

# Fair Collection and Debt Recovery Policy

March 2015



*your council working for you*

# Fair collection and debt recovery policy

## INTRODUCTION

As part of a growing partnership approach to anti-poverty initiatives, South Kesteven District Council has agreed that there is a need to work on developing a collection and debt recovery policy that is fair to everyone, especially people on low incomes.

This policy is made in conjunction to the Council's Corporate Enforcement Policy. It is intended to:

- help staff work within the policy
- help advice workers understand it so they can advise people about it and let us know if we don't keep to it
- help contractors who work for the Council on debt recovery and other activities to follow the aims of the policy

## OUR POLICY AIMS TO

- take positive action to prevent debts from occurring in the first place – for example by making the most of people's incomes and offering different payment methods
- take positive enforcement action against deliberate non payers or those who delay payment unnecessarily
- make sure we make early contact to avoid debts increasing
- encourage our customers to make early contact with us to avoid debts building up
- make sure that where people have fallen or are likely to fall into debt, we work with them and their representatives to try to set reasonable payment levels that they can maintain
- make sure that all parts of the Council work towards adopting a co-ordinated approach to billing, concessions, benefits and multiple debts
- make sure we consider our customers' other debts and liabilities when making arrangements for recovering the money they owe

## **MAKING OUR POLICY EFFECTIVE**

We know that for our policy to work, we must:

- send clear and accurate bills quickly
- respond to changes in our customers' circumstances as soon as we are told about them
- deliver fast and accurate benefit entitlements
- stick to the time scales we give people for processing non-payment

## **THE BENEFITS OF OUR FAIR COLLECTION AND DEBT RECOVERY POLICY**

We believe that our policy will:

- help people who are in debt to make payment agreements that are realistic and appropriate to their circumstances
- make sure that when we have to process non-payment, the action we take is both appropriate for the individual and likely to be effective
- mean that by being seen as easy to talk to, people will be more likely to make contact with us when they first face difficulties
- help reduce the burden of debt for people on low incomes
- enable people who experience change, even after an arrangement has been made, to vary their payments in line with those changes
- help identify and recognise people who may try to abuse the policy, such as people who refuse to pay or who delay payment without a real reason

## **STATEMENT OF PRINCIPLES FOR OUR FAIR COLLECTION AND DEBT RECOVERY POLICY**

Here at South Kesteven District Council, we:

- believe that people have a responsibility to pay what they owe
- actively encourage contact at every stage of the collection and recovery process
- aim to help people make the most of their income
- provide clear, accurate and speedy bills and information about liabilities

- acknowledge the need to provide a service that is effective but sensitive to peoples' needs,
- acknowledge our responsibility to collect money effectively.

### **WHEN PEOPLE GET INTO DEBT, WE WILL:**

- make sure that payment arrangements reflect our customers' ability to pay as well as the amount they owe
- not take the next step in the recovery procedure if agreements are being met
- acknowledge and respect a persons' obligations to his or her dependants and recognise the need for a person to maintain a reasonable standard of living
- expect Priority Debts (see Annex 1) to be given precedence over other money owed
- acknowledge the role of the recognised advice agencies and treat offers made on behalf of their clients in good faith

### **OUR DUTY TO COLLECT & RECOVER**

South Kesteven District Council has a duty to all council tax and business ratepayers to ensure cost effective billing, collection, and recovery of all money due to the Council. We also have a responsibility to all our tenants to collect rent as efficiently as possible, and take early action against those who do not pay. In trying to meet these aims, we recognise that people do not pay their debts for a variety of reasons:

- some people, because of living in or on the margins of poverty, will find it hard to pay. We will try to help these people to minimise the impact of debt upon them
- some people may be able to pay but do not do so because of an oversight or personal difficulties not because of a deliberate decision to avoid or delay payment. The Council will try to help such people by encouraging them to contact us to discuss their difficulties
- some people may deliberately set out to delay or not make payments. In these cases all methods of enforcement may be used to make them pay the money they owe

The need to get in touch is central to our policy. When a person contacts us, their circumstances will be used to agree a reasonable payment arrangement. This will

minimise our need to take recovery action and help prevent hardship for the individual

- If people do not make contact or maintain their payments, recovery action will continue.

### **THE COUNCIL WILL:**

- make sure that publicity is available in a variety of formats about benefits, claim forms and information about where to get independent advice
- promote maximum take-up of housing benefit and council tax support and ensure that bills and liabilities are taken into account when we ask you to pay
- notify people of the availability of council tax discounts, rate relief, reductions for people with disabilities, exemptions and second adult rebate
- inform people of the general availability of income-related benefits
- make sure staff who deal with the public are aware of this policy and where professional/independent advice may be found
- help to complete a benefit application for all council tenants who may be eligible when the tenancy agreement is signed

For business (non-domestic) rates, the Council will make all payers aware, via its billing leaflet, of the availability of reliefs available such as charitable rate relief, rural rate relief and Small Business Rate Relief. Each application is determined on its individual merit and in accordance with existing legislation and national guidance. Application forms are available from the Council.

For housing benefit overpayments, the Council will consider in each case, whether recovery should be sought and, if so, determine a level of payment appropriate to the person's financial circumstances.

### **OTHER COUNCIL DEBTS**

Other Council debts are due on demand, but where an account is ongoing e.g. commercial rent, payments can be made by monthly instalments by standing order. Customers must ensure that payments reach us by the due date.

To try to prevent debts, we want people to contact us as soon as they have difficulty paying. Many people are unaware of their rights and responsibilities, and of the availability of a variety of payment arrangements. If people contact us early we will be able to discuss the situation and prepare a payment plan. This will help people to manage their debts.

When people contact us we will:

- check whether they should be paying less or nothing at all
- check whether all benefits, discounts, reliefs, exemptions and rebates are being claimed
- advise on the most appropriate payment methods
- if appropriate, advise them to contact an independent advice agency eg. CAB

## **COUNCIL TAX RECOVERY PROCESS**

Where payments due have not been made, the Council will take the following action:

1. A **Reminder Notice** will be issued if a council tax instalment is missed. The Notice requires the instalment to be paid within 7 days to bring the account up to date.
2. If the Reminder Notice is not paid, the right to pay by instalments is lost for the financial year in question and the total remaining balance (displayed on the Reminder Notice) becomes due and payable and must be paid within a further 7 days.

If the Reminder Notice is paid, the taxpayer can continue to pay by instalments.

3. If another instalment is not paid the same process takes place.
4. However, if an instalment is missed for the third time, the taxpayer automatically loses the right to pay by instalments for the financial year in question and a **Final Reminder Notice** is issued for the total remaining balance.
5. If a taxpayer has lost the right to pay by instalments and not paid the total remaining balance within 7 days, a complaint is made to the magistrates court that the taxpayer has defaulted in payment of the council tax. The court costs, which are charged to the taxpayer, are £72.50
6. A **Summons** is then sent to the taxpayer requiring full payment before the date of the court hearing. If a taxpayer disputes the summons they, in the first instance, should contact the Revenues Enforcement Section to discuss and hopefully resolve the matter. If the taxpayer is still aggrieved then they must attend the magistrates court on the day of the court hearing and appear before the magistrates informing them why they have not paid and their dispute. A taxpayer's ability to pay will not be considered by the magistrates at this time.
7. The Council's application at the court hearing is for a **Liability Order** to be issued in respect of each unpaid summons.

This action will not affect the taxpayer's credit rating as the case is heard in a magistrates court and not a county court.

A Liability Order gives the Council further recovery powers, which include:

- an attachment of earnings order
- an Attachment of Benefit Order (Income Support / Job Seekers Allowance/ Employment Support Allowance)
- distress
- insolvency and bankruptcy
- charging orders

The Council may implement an Attachment of Earnings/Benefit Order at anytime after the issue of a Liability Order.

8. A Liability Order Notice (7 day notice) is sent to the taxpayer and a copy of details of the costs associated with enforcement, taking control of goods (fees) Regulations 2014 informing the taxpayer that full payment is required within 14 days of the date of the letter. If full payment cannot be made by the taxpayer he/ she will be advised that a payment arrangement will be considered. If no contact is made, the taxpayer is informed that the Council's Enforcement Agent will call at their premises to remove their goods.
9. Where there is no response to the Notice, the Liability Order will be passed to the Council's enforcement agent.
10. The enforcement agent will visit the taxpayer's address to secure payment. Details of the fees are detailed in appendix one. If no contact is made a committal warning letter is issued. If the taxpayer still does not make contact, the Liability Order in question is endorsed by the enforcement agent and the next step is committal action against the taxpayer.
11. A Pre-Committal Notice is sent to the taxpayer informing him/her that the Council is in the process of issuing a Committal Summons if full payment is not received the day before the summons is due to be issued.
12. If full payment is not received, the Committal Summons, after being endorsed by a magistrates court incurring a further £245 costs that will be added to the debt, is issued to the taxpayer (together with appropriate guidance notes). Full payment must be made or the taxpayer must attend the magistrates court as the Council's application at the hearing is for the taxpayer's committal to prison. During the council tax recovery process the Council, where possible, will take into account a taxpayer's personal circumstances and ability to pay. Also, payment arrangements (including voluntary deductions from wages) are always made with taxpayers where possible. Staff can also use their discretion by amending payment arrangements and inputting recovery 'suspended' so queries can be resolved.

## **NATIONAL NON DOMESTIC RATES**

An identical recovery process for this applies up to and including the acquisition of a Liability Order. However an Attachment of Earnings Order or an Attachment of Benefit Order cannot be implemented in respect of this debt. Also, Committal action can only be taken against an individual and not, for example, a limited company.

## **COUNCIL HOUSING RENT RECOVERY PROCEDURE**

Where arrears occur the Revenues Income Recovery section will take the following action with flexibility allowed for individual circumstances. At each stage, the tenant is encouraged to contact the office to make arrangements to pay, or to advise if there are any reasons why the payment cannot or should not be paid.

1. Where arrears reach the equivalent of two weeks rent due, a reminder letter will be sent.
2. If the tenant fails to clear the arrears or contact the Council within one week of this reminder, an attempt to contact the tenant will be made by visit, telephone or email.
3. Where arrears have not reduced by a satisfactory amount during the period of a further week, a second reminder will be sent advising the consequences of failing to pay.
4. Where arrears have not reduced by a satisfactory amount after a further two weeks then a Notice of Seeking Possession (NOSP) will be sent. This is replaced by a s128 Notice of Proceedings for Possession for introductory tenancies.
5. If the tenant does not clear the arrears by the end of the notice period or come to an arrangement for payment of the arrears, then a Letter Before Action (LBA) will be sent. This warns that court proceedings will commence unless the balance is paid in full or a suitable arrangement made.
6. If there is no response to the LBA, contact will be attempted by visit, telephone or email.
7. If there is no contact from the tenant within 14 days, or if the payment arrangements are not kept up, court action will be pursued.
8. A court hearing will take place at which the Council will request a Suspended Possession Order, Outright Possession Order or adjournment on terms.



9. After the court hearing the tenant will be informed of the outcome in writing by the court including the terms of the order if appropriate.
10. If the tenant does not keep to the terms of a Suspended Possession Order or there is an Outright Possession Order in force and the tenant has not paid the total amount of arrears and costs owed within the time specified on the order, an application will be made for a Warrant of Possession.
11. After a warrant has been issued the tenant may apply to the court to suspend the warrant (this may also be referred to as a Stay). If the court agrees to suspend the execution of the warrant it will impose conditions regarding the payment of the arrears.
12. If a suspension is not applied for or granted then the eviction is carried out by the court appointed bailiff.

### *Introductory Tenancies*

An introductory tenancy will last for 12 months after which time the tenancy will become secure unless:

- the Council is in the process of gaining possession of the property (where possession proceedings have started and the 12 month period for an introductory tenancy ends, the tenancy will remain an introductory tenancy until the proceedings are finally decided); or
- the Council has served a notice on the tenant to extend the trial period for a further six months.

The eviction process for an introductory tenant is different to that of a secure tenant in that no grounds for possession have to be proved to the court, but a tenant will have the right to a review by the Council of any decision to evict or serve an extension notice. Suspended Possession Orders which are commonly used for secure tenants as a means of recovering rent arrears are not appropriate for introductory tenancies. Applications to the court for possession must lead to eviction.

### **RECOVERY OF OTHER COUNCIL DEBTS**

Where payments are due for other Council debts (e.g. sundry debtors/ overpayments), the following action will generally be taken:

- an invoice will be issued stating the amount owed and methods of repayment
- if no payment is made within 14 days, a reminder notice will be issued which requires the account to be paid up to date within 10 days
- if no payment is received, a final reminder will be issued warning the debtor of the need to pay and warning that legal action may follow

- a further 7 days and an internal document is produced
- the debt will be either be passed to our legal section for their attention or passed to external debtor collectors
- during any stage of this process, arrangements for payments can be made which will result in proceedings being adjourned
- payment will then be enforced using the most appropriate means. This may be one of the following:
  - attachment of earnings
  - warrant of execution
  - charging order
  - garnishee order
  - overpayment of benefit

An invoice will be issued stating the amount owed and methods of repayment.

- if no payment is made within one month, a reminder notice will be issued which requires the account to be paid up to date within 10 days.
- if no payment is received, a final reminder will be issued warning the debtor of the need to pay and warning that legal action may follow

During any stage of this process, arrangements for payments can be made which will result in proceedings being adjourned.

- payment will then be enforced using the most appropriate means. This may be one of the following:
  - Direct Earnings Attachment (DEA)
  - Debt collector
  - DWP deductions
  - Legal

## **MAKING ARRANGEMENTS FOR PEOPLE IN ARREARS**

Our staff will:

- make every reasonable effort to contact people at an early stage in the recovery process
- expect priority debts (see Annex 1) to be given precedence over other debts. When a person makes contact a realistic agreement for payment will be made. If there is any doubt as to whether the agreement is realistic (either because it appears to be too high or too low), staff will help the individual to complete an income and expenditure form

It is important to remind the person to contact the Council if they anticipate problems in meeting any instalment due date. They will be advised not to wait until they have received a written response to their offer of payment, but to start to make the payments which they have offered.

## **PAYMENT DATES**

- the payment date should take into account:
- the date the person receives income
- the method and frequency of agreed payments

## **ARRANGEMENTS MADE BY ADVICE AGENCIES**

- where an arrangement is proposed by a recognised advice agency, an Income and Expenditure form will normally be provided. Their offers received will be treated in good faith, subject to approval
- where a person appears to have complex benefit or money advice problems, staff will refer them to an appropriate agency

## **OBTAINING DETAILS**

- staff should try to get as much detail as possible of a person's circumstances to enable us to make the best assessment of their ability to pay.
- if a person refuses to divulge any information, this should not be used as a reason for refusing to make an arrangement. However, they will be advised that this could lead to a higher rate of payment being required than if their circumstances were fully assessed.

## **DOCUMENTARY EVIDENCE**

- in some cases it will be necessary to request documentary evidence to confirm particular details when arriving at a payment arrangement. People will not, however, be asked for documentary evidence unless it is absolutely necessary.
- where it is necessary, the person will be told of the particular items that require confirming and be given a specified reasonable time limit within which they are required to provide the documents.
- if it is easier for the person, arrangements will be made for the documents to be confirmed either by the Council or a recognised advice agency.
- the person will be advised that if the evidence is not produced within the agreed time-scale, the offer of payment may be rejected and further action could be taken.

## **MONITORING PAYMENT ARRANGEMENTS**

- all payment arrangements will be closely monitored
- further recovery action may be taken in respect of late or missed payments
- the responsibility for making sure that payment reaches the account by the due date remains with the debtor
- the person will be reminded that the date on which instalments are to be paid is the final date on which money should reach the account. This means that people must allow sufficient time for the payment to reach the Council by the due date

## **WHEN PAYMENT ARRANGEMENTS ARE NOT MAINTAINED**

- it is important to ensure that where arrangements have not been maintained, prompt action is taken by the person to try and bring the arrangement back up to date. If the person's circumstances have changed, they will be encouraged to contact us to alter the agreement.
- when a person defaults on an arrangement, we will send a written notice advising them of the need to take action. This will provide the person with the opportunity to bring the arrangement up to date or advise the Council of a change of circumstances.
- although the Council will ideally require the original agreement to be brought up to date within a short time scale, if there has been a significant change in circumstances it will be possible to negotiate a new arrangement.

## **MAINTAINING CURRENT INSTALMENTS**

When negotiating arrangements for payment, staff will ensure that current instalments and weekly rent are being maintained, i.e. the arrangement will be in addition to and conditional on, the current council tax, weekly rent, business rates, or other Council debt being paid. For council tax, current instalments will be the yearly council tax divided by 52 in the case of weekly instalments or 12 in the case of monthly instalments. This arrangement is available only on hardship grounds and is subject to completion of an income/expenditure form.

## **TO CONTINUE TO DEVELOP THE STRATEGY WE WILL:**

- continue to build on the trust that has developed between the advice agencies and the Council
- forge stronger links with the Department for Works and Pensions, and Job Centre Plus, particularly in areas of Income Support Direct Deductions and notification of changes in benefits.

- continue to review all leaflets being forwarded by the Council in respect of debt collection and benefits
- look at better targeting of information, particularly in relation to benefits
- consider recommendations that could be made to national Government to amend appropriate legislation

## **ANNEX 1**

### **DEFINITIONS**

Throughout the document several words or phrases have been used that may have different meanings to different people. This section provides the Councils accepted definitions of some of those terms.

#### **1. Poverty**

The Council uses a relative definition of poverty, which is “the enforced lack of the resources needed to participate in society”

#### **2. Minimum accepted standard of living**

The means-tested benefits level is a simple and measurable indicator of how much someone needs to live on. However, it is generally accepted that this level is insufficient for a decent standard of living and it does not take account of individual circumstances. The Council therefore uses this level as a minimum whilst allowing a degree of flexibility for special costs or expenses that individuals or families may face.

#### **3. Priority Debts**

Priority debts are those debts that can result in loss of essential service, lose your home or imprisonment

##### **Housing**

Council tax  
Mortgage  
Rent

##### **Utilities**

Electricity  
Gas  
Telephone  
Water

##### **Other**

Business rates  
CSA deductions  
Court fines  
Hire purchase for essential goods  
Income tax  
Maintenance  
Arrears  
Secured loan  
VAT




# COSTS ASSOCIATED WITH ENFORCEMENT

## The Taking Control of Goods (Fees) Regulations 2014

With effect from 6<sup>th</sup> April 2014 the legislation governing the enforcement of unpaid council tax and business rates changed. Where a debt is passed to an enforcement agent the following fees will apply. These fees are set by legislation and are non-negotiable.

Enforcement Stage	Amount
Enforcement Notice	<b>£75</b>
Enforcement agent visit to take control of goods	<b>£235</b> If the debt is above £1,500 there is an additional 7.5% of the amount above £1,500
Enforcement visit to remove goods	<b>£110</b> If the debt is above £1,500 there is an additional 7.5% of the amount above £1,500
<b>Where removal and sale of the goods takes place</b>	
Storage costs	Actual costs
Locksmith's costs	Actual costs
Any relevant court application fees	Actual fees
<b>Auctioneer's costs where the sale is held on the auctioneer's premises</b>	
Auctioneer's commission	Not to exceed 15% of the sum realised
Auctioneer's out of pocket expenses	Actual costs
Reasonable advertising costs	Actual costs
<b>Auctioneer's costs where the sale is held on other premises</b>	
Auctioneer's commission	Not to exceed 7.5% of the sum realised
Auctioneer's out of pocket expenses	Actual costs
Reasonable advertising costs	Actual costs
Internet auction costs	Actual costs
Exceptional costs that will apply	As agreed by a court

## How to pay

	Payments can be made on the internet by credit or debit card, 24 hours a day, 7 days a week. Go to <b>www.southkesteven.gov.uk</b> and follow the instructions (American Express and Electron cards are not accepted).
	You can make payment by telephone anytime, 24 hours a day, 7 days a week, using a credit or debit card. Please dial <b>0845 234 0038</b> and follow the instructions (American Express and Electron cards are not accepted).
	You can send a cheque made payable to South Kesteven District Council, with your name, address and account number written on the back to: Exchequer Services (Payments), Council Offices, St Peter's Hill, Grantham, Lincolnshire, NG31 6PZ