

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

POLICY DEVELOPMENT GROUP – WEDNESDAY, 6 FEBRUARY 2019

| | |
|---------------------------------------|--|
| Report Title | USE OF BAILIFFS REVIEW |
| Contacts | <p>Councillor Nick Rushton 01530 412059 nicholas.rushton@nwleicestershire.gov.uk</p> <p>Strategic Director of Housing and Customer Services 01530 454819 glyn.jones@nwleicestershire.gov.uk</p> <p>Head of Customer Services 01530 454753 tom.shardlow@nwleicestershire.gov.uk</p> |
| Purpose of report | To provide members with information around the use of enforcement agents in North West Leicestershire for the recovery of Council Tax debt. |
| Council priorities | Spend Money Wisely |
| Implications: | |
| Financial/Staff | Enforcement agents are used for debt recovery. |
| Link to relevant CAT | N/A |
| Risk Management | N/A |
| Equalities Impact Screening | Report speaks of vulnerability and how these customers are treated differently based on their circumstances. |
| Human Rights | N/A |
| Transformational Government | N/A |
| Comments of Head of Paid Service | The report is satisfactory. |
| Comments of Section 151 Officer | The report is satisfactory. |
| Comments of Deputy Monitoring Officer | The report is satisfactory. |
| Consultees | Report has been drafted in conjunction with the Management Team of the Leicestershire Revenues and Benefits Partnership. |

| | |
|-------------------|--|
| Background papers | 'Stop the Knock' Paper of the Money Advice Service |
| Recommendations | <p>THAT THE POLICY DEVELOPMENT GROUP:</p> <ol style="list-style-type: none"> 1. NOTE THE REVENUES & BENEFITS PARTNERSHIP'S RESPONSE TO THE RECOMMENDATIONS MADE BY THE MONEY ADVICE SERVICE IN RESPECT OF THE USE OF ENFORCEMENT AGENT SERVICES IN RESPECT OF THE NON-PAYMENT OF COUNCIL TAX AND BUSINESS RATES. 2. NOTE THE ASSURANCE FROM THE HEAD OF CUSTOMER SERVICES THAT THE COUNCIL'S USE OF ENFORCEMENT AGENTS IS PROPORTIONATE AND REASONABLE. |

1 BACKGROUND

- 1.1 At the Council Meeting of 27 February 2018, Cllr Enyon raised a concern and asked for further information as to why it was that Chesterfield Borough Council pursued only 2 Council Tax cases via enforcement agents compared to NWLDC's 3,000 during 2016/17. Consequently, the Chief Executive Officer asked for further information and officers have now reviewed the position which informs this report.
- 1.2 The source of the information which was referred to by Cllr Enyon is a report by the Money Advice Trust called "Stop the Knock" (Appendix 1). This report looks at the use of enforcements agents for recovering local government debts.
- 1.3 If viewed in isolation the headlines of "£2.3m worth of debts passed to bailiffs in 2016/17 and the use of bailiffs has increased by 14% in two years" appears quite alarming but has to be viewed in context and more importantly the reference to Chesterfield BC's use of enforcement agents was incorrect.
- 1.4 Enquiries were made with Chesterfield BC and revealed that the reference in the report was incorrect. They had not been aware of the report and confirmed that they had referred 2,221 cases to enforcement agents to recover outstanding Council Tax debt during 2016/17. The reference to two referrals was actually in relation to commercial rent.
- 1.5 Whilst the report might have contained inaccuracies, it is worth PDG noting the R & B Partnership's response at section 1.4 to the recommendations made in the Money Advice report.

2 NATIONAL CONTEXT

- 2.1 Reform and regulation of the bailiff industry and the replacement of common law distress (known as removal and sale of goods) by a bailiff had been in the pipeline for over 10 years. In April 2014, new procedures and a fee scale relating to the enforcement of debts including non-payment of Council Tax and Business Rates were introduced. These debts are enforced by enforcement agents, formerly referred to as bailiffs.
- 2.2 Private sector enforcement agents who are recovering debt owed to the public sector perform the vast majority of enforcement work and in order to improve the public's perception of the profession, enforcement agents and those who employ them or use their services must maintain high standards of business ethics and practice.

3 FEE STRUCTURE

- 3.1 Before a Council Tax debt reaches the Enforcement Agent stage, Council Tax payers are encouraged to contact us as soon as they fall into financial difficulty.
- 3.2 In advance of any Enforcement Agent action they will have received:
- A demand notice
 - Reminder (minimum of one)
 - Summons
 - Notification of Liability Order
- 3.3 Each document encourages the debtor to make contact and to arrange with us a mutually acceptable payment arrangement. The Council will always attempt to put in place an attachment of earnings or attachment to benefits order before instructing enforcement agents. The consequences of failing to pay are always clearly spelt out.
- 3.4 When a Council Tax debt is passed to enforcement agents, an account is set up by the enforcement company tasked with enforcing the debt. A fee of £75 will be added to the account by the enforcement agency. Debtors are then sent a Notice of Enforcement which outlines the details of the outstanding debt; this is referred to as the compliance stage, which typically lasts for a minimum of two weeks. During this stage, debtors do not get a visit from an enforcement agent and therefore can avoid a visit by arranging a payment schedule and adhering to a payment agreement. If contact is not made with the enforcement agent during the compliance stage, the matter is then moved to the enforcement stage which entails a visit, or a series of visits from an enforcement agent and a further fee of £235. At this stage, debtors risk having their possessions seized by the enforcement agent and subsequently removed and sold, if full payment is not made. If goods are seized and removed there is an additional sale stage fee of £110. These fees are set by the Taking Control of Goods (Fees) Regulations 2014.

4 MONEY ADVICE TRUST'S REPORT

- 4.1 When the report was published the Money Advice Trust wrote to Council Leaders and Chief Executives asking them to consider some specific recommendations on how they believed collection practices could be improved. For ease of reference the recommendations and the Partnership's responses to them are detailed below:
- 4.2 Put in place a formal policy covering residents in vulnerable circumstances

It should be noted that there is a safeguarding policy which is included as part of our contract with enforcement agents and what steps to follow when vulnerability is identified.

This is summarised below:

Vulnerability Criteria

The Council recognises that some customers will, due to their individual personal and financial circumstances have extreme difficulty in paying their council debts. In some cases where recovery action is being considered, it may not be appropriate to progress to an enforcement stage, where circumstances suggest that the customer or other household members may be vulnerable in some way. The Council ensures processes are in place to ensure that due regard is given to this group of customers.

A person may be considered vulnerable in the following circumstances. The list is not exhaustive and each case will be decided on its own merits:

- The person is elderly
- The person is seriously ill, suffers from mental ill health or has physical disabilities
- The person has communication or learning difficulties
- The person has young children and where there is severe deprivation
- The person has recently experienced a long term relationship, marital or civil partnership break up
- The person has recently been bereaved or made unemployed
- The person has difficulty in understanding written or spoken English.

Falling into one of these categories does not automatically mean that recovery action is not appropriate. The Council will make individual decisions based upon the individual circumstances of the customer to identify if recovery action is appropriate and, if so, what action to take.

Different recovery proceedings cannot be applied simultaneously to one customer but can be applied subsequently if a debt remains outstanding. The choice of recovery action is made at the discretion of the Council's Enforcement Officers and they will consider the customer's circumstances on a case by case basis and the guidance within this Policy.

The Revenues Service may become aware of vulnerable customers following contact from the customer, their representative or once recovery action is instigated. Alternatively, this information may become available from other internal systems used by the Council, from other departments or from other support agencies.

Where the Enforcement Agent on visiting the customer has identified vulnerability concerns, he/she is required to return the case to the Council in order for the Council to decide upon the most appropriate recovery action.

Enforcement agents also have a vulnerability statement in their procedures regarding the way they deal with potentially vulnerable people, which is agreed with their clients. When vulnerability is identified, the situation is dealt with sensitively.

4.3 Exempt Council Tax Support recipients from bailiff action altogether

At the heart of this sits the replacement of 100% Council Tax Benefit and the move to a locally defined scheme, with a Government intention that those of working age should contribute something and take financial responsibility. If the ability to recover a debt is removed, this will effectively pass the debt onto others and inadvertently encourage those recipients to treat Council Tax as a non-priority debt. At present the maximum award in North West Leicestershire for Local Taxation Reduction is 85% of the liable amount for working age claimants, leaving the remaining 15% to be paid. This was effective from 2014/15, rising from the previous amount of 8.5% in 2013/14.

A hardship fund is also currently available for Council Tax Support claimants, though this fund will be diminished by the precepting authorities withdrawing their financial support to the Discretionary Discount Fund from April 2019.

4.4 Sign the Council Tax Protocol and examine the Money Advice Service's creditor toolkit

The Partnership management have reviewed the protocol and will present to the Revenues and Benefits Joint Committee on 24 January 2019, the work that is currently being undertaken by the Partnership in response to this.

It should be noted that whilst we want to support our community, NWLDC does have a statutory duty under the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992 to collect all local authority debts. Our preceptors also have a significant vested interest in this and are keen that collection authorities do everything possible to maximise the collection of Council Tax.

4.5 Adopt the Standard Financial Statement (SFS) to objectively assess affordability

The SFS would appear to be aimed at supporting people to manage their whole financial position without consideration of the relative priority of some matters. There is a provision which encourages saving by the tax payer. This is a laudable aim, however, bearing in mind our statutory responsibility as a collection authority, this cannot be to the detriment of paying priority debts and cannot be something we would support as Council Tax is a priority debt. As a collection authority, we do not have the same options as those organisations that provide other services (e.g. we cannot stop our services), and our new bills will be issued annually regardless of propensity to pay, credit rating etc.

The Standard Financial Statement (SFS) is an online tool for an internal debt advisor to use when liaising with a customer in person or over the phone. The advisor asks questions and completes the assessment. For Council Tax we issue an income and expenditure document for the customer to complete themselves. The SFS would need to be adapted into a form to make it fit for purpose.

4.6 Make a clear public commitment to reduce the council's use of bailiffs

We agree that all remedies should be used prior to referral to enforcement agents and make a firm commitment to this. Whilst it cannot be guaranteed that the number of referred cases will reduce (due to the increase in properties etc.), we always attempt to recover the debt before it is referred to enforcement agents, as mentioned in section 1.3.

The caveat to the above is that the resource requirements will need to be considered / balanced. The number of debts being dealt with is high and the Partnership aims to make all processes as automated and efficient as possible. On this basis cases are reviewed manually where there is a reason to suspect vulnerability, before progressing to the Enforcement Agent stage.

5 THE COUNCIL'S CURRENT APPROACH

5.1 In considering the use of bailiffs, the PDG may find it helpful to understand the broader context of the R & B Partnership. In April 2015 the Partnership restructured and the Revenues team moved to generic working, this involved a significant amount of training and as a consequence during 2015/16 referrals to enforcement agents were artificially reduced, as officers were taken away from core duties. This explains the increase in referrals since then, as business as usual activity resumed.

5.2 Additionally, since 2011 the number of properties has increased by 9.2% so it can be expected that there would be a commensurate increase in the number of referrals simply because the number of accounts we need to recover from has increased.

5.3 The recovery policies are agreed for the Partnership, any changes would need to be considered by all partners, as they have an impact both financially and in terms of performance. If desirable, this could be considered by all partners at the operational meeting of the Management Board.

- 5.4 It is difficult to make direct comparisons with other authorities as they may have a higher/lower number of staff, number of properties, lower levels of deprivation etc. However, a piece of work is ongoing by the District Treasurers to identify any areas where alignment/change may be appropriate, which will be reviewed once completed.
- 5.5 We also have to be mindful of the importance that the County Council places on increasing collection rates, and if we commit to reduce the use of enforcement agents we may see collection rates reduce significantly.
- 5.6 The Partnership is currently in the process of letting the contract for the provision of enforcement Agents. Within the new requirements there is a very strong emphasis on vulnerability and it should be noted that as previously detailed we only ever refer cases to enforcement Agents as a last resort and when all other attempts to recover the debt have failed.