



# *Cherwell*

DISTRICT COUNCIL  
NORTH OXFORDSHIRE

## Corporate Debt Policy

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## **1. Introduction**

- 1.1** It is good practice to have a Corporate Debt Policy and ensures that all the people involved in the collection of money owed to the Council have a consistent approach and an understanding what that approach is. This promotes efficiency, effectiveness and consistency in the collection of debt. An understanding of an individual's or a commercial organisation's problems will enable them to access the appropriate help, assistance and benefits to allow them to pay their bills.

The Council recognises that the minimisation of and effective management of debt is crucial in terms of maximising resources available and providing cost effective services. A high percentage of the Council's revenue expenditure is for local services and is funded from the council tax, business rates, fees and charges and sundry debt income collected. Therefore, it is vital that the Council collects taxes, along with other debts and income, in order to support the local services offered. The full range of collection and recovery methods will be used as appropriate where debts are not paid (see appendices A-D).

- 1.2** We will treat individuals consistently and fairly, ensuring that individual's rights under Data Protection, Equality and Human Rights legislation are protected

## **2. Scope**

- 2.1** The Policy covers all debts owed to the Council including:

- A.** Business Rates
- B.** Council Tax
- C.** Sundry Debts (Domestic & Commercial Charges/Rents)
- D.** Housing Benefit Overpayments

**Please refer to Appendices A-D for the billing and recovery process**

## **3. Purpose and Objectives**

- 3.1** To set out the general principles of debt management across all services provided by the Council
- 3.2** To seek payment in advance for a service being provided where possible and make it easy for customers to pay
- 3.3** To raise debt/invoices and collect those due to us in as soon as reasonable possible.
- 3.4** To identify and assist those who face difficulties in paying at an early stage and to actively encourage them to contact us to help to reduce the effect of debt

- 3.5 To ensure that where customers can't pay their debt that we consider their individual circumstances and take action on a case by case basis and to negotiate repayment plans that do not cause unnecessary financial hardship
- 3.6 To signpost potential debtors to advice agencies and other sources of support and do everything possible to encourage them to use them.
- 3.7 To have clarity in the enforcement action process and ensure that customers know their obligations and potential consequences of not paying
- 3.8 To recover and enforce debts in accordance with relevant legislation and guidance and in a proportionate, consistent and fair manner
- 3.9 To undertake a proactive stance on recovery by promoting awareness of discount, exemptions, reliefs and council tax reduction to reduce outstanding liabilities where applicable

#### **4. Assessing the Customer's Ability to Pay**

- 4.1 During the process of recovery, the Council will act in accordance with statutory regulations and advice issued by professional bodies e.g., Citizens Advice, Money Advice Service, and Money & Pensions Service.
- 4.2 When recovering multiple debts, the Council will endeavour to break the cycle of debt more specifically towards Council Tax and Business Rates by encouraging payment for current year, and then work with the customer to achieve an acceptable payment arrangement for previous year debts such as Council Tax whilst ensuring a satisfactory level of repayment for the Council.
- 4.3 The Council will review payment arrangements to offer flexible options, including different payment dates and amounts to assist those on irregular incomes.
- 4.4 The Council will endeavour to make payment arrangements with customers who are unable to settle their debt(s) in full. However, this may involve legal action being taken against the customer where appropriate.
- 4.5 Debts will only be written off in line with the Council's Financial Procedure Rules.

#### **5. Arrangements for Repayments of Arrears**

- 5.1 More detailed information is likely to be required where the debtor claims to be unable to pay the debt over a short space of time and where the debt will not be repaid in full by the end of the financial year.

**5.2** Where a debtor refuses to divulge any information that is considered essential to assessing their ability to pay then no payment agreement will be entered into.

## **6. Supporting Vulnerable Customers**

**6.1** We will ensure that arrears are pursued in a timely manner with a firm but fair approach. It is Council policy to try to balance customer care with the responsibility of collecting all debts efficiently. We endeavour to be responsive to individual circumstances wherever possible.

**6.2** We recognise that everyone will need to be treated in a sensitive way and a more considered approach will need to be taken with our individual customers; the Council recognises that customers do not pay their debts for a variety of reasons. This may include poverty or other financial hardship, which we will endeavour to balance their circumstance against our duty to collect.

**6.3** Vulnerability does not mean that a customer will not be required to pay amounts they are legally obliged to pay. The cause of vulnerability may be temporary or permanent in nature and the degree of vulnerability will vary widely.

**6.4** Whilst there are several characteristics which may cause an individual to be judged as vulnerable, we will consider each case on an individual basis, and take all relevant factors into account.

**6.5** Whilst there is no legal definition of a vulnerable person. Generally, persons considered vulnerable are likely to be those who:

- Are elderly.
- Appear to be physically or mentally ill, severely disabled or suffering mental confusion.
- Have young children and severe social deprivation is evident.
- Are heavily pregnant.
- Are in mourning due to recent bereavement (of immediate family).
- Have difficulty communicating e.g., due to profound deafness, blindness, or language difficulties.
- Are in receipt of state benefits and/or on a low income and severe social deprivation is evident; and/or
- Are suffering from long term sickness or serious illness including the terminally ill.

- Are in a refuge.

## 7. Breathing Space

- 7.1** The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020, effective from 4 May 2021, introduce a scheme known as ‘breathing space’ for people in problem debt who receive professional debt advice.
- 7.2** Upon seeking professional debt advice from an accredited debt advisor, a person in problem debt may be entered into a 60-day period which pauses enforcement action from creditors and freezes charges, fees and certain interest on qualifying debts for up to 60 days.
- 7.3** For people receiving mental health crisis treatment, this scheme creates an alternate route where the protections of a moratorium may be accessed and remain in place for the duration of their crisis treatment, plus 30 days. An approved Mental Health Professional (AMHP) will need to certify that an individual is in receipt of mental health crisis care. The AMHP must be satisfied that in their professional judgement, the person meets one of the three criteria as follows:
- has been detained in hospital under the Mental Health Act for assessment or treatment (including under Part 3 of the Mental Health Act 1983).  has been removed to a place of safety by a Police Constable or;
  - is receiving a specialist mental health crisis service such as Home Treatment Team. In addition, the AMHP also needs to:  Ask for consent to share personal information  Identify a nominated point of contact, as specified in the guidance.
  - Submit the evidence form at [www.maps.org/mhcbs](http://www.maps.org/mhcbs). On receipt of the evidence form, a debt advisor will decide if the individual is eligible for a mental health crisis breathing space, linking in with the nominated point of contact.
- 7.4** This scheme is administered by the Insolvency Service who will send notifications to the council and upon receipt we will search for all qualifying debts owed to the council and suspend all recovery action for the duration of the breathing space period. The intention of the breathing space is to give the professional debt advisor time to review the individual’s financial situation and propose a solution which might include a payment plan to cover the debts owed to the council. It is a matter between the professional debt advisor and the individual as to whether or not a solution is found.

**7.5** The council is not involved in and has no say in this process

## **8. Write-off Policy**

**8.1** The Council recognises that a small proportion of its overall debt may not be collectable due to matters beyond its control and where a debt is assessed to be irrecoverable it will be considered for write-off. However, the Council will seek to minimise the cost of write-offs by taking all appropriate action to recover what is due.

**8.2** Furthermore, if a debt is written off but an individual or businesses circumstances change such debts will be considered for write-on and pursued to the full extent of the law. An example of when this may occur is if a debtor absconds with no forwarding address but is subsequently traced. A further example would be in insolvency cases where an individual/company goes bankrupt or is made insolvent, partial/full dividend(s) can be received many years later.

**8.3** All officers, members and contractors will ensure that they have no work-related involvement with any account involving any relatives, friends, close associates, organisations of which they or their relatives are members or previous employees of. This includes making any decisions on how money owed to the Council is collected and recovered.

**8.4** Please refer to write off policy in Appendix E

## **9. Monitoring Performance**

**9.1** The collection of Council Tax, Non-Domestic Rates and Sundry Debts are all under public scrutiny as Key Performance Indicators (KPIs). The efficiency of this policy and associated procedures will be monitored through the following KPIs:-

- % of Council Tax debt recovered
- % of Non-domestic Rate debt recovered
- % of Sundry debt recovered
- % of Housing Benefit overpayment recovered
- % of previous year's Council Tax Recovered
- % of previous year's Business Rates Recovered

## **10. Evasion and Fraud**

**10.1** The evasion of payments owed to the Council reduces the financial resources available to the Council, this has a direct impact on all our residents, businesses and other organisations that rely on Council services

- 10.2** Evasion or fraud to avoid payment will not be tolerated and where this is identified then in addition to enforce payment, the Council will seek to impose such further penalties or sanctions as the law allows. We are currently in partnership with Oxfordshire County Council where referrals are made to them for Business Rates, Council Tax and Housing Benefit Overpayments for the investigation and detection of fraud.

## **11. Equality Duty**

- 11.1** Under the Equality Act 2010, the Council, in exercising any of its functions, must have due regard to the need to:
- Eliminate unlawful discrimination
  - Advance quality of opportunity; and
  - Foster good relations between people of different background

## **12 Use of Data**

- 12.1** The Council will collect and store personal data for the purposes of the effective billing, collection, and recovery of sums due. Data retained for this purpose will be processed in accordance with the Data Protection Act 2018 and will be always stored securely.
- 12.2** Data will be shared with agents or contractors appointed by the Council for the purposes of the billing, collection, and recovery of sums due. Data may also be shared within the Council or with external organisations where the law allows and where it is in the interests of the debtor or where it will prevent fraud or the unlawful evasion of payment of sums due.
- 12.3**

## **13. Complaints**

- 13.1** Should any customer feel dissatisfied with how they have been treated the Council has a complaints procedure which can be accessed and complete an online complaints form at: <https://www.cherwell.gov.uk/complaints> or write to: Customer Complaints Cherwell District Council Bodicote House Whitepost Road Bodicote OX15 4AA or send an email to: [complaints@cherwell-dc.gov.uk](mailto:complaints@cherwell-dc.gov.uk) Call us on: 01295 227001

## **14. Rights of Appeal**

- 14.1** There are a number of ways in which customers can appeal about decisions the Council may have taken:
- 14.2** Valuation Tribunal: For people who believe the Council has acted incorrectly on a Council Tax billing matter.
- 14.3** Magistrates Court: For people who are aggrieved by the recovery process for Council Tax and Non-Domestic Rates and for Non-Domestic Rates payers who believe the Council acted incorrectly on a billing matter.
- 14.4** Appeal Tribunal: For decisions made on Housing Benefit claims
- 14.5** County Court: For action taken to recover Housing Benefit overpayments and for Sundry Invoices.

## **15. Review**

- 15.1** This Policy will be monitored and regularly reviewed and updated where necessary to take account of changes in legislation and best practice. A full review of the Policy will be scheduled for September 2023



## **Appendix A - Business Rates Recovery**

The bills for Business rates and for any BIDs operating within the District, are issued on an annual basis and the responsibility for issuing bills and the collection and recovery of debt is held by the Chief Finance Officer. Business rates and BID levy payments are payable in line with legislative requirements.

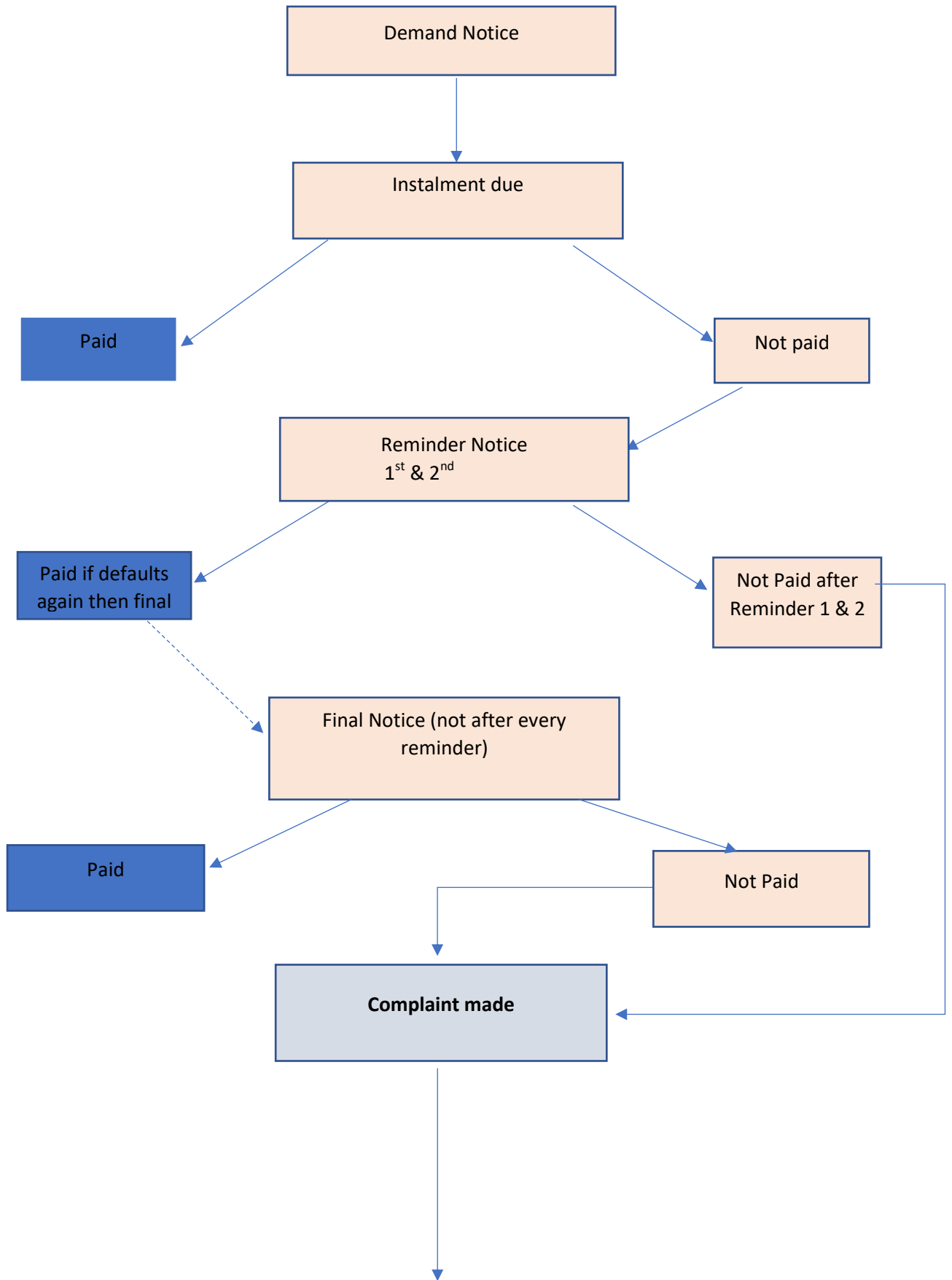
The business rates bill will detail when instalments are due to be paid and the methods which can be used to pay, whereas the BID levy payment is payable in one instalment. If an instalment for either business rates or BID are not paid on time, then a reminder will be issued following non-payment.

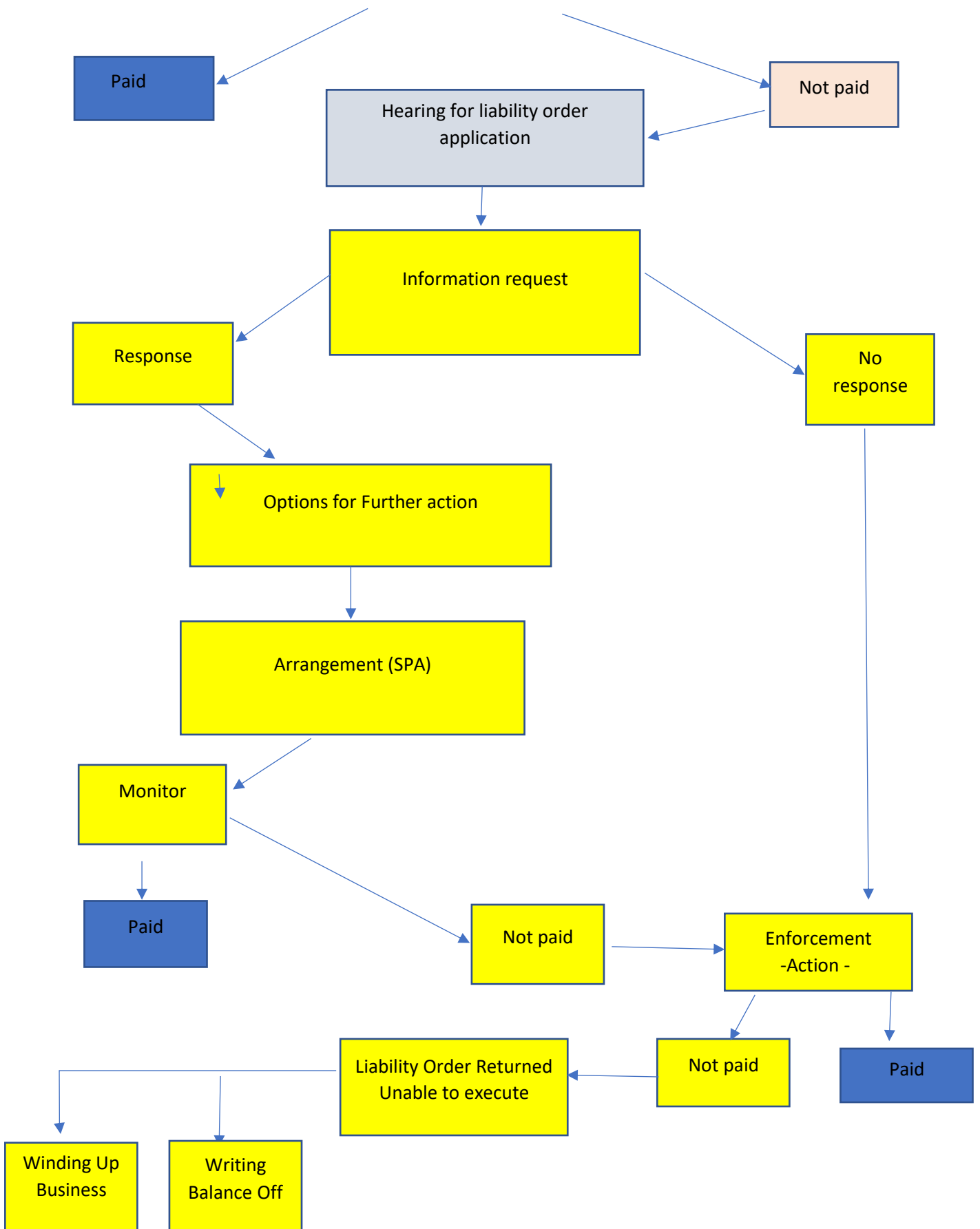
Only one reminder notice will be issued for business rate bills and those of the BID; any further default will result in a final notice being issued. A final notice withdraws from the customer the right to pay by instalments for business rates and requires full payment of the outstanding amount to be made within seven days. The enforcement action to be taken for the BID mirrors that of business rates and therefore the final notice issued will give the ratepayer their final opportunity to settle the outstanding levy payment. If the business rate account or the BID levy payment remains unsettled, the Council will make a complaint to the Magistrates Court by the issue of a summons notice for an application to apply for a liability order to be granted.

The Liability Order enables the Council to consider other enforcement remedies for example: instructing enforcement agents to collect the balance of debt that is outstanding.

If an appeal is made against the rateable value to the independent Valuation Officer, payment must still be made against both the business rates and the BID account until the appeal is settled.

Enforcement agents will be appointed based on the contracts which have been procured in line with contract procedure rules. Enforcement/agent's performance and contract management will be in place to ensure compliance with codes of conduct and good practice. Enforcement/agent's services will comply with the Taking Control of Goods: National Standards, issued by the Ministry of Justice.





## **Appendix B - Council Tax Recovery**

The responsibility for the issuing of council tax demand notices, its collection and recovery of debt is held by the Council's Chief Finance Officer.

The Council will issue a council tax demand notice, which will give instructions on when the instalments are due to be paid. The preferred method of payment for council tax is direct debit and flexibility is available on the date on which the direct debit is collected. Unless paid by Direct Debit the first instalment is due by the first of the month.

A reminder notice will be issued if an overdue instalment is not paid within seven days of the instalment due date. If the instalment is paid as requested, then no further action will be taken. If the instalment is not paid or only partly paid, recovery action will proceed to the summons stage. Within a council tax year (April – March) only two reminders will be issued for late payment of instalments.

A final notice will be issued on the third occasion that an instalment is paid late. The final notice will be a request for the full balance to be paid. The balance must be paid within seven days of a final notice being issued.

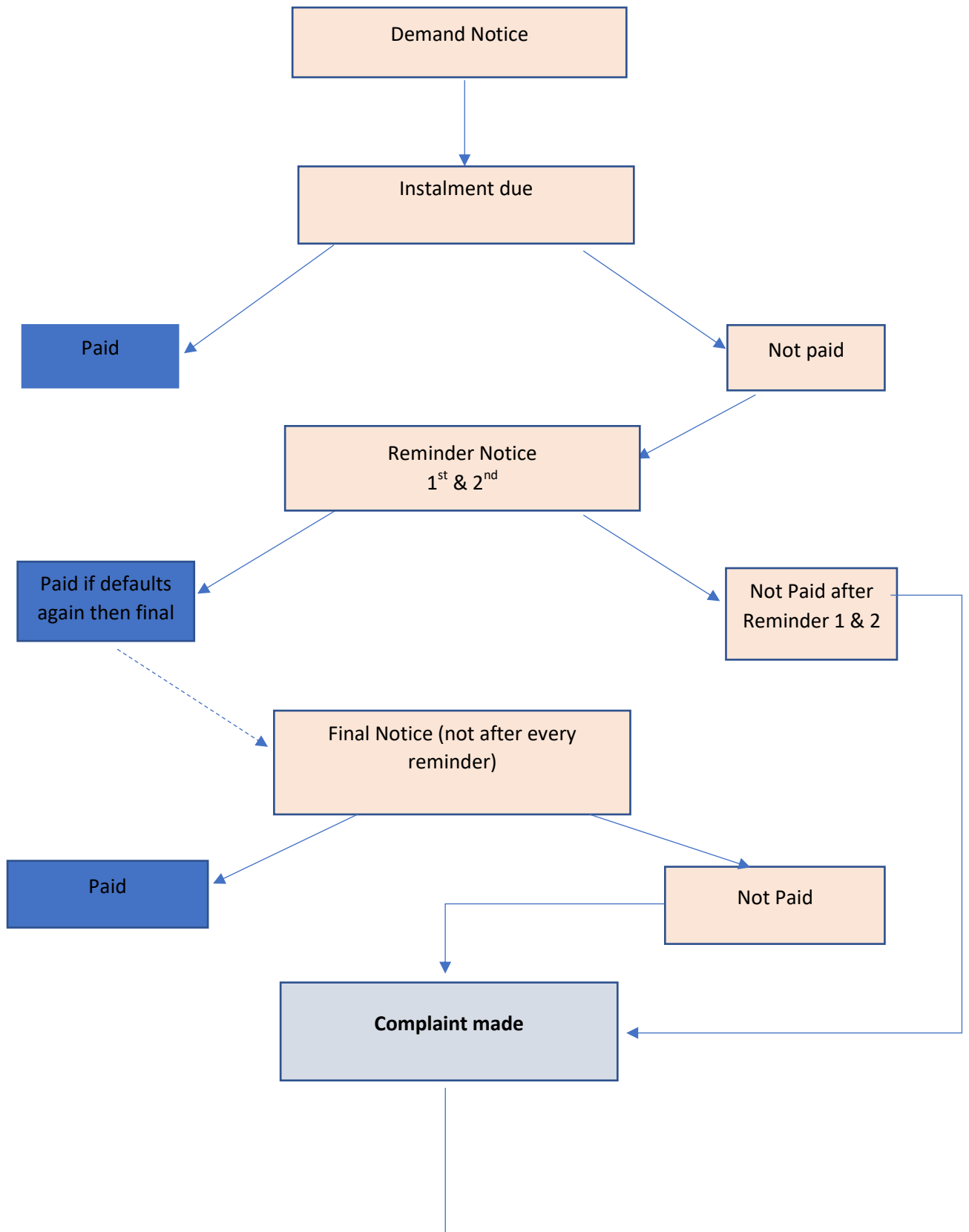
If payment is not received within 14 days after the first or second reminder notice or within seven days of a final notice, the Council will take legal action and a summons will be issued against the customer. All costs incurred are recoverable by the Council and will be added to the amount due when the summons is issued.

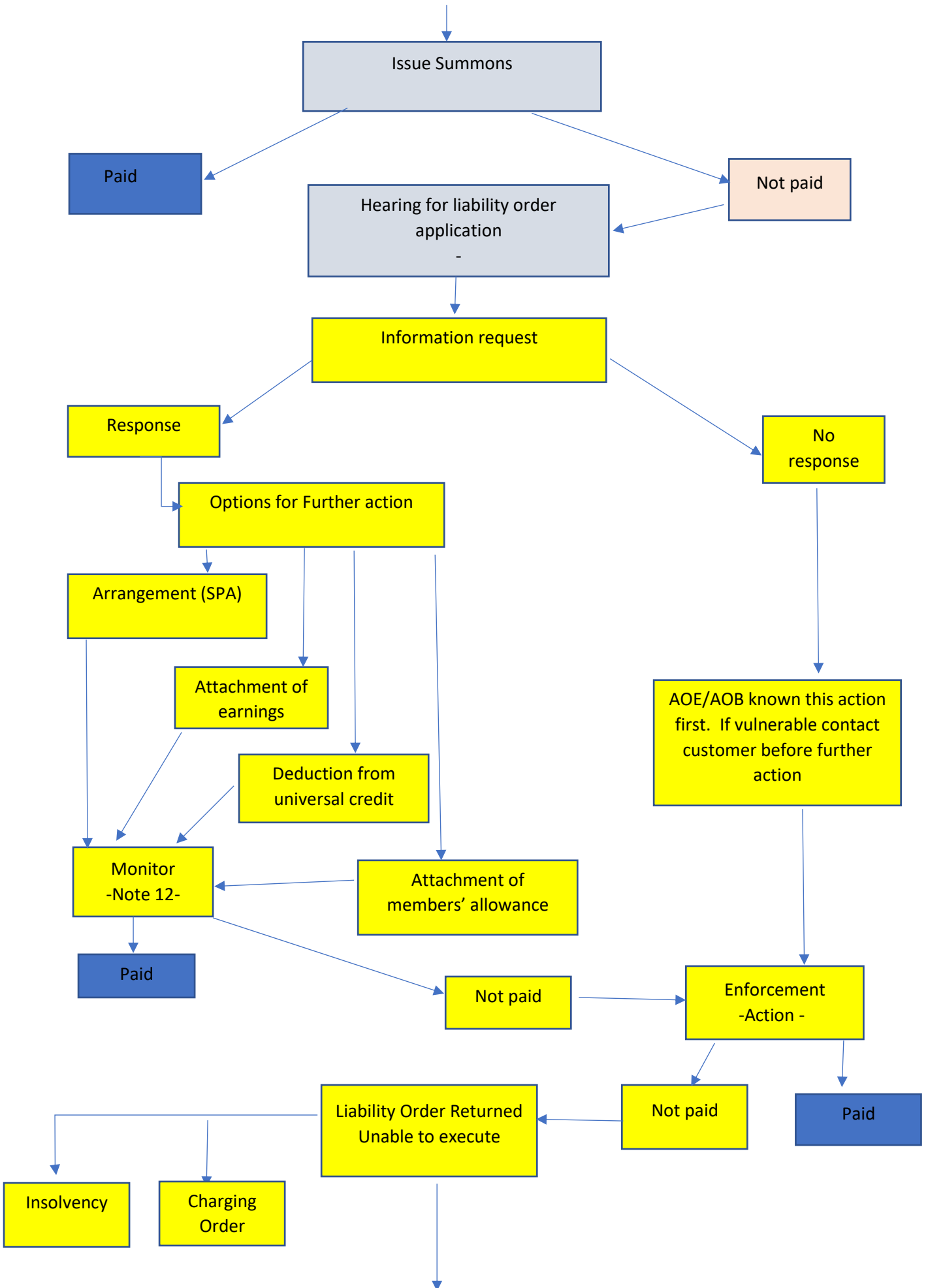
The Council reserves the right to take recovery action where a customer does not pay and does not indicate that they are having trouble paying. Customers are informed of:

- entitlement to housing and council tax support and other income related benefits
- discounts, reliefs, and exemptions

The ability to refer debt to an enforcement agent is an important tool in the recovery process. The Council appreciates the sensitivity attached to the use of enforcement agents and will only use them if it is deemed necessary. The Council will seek to use enforcement agents only where it has been determined that this is the most effective collection method for the debt in question.

Enforcement agents will be appointed based on the contracts which have been procured in line with contract procedure rules. Enforcement/agents performance and contract management will be in place to ensure compliance with codes of conduct and good practice. Enforcement agent's services will comply with the Taking Control of Goods: National Standards, issued by the Ministry of Justice.





## **Appendix C Sundry Debts Recovery**

The responsibility for the raising of sundry debts against a debtor account is set up by Customer Services, each service will request for an invoice to be raised via a 'Finance Sundry Debt' form that can be found on Spelnet via online forms.

The overall responsibility for the collection and recovery of sundry debt is held by the Council's Chief Finance Officer. Revenues and Benefits will be responsible for ensuring that assistance/guidance is provided to the senior managers for each service in recovering the debt due to their Service, where appropriate.

Wherever possible, Cherwell District Council should endeavour to obtain payment in advance or at the time when a service is delivered.

The council will only raise a debtor's invoice where payment in advance for a service is inappropriate. All sundry debtor invoices must be raised using the corporate finance system.

The general settlement terms for sundry debtors are 30 days from the date of the invoice, there are on odd occasions other dates, these are specified by the individual service areas.

A reminder notice will be issued to the debtor, days after the invoice date, which requires the account to be brought up to date within seven days. Some service areas do fall within vulnerable groups, where this applies, consideration on the best way to proceed will be taken in line with the Council's policy on debt collection for vulnerable people.

A final notice letter will be issued after a further period of 14 days which will give a further seven days for the account to be brought up to date.

A further final notice before recovery action is sent asking for payment within seven days.

At this stage an arrears analysis report is run for all outstanding debts that are at reminder letter three stage. This is produced on a quarterly basis and forwarded to the Budget Holder responsible.

All Service areas are required to return this report within four weeks, failure to do this, will result in Revenues and Benefits exercising their professional judgement as

to what action should be taken. The Council's Corporate Leadership Team will receive regular aged debtor reports and monitor performance.

The recovery options are as follows:

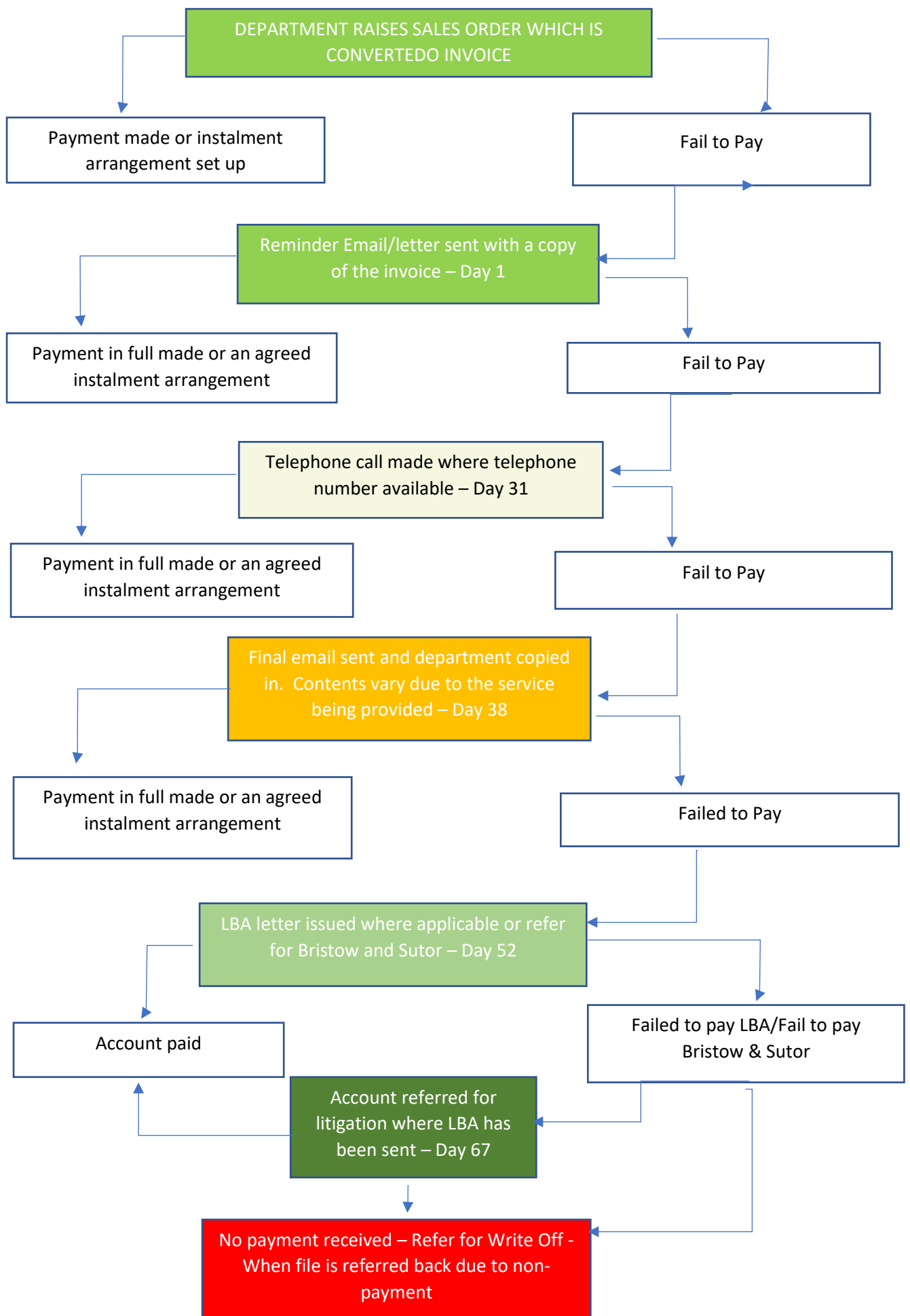
- Letter before action allowing the debtor 14 days to pay
- Referral to the Council's approved debt collection agent

(where additional costs may be incurred)

- A Collection Agency
- Money Advice Service (previously known as County Court action seeking a Judgement e.g., Attachment of Earnings)
- Refer to the Council's own Legal Team.

The list is not exhaustive, and the Council will seek to recover outstanding debt via the most practical and cost-effective manner. Where debt proves uneconomical to collect or the debtors have absconded, we would have to consider to write-off the debt in accordance with the Council's write-off Policy.





## **Appendix D Housing Benefits Overpayment Recovery & Council Tax Reduction Schemes**

Overpayments of Housing Benefit and Council Tax Benefit/Support are established through a change in benefit entitlement. They are described as an amount of benefit that has been awarded but to which there is no or reduced entitlement under the regulations.

The Council believes that the prevention of overpayment debt is better than the cure. Therefore, measures are to be employed to prevent overpayments occurring. These will include:

- Using a well laid out application form to collate accurate information which contains an unambiguous statement that failure to provide correct information could lead to overpayments of benefit and to prosecution.

Ensuring all benefit notification letters and relevant correspondence informs the people affected of their responsibility to tell the Council of any change of circumstances that may affect their claim.

Making use of reasonable evidence in support of claims and changes or circumstances for example, using checks for:

- identity
- residency and
- National Insurance numbers

Targeted interventions that are risk profiled where possible and appropriate.

Ensuring all staff involved with overpayments receive, suitable training with Comprehensive access to overpayment recovery procedures and an awareness of problems relating to debt.

- Providing fraud awareness training for staff.

Using and developing information technology to automate the identification and recovery of overpayments and to reduce error:

Including publicity material and information on responsibilities for reporting changes of circumstances.

Ensuring that benefit awards are suspended and terminated in line with current regulations and case law.

Dealing as quickly as possible with reported changes of circumstances.

Participating in various data matching exercises with external agencies and cross matching against internal databases whilst adhering to principles laid down by the Data Protection Regulations 2018, Data Protection and Human Rights Act 1998.

The Council aims to calculate overpayments quickly and accurately and to provide quality information to the people affected, ensuring it recovers the correct amount. To achieve this, the Council will:

Invite claimants to apply for underlying entitlement.

Calculate the overpayment, on average, within 14 days of receiving all necessary information.

Use the proper effective date of change to fix the correct overpayment period.

The Council aims to ensure the correct classification of overpayments for subsidy purposes is always used to prevent loss of subsidy.

All necessary invoices, reminders and pre-debt collector stage letters/Financial Enquiry will be raised according to recovery stage, using the Housing Benefits and Debt Management system.

Invoices will only be issued when the overpayment cannot be recovered from benefits.

The Council has a responsibility to act in accordance with all relevant legislation and regulations, when recovering overpayments.

- Social Security Administration Act 1992.
- Social Security Administration Act 1992 (Housing Benefit).
- Social Security Administration Act 1992 (Council Tax Benefit).
- Social Security Contributions and Benefits Act 1992.
- The Housing Benefit (General) Regulations 1987 - and subsequent varying regulations.
- The Council Tax Benefit (General) Regulations 1992 - and subsequent varying regulations.
- Housing Benefit (Recovery of Overpayments) Regulations 1997.
- Social Security (Overpayment and Recovery) Regulations 2013.
- The Housing Benefit and Council Tax Benefit (Decisions and Appeals and Discretionary Financial Assistance) (Consequential Amendments and Revocations) Regulations 2001.
- Welfare Reform Act 2012.

- Housing Benefit Overpayment Guide 2015.

Where the Council decides an overpayment is recoverable, the most appropriate method of recovery will be considered in all cases and arrangements will follow the general hierarchy below:

- From arrears of Housing Benefit.
- On-going deductions from further payments of continuing Housing Benefit.

This will include payments that are sent directly to the Landlord on the claimant's behalf. The Council will base recovery rates as laid down by regulation and will initially seek to recover the standard weekly deduction calculated, unless the health or financial circumstances of the claimant suggests, a more appropriate rate should be used. In all cases, however, a minimum amount of fifty pence per week Housing Benefit must remain in payment. The debtor has the right of appeal against the rate of recovery chosen by the Council.

- Overpayments of recoverable Council Tax Benefit/Support, apart from in
- exceptional circumstances, will result in an adjustment being made to the respective Council Tax account for the appropriate year.

An amended bill will be issued, and any unpaid monies will be subject to recovery action under the Council Tax regulations.

By deductions from certain Department of Work and Pensions benefits. Section 75(1) of the Social Security Administration Act 1992 allows recovery of overpaid Housing Benefit by deduction from prescribed benefits which are defined in Regulation 105 of the Housing Benefit Regulations 2006.

As of 8 April 2013, Sections 105 and 106 of the Welfare Reform Act 2012 amends the Social Security Administration Act 1992 allows the Council to recover by attachment of earnings without court authority. Known as Direct Earnings Attachments (DEA), their primary purpose is to enforce recovery where a liable person is in Pay as You Earn (PAYE) employment.

Referral to an external debt collection agency (after all the above avenues of recovery are considered and/or exhausted).

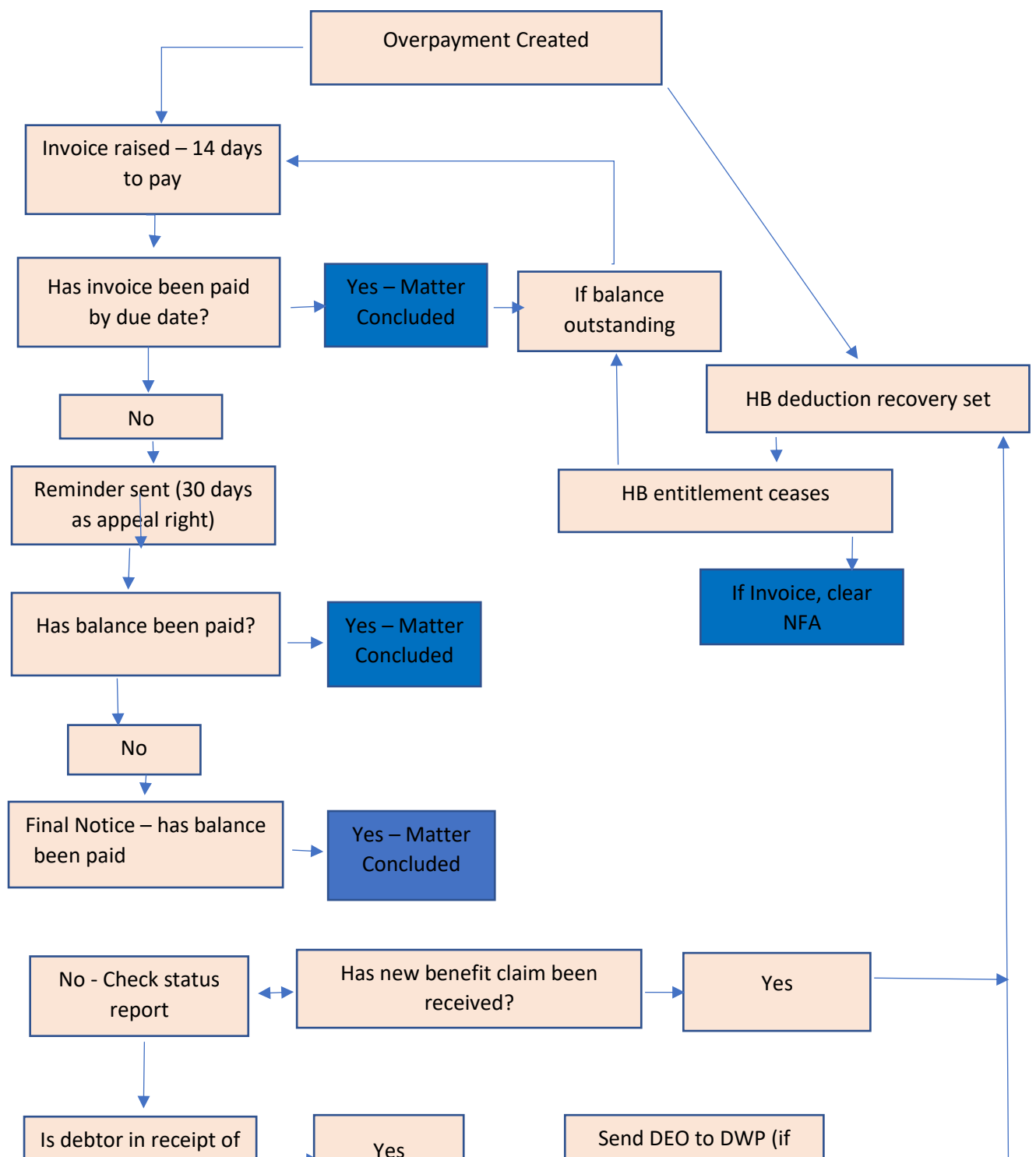
In extreme circumstances Civil Proceedings Application to the County Court for a County Court Judgement (after all avenues of recovery are considered and/or exhausted). With a County Court Judgement (CCJ) further recovery actions can be taken, e.g., application to the High Court to instruct High Court enforcement agents.

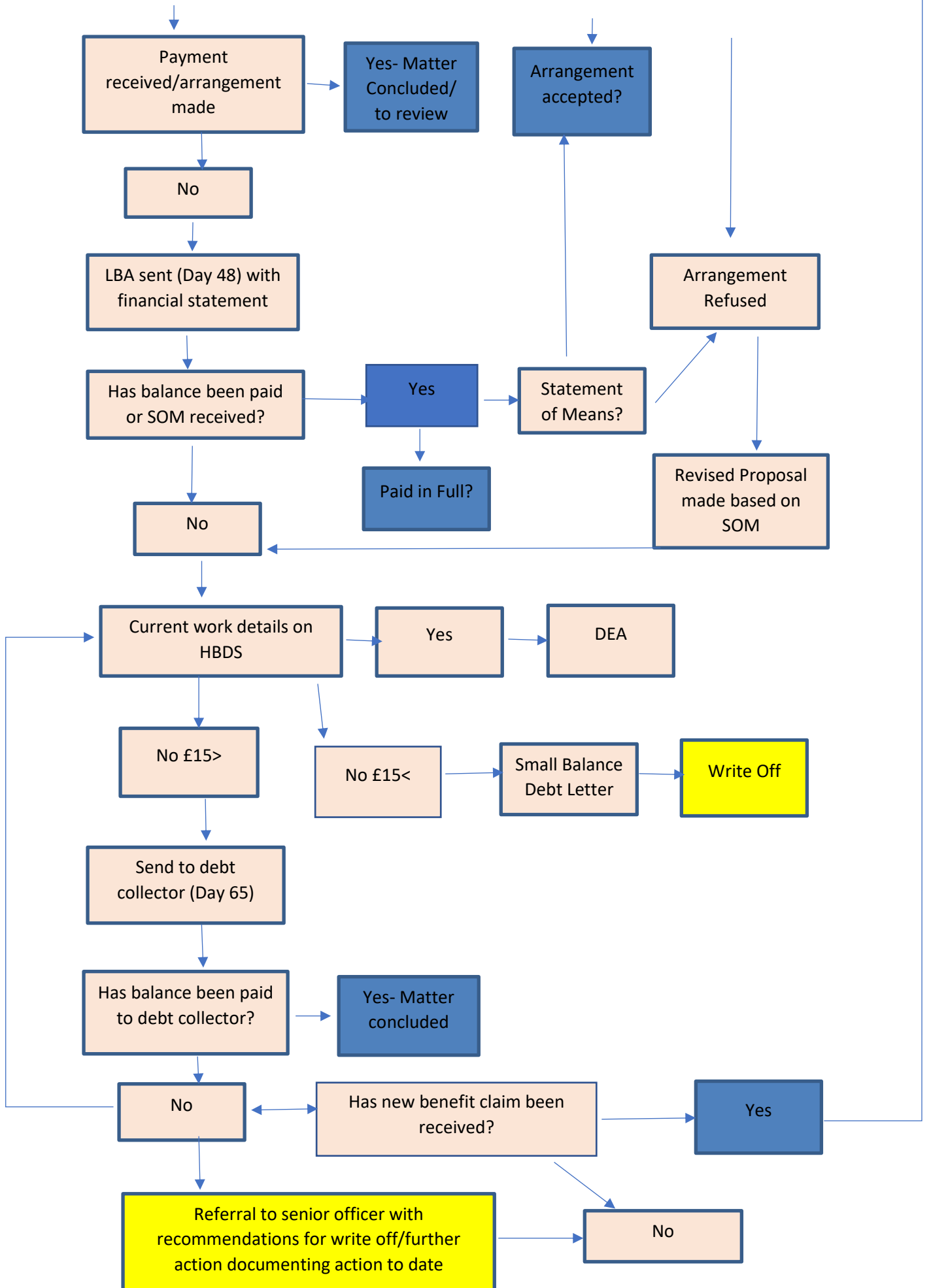
The Housing Benefit (Recovery of Overpayments) Regulations 1997 provide for the opportunity if deemed appropriate for the Council to recover overpayments from landlords, when the landlord has been classed as responsible from their current tenants' entitlement. The Council will, in appropriate circumstances, reduce

payments to landlords for their current tenants to recover overpayments that arose for former tenants, known as 'blameless tenant,' recovery. It will take this action when the original tenant has no continuing Housing Benefit entitlement.

We will ensure recovery is applied in a fair and equitable way. We will also set up payment plans wherever possible to encourage payment of debts considering the claimant's financial circumstances to try and prevent financial hardship but considering the need to clear any outstanding debt.

Only if after all attempts at recovering the overpayment have become exhausted and there is no hope of recovery, or there are qualifying circumstances, shall the debt be recommended for write-off.





## **Appendix E - Cherwell District Council -Write Off Policy**

### **Introduction**

This document sets out the procedure to be followed when writing off irrecoverable amounts (including credit balances) of Council Tax (CTax), Non-Domestic Rate (NDR), Housing Benefit Overpayments (HB), the Local Council Tax Support Scheme and sundry debtors.

Under the Accounts and Audit Regulations 2003 (as amended by the 2006 and 2009 Regulations), bad debts should not be written off without approval of the Chief Finance Officer (subject to limits of delegation), or such member of staff as is nominated by him or her for this purpose. There are no equivalent rules for credit balances although it is prudent to have these written off on a regular basis.

A debt should only ever be written off in accordance with the Council's Financial Procedure Rules; proposed write offs should be reported to Members for approval periodically.

The Council sets rigorous performance targets for the collection of CTax, NDR and sundry debtors. In addition, we strive to minimise HB / CTS overpayment. The Council is committed to accurate collection and timely recovery and will ensure that sums outstanding are correctly recorded and recovery is taken where a debtor is in arrears.

Staff are required to take robust action to collect all debts; however, in some cases, recovery might not be possible, and debts do become irrecoverable. Where a debt is deemed to be non-recoverable (or a credit non-refundable), it needs to be identified at the earliest possible opportunity and properly dealt with. Irrecoverable debts must also be identified and written off promptly.

Writing off irrecoverable items represents good financial management. It allows staff to concentrate on recoverable debts and ensures that the level of debtors / arrears within the accounts is accurate and represents a true and fair reflection of the council's financial position.

### **Reasons for Write-Off**

Every effort will be made to recover a debt owing to the council before it is considered for write off. This includes using tracing agents, contacting the occupants / owners. There is a separate policy that sets out the CTax and NDR billing / reminder processes and the actions to be followed if a debt is not paid. Only where all recovery action has failed, is a debt regarded as irrecoverable.

The circumstances where a debt may be written off have been categorised as follows:

Reason	Description
Insolvency	Debtor or the Company is the subject of bankruptcy, individual voluntary arrangement, liquidation, company voluntary arrangement & administration order or administrative receivership proceedings or has ceased to trade or is subject to a Debt Relief Order.
Unenforceable	Debtor is overseas or outside of jurisdiction or the debt is over 6 years old
Abscond	Tracing agents have been unable to find the debtor
Uneconomical to Collect	Balance is too small for further action
Uncollectable	Custodial sentences / remitted debts / vulnerable people / hardship / local authority error / system roundings
Deceased	No funds in an estate

Should a debtor be subsequently traced, a debt will be re-instated if considered economically viable to recover and it is within the statute of limitations.

In cases where the debtor is jointly and severally liable for the debt with another party, recovery action will continue against all liable individuals and only if this action fails, will monies be recommended for write off.

There will be instances where the Council will need to write off a credit that remains on a closed account. Not knowing the whereabouts of the creditor (or not having sufficient information to determine how or when a credit is to be refunded) will be the reasons for writing off a credit.

### **Procedures to be undertaken prior to obtaining write-off approval**

#### **General**

The procedures to be followed prior to the writing off of a debt / credit are analysed below. Once the actions have been undertaken, only then will a debt / credit be included on a list of cases submitted for write off.



## **Insolvency**

The Council will seek to establish the status of the company and if an insolvency practitioner has been appointed discuss with them the outstanding debt.

## **Bankruptcy**

Upon notification of a bankruptcy, a proof of debt will be completed for the outstanding debt that is due at the date of the bankruptcy order and submitted as a claim to the trustee in bankruptcy. In the event of payment being received in full or part from the bankrupt's estate, this money will be credited back to the relevant account.

## **Individual voluntary arrangement**

A voluntary arrangement is an alternative route available to an individual wishing to avoid the restrictions placed upon them by a bankruptcy order. It involves the debtor making an offer to all creditors, which is less than the full amount of the debt outstanding, and agreeing that it be repaid over a period of time in full and final settlement. If 75% (in value) of creditors agree to the offer as an alternative to proceedings for bankruptcy, an insolvency practitioner will be appointed to administer the voluntary arrangement. In the event of payment being received in full or part, this money will be credited back to the relevant account. In the case of part payment the remaining balance will be considered for write off.

## **Liquidation**

Liquidation may either be compulsory (your company cannot pay its debts and you apply to the courts to liquidate it) or creditors voluntary (your company cannot pay its debts and you involve your creditors to liquidate it) or members voluntary (sometimes referred to as a shareholders' liquidation, your company can pay its debts but you want to close it. Upon notification of liquidation, a proof of debt will be completed for the outstanding debt that is due at the date of the winding-up order and submitted as a claim to the liquidator. In the event of payment being received in full or part, this money will be credited back to the relevant account. In the case of part payment the remaining balance will be considered for write off.

## **Company voluntary arrangement / administration order**

A company voluntary arrangement is an alternative route available to a company wishing to avoid the making of a winding up order. It involves the directors making an offer to all creditors, which is less than the full amount of the debt outstanding, and agreeing that it be repaid over a period of time in full and final settlement. If 75% (in value) of creditors agree to the offer as an alternative to liquidation, an insolvency

practitioner will be appointed to administer the voluntary arrangement. In the event of payment being received in full or part, this money will be credited back to the relevant account. In the case of part payment the remaining balance will be considered for write off.

### **Administrative receivership**

This involves an individual being appointed by a lender, usually a bank, which holds a debenture as security over a floating charge on assets of the company, and usually takes effect where the company is in default of agreed lending terms. An insolvency practitioner will assume immediate control of the company in an attempt to sell it as a going concern. However, although remaining in occupation, no action can be taken against the receivers appointed to enforce payment of previous or on-going rate charges. In the event of payment being received in full or part, this money will be credited back to the relevant account. In the case of part payment the remaining balance will be considered for write off.

### **Company has ceased to trade leaving no assets**

On occasions, limited companies will cease to trade on the grounds of having no assets to pay an outstanding and / or on-going debts. They do not go through the formal process of winding-up proceedings, which carry a cost and have legal implications.

In these circumstances, if it is proven that an enforcement agent has failed to recover monies due, or identify assets on which to levy distress, a recommendation for write-off will be made.

### **Debt Relief Order**

A Debt Relief Order (DRO) is a way of dealing with debts if the individual cannot afford to pay them. It means debtors don't have to pay for debts for a specified period, usually 12 months.

An application for a DRO is made through an authorised debt advisor such as Citizens Advice, Christians Against Poverty, Step Change

At the end of the specified period, the debts included will be written off.

If any of the debts have been obtained through fraud, you will need to commence payment of these once the DRO has ended.

- you owe less than £30,000
- you have less than £75 a month spare income
- you have less than £2,000 worth of assets
- you do not own a vehicle worth £2,000 or more

- you have lived or worked in England and Wales within the last 3 years
- you have not applied for a DRO within the last 6 years

The debt will be recommended for write off but will be monitored periodically, as the debtors circumstances must remain the same for a period of usually 12 months in order for the DRO to remain in place.

### **Unenforceable**

Certain debts will fall outside of legal jurisdiction either because the debtor is overseas or six years may have passed since recovery action had been instigated against a debtor and the debt was last acknowledged.

If a debtor is overseas and contact in writing has failed to result in payment or an arrangement to pay, a recommendation for write off will be made. Evidence supplied from external sources would be used to determine this.

In cases where six years may have passed since recovery action had been instigated against a debtor and the debt was last acknowledged, the whole debt will be submitted for write off. Evidence on what action, if any, has been taken will be used to determine this.

### **Abscond**

Closed accounts where no forwarding address is known, there has been no contact for 4 years and the debt is under £250.

For any finalised account with a balance of under £50.00, staff will make basic checks of the authority systems and known third parties, (i.e. solicitors and letting agents). If, after a three month period, a new address is not established, the debt will be submitted for write off.

Before the debt can be recommended for write off, the following enquiries will be undertaken by staff:-

- Check CTax or NDR database to identify if the person has re-registered at another address within the Council's area.
- Check electoral register.
- Contact landlord or letting / estate agent.
- Contact other local authorities where appropriate.
- Undertake visits to property if required.
- Conduct third party searches (i.e. through 'Experian' or similar companies).

If, after all enquiries have been completed, a forwarding address has not been established, the amount will be submitted for write-off.

### **Uneconomical to Collect**

Prior to annual billing, every debt of up to £1, on each financial year, on both live and finalised accounts will be submitted for write off to prevent bills being issued for small sums. These will automatically be written off prior to printing production. The Council Tax system automatically adjusts penny roundings. No adjustment notice or demand is issued if the balance outstanding is less than a £1. Any small balances will be written off to allow the demand / adjustment notice to be produced.

### **Uncollectable**

Debts where the debtor has served a custodial sentence in respect of the debt

If a debtor is the subject of a means enquiry and has been imprisoned for non-payment of CTax or NDR, whilst a debt is not legally remitted on imprisonment, an authority cannot enforce the debt again in the event of continued non-payment.

Therefore, an authority has no option but to write off the debt. Debts which are remitted by the court on the grounds of inability to pay

### **Debts that have arisen because of local authority error / system roundings**

If a debt has arisen as a result of a local authority error or system rounding, the possibility of recovering the debt would be considered in the first instance. If that proves impossible (i.e. legislation prevents recovery where the fault is not of a debtors doing) the debt will be written off. Details of the events that gave rise to the debt being incurred will be taken to evidence this.

### **Deceased**

Where a debtor has died and the estate is insolvent, the debt will need to be written-off. A letter from the executor confirming there are no assets from which to discharge any outstanding liability will be taken to determine this.

### **Credits**

There will be instances where an account is closed and a credit balance remains on an account. If it has not been possible to refund the money, for whatever reason (i.e. forwarding address unknown and debit/credit card expired or paid by a method other than direct debit), the credit will be written off after a period of one year. Credits will

be used to reduced other balances the debtor owes to the Council if the credit remains unclaimed.

### **Authority for Write off up to £5,000 (£10,000 NDR)**

At officer level, only the Assistant Director of Finance (S151 Officer) (or his or her nominated representatives) has the authority to write off a debt.

### **Debts of over £5,000 (including aggregated debts for one debtor) (over £10,000 NDR)**

For the write off of debts of over £5,000 (over £10,000 NDR), it will require a full report to be submitted to the Executive requesting its approval to write the debt off. In this instance, they will be accompanied by an individual write off application stating the reason for the request for the debt to be written off and will be submitted to the Executive on a quarterly basis.

### **HB and CTB/CTS Overpayments**

Factors that should influence the decision whether an overpayment is economical to pursue are:-

- The size and age of a debt in relation to where it is in the recovery process and the cost of certain action, which could be taken to try and secure recovery.
- Any previous action taken on the case and the results.
- Whether we know the current address of the debtor.
- When was the last action taken to try and recover the overpayment?
- Are all documents in sufficient order to support the recovery of the overpayment?

From here, council officers will calculate how much it would cost the authority to proceed with certain action and whether it is economically viable to do so.

### **Exceptional Circumstances**

Whilst rare, it may be necessary to recommend an overpayment for write-off, whether it is claimed in error or fraudulently, due to:-

- A person's age, health or personal circumstances, which would make any prosecution or penalty unsuitable.
- The claimant's diligence in reporting a change of circumstances (if applicable).

- The standard of advice and notification given to the claimant in respect of the overpaid amount.
- Whether it is reasonable to expect the claimant or any other person affected to repay the overpayment.
- Whether recovery will cause unacceptable hardship to the claimant or any other person affected.

The authority (and procedure) for writing off debits and credits will follow the practice adopted for Ctax , NDR and sundry debtors referred to earlier in the document.

### **Write Off Reporting up to £5,000 (£10,000 NDR)**

All debts will be batched as follows:-

- Listed on a spread sheet showing the reference number, amount and year the debt was raised and supported by documentary evidence for each case which demonstrate the steps that have been taken to recover the debt and, if appropriate, the steps that have been made to trace the debtor.
- Sorted into the debt type and reason for the write off, (e.g. insolvency, unenforceable etc.).
- Summarised on a front sheet detailing the number of cases and amount of debt.

Reports will be submitted on a quarterly basis for consideration by the Assistant Director of Finance (S151 Officer)