



**North Somerset Council  
Debt Recovery and Overpayments Policy  
April 2016**



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## North Somerset Council

### 1. Debt Recovery and Overpayments Policy

This Policy guidance is aimed at North Somerset Council services and employees. It provides a guideline on the course of action the Council will normally consider in a particular situation rather than define an absolute course of action.

The Policy is flexible in order to allow the relevant circumstances of each specific case to be considered and judged on its own individual merits.

The initial criteria to be applied in determining whether the Council should recover will, in general, be based on the level of overpayment, giving due consideration to the nature of the overpayment and the test of public interest.

Other organisations to which the Council is directly applicable should ensure compliance with any relevant provisions and follow procedures consistent with the guidance.

### 2. Guidelines

2.1 North Somerset Council will always pursue recovery of debts, irrespective of how they came to arise. However, there will be both practical and legal limits to how cases should be handled. Therefore, each case should be dealt with on its own merits.

2.2 As a general rule, the Council will only take a decision **not** to seek or pursue recovery of a debt on the basis of a cost benefit analysis of the options and in exceptional cases.

The decision should only be taken after a careful appraisal of the relevant facts and any decision to write off a debt or not to pursue part or recovery in full should be defensible in the public interest. It is important to ensure that officers take legal advice when considering court action or other legal means of recovery (e.g. charging orders) and ensure that cases are dealt with consistently and equitably.

2.3 The Council will take all reasonable measures to vigorously collect debts as part of its management of public funds. A debt will be written off only after all reasonable measures have been taken to recover it (commensurate with the size and nature of the debt).

2.4 When deciding on appropriate action for debts the Council should generally consider:

- ↪ the validity and evidence for the debt arising;
- ↪ whether the debt is in dispute;
- ↪ whether the debtor has received the service and accepted the charge;
- ↪ the financial capacity of the debtor to repay;
- ↪ the cost-effectiveness of recovery action;
- ↪ the length of time the debt has been in existence



In the case of overpayments:

- ↪ any relevant personal circumstances of the payee, including defences against recovery;
- ↪ whether the recipient accepted the money in good or bad faith
- ↪ the length of time since the payment in question was made.

- 2.5 In cases of bad faith, recovery of the full amount overpaid or debt incurred should be sought.
- 2.6 In cases of good faith it may not always be appropriate to seek full recovery, in accordance with the general principles of recovery expressed in this policy.
- 2.7 After all appropriate steps have been taken; any debt(s) that are considered for write off should be referred to the Section 151 Officer in accordance with the Council's Accountability and Responsibility Framework.

### 3. Overview of Policy

This Policy takes the following factors into account:

- Sundry Debtors** In general, the older the debt, the more difficult it will be to collect. Therefore, it is essential to identify debts in their early stages and devote time to chasing them up to maximise the probability of recovery.
- Ensure that regular customers know from experience that the Council will follow up outstanding invoices quickly and avoidance of payment will not be accepted.
- S106 Agreements** Treated as debtors above, Section 106 Agreement monies will be recovered promptly by raising an invoice in respect of all Bonds, Contributions and Supervision fees where income is not received in advance.
- Payroll** Current employees – a letter will be sent, stating the amount overpaid and an amount which will be deducted from salary over the same time scale as the overpayment;
- Ex employees – an invoice will be raised to recover monies due. These invoices are followed up by Exchequer Services.
- Business Rates** The current years Business Rates and any previous year's arrears will be collected in full. The method of recovery will be determined as outlined in section 5 and 6



**Council Tax** The current year Council Tax and any previous year's arrears will be collected in full. It is noted that there will be increases in liabilities due to the reduction in Council Tax Support and the removal of discounts. The method of recovery will be determined as outlined in section 5 and 6. In certain circumstances the ability to repay may be considered and subject to completion of a Means Test form.

**Benefits** Benefit claimants or landlords who have received Housing Benefit from the council to which they are not entitled. Benefit overpayments may also have penalties attached to them in the case where fraud or error has occurred (civil or administrative penalties) and the recovery of these elements is also covered in this policy.

**Care and Support** The Care Act 2014 consolidates local authorities' powers to recover money they are owed for arranging care and support for a person. These powers can be exercised where a person refuses to pay the amount they have been assessed as being able to pay.

Section 70 of the Care Act also provides the Council with the power to recover charges from a third party where a person has transferred assets to them in order to avoid paying care and support charges. The principles and method of the approach to recover debt for the provision of this service are outlined in Item 6.9 of this policy.

Responsibility for the recovery of debts and overpayments:

Category of debt	Collector	Responsible Officer
Social Care personal & sundry debts	Liberata	Assistant Director - Strategy, Commissioning & Quality Assurance
General external sundry debts	Liberata	Head of Support Services Partnership
Internal debt journals	Council	Head of Finance & Property
Payroll overpayments	Liberata	Corporate HR Manager
Business Rates	Liberata	Head of Support Services Partnership
Council Tax	Liberata	Head of Support Services Partnership
Housing Benefit overpayments	Liberata	Head of Support Services Partnership
Administrative & Civil Penalties	Liberata	Head of Support Services Partnership
Overpayments to suppliers	Liberata	Head of Support Services Partnership
Overpayments of grants	Council	Head of Finance & Property



## 4. Specific Debt Recovery Situations

### 4.1 Commercial debt

Subject to the general guidance outlined in this policy, the recovery of debt arising out of business transactions with suppliers, contractors, developers and other commercial entities should be pursued in all cases.

The council should also explore the use of interest charges on unpaid invoices in order to deter late or non-payment and to cover the council's financial loss through protracted recovery action. This should be a consideration at the point of commercial agreement and formally contained within contracts or agreements.

If a request for repayment is not accepted, and set-off against subsequent payments is not possible, the Council will consider taking legal action.

Efforts to recover debt (through legal action or otherwise) should be commensurate with the amounts involved and the particular circumstances of the case.

### 4.2 Overpayments of grants and subsidies

In general, payments of grants and subsidies, whether to persons or to corporate bodies, should be regarded as if they were business transactions and full refund of any overpayment sought.

### 4.3 Overpayments of pay, allowances, pensions, etc.

In accordance with the Employment Rights Act 1996 an employer has the right to make a deduction from salary where the purpose of the deduction is the reimbursement of an overpayment of salary.

Where an overpayment occurs, a recovery will normally be sought irrespective of the circumstances in which it arose. Recovery of the overpayment may be pursued in whole or in part, as appropriate.

In cases of good faith it may not always be appropriate to seek full recovery in accordance with the general principles of recovery expressed in this policy.

The recovery period will normally be the same as the period over which the overpayment occurred. This is consistent with the advice of the relevant professional body, the Institute of Payroll and Pensions Management. As an example, an overpayment for two months will normally be recovered over a two-month period. In deciding the appropriate repayment period the Council will consider:

- How recently the overpayment was made;
- How long it went on for;
- Any relevant or exceptional circumstances against recovery;
- The need to deal equitably with overpayments; and;
- The cost-effectiveness of any recovery action.



There would be only very exceptional reasons for not seeking recovery.

The Head of Performance Improvement and Human Resources would decide this, in consultation with the relevant budget holder. Income Tax, National Insurance and pension contributions will automatically reduce during the period in which the repayments are made.

It will often be possible to recover an overpayment through deduction from later salary. If this is the case, the individual concerned should be notified in advance.

If there is any doubt about whether recovery through deduction from pay is appropriate, legal advice should be sought.

#### **4.4 Overpayment of Housing Benefit**

The rules concerning the administration of benefit overpayments are contained in the Housing Benefit Regulations and other subsequent legislation. The Council is required to implement these provisions and has a duty to recover overpayments from tenants and landlords.

In general, an overpayment is recoverable unless it is as a result of an official error. However, recovery may still be appropriate where the customer, or person acting on their behalf, or to whom the payment was being made, could reasonably have been expected to realise that an overpayment was taking place.

This Council will always attempt to recover any overpayment made as a result of any failure to provide complete and accurate information regardless of whether a decision to prosecute has been made.

It would not be the Council's intention to place a customer in financial hardship, but failure to agree a reasonable arrangement for repayment may result in civil recovery action through the courts.

Where benefit has been paid to a landlord the Council would seek to recover any payment received to which they are not entitled.

#### **4.5 Council Tax liability resulting from a reduction in Council Tax Support**

The removal of Council Tax Benefit and introduction of the local Council Tax Reduction Scheme will result in a significant number of working age council tax customers having an element of council tax liability.

It is likely that these customers will find it difficult to afford this new cost, but the liability will be collected by the Council and customers will receive reminders and be subject to appropriate recovery action. This action must be considered appropriate to the level of debt and financial circumstances of the customer.

As a guideline, debt below the level of the summons costs would not proceed to a Liability Order and alternative recovery methods will need to be explored.

The council may consider using its discretionary powers under S13 (A (1) (c)) of the LGFA 1992 to reduce the liability. An outline of the policy is contained at Appendix C.





#### **4.6 Care and Support**

The Council should clearly discuss with the person or their representative at the outset that care and support is a chargeable service and that where the person has been assessed as being able to afford to do so, they will be required to contribute to the cost of that care.

It should also be explained that an agreement should be reached as to whom invoices are sent, and if the person wishes, that this agreement and authority may be obtained for the use of an agent or representative.

The Council will adhere to the debt recovery powers for the non payment for care and support as outlined under Section 70 of the Care Act.

It would not be the Council's intention to place a customer in financial hardship, but failure to agree a reasonable arrangement for repayment may result in civil recovery action through the courts.

Taking Court action to recover a debt should be the last resort.

Section 6.9.1 of this policy provides an outline of the debt recovery approach.

### **5. Considerations**

#### **5.1 Good Faith / Bad Faith**

This test is appropriate when considering the recovery of an overpayment, generally in regard to commercial and council tax/business rates debt this test would not apply.

Whether the recipient of an overpayment has acted in good or bad faith will, as a matter of policy, influence the decision on how far a recovery should be pursued.

However, each case should be dealt with on its merits, and good faith alone, is not a valid defence against recovery.

Lack of good faith can be implied if the person overpaid has wilfully suppressed a material fact or has otherwise failed to give timely, accurate and complete information affecting the amount payable.

Other cases may be more a matter of judgement, for example, where the failure to give information clearly involved carelessness. There may also be cases where the error is obvious, e.g. where an amount stated is very different from that payable, that no one could claim that they had received the money in good faith.

In the case of pay, pay-related allowances, and superannuation payments, the regulations are not always simple.

It may, therefore, be unreasonable to assume that all individuals will know precisely how their entitlement is calculated, or what factors might alter it, that they can themselves immediately detect an overpayment.



If, however, there are strong grounds for thinking that the payee knew or could have found out that there had been an overpayment, for example, from a handbook or office notice explaining pay entitlement, or from a pension award, or if the cause of overpayment was an obvious one such as simple arithmetical error evident to the recipient, it may be reasonable to assume that the payee did not act in good faith.

In seeking to establish the payee's good faith the following should be considered:

- the complexity of the entitlement calculation;
- the extent to which the payment depended on changes in the payee's circumstance that he / she was obliged to inform the payer; and
- the extent to which the basis of how the payment was calculated was explained to, or was readily accessible to, the payee.

## **5.2 Vulnerable Clients**

There is a need for all Council Officers and partner organisations involved with the collection of debt to identify those individuals who could be identified as potentially vulnerable and so require an approach which takes into account all viable options.

Whilst a national standard or legal definition of a vulnerable person exists the Council recognises the need to be mindful of such instances. The following list indicates categories/indicators of individuals who may be considered as potentially vulnerable under this policy;

- Ongoing mental illness / severe depression or suicidal tendencies;
- The elderly – where it is clear the person lacks capacity to deal with the initial affairs;
- Long standing ill health condition;
- Terminally ill;
- Learning difficulties;
- Recent bereavement;
- Allegations of suicide;

The list is not exhaustive as all cases will be considered on merit on an individual basis.

As previously mentioned, it may not be reasonable to assume that all individuals will know how an overpayment has occurred, or that they could themselves have detected or understood an overpayment for a number of reasons.

This policy is, therefore, designed to ensure that anyone who is the subject of a debt or overpayment may be offered assistance in being able to understand how it has occurred.

If there is doubt about the person's ability to communicate because of language, age, hearing, or other difficulties such as literacy and understanding, the Council will take reasonable steps to make relevant provision of an interpreter or adviser to assist.



Similarly, if the customer is seriously visually impaired the Council will make sure that all documentation can be read out.

Should the customer consider that they do not have the financial means to repay the debt, a method of repayment and collection should be considered following the completion of a Means Test. A Means Test Form to record the details should be used and the content of this Form is provided at item 5.5(b) Hardship.

Recovering overpayments, debt or liability from vulnerable customers has to be carried out in an adaptable manner and in particular once the standard reminder processes have been completed, a non-threatening personalised approach needs to be taken to establish payment arrangements or other assistance. Both People and Communities and Liberata operate a personalised service through dedicated officers dealing with vulnerable customers.

The identification of vulnerable customers is difficult as this is not always apparent until direct personal contact is made that an individual customer is vulnerable and in that regard council departments are encouraged to share information in order to assist in early identification of vulnerable customers in the recovery process.

Council Tax Enforcement Agents are often the first people to make direct personal contact with council tax debtors and they have an explicit protocol to immediately disengage with such customers and refer the contact to their own internal Welfare Officers who will give the customer time to seek assistance with the matter.

In certain cases, or depending upon the nature of vulnerability, referrals will be referred to and dealt with by an officer in Liberata conversant with vulnerability issues.

Where concerns over an individual's vulnerability are high in regard to the mental capacity of the individual, suspected safeguarding concerns (i.e. the debt is a result of a suspected abuse) then the matter should be passed onwards to adult social care for advice.

### **5.3 Fraud**

Where the Council is satisfied that the circumstances of an overpayment involved bad faith on the part of the recipient, it will consider, in addition to recovery action, whether the recipient obtained the overpayment fraudulently, for example by dishonestly giving false information or knowingly failing to disclose information which he/she was under a duty to disclose.

If there is evidence of fraudulent intent, where appropriate and practicable, prosecution and/or disciplinary action should be taken. Such action will not eliminate the debt which had resulted from the overpayment, so recovery of the debt should continue to be pursued by any means available.

Prior to considering recovery of a debt under this category, the Internal Audit Service should be notified in order not to jeopardise any on-going internal or external investigation.



#### **5.4 Cost-effectiveness of Recovery Action**

In general, the Council will only make a decision not to seek recovery of an overpayment on the basis of a cost benefit analysis of the options.

In certain cases there are statutory requirements to raise a charge for services provided. However, as a guideline the de minimis level for collection of a debt or overpayment is where the amount is less than £25 and where it is considered recovery action would not be cost effective.

A decision not to pursue recovery should be exceptional and should only be taken after a careful appraisal of the relevant facts, taking into account the legal position.

The option of stopping any future payments which may be due to the recipient of the overpayment should always be considered.

#### **5.5 Disputes or challenges against recovery**

A number of challenges may be claimed against recovery which may include:

(a) **Length of time elapsed since the overpayment was made.**

Under the Statute of Limitation Act 1980, an overpayment cannot be recovered after a period of 6 years has elapsed; unless a relevant claim has been made in relation to it or its existence has been relevantly acknowledged.

A relevant acknowledgement is where the recipient of the overpayment acts in such a manner as to clearly indicate that the claim still exists or where the recipient makes an unequivocal written admission that it does so.

Where the Council has supplied goods and/or services, the customer is liable to pay even if no invoice has been issued. If a trader has not received an invoice at the end of the 6 year Limitation Act period for enforcement they may believe there is no longer a likely prospect that they will have to pay.

A debt which arises for Care and Support after the Care Act 2014 came into force must also be recovered within six years of the date when the sum became due to the local authority. This is an extension to the previous limits for a debt that arose before the Care Act 2014 came into force which had to be recovered within three years of the date when it became due. Where a debt is taking time to be recovered, provided legal proceedings have been issued within the limitation period, enforcement can continue. If it has not, the debt must be written off.



(b) **Hardship**

As a matter of policy the Council may waive recovery of overpayments if it would cause hardship, but hardship must not be confused with inconvenience.

To be required to pay back money to which there was no entitlement does not in itself represent hardship, especially if the overpayment was identified promptly.

To be acceptable, a plea of hardship should be supported by reasonable evidence that the recovery action proposed would be detrimental to the welfare of the recipient or his/her family.

The Council has a Means Test form that should be completed by the customer in cases where they consider they do not have the ability to repay an overpayment (see Appendix B).

(c) **Change of position**

The onus is on the recipient to show that it would be unfair to repay an overpayment of monies if they, in good faith, have relied on it to change their lifestyle. The money and the subsequent course of action by the Council would depend on the facts of the case.

It might then be inequitable to seek to recover the full amount of the overpayment.

(d) **Good Consideration**

There are also a number of other possible defences against recovery such as good consideration - the satisfaction of a debt by the giving of something in return. Legal advice should always be sought.

## 5.6 **Set-Off**

Set-off is a right of common law which, in appropriate circumstances, provides a means of settling mutual debts between two parties. The facility may also be explicit in some council contracts.

It is not unusual for the council to have various financial interactions with some contractors and organisations. In such circumstances the organisation will be both a creditor and a debtor of the council which provides the opportunity to set-off an outstanding debt from a liability the council has with the organisation.

A set-off should not automatically be applied as it creates reconciliation issues for both parties, however, it should be used when a recognised debt remains unsettled.

In most circumstances this will result in the council (as itself a debtor) short paying an invoice by the value of the amount it is owed by the same party. The reduced payment should be accompanied by correspondence to explain the transaction in detail.



## 5.7 Collective Overpayments

If a group of people have **all** been overpaid as a result of the same mistake the members of the group should not be treated differently with regard to the degree of recovery required and should all be invited to repay on the same basis.

However:

- repayments should not be pursued against any individuals who can claim one of the legitimate challenges against recovery; and;
- it may be impossible or disproportionately expensive to enforce recovery against some individuals - it can be expensive to trace an individual and, in some cases, the individual may not have the resources to pay and the sum would be, in practice, irrecoverable.

North Somerset Council will decide how best to handle collective overpayments in order that they do not inhibit the maximum recovery possible.

The fact that recovery cannot, in practice, be made from certain members of a particular group does not mean that recovery should be waived for others in the group.

The individual who voluntarily pays and settles up should not be regarded as having been treated unfavourably, as all had been required to pay.

The difference is one of practicality in pursuing the claim. There is no obligation to inform other individuals of what steps are, or are not, being taken, to recover a claim.

Although there is a general principle of treating like cases alike, as a matter of the law relating to recovery, the fact that a claim is pursued against one person and not another, when they are both equally liable, does not affect the validity of the claim against either.

Where it is considered, as a matter of policy, that it would not be fair to recover the amount outstanding, then the individuals concerned must be informed of such.

However, any proposal to forego recovery of the whole or part of a collective overpayment must be approved by the s151 Officer **before** the recipients of the overpayments are informed.

The Head of Financial Management must be satisfied that a collective waiver is defensible in the public interest or on the basis of value for money.



## 6. Methods of Recovery

### 6.1 Debt Collection Procedures – invoicing external debts

For further details guidance please contact the Head of the Support Services Partnership on ext 4256.

Details of all correspondence with the customer, both written and verbal should be recorded for future reference on customer paper notes and within the Agresso financial system. These will be valuable where Court Proceedings are necessary.

#### 6.1.1 Invoicing external sundry debts;

An invoice should be raised on the Council's Agresso system for the amount involved, where it is decided to instigate recovery action of the overpayment rather than by stopping any future payments or by way of setting off payments due to the recipient.

All invoices raised must be properly supported by documentary evidence that supports the debt. Officers must ensure that invoices are raised within five working days of delivering goods or services or of the commencement of the period where service covers a period of time. Including VAT at the prevailing rate as appropriate.

In case of a query arising, all invoices will have;

- the name and contact number of the officer raising the invoice;
- the address of the Accounts Receivable Team to where income should be paid,
- preferred methods of payments, and;
- terms and conditions.

Where practical, legally allowable, and efficient, advance payment should be requested for all services, or by the debtor signing a direct debit agreement before the provision of service. This will minimise the financial risk to the Council.

Where this is a continual supply of goods or services, periodic invoices should be raised within five working days of the end of each period or, if payment in advance is appropriate, five working days in advance of the end of each period.

The Council's follow-up process is automatically instigated once the debt is 30 days old from the invoice date and a second reminder is issued when the debt is 45 days overdue. Once the debt becomes 55 days overdue a Departmental Referral is sent to the originator of the invoice via the Workflow system in Agresso who in liaison with the budget holder, should respond in 10 days in order to confirm whether there is;

- (a) a dispute, if so give details, and the account will be placed into dispute;
- (b) recommend for write off; or;
- (c) write back as insufficient evidence to recover or no funds available;
- (d) escalate for further recovery action.

If a response has not been received after the 10 days the task will be escalated to the relevant officers, showing debts still outstanding. (See Appendix D).



### **6.1.2 Disputed Invoices**

All sundry debt invoices have the contact details of both the service originator and the Income Team. However, the service originator is the officer to contact to help resolve initial queries, as they will have the relevant information.

All invoices that are disputed will be flagged within Agresso (debtor system) as not requiring further action at this time.

If an invoice is flagged:

- (a) A reason for the dispute should be clearly defined;
- (b) Every effort to resolve should be made at the earliest opportunity; and;
- (c) Any obstacles to partial or full payment should be explored and resolved.

The aim should be to resolve disputes within one week and at most within 21 days, this may be longer for specific cases under People and Communities.

Every two weeks all invoices which have been flagged should be reviewed by the income team and reported to Liberata's Service Delivery Manager, together with the reason(s) for the dispute.

All flagged invoices should be detailed and reported monthly to the Head of Support Services Partnership.

### **6.1.3 Credit Notes**

Credit notes will be raised by the originating service and be properly supported by documentary evidence to validate the reason for reducing or cancelling a previous amount invoiced.

A credit note must be issued to cancel an incorrect invoice, before re-invoicing correctly. The Budget Holder must authorise in Agresso.

A credit note must only be applied to, or reduce the balance of, the invoice it was raised against. A credit note must not be used as a method to write off debt, as it is primarily a means of adjusting the value of a debt for valid and agreed reasons

### **6.1.4 Bad Debt Provision**

The Council will ensure that it has adequate provision for Bad Debt. Each major debt must have identifiable provision.

## **6.2 Set Offs**

See Item 5.6





### **6.3 Write-Off of outstanding debts**

After all appropriate steps have been taken any debt (or part thereof) which North Somerset Council decide not to pursue or pursue further may be considered for write off and should be referred to the Section 151 Officer in accordance with the Council's Accountability and Responsibility Framework.

All requests for write-off must be supported with full details as to the reason for write-off.

The write-off of all overpayments must ensure the segregation of duties between staff involved in the overpayment and staff authorising the write-off.

Any decision not to pursue recovery, or not to pursue recovery in full, should be defensible in the public interest.

### **6.4 Overpayments to Staff**

**Current employees** will receive a letter stating the amount overpaid and an amount which will be deducted from salary over the same time scale as the overpayment;

**Ex-employees** will be invoiced to recover monies due. These invoices will then be followed up by Accounts Receivable Team (see item 6.1.1).

It is important that the reason for the overpayment is established at the start, as this will be needed should payment recovery prove difficult.

### **6.5 Payment by Instalments**

Payment by instalments is only acceptable when the customer is immediately unable to settle the debt in full.

The decision to agree payment by instalments should be made by the Accounts Receivable Team.

Where the debt relates to an on-going service provision consideration should be given to discontinuing the service until the outstanding debt and overpayment has been settled.

Consideration will be given to the type of service that is being provided so as to not detrimentally affect the health or well-being of an individual i.e. the provision of home care.

Consideration will be given to the recommended value and the suggested repayment period of the instalment.

As a general rule the debt should be recovered in the financial year in which it arose and over a period of no more than six months.

However, in exceptional circumstances, and only if approval is obtained from the designated senior manager, more time can be offered e.g. 12–18 months.

The instalment offer needs to be for a realistic amount and guidance and advice should be sought from the designated senior manager.



In general, all debts should be paid by the due date. Therefore, if a customer defaults on the arrangement, without making contact, the balance becomes due and payable immediately.

It may be necessary to refer the customer to an independent advice agency e.g. Citizens Advice. A statement from an independent advice agency can be taken into account when action to recover the outstanding amount is considered, as this will show the overall level of debt and not just the amount owed to the Council.

## **6.6 Overpayments of Housing Benefit**

Recovery will generally be sought from the recipient of the Benefit whether it is the landlord or the customer. Where there is still entitlement to benefit, the overpayment can be recovered from the on-going Benefit.

The Council's Prosecution Policy contains information regarding the sanctions that can be applied to Housing Benefit fraud.

In certain cases where the customer has the ability to repay they may be offered the alternative sanction of an Administrative Penalty. In such cases, recovery of the penalty will occur in the same way as the recovery of the overpayment. However, the Administrative Penalty will be recovered prior to the recovery of the overpayment.

Where a prosecution is brought the Council will consider confiscation action if appropriate.

The Proceeds of Crime Act (POCA) should also be considered where appropriate.

## **6.7 Recovery Procedures – Council Tax and Business Rates**

Council Tax and Business Rates debts will be recorded on the relevant Council Tax and Business Rates database. Bills will be issued in respect of all amounts due giving the customer at least 14 days notice of any amount due.

Bills must allow customers to pay in monthly instalments as prescribed in the Council Tax and Business Rates Regulations. All bills will also have details of how payment can be made and provide relevant contact details.

Recovery action will be taken in respect of any unpaid amount greater than £25 within 15 working days of the payment becoming overdue.

Failure to pay as required by any reminder notice or continued failure to pay instalments by the due date will result in the right to pay by instalment being withdrawn and the balance of the year's liability becoming due and payable within 7 days.

A summons to appear at the Magistrates Court will be issued in respect of any amount not paid within 7 days and costs, as agreed with the Magistrates, will be incurred at this stage.



To avoid disproportionately increasing a customer's indebtedness to the Council, a summons will not be issued in respect of any debt less than the amount of the summons costs. However, the Council may seek to recover such debts using external debt collection enforcement agents.

If a summons has been issued and the amount outstanding, including the summons costs, has not been paid in full a Liability Order will be requested from the Magistrates at the Court Hearing. Once a Liability Order has been obtained a number of additional recovery options are available, including:

- **Enforcement Agents** can be instructed to collect the outstanding debt on the Council's behalf. Any action taken by the Enforcement Agents will result in additional fees being incurred.
- **Attachment to Earning Orders** served on the debtors' employer to deduct the outstanding amount from their wages (Council Tax only). The amount deducted is prescribed in Regulations.
- **Deductions from certain State Benefits** (Council Tax only). Again, the amount deducted is prescribed in Regulations.
- **Charging Orders** obtain in respect of properties owned by the debtor (Council Tax only). Any outstanding debt, including costs and interest, would be recovered from the proceeds of sale of the property. Ultimately, the Council may force sale of the debtor's home.

**Prior to proceeding with a Charging Order the council will;**

- Attempt to seek as much information about the debtor's circumstances including whether the debtor is known by Social Services to find out if the proposed course of action would be appropriate;
- Make a final attempt to contact the customer by way of a letter sent recorded delivery and signed for;
- Carryout at least one visit to the property in question to attempt to discuss the situation with the debtor and to establish where possible that the debtor is still in residence.
- **Bankruptcy Proceedings.** Regulations provide that the amount of any liability order shall be treated as a debt under the Insolvency Act 1986. The effect of this is that a council tax debt can give rise to bankruptcy proceedings under section 267 of the Insolvency Act 1986 which covers the grounds for serving a creditors petition providing certain criteria has been satisfied.
- **Commitment to Prison.** Continued failure to pay can result in a debtor being brought back before the Magistrates. If the Magistrates decide that the failure to pay is as a result of the debtor's culpable neglect or wilful refusal a prison sentence of up to 90 days could be imposed.



Whilst all of the above recovery options are available, as long as an acceptable offer of payment is received and payments continue to be made as agreed no further action will be taken once a Liability Order has been obtained.

A flowchart of the Council Tax and Business Rates Recovery process is detailed in Appendix E.

## **6.8 Debt Recovery Procedures – Care and Support Needs**

The Care Act 2014 introduced a modern legal framework for the recovery of any debts that may have accrued as a result of a local authority meeting a person's eligible care and support needs. Section 22 of the Health and Social Services and Social Security Act (HASSASSA) 1983 is revoked from April 2015 and no new debts can be recovered under that provision.

New powers are provided under Section 69 of the Care Act that provides equal protection to both the local authority and the person. Section 70 of the Care Act also provides a local authority with the power to recover charges from a third party where a person has transferred assets to them in order to avoid paying charges for care and support.

These powers can be exercised where a person refuses to pay the amount they have been assessed as being able to pay.

These powers can also be exercised where the person, or their representative, misrepresents or fails to disclose (whether fraudulently or otherwise) information relevant to the financial assessment of what they can afford to pay.

There could also be a variety of reasons why the person has not paid the assessed charge, for example, there could be issues around diminishing capacity.

Even if there is a debt, the Council will need to consider whether it is appropriate to recover it. The Council does not have to recover the debt – it can choose not to do so. Consideration as to whether the Council should not take action to recover a debt may be taken where:

- (a) The amount of the debt is small and the costs of recovery would be disproportionate.
- (b) The impact of recovering the debt would adversely affect the well-being of the person receiving care and support.
- (c) The person or their representative could not reasonably have been aware that the asset in question needed to be included in the financial assessment.



### 6.8.1 Principles underpinning the approach to debt recovery

The recovery of debts from those who are receiving care and support is a sensitive issue given the potentially vulnerable nature of the client group and local authority's ultimate responsibility to meet needs.

Where a person is eligible the Council will also bear in mind that they are bound by the public law principle of acting reasonably at all times and **must** act in accordance with human rights legislation, as well as the wellbeing principle set out in the Care Act.

The Council will consider all other reasonable avenues before using the powers provided under the Act. Ultimately the local authority may take the person or other party to the County Court to recover the debt.

Therefore the Council will apply the following principles and approach to the recovery of debts:

- Possible debts **must** be discussed with the person or their representative;
  - By Negotiation, Mediation or Arbitration for an agreement;
- Arrangements for debt repayments should be agreed, if possible, with the person receiving care or their representative;
- Repayments **must** be affordable to the person receiving care;
- The Council **must** act reasonably;
- Where a person meets certain criteria and is eligible for a Deferred Payments Agreement (DPA) the Council **must** offer this option as set out in Section 69(2) of the Care Act 2014.
  - The Council is able to include a claim for interest on the debt under Section 69 of the Care Act 1984 provided it has been identified in the claim to the Court.
  - Only where a person refuses the option of a DPA or does not meet the eligibility criteria can the Council seek to enforce the debt via an application to the County Court. The Council will ensure that an appropriate record of the refusal, together with the reason for refusal, is suitably retained.
- Taking Court action to recover a debt should be the last resort;
  - Where a court order or judgment for payment is made but not complied with the Council may choose to request enforcement on the order. Methods of enforcement are detailed in item 6.8.

### 6.8.2 Timing of debt recovery

A debt which arises after the Care Act 2014 came into force must be recovered within six years of the date when the sum became due to the local authority.

Where a debt is taking time to be recovered, provided legal proceedings have been issued within the limitation period, enforcement can continue. If it has not, the debt must be written off.



## **7. Who to Contact About This Policy**

For any further information or advice please contact Richard Penska, Head of the Support Services Partnership, via e-mail [richard.penska@n-somerset.gov.uk](mailto:richard.penska@n-somerset.gov.uk) and can be contacted on 01934 634256.

## **8. Review of the Debt Recovery and Overpayments Policy**

The Policy will be subject to annual review to ensure that it remains current and will be presented for approval to the Executive Member.



## Appendix A –Public Interest Tests

### The Public Interest Test

**The public interest test** is discretionary, based on the principle that not everyone should be automatically subject to having to repay an overpayment and that the following factors should be taken into account when making a decision:

- the value of any money, property or advantage obtained as a result of the overpayment;
- the physical and/or mental condition of the recipient; whether the recipient accepted the money in good or bad faith;
- the cost-effectiveness of recovery action;
- any relevant personal circumstances of the payee, including defences against recovery;
- the length of time since the payment in question was made;
- failures of the administration process which may have resulted in the overpayment;
- involvement of third parties or the forgery or falsification of documents;
- voluntary disclosure;
- the individual was in a position of trust;
- abuse of process or unnecessary delay;
- mitigating factors put forward by or on behalf of the individual;
- the need to deal equitably with overpayments for similar circumstances.

The above list is not exhaustive.

The Debt Recovery and Overpayments Policy is intended to take into account all the above in a clear, understandable and unambiguous manner.



## Appendix B –The Means Test Form

### The Means Test Form

**The Means Test Form** may be used to establish the ability to pay a debt, overpayment or outstanding arrears, based on the principle that not everyone may automatically be able to repay an overpayment and that the following factors should be taken into account when making a decision:

The Means Test Form requests details of;

- personal details
- dependants
- employment
- income
- expenses (i.e. Utilities, maintenance, motoring, children, leisure etc)
- priority debts.
- proposed amount and
- frequency of re-payment.

In determining a customer's ability to pay the assessment should take into account the expenditure information provided and also the service guidance on reasonable living expenses.





## Appendix C – Section 13A Council Tax Discounts

### Section 13A Council Tax Discounts

#### 1. Background

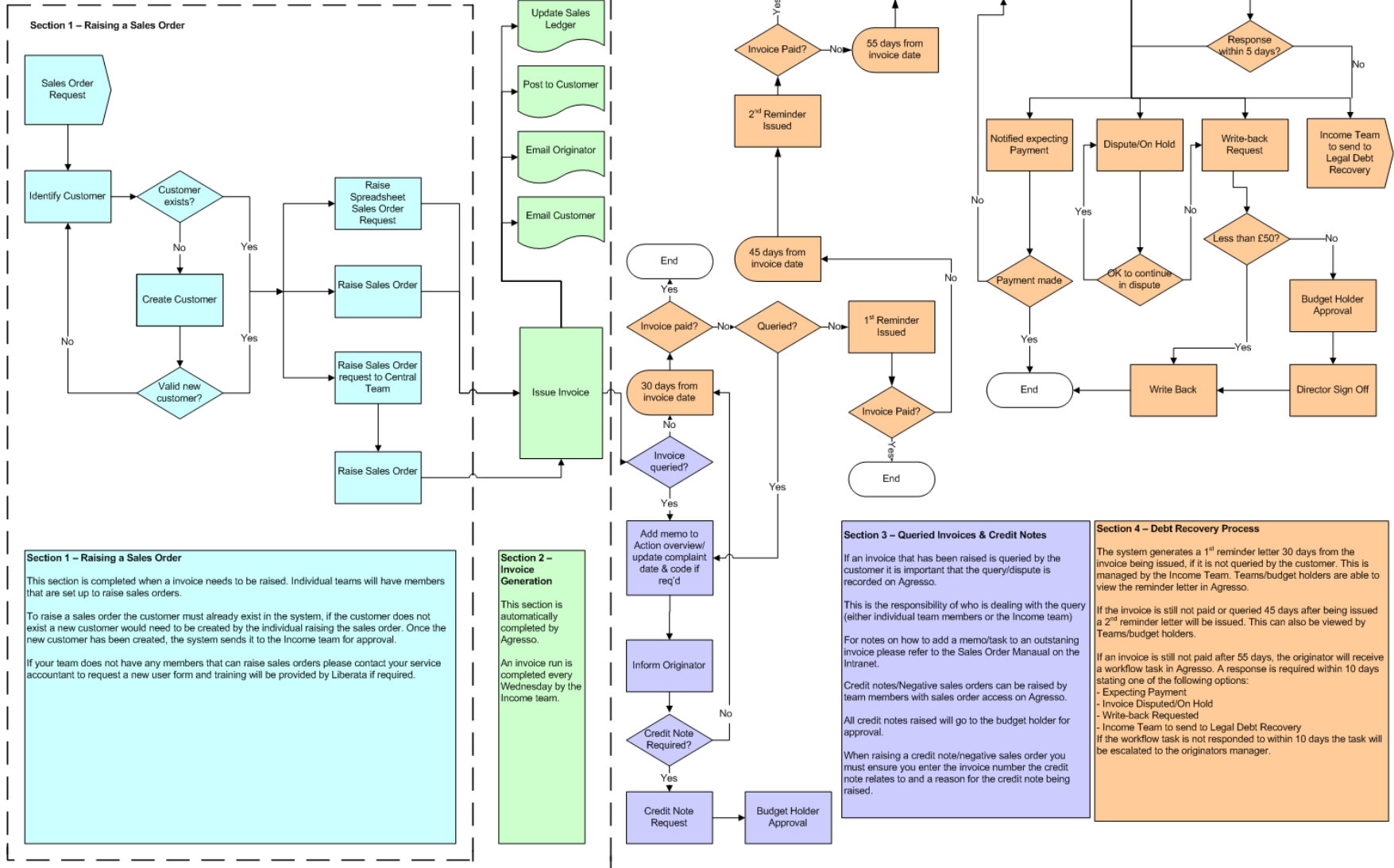
- 1.1 Under S13A(1)(c) of the Local Government and Finance Act 1992 the Council has the power to reduce the liability for Council Tax in relation to particular cases or by determining a class of cases in which the liability is to be reduced.
- 1.2 Discounts could be granted either to an individual or to classes of individuals. However there are financial implications to awarding any discounts other than those currently available under the statutory legislation. Not only would there be an increase in the general level of council tax for other payers, but the complication and cost of administering council tax would increase.
- 1.3 There are a number of reasons for this policy:
  - Use of the power would reduce the income from Council Tax;
  - A wider entitlement to reduced liability would require considerable administration to assess requests; and;
  - The benefits system exists to ensure that those on low incomes receive financial assistance with their Council Tax.
- 1.4 In dealing with the collection of council tax liability the Council may make a decision to "write off" a debt under the provisions of the Council's Accountability and Responsibility Framework and the Debt Recovery Policy, this is carried out through an assessment on the ability to collect the debt and does not constitute a reduction in liability as defined within S13A(1)(c) of the Local Government and Finance Act 2013.

#### 2. Scheme

- 2.1 The initial application would be assessed by the officer dealing with the request. The customer would then be notified of the outcome in accordance with the council's customer service standards. If the customer was still not satisfied they would be required to make a formal appeal to the Head of the Support Services Partnership. The appeal will be personally reviewed by either the Head of Financial Management or their deputy. A formal written decision will then be issued to the taxpayer within 15 working days from receipt of the appeal.
- 2.2 Each request will be dealt with on an individual case by case basis and appropriate care will be given to the decision making process. This will take into account the taxpayers personal circumstances and the other powers of Council Tax legislation to amend Council Tax liability.

**Appendix D – Account Receivable Process**

# Account Receivable Process



# Appendix E – Council Tax and NNDR Process Flow Chart

Additional Box required for setting up an attachment of earnings/benefits and a route Yes or No

