

## **ECONOMY AND RESOURCES SCRUTINY COMMITTEE**

### **5 November 2020**

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### **THE PROCESS FOR THE WRITE-OFF OF IRRECOVERABLE DEBT**

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#### **Purpose of the Report**

1. To provide Members with the process for the write-off of irrecoverable Council Tax, Business Rates, former tenant rent arrears and Housing Benefit overpayment debts.

#### **Summary**

2. The collection of rent and taxes is critically important to provide the Council with an increasingly large part of the resources that it needs to provide essential services to residents and businesses. In 2019-20, over £119 million of Council Tax, Business Rates, rent and Housing Benefit overpayments were collected by the Council.
3. However, provision is made for the write-off of irrecoverable debts, where all reasonable steps have been taken to recover the amount but it is no longer practical or financially viable to proceed.
4. Writing-off irrecoverable debt at the earliest opportunity represents good financial management, allowing staff to concentrate on recoverable debts and ensuring that the level of outstanding debt within the Council's accounts is accurate and represents a true reflection of our financial position.

#### **Recommendation**

5. Members are asked to note the contents of this report.

**Ian Williams**  
**Director of Economic Growth and Neighbourhood Services**

#### **Background Papers**

Background papers were not used in the preparation of this report.

S17 Crime and Disorder	There is no impact on the Council's Crime and Disorder responsibilities as a result of this report
Health and Well Being	There is no impact on Health and Well Being as a result of this report
Carbon Impact and Climate Change	There is no impact on Carbon Impact and Climate Change as a result of this report
Diversity	There is no impact on Diversity as a result of this report
Wards Affected	All wards will be affected by this report
Groups Affected	All groups will be affected by this report
Budget and Policy Framework	This report does not represent a change to the budget and policy framework
Key Decision	This is not a key decision
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	The report has no particular implications for the Sustainable Community Strategy
Efficiency	This report does not contain proposals but the write-off of debts enables the Council's accounts to be maintained in accordance with the Financial Procedure Rules
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers

## MAIN REPORT

### Information and Analysis

6. Despite the numerous challenges this year has brought so far, staff in the Housing Income and Revenues and Benefits teams have continued to maintain high levels of Council Tax, Business Rates and rent collection performance.
7. At the end of Quarter 2, the Council has collected:
  - (a) £33.4 million of Council Tax
  - (b) £9.6 million of Business Rates
  - (c) £13.2 million of Council rents and arrears
8. The in-year collection rate for Council Tax is at 52.7%, which is only slightly below last year's figure of 53.3% for the same period. Business Rates collection is at 58.1%, which is slightly higher than last year's 56.8% for the same period. The collection rate for Council rents is at 97.1%, with rent arrears at the end of Quarter 2 standing at 3.2% compared to 3.3% for the same time last year.

## Council Tax and Business Rates

9. The billing and collection of Council Tax and Business Rates is set out in national legislation, including the various stages of collection and recovery, as follows:
  - (a) The Council Tax or Business Rates bill is the first formal notice of recovery action and includes the statutory payment scheme with 10 or 12 monthly instalments.
  - (b) Reminder notice - If an instalment has become due but is not paid after 21 days (or is only part paid) the Council may issue a reminder notice requiring the outstanding amount to be paid within the next 7 days.
  - (c) Notice of Legal proceedings - If an instalment has not been paid (or only part paid) after 14 days from the issuing of a reminder notice, the Council may issue a notice of legal proceedings. This advises that the right to pay by instalments has been lost and that the full amount of the outstanding Council Tax or Business Rates for the year must be paid within the next 7 days.
  - (d) Summons and Liability Order - If after issuing a notice of legal proceedings, full payment has not been received, the Council may take legal action with the issuing of a summons to the Magistrates Court and costs are added to the account. If the full amount outstanding has not been paid by the Court date, a Liability Order will be issued by the court and further costs are added.
10. A flowchart summarising the collection process for Council Tax and Business Rates is given at **Appendix 1**.
11. The Liability Order gives the Council powers to recover and enforce the debt, through the following means:
  - (a) Payment arrangement – the Council will always seek to recover the amount outstanding through a payment arrangement with a view to collect the outstanding amount by the end of the financial year.
  - (b) Attachment of earnings (for Council Tax) - if the debtor is an employed earner, the Council can serve an Attachment of Earnings Order on the employer to recover the debt through deductions from their earnings.
  - (c) Deductions from benefits (for Council Tax) - if the debtor is in receipt of certain state benefits, the Council can request the DWP to recover the debt through deductions from their benefit.
  - (d) Referral to Enforcement Agents – if the Council is unable to recover the debt using the options above, the debt will be referred to an Enforcement Agent. The Council will write to the debtor to advise them that if payment of the

debt is not made, then it will be passed to the Council's Enforcement Agent and further fees will be added to the debt. This is the last chance the debtor has to pay the Council. The amount of fees an Enforcement Agent can charge to the debtor is prescribed in the Taking Control of Goods Act 2014 and they will always collect their fees first before any debts.

12. A flowchart summarising the recovery process following a Liability Order is given at **Appendix 2**.
13. If a debt is returned by an Enforcement Agent as uncollected, the Council will consider what further action can be taken to recover the debt or if the debt should be recommended for write-off. Further recovery action at this stage can include:
  - (a) Charging Orders - where the debtor owns property and there is enough equity in the property to cover the outstanding debt, a Charging Order can be placed against the property as a secured charge (in a similar way to a mortgage). This means that if the property is sold, the debt will be paid on completion of the sale.
  - (b) Orders for Sale - where the overall debt exceeds £4,000, the Council may force the sale of a property to recover the debt. This is usually where the property is empty, or the property is occupied but the debtor is making no attempt to pay their ongoing charge.
  - (c) Bankruptcy - where the overall debt exceeds £5,000 the Council will consider bankruptcy (for Council Tax) or liquidation (for Business Rates). In these circumstances, the Council will serve a 'Statutory Demand' on the debtor, and if full payment is not received, we can then petition for bankruptcy.
14. Where debts have been returned by the Enforcement Agents as "no trace" (and the Council Tax or Business Rates account is closed), the Council will undertake actions to trace the debtor. If the debtor cannot be traced, the debt will be recommended for write-off. However, if contact is made in the future, the debt will become recoverable again.
15. Where debts have been returned by the Enforcement Agents as "no goods" (where there are insufficient goods that can be removed to cover the value of the debt), the Council will take the following action:
  - (a) Where the account is closed and the debt is less than £100, the debt will be recommended for write-off.
  - (b) Where the account is closed and the debt is between £100 and £500, the debt will be recommended for write-off if the account was closed more than 12 months ago. If the account was closed within the past 12 months, the debt will be referred to a Recovery Officer to consider further recovery action.

- (c) Where the account is closed and the debt is more than £500, it will be referred to a Recovery Officer to consider further recovery action.
  - (d) Where the account is open and the debt is less than £100, the debt will be recommended for write-off unless the current Council Tax or Business Rates charge is not being paid.
  - (e) Where the account is open and the debt is more than £100, the debt will be referred to a Recovery Officer to consider further recovery action.
  - (f) All debts recommended for write-off for the reasons given above will be classed as “not financially viable to proceed”.
16. At any point during the recovery process, where a Recovery Officer considers that all reasonable attempts to recover the outstanding debt have been taken and that it will be uneconomical to pursue the debt further, the debt will be recommended for write-off.
17. In recommending a debt for write-off in these circumstances, a Recovery Officer will consider:
- (a) The steps taken so far to recover the debt
  - (b) The cost and likelihood of success of taking further recovery action
  - (c) What options, if any are available to recover the debt
  - (d) The debt history and whether previous debts have been written-off
  - (e) Any legal advice.
18. A flowchart summarising the process of debts returned by Enforcement Agents as uncollected is given at **Appendix 3**.
19. The Council will also recommend the write-off of Council Tax and Business Rates debts in the following circumstances:
- (a) Bankruptcy, Liquidation, Voluntary Arrangement, Administrative Order or Debt Relief Order – where evidence is received from a trustee, administrator or liquidator that no assets exist to repay the debt.
  - (b) Deceased and estate insolvent – where evidence is received from the executor that no assets exist in the estate to repay the debt.
  - (c) Statute barred - any debts uncollected after 6 years of obtaining a Liability Order where recovery is not actively in progress.
  - (d) Hardship – where recovery of the debt will cause the debtor hardship, and the current charge is being paid (for example, where the maximum deductions are already being made from a DWP benefit).

20. The process for recommending Council Tax and Business Rates debts for write-off is as follows:
  - (a) For debts under £500 – a Revenues and Benefits Officer or Recovery Officer will recommend the debt for write-off. The Collection Team Leader will check and approve the debt for write-off. The Assistant Director - Resources will authorise the write-off.
  - (b) For debts of £500 and over – a Recovery Officer or the Collection Team Leader will recommend the debt for write-off. The Revenues and Benefits Manager will check and approve the debt for write-off. Cabinet will authorise the write-off.

### **Former Tenant Rent Arrears**

21. The collection of Council rent arrears is set out in national legislation (the Pre-Action Protocol for Possession Claims by Social landlords). This sets out the process the Council must follow in order to start possession proceedings as a result of a tenant not paying their rent and falling into arrears. However, the Council will not consider the write-off of any rent arrears until a tenancy has ended.
22. The process for the recovery of former tenant rent arrears is set out below. However, as the Council has already attempted to collect these amounts whilst the debtor was a Council tenant, there are limited further options available to the Council to collect the debt once the tenancy has ended.
23. In most cases, where the debt is under £200 it will be recommended for write-off as uneconomical to pursue (this equates to approximately 2 weeks rent). Where the debt is £200 and over, notification is sent to the debtor of the outstanding rent arrears, which is the start of the recovery process followed by a reminder if no response is received.
24. For debts of £500 and over, if the debt remains unpaid after the initial recovery process, further recovery action will be considered, as follows:
  - (a) Where the debtor is in work and a Possession Order was granted by the Court before the tenancy was terminated, the debt will be referred to Legal Services to apply for an Attachment of Earnings to recover the debt.
  - (b) Where the debtor is not in work and a Possession Order was granted by the Court before the tenancy was terminated, the debt will be referred an Enforcement Agent to recover the debt.
  - (c) Where the debtor is not in work and a Possession Order was not granted by the Court before the tenancy was terminated, the debt will normally be recommended for write-off, although a Housing Income Advisor will review each case individually at this stage to decide if any further recovery is viable.

25. A flowchart summarising the recovery process for former tenant rent arrears is given at **Appendix 4**. A flowchart summarising the recovery process for former tenant rent arrears where the current whereabouts of the debtor is not known is given at **Appendix 5**. A flowchart summarising the recovery process for former tenant rent arrears where the debtor is deceased is given at **Appendix 6**.
26. The Council will recommend the write-off of former tenant rent arrears in the following circumstances:
  - (a) Bankruptcy or Debt Relief Order – where evidence is received from a trustee or administrator that no assets exist to repay the debt.
  - (b) Deceased and estate insolvent – where evidence is received from the executor that no assets exist in the estate to repay the debt.
  - (c) Debtor in prison or residential care – where there is no prospect of recovering the debt.
  - (d) Statute barred - any debts uncollected after 6 years where recovery is not actively in progress.
  - (e) No forwarding address – where the debtor’s current whereabouts cannot be traced.
  - (f) Not financially viable to proceed - where all reasonable steps to recover the debt has been taken, but it is no longer financially viable to proceed further.
27. The process for recommending former tenant rent arrears for write-off is as follows:
  - (a) For debts under £500 – a Housing Advisor will recommend the debt for write-off. The Housing Manager will check and approve the debt for write-off. The Assistant Director - Resources will authorise the write-off.
  - (b) For debts of £500 and over – a Housing Advisor will recommend the debt for write-off. The Housing Manager will check and approve the debt for write-off. Cabinet will authorise the write-off.
28. Applicants who apply for Council housing with former tenant rent arrears (including debts that have previously been written-off) will only be considered for re-housing in the following circumstances:
  - (a) For debts under £500 where the tenant was not previously evicted by the Council – the debt must be cleared, or a payment arrangement maintained for 13 consecutive weeks or more.
  - (b) For debts of £500 and over where the tenant was not previously evicted by the Council – the debt must be cleared, or a payment arrangement maintained for 26 consecutive weeks or more.

- (c) For all debts where the tenant was previously evicted by the Council – the applicant will be ineligible for re-housing for 12 months after the date of eviction. In addition, the debt must be cleared, or a payment arrangement maintained for 26 consecutive weeks or more.

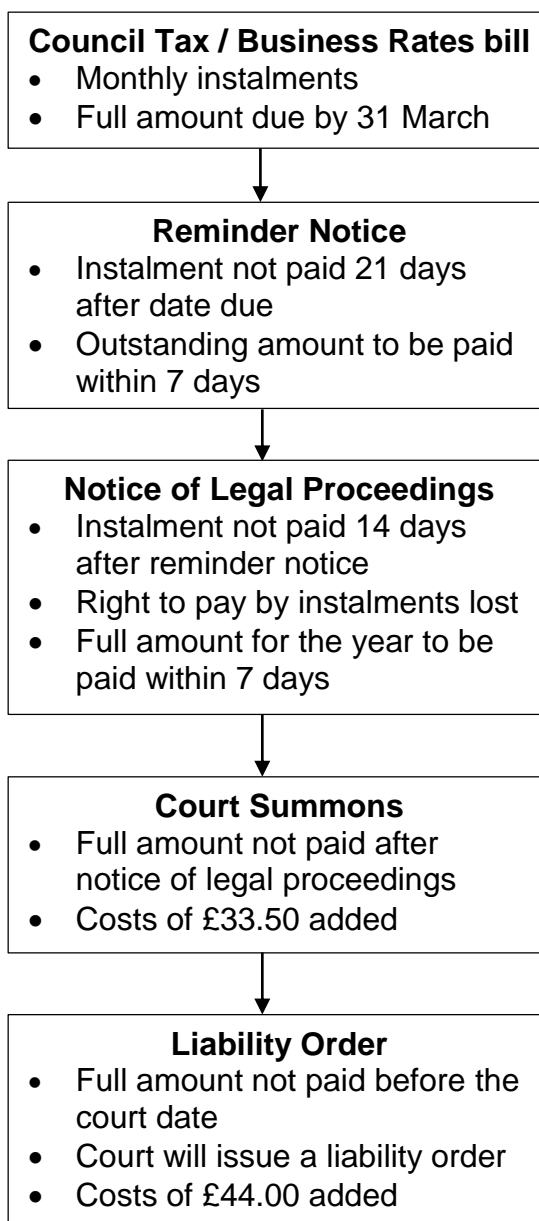
### **Housing Benefit overpayments**

- 29. Housing Benefit is paid to over 5,000 tenants and landlords each year through the Housing Benefit scheme. Whilst every effort is made to minimise overpayments, due to the very nature of the scheme some overpayments will occur.
- 30. Overpayments are usually caused by a failure of the tenant or landlord to report a change of circumstances, which reduces or stops entitlement to benefit. Other overpayments can also be caused as a result of errors made by the Council or DWP.
- 31. Depending on how the overpayment occurs will determine whether, or not it can be recovered or must be written-off as irrecoverable.
- 32. In respect of recoverable overpayments, these may be recovered by:
  - (a) Raising an invoice, or
  - (b) Deductions from ongoing Housing Benefit payments, or
  - (c) Recovery from the landlord's scheduled Housing Benefit payments, or
  - (d) Deductions from certain social security benefits, such as Universal Credit, or
  - (e) Deductions from earnings for people in work.
- 33. During the recovery process, it may be found that an individual cannot be located, has been made bankrupt, or an appeal has been successful. Where appropriate, Revenues and Benefits officers will make every attempt to trace individuals by enquiries through other departments of the Council, and if necessary, via tracing agencies and the Council's contracted collection agents. Only when all avenues of recovery have been exhausted, will the overpayment be recommended for write-off.
- 34. The most effective way to recover overpayments is to make deductions from ongoing payments of Housing Benefit. However, with the migration of Housing Benefit claims to Universal Credit, this is making the recovery of overpayments more challenging.
- 35. A flowchart summarising the recovery process for Housing Benefit overpayments is given at **Appendix 7**. The process for recovering Housing Benefit overpayments where the current whereabouts of the debtor is not known or where the debtor is deceased is similar to the former tenant rent arrears processes.

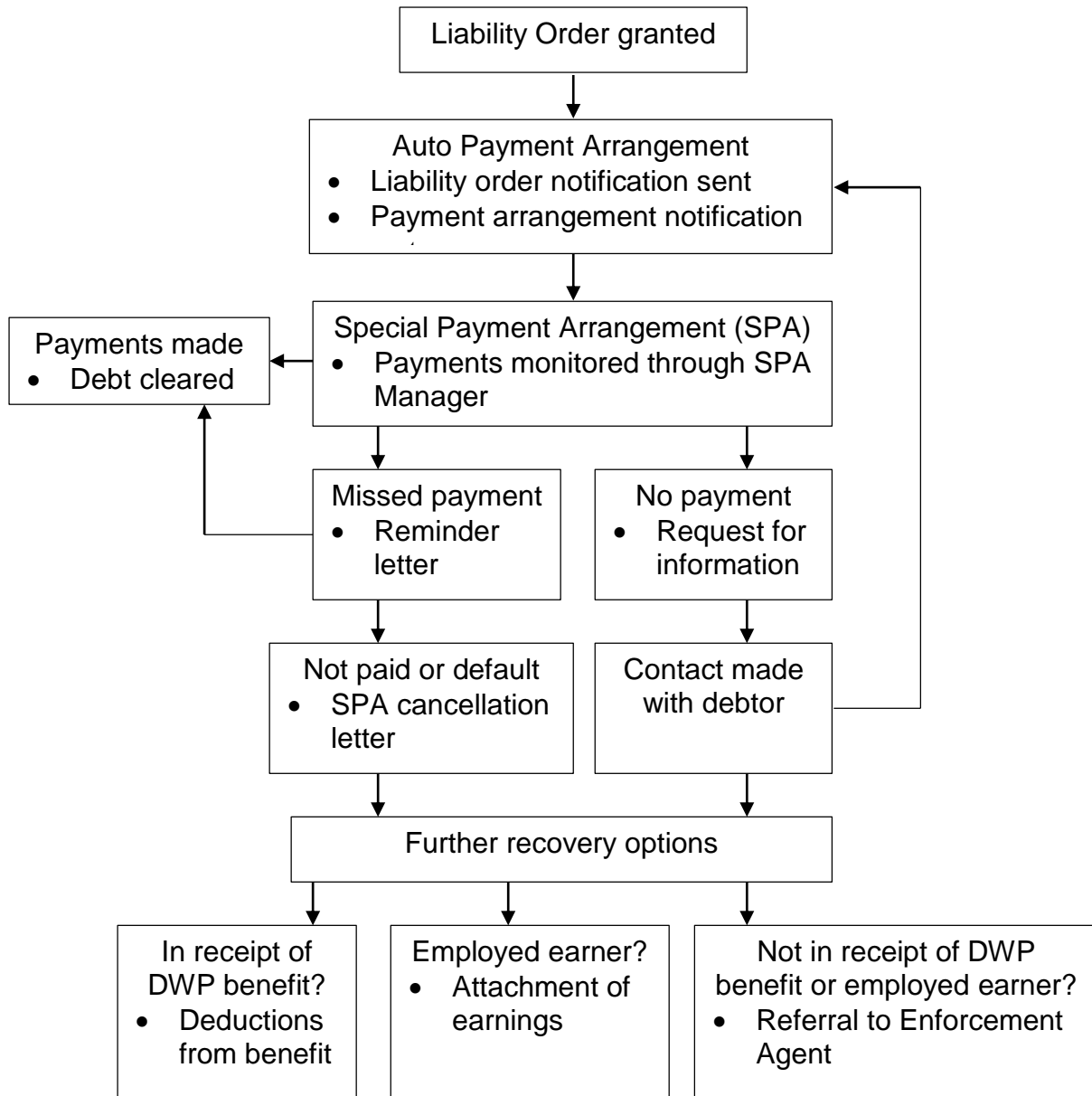


36. The Council will recommend the write-off of Housing Benefit overpayments in the following circumstances:
- (a) Bankruptcy or Debt Relief Order – where evidence is received from a trustee or administrator that no assets exist to repay the debt.
  - (b) Deceased and estate insolvent – where evidence is received from the executor that no assets exist in the estate to repay the debt.
  - (c) Official error – where the debt was caused by Council or DWP error and it is not appropriate to take recovery action (but see below).
  - (d) Statute barred - any debts uncollected after 6 years where recovery is not actively in progress.
  - (e) No forwarding address – where the debtor's current whereabouts cannot be traced.
  - (f) Not financially viable to proceed - where all reasonable steps to recover the debt has been taken, but it is no longer financially viable to proceed further.
  - (g) Hardship – where the debtor has made a successful appeal against the recovery of the overpayment and further action is not appropriate.
37. The majority of Housing Benefit overpayments are subsidised by the DWP at a rate of 40%, whether they are recovered or not. For official error overpayments, the DWP has recognised that in a system as complex as the Housing Benefit scheme, errors will occur. Official error overpayments are subsidised at 100% providing we remain below the error threshold of 0.48% of total expenditure. For 2019-20 the error level was 0.17% and has never exceeded the 0.48% threshold. Therefore, these overpayments are fully subsidised by the DWP.

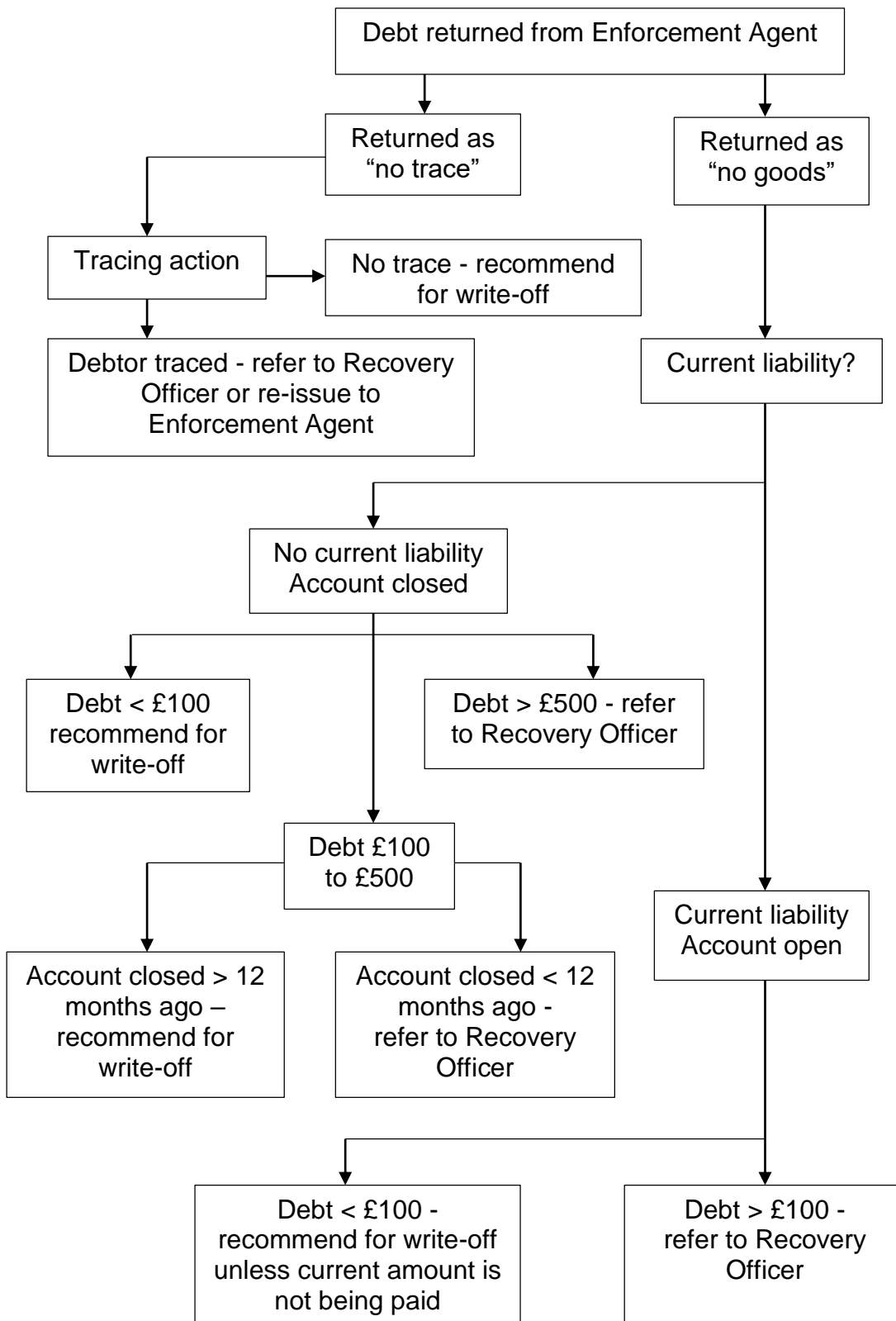
## Council Tax and Business Rates Collection



### Liability Orders

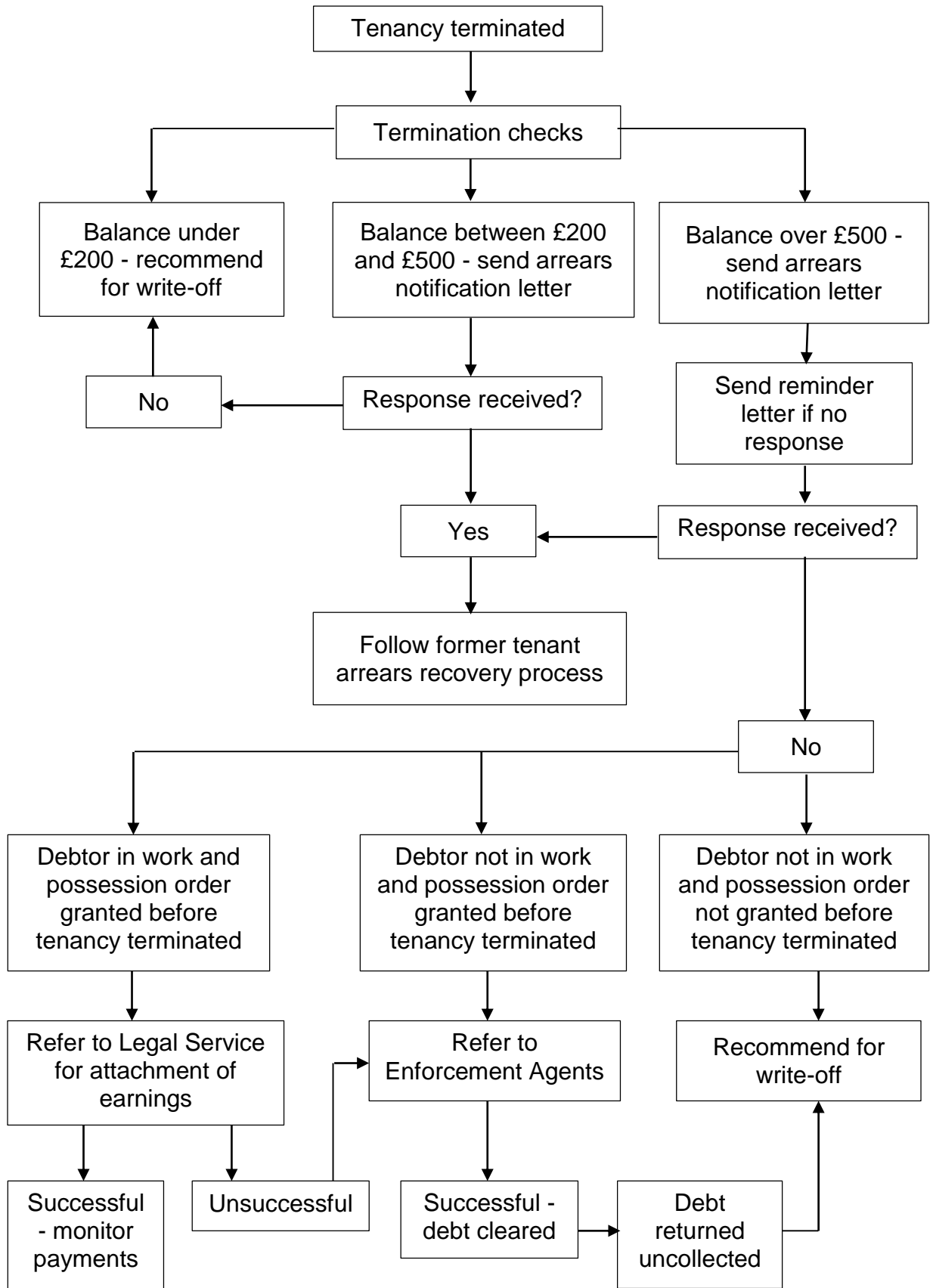


### Enforcement Agent returns

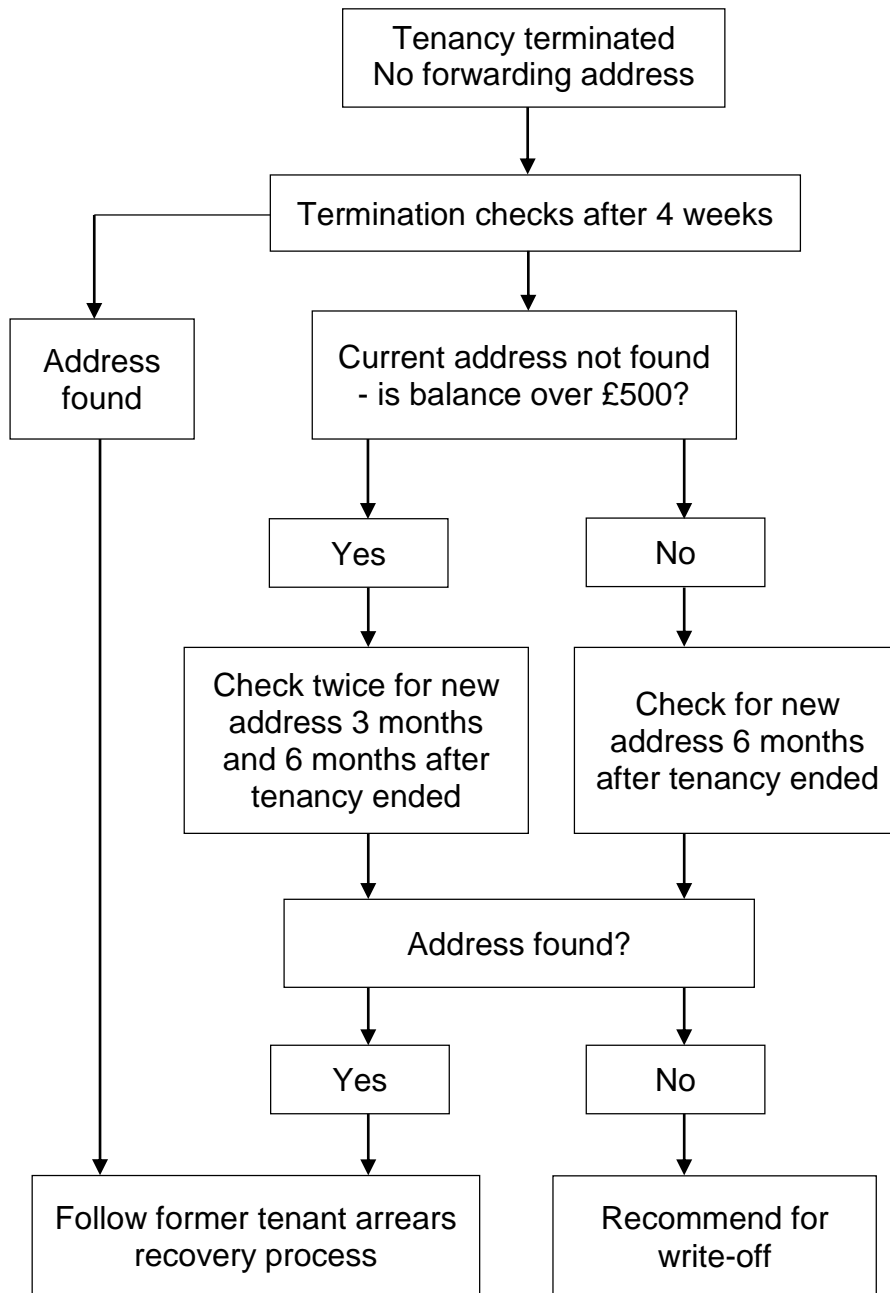


Appendix 4

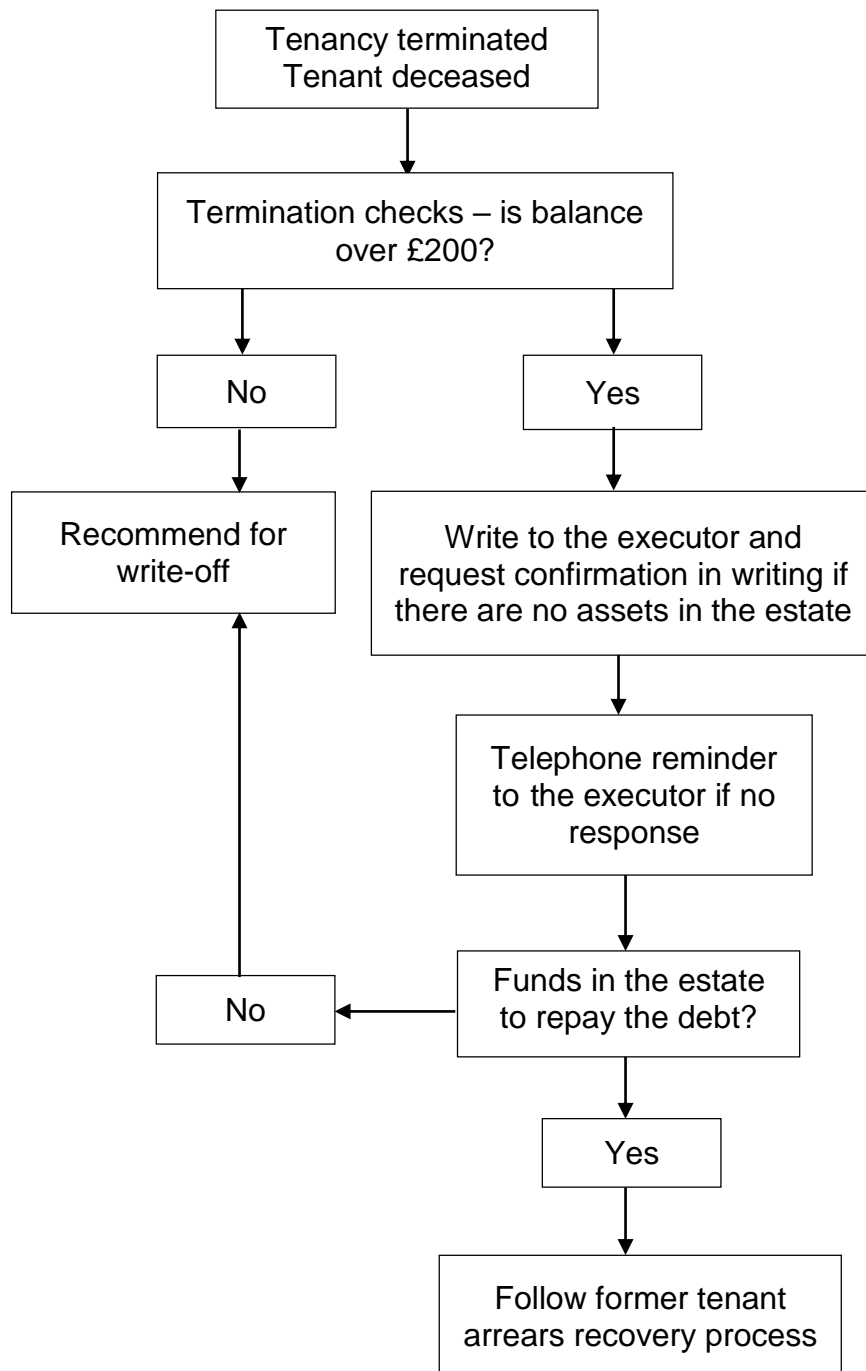
Former Tenant Arrears



### Former Tenant Arrears – No Forwarding Address



### Former Tenant Arrears – Deceased



Appendix 7

Housing Benefits overpayments

