

COUNCIL TAX RECOVERY

SUMMARY REPORT

Purpose of the Report

1. To provide an overview of the Council Tax recovery process and collection performance.

Summary

2. The Council has a statutory duty to:
 - (a) Decide liability for Council Tax
 - (b) Issue bills and reminder notices
 - (c) Collect Council Tax when it is due
 - (d) Undertake recovery action for Council Tax arrears
 - (e) Enforce Council Tax debts.
3. The collection of Council Tax is a key priority for the Council and is the responsibility of the Revenues and Benefits service, which has dedicated teams of recovery officers, inspection officers and advisors to maximise recovery of Council Tax.
4. This report provides details of the recovery and enforcement actions taken by the Council to collect Council Tax and also details our collection performance and how we compare at a national and regional level.

Recommendation

5. It is recommended that Scrutiny Members note the contents of this report.

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Background Papers

No background papers were used in the preparation of this report.

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|--|--|
| S17 Crime and Disorder | There are no issues |
| Health and Well Being | There are no issues relating to health and well-being which this report needs to address |
| Sustainability | There is no environmental impact in this report |
| Diversity | There are no diversity issues |
| Wards Affected | All wards are affected |
| Groups Affected | Anyone who is liable to pay Council Tax |
| Budget and Policy Framework | There is no particular impact |
| 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 | The collection of Council Tax is a key priority for the Council |
| Impact on Looked After Children and Care Leavers | There is no particular impact |

MAIN REPORT

Information and Analysis

Background

6. The billing and collection of Council Tax is set out in national legislation, the main regulations being the Council Tax (Administration and Enforcement) Regulations 1992.
7. Before any Council Tax can be collected, the Council has a statutory duty to decide liability for Council Tax. This includes:
 - (a) Identifying domestic properties liable for a Council Tax charge and notifying the Valuation Office Agency of any changes.
 - (b) Identifying the person(s) liable for Council Tax. This is usually the occupier(s) of the property (owners or tenants) or the owners or landlords for empty properties.
 - (c) Identifying any exemptions or discounts (including Council Tax Support) that apply.

The Council Tax Bill

8. There is no liability to pay Council Tax until a bill (formally referred to as a 'demand notice') has been issued. The Council Tax bill is the first formal notice of Council Tax recovery action. Annual bills for the forthcoming financial year are issued around the middle of March and adjustment notices can be issued at any time during the year if the liability changes.
9. The content of the bill is prescribed by law and must contain details of the amount payable and any instalments, including the dates and amounts of each instalment (referred to as the 'statutory payment scheme').

10. The statutory payment scheme is also prescribed in law. Usually, Council Tax is paid over 10 months, with instalments due on the 1st of each month, although the Council Tax payer has the right to pay over 12 months and can choose a different day in the month to pay. Different payment arrangements can be made depending on when the Council Tax bill is issued, although the Council must give at least 14 days' notice of the first instalment due.
11. Non-statutory payment arrangements can also be made at the discretion of the Council (such as weekly payments), but these are not subject to the statutory recovery process.
12. In **all** cases, the Council Tax due must be paid in full by 31st March.

Statutory Recovery Process

Reminder Notices

13. If an instalment of Council Tax 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. The reminder notice advises that the outstanding amount must be paid within the next 7 days (plus any further instalment that may fall during the 7 day period).
14. The reminder notice also advises that failure to pay the outstanding amount in 7 days will result in the Council Tax payer losing the right to pay by instalments and the full year's Council Tax becoming due.
15. A second reminder notice can be issued if a Council Tax payer has brought their account up to date after the issue of a first reminder, but defaults again. The second reminder notice advises that if they default for a third time, the right to pay by instalments will be lost automatically without a further reminder notice being sent.

Notice of Legal proceedings

16. If an instalment of Council Tax 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 (known as a final reminder).
17. The notice of legal proceedings advises that the Council Tax payer has lost the right to pay by instalments and that the full amount of the outstanding Council Tax is due and must be paid within the next 7 days. The notice also advises that failure to pay the full amount within the next 7 days may result in the Council taking legal action to recover the debt.
18. Although the Council Tax payer will have lost the right to pay by instalments at this stage, the Council may still accept instalment payments, if the Council Tax payer brings their account up to date. However, any further default in Council Tax payments may result in legal action being taken without any further reminder notices being issued.

Summons

19. If after the issuing of a notice of legal proceedings, full payment has not been received, the Council may take legal action with the issuing of a summons for the Council Tax payer to appear at the Magistrates Court.
20. A summons is issued by the Council on behalf of the Magistrates Court and is made following a list of names and address of debtors provided to the Court, also referred to as a 'complaints list'.
21. The summons will specify to the Council Tax payer the outstanding amount, including any costs, and will advise that if the outstanding amount is paid in full before the court date, further action will be suspended. In these circumstances, the summons will usually be withdrawn by the Council.
22. Summons costs of £33.50 are added to the Council Tax payer's account at this stage (£33.00 for the Council's costs and £0.50 for the Court's set fee).

Liability Order

23. If the full amount outstanding has not been paid by the Court date, a Liability Order will be issued by the court. The Council Tax payer does not have to attend court as the Liability Order will be granted in their absence.
24. Unless there are objections, the Court will usually grant a Liability Order. The Council must satisfy the Court that the appropriate procedures have been followed, including the issuing of the statutory demand and reminder notices. The only objections the Court will take into account are that:
 - (a) The Council has not followed the correct procedures (although saying that the correct notices have not been received will not be accepted as a defence).
 - (b) The Council Tax payer can provide evidence that they have lodged an appeal against their Council Tax liability with a Valuation Tribunal and this is waiting to be heard.
 - (c) The full amount of the Council Tax, including the costs, has been paid before the Court date.
25. The Liability Order is not a written notification; it is simply a verbal instruction made by the Court and there is no legal requirement for the Council to provide a Court signed document to the Council Tax payer. Further costs of £44.00 are added to the Council Tax payer's account once a Liability Order has been granted.
26. The Council will then write to the Council Tax payer to advise that the Liability Order has been granted and they will have the option to pay the amount in full, or pay by a new instalment arrangement set by the Council. In all cases, full payment must be made by 31st March.

27. If full payment is not made, or the first instalment is not paid (or is only part paid) after 14 days, the Council will issue a 'request for information'. The Council Tax payer is required by law to provide the Council with 'relevant information', including details of their employer, their earnings and any other income.
28. If any Council Tax remains unpaid at this stage, the Liability Order gives the Council powers to recover and enforce the debt.

Enforcement of debts

29. The following enforcement actions are available to the Council once a Liability Order has been granted:
- (a) Attachment of Earnings Orders.
 - (b) Deductions from Benefits.
 - (c) Enforcement Agents (bailiffs).
 - (d) Charging Orders.
 - (e) Bankruptcy.
 - (f) Committal to Prison.

Attachment of Earnings Orders

30. If the Council knows the Council Tax payer's employer, an Attachment of Earnings Order can be served on the employer. The employer then has a legal obligation to make deductions from their employee's earnings and submit the amounts deducted to the Council.
31. The amounts to be deducted are prescribed by law and are dependent on the amount earned. A maximum of two Attachment of Earnings can be made at the same time.

Table 1 – Attachment of Earnings amounts to be deducted

| Monthly net earnings | Percentage to be deducted |
|-----------------------------|--|
| Less than £300 | 0% |
| £300 to £550 | 3% |
| £550 to £740 | 5% |
| £740 to £900 | 7% |
| £900 to £1,420 | 12% |
| £1,420 to £2,020 | 17% |
| Over £2,020 | 17% of the first £2,020 then 50% of the remainder |

Deductions from Benefit

32. If the Council Tax payer is in receipt of certain benefits, then the Council can apply to the Department for Work and Pensions to deduct amounts from their benefit and submit these to the Council. These benefits include; Income Support, Jobseekers Allowance, Employment and Support Allowance, and Universal Credit.
33. The amount that can be deducted is £3.70 each week and only one deduction can apply at a time. The Council will not usually take any other enforcement action if deductions from benefit are being made.

Enforcement Agents

34. Enforcement Agents (formerly known as bailiffs) are one of the last resort actions for recovery taken by the Council. Referring a debt to an Enforcement Agent will only take place if:
- (a) The Council Tax payer has not paid the debt in full or has not kept up with instalment arrangements, and
 - (b) An attachment of Earnings Order cannot be made, and
 - (c) Deductions from Benefits cannot be made.
35. The Council will write to the Council Tax payer 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 Council Tax payer has to pay the debt to the Council.
36. The amount of fees an Enforcement Agent can charge to the debtor is prescribed in the Taking Control of Goods Act 2014. The Enforcement Agent will always collect their fees first before any Council Tax debts.

Table 2 – Enforcement Agents' fees

| Stage | Fee |
|--|--|
| Compliance stage (initial contact by telephone or letter) | £75 |
| Enforcement stage (visit) | £235 (or 7.5% of the sum to be recovered if this is over £1,500) |
| Sale or disposal stage (taking of goods) | £110 (or 7.5% of the sum to be recovered if this is over £1,500) |

37. The Enforcement Agent will attempt to contact a debtor by telephone or in writing as part of the compliance stage. Where this has been unsuccessful, the Enforcement Agent will visit the debtor's property. At this stage the Enforcement Agent will use their discretion as to whether a payment arrangement is offered; any arrangement will usually be over a short period.

Where a Council Tax payer contacts the Council about a debt referred to the Enforcement Agent, they will be referred to them to make a payment arrangement. The Council will only usually intervene if an issue of vulnerability arises.

38. The Enforcement Agent has the power to remove goods that belong to the debtor, to pay the outstanding debt. Where the Enforcement Agent has been unsuccessful in obtaining payment and there are insufficient goods that can be removed to cover the value of the debt, they will issue a 'nulla bona' (no goods) certificate to the Council and return the debt. In these circumstances, the Council will decide if it economical for the Council to take any further action.

Charging Orders

39. Where the Council Tax payer owns property and there is sufficient 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 Council Tax debt will be paid on completion of the sale.
40. In some cases, 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 Council Tax payer is making no attempt to pay their ongoing Council Tax charge. Each case is looked at individually and the Council will normally take legal advice in such cases. The Council will usually add additional legal fees on to the debt.

Example

41. A significant amount of Council Tax debt remained outstanding for a large unoccupied property in the Great Burden area. The Council had previously obtained charging orders against the property, but had held off from further action as we were aware that the property was being sold. However, we became aware that the asking price for the property did not reflect its market value and so instructed solicitors to start order for sale proceedings. This prompted the owner to lower the asking price and the property was sold without any further action by the Council. As a result of the sale, we collected the following:

| | |
|------------------------|----------------|
| Council Tax | £17,808 |
| Fees and interest | £3,207 |
| Total recovered | £21,015 |

Bankruptcy

42. Where the overall debt exceeds £5,000 the Council will consider bankruptcy action. 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. In most cases, the Court will expect the Council to have exhausted all other methods of recovery, including referral to Enforcement Agents.
43. In deciding if bankruptcy action is appropriate, the Council has to weigh up the costs of taking such action, together with legal advice as to how likely the Council will be in recovering its debt. The Council will also have to consider the impact on the debtor and what action they have taken to improve their financial situation. Bankruptcy is very often a last resort action where the debtor is wilfully refusing to pay their Council Tax and all other recovery actions have been exhausted. Any fees incurred in taking

bankruptcy action will be paid by the debtor, although the likelihood of actually recovering these fees also has to be taken into account.

Example

44. A significant amount of Council Tax debt was outstanding for an occupied property in the Lingfield area of Darlington. Charging orders had been successfully secured against the property, but this did not address the ongoing Council Tax. The owner / occupier of the property had not engaged with the Council or made any attempt to pay their Council Tax.

In 2016 the Council made the owner of the property bankrupt; the Council Tax arrears at this point were in excess of £10,000. The owner also failed to engage with the Insolvency Practitioner appointed by the Official Receiver. The Official Receiver then obtained an eviction order in June 2017 and the owner eventually left the property in January 2018.

The property was then sold and the Council Tax arrears and fees were recovered from the sale.

| | |
|------------------------|----------------|
| Council Tax | £11,899 |
| Fees | £1,330 |
| Total recovered | £13,229 |

Committal to prison

45. Where Enforcement Agent action to recover a debt has been unsuccessful, the Council can apply to the Magistrates Court for a committal summons to be issued. Again this is for cases where the debtor can be shown to be wilfully refusing to pay their Council Tax and the Magistrates Court can sentence a person for up to 3 months in prison.
46. The Council has never taken committal action against a Council Tax payer and there are very few Councils that do. Committal is another last resort action available to the Council, but is generally not considered as an effective method of recovery. This is mainly because if a debtor is sent to prison, then the debt is automatically remitted (written-off).

Council Tax collection performance

47. The collection of Council Tax is a key priority for the Council and is increasingly becoming a larger proportion of the Council's overall income, as Government grants reduce.
48. Council Tax collection performance is measured by the percentage of Council Tax liability collected in-year (1st April to 31st March) and the total Council Tax collected overall.

The in-year target for collection is 95.5% and the overall collection target is 99%. Performance against both measures is summarised below.

Table 3 – Council Tax collection performance (as at 31st March 2018)

| Year | Debit (£,000) | Collected (£,000) | Written-off (£,000) | Outstanding (£,000) | In-year collection | Overall collection (to date) | Potential collection |
|---------|---------------|-------------------|---------------------|---------------------|--------------------|------------------------------|----------------------|
| 2012/13 | 41,273 | 40,868 | 307 | 98 | 96.0% | 99.0% | 99.3% |
| 2013/14 | 44,697 | 44,109 | 391 | 197 | 95.2% | 98.7% | 99.1% |
| 2014/15 | 46,339 | 45,566 | 431 | 342 | 95.2% | 98.3% | 99.1% |
| 2015/16 | 47,946 | 46,965 | 403 | 578 | 95.2% | 98.0% | 99.2% |
| 2016/17 | 50,334 | 49,024 | 271 | 1,039 | 95.8% | 97.4% | 99.5% |
| 2017/18 | 53,473 | 51,121 | 95 | 2,257 | 95.6% | 95.6% | 99.8% |

49. Since 2013, collection of Council Tax has become more challenging following the introduction of the Council Tax Support scheme. Under the Council's local scheme, working aged people on low incomes can receive up to 80% help with their Council Tax (as opposed to 100% under the previous Council Tax Benefit scheme).
50. However, collection of Council Tax for people in receipt of support has proven generally successful, with in-year collection of Council Tax for these people around 80% and overall collection rates at 90%. In-year collection of Council Tax is benchmarked at a national level and overall Darlington's performance has been below the national average. However, it is difficult to make a fair comparison with other Councils since 2013, as each Council has set their own Council Tax Support scheme and some Councils still offer up to 100% support for working aged people on low incomes. In addition, collection levels in more affluent areas of the country have been consistently higher than the North East region.

Table 4 – In-year collection of Council Tax benchmarking

| Year | National average | Darlington |
|---------|------------------|------------|
| 2012/13 | 97.37% | 95.96% |
| 2013/14 | 96.96% | 95.24% |
| 2014/15 | 97.01% | 95.19% |
| 2015/16 | 97.10% | 95.17% |
| 2016/17 | 97.17% | 95.81% |
| 2017/18 | 97.11% | 95.60% |

51. The Council also monitors the collection of Council Tax arrears collection, both in cash terms and as a percentage of outstanding Council Tax arrears. Overall the collection of arrears has improved significantly since 2012 and Darlington performs well both in terms of the percentage of arrears collected and the level of outstanding arrears.

Table 5 – Council Tax arrears collection (including costs)

| Year | Arrears outstanding (£,000) | Arrears collected (£,000) | Percentage of arrears collected | National average |
|-------------|------------------------------------|----------------------------------|--|-------------------------|
| 2012/13 | 4,358 | 977 | 22.42% | 20.41% |
| 2013/14 | 4,956 | 1,136 | 22.92% | 20.58% |
| 2014/15 | 5,179 | 1,463 | 28.25% | 22.31% |
| 2015/16 | 6,081 | 1,869 | 30.74% | 22.83% |
| 2016/17 | 5,889 | 1,664 | 28.26% | 22.74% |
| 2017/18 | 5,946 | 1,848 | 31.08% | 21.20% |

Conclusion

52. Collection of Council Tax is a high priority for the Council and has been particularly challenging over the last few years with the difficult economic climate and the introduction of the Council Tax Support scheme in 2013.
53. Overall, collection performance is good and arrears of Council Tax are well managed. Dedicated recovery staff actively pursue the higher debts and those people who deliberately avoid paying Council Tax. However, these 'last resort' enforcement actions are very resource intensive and success is not always guaranteed. The Council has to balance the likelihood of recovery with the overall aim to collect Council Tax in the most economical way, with the resources available.