



DARLINGTON

Borough Council

Council Tax and Business Rates Recovery Strategy

2024 to 2029

Introduction

Council Tax and Business Rates are an essential source of Local Government Revenue. Councils use the monies collected to deliver key, quality public services including Adult Social Care, Children's Services, refuse collection and leisure facilities. The efficient collection of Council Tax and Business Rates allows the Council to consistently make this broad range of services available, but it is vital that we have sufficient powers to recover any arrears from those who do not pay.

However, Council Tax and Business Rates collection and enforcement should never come at the cost of fair treatment of residents and local businesses. Where residents do not pay on time, the Council faces a range of choices about how and when to use the discretionary and statutory powers to facilitate payments and recover debts. When considering appropriate recovery action, the Council will consider all factors known to us and will maintain a firm but fair approach to collection and recovery, whilst distinguishing between those who are unable to pay and those who deliberately won't pay.

Purpose and Principles of the Strategy

The purpose of this strategy is:

- To use cost effective and fair collection recovery practices regarding all debts, ensuring that those with the means to pay, do so
- To provide a professional, consistent and timely approach to recovery action
- To fully consider our customers' circumstances and their ability to pay
- To improve the levels of income collection and reduce the levels of arrears, bad debt and write-offs
- To ensure that debts are managed in accordance with legislation provisions and best practice.

The principles of this strategy are to ensure:

- We are effective and responsive to our customers to avoid enforcement action being necessary
- We are approachable to customers who are willing to make contact at an early stage when financial difficulties occur
- We promptly identify deliberate non-payers or customers who delay payment
- We only take enforcement action when it is appropriate
- We treat all individuals consistently and fairly regardless of any protected characteristics and to ensure that individual's rights under Data Protection and Human Rights legislation are protected.

Legal Framework

To enable Local Authorities to administer Council Tax and Business Rates, statutory powers exist to ensure a fair and consistent approach is followed.

The legal framework for the enforcement of Council Tax is provided by Schedule 2 and Schedule 4 of the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992 (SI. 1992/613).

The legal framework for the enforcement of Business Rates is the Local Government Finance Act 1988 and the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989.

The Council has a statutory duty to:

- Decide liability for Council Tax and Business Rates
- Issue bills and reminder notices
- Collect Council Tax and Business Rates when it is due
- Undertake recovery action for Council Tax and Business Rates arrears
- Enforce Council Tax and Business Rates debts.

Before any Council Tax and Business Rates can be collected, the Council has a statutory duty to decide liability for both. This includes:

- Identifying properties liable for a Council Tax charge and notifying the Valuation Office Agency of any changes
- Identifying properties liable for Business Rates and notifying the Valuation Office Agency of any changes
- Identifying the person(s) liable for Council Tax following the Hierarchy of Liability set in legislation. This is usually the occupier(s) of the property (owners or tenants) or the owners or landlords for empty properties
- Identifying the person(s) or companies liable for Business Rates
- Identifying any exemptions or discounts (including Council Tax Support) that apply
- Identifying any empty property premiums that apply.

Demand Notice

A Council Tax/Business Rates bill is legally defined as a demand notice. No payment can be requested unless a demand notice requiring payment has been served. Annual bills are issued around mid-March for the forthcoming financial year with adjustment notices being issued at any time during the year if there is an amendment to a charge.

Payment of Council Tax/Business Rates is due annually and a taxpayer has a statutory right to pay by ten instalments (April to January) or request that the payments are spread over twelve instalments (April to March). The number of instalments available will decrease as adjustment notices are issued throughout the year. The Council can dictate which date in the month payments should be made – Darlington Borough Council's instalments are due on the 1st of each month for those payers who do not opt to pay by Direct Debit. For those

who opt to pay by Direct Debt, there are currently 5 dates within the month, whereby a Direct Debit can be taken 1st, 8th, 15th, 22nd or the 27th.

Non-statutory payment arrangements can be made at the discretion of the Council (such as weekly payments) however these are not subject to the statutory recovery process.

In all cases, the Council Tax/Business Rates must be paid in full by 31st March.

Joint and Several Liability

Joint and several liability means in law that all, or both, the jointly liable parties are each responsible for the whole liability. As a result, the Council can recover the whole amount due from any one of them and they are then left to make arrangements in relation to respective contributions between themselves.

When Council Tax is not being paid, the Council will take action for recovery of the debt against any or all of the liable parties.

Council Tax and Business Rates Recovery

A recovery programme is developed and implemented, which can be amended by adding or removing dates, dependant on local factors.

If a Council Tax or Business Rates payment is missed, we will send out a reminder notice allowing 7 days for the amount to be paid. If the payment is not made within the 7 days, a notice of legal proceedings (or final notice) will be issued asking for the whole year's Council Tax or Business Rates to be paid. If the full year's Council Tax or Business Rates is not paid, then we will ask the Magistrates' Court to issue a summons for Non-Payment of Council Tax or Business Rates (see appendix 1), whereby a Liability Order for the balance including costs will be obtained.

Once a summons has been issued, if full payment of the debt is made including the summons costs, no further action will be taken. If a debtor is unable to do this, we will agree to a suitable repayment plan on the understanding a liability order will be granted and the full costs incurred are payable. If the payment arrangement is maintained and payments are received as agreed, then no further recovery action will be taken. If the payment arrangement is not paid, then we will write to the customer and ask them for their financial situation to assess their ability to pay the debt.

Where customers engage, we will endeavour to assist and accommodate their needs by promoting entitlement to the correct discounts/exemptions/discretionary awards at the first point of contact. Guidance and signposting will be provided alongside addressing the need to pay as much as they can whilst assistance is sought.

Liability Order

A Liability Order is granted by the Magistrates' Court in respect of the unpaid Council Tax and Business Rates and gives the Council powers to recover and enforce the debt in the most appropriate manner available.

The Liability Order is not a written notification; it is a verbal instruction made by the Magistrates' Court and there is no legal requirement for the Council to provide a Court signed document.

The Council must satisfy the Court that they have followed the legal process to ask for a Liability Order to be granted. The legal process includes confirmation that the statutory notices have been issued within relevant timescales, confirmation that the debt remains outstanding on that date and confirmation that the summons has been posted to the last known address we believe the debtor to be at.

Once the Magistrates' Court has granted the Liability Order, a notice is issued to the debtor confirming this. Within the notice for Council Tax debtors, there is a request for information, which should be completed and returned informing us of their financial situation.

Request for Information

Where a Liability Order has been granted and the sum remains unpaid, the Council are able to request certain information from the debtor to enable the most efficient and effective recovery of the debt, whilst understanding the debtor's situation. The information which may be the subject of a request is:

- Date of birth
- National Insurance number
- Name and address of employer
- Information as to the earnings of the debtor
- Information of other sources of income if not employed
- If any other individuals reside in the property
- Offer of repayment

The debtor is under a duty to supply the information within 14 days of the request being made. It is a criminal offence not to supply the information without reasonable excuse. Persons guilty of the offence may be liable to conviction of a fine not exceeding level 2 on the standard scale.

The Council will not normally have up to date information of this kind about the debtor, therefore the request for information is usually the first step once the Liability Order has been obtained.

If the offer of repayment is accepted, then a formal payment agreement will be implemented, which is confirmed in writing. If the payment agreement is maintained and the debt repaid, then no other recovery action will be taken.

Payment Arrangements

Where a debtor is unable to repay the debt in full, we may agree to a payment arrangement on a weekly, fortnightly or monthly basis. Consideration will be made to the debtors' historic payment history along with their current financial situation to make the payments.

In some cases, a payment arrangement will be included within the notice of Liability Order, which will ensure the debt is repaid within the financial year (the Council will not issue these arrangements for any liability orders obtained after 1st January within the financial year, due to the time restrictions for repayment). If the payment arrangement is maintained and payments are received as agreed, then no further recovery action will be taken.

Payment arrangements are monitored on a monthly basis. If a payment arrangement falls into arrears for the first time, a reminder notice is issued. The notice will advise of the amount the arrangement is in arrears and ask that it be paid within 7 days. If it is not brought up to date or any future default occurs, then the arrangement will be cancelled.

Where an arrangement is cancelled, the Council will write to the debtor advising them of the full amount due and advise the further enforcement options which may be taken.

Enforcement of Debts

Where we are unable to agree a payment plan to repay the Council Tax or Business Rates debt, or the customer does not make the payments, legislation allows for us to recover the money through a number of alternative options:

- Attachment of Earnings
- Deductions from certain welfare benefits
- Attachment to Members Allowances
- Enforcement Agents
- Charging Orders
- Bankruptcy/Liquidation proceedings
- Committal to Prison

With regards Business Rate debt, legislation allows for us to recover the money through:

- Enforcement Agents
- Bankruptcy/Liquidation Proceedings

Attachment of Earnings

If the Council know the debtor's employer, an Attachment of Earnings Order can be served on the employer. The employer then has a legal obligation to make deductions from the employee's earnings and forward the amounts deducted to the Council. 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.

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 Welfare Benefits

If it is identified the debtor is in receipt of certain benefits, the Council can apply to the Department for Work and Pensions (DWP) to have amounts deducted from their benefit. These deductions are then sent to the Council, on a monthly basis. The maximum amount that can be deducted from the customer's benefits is set by the DWP.

The benefits from which deductions can be made include Universal Credit and certain legacy benefits. Deductions in respect of only one Liability Order can apply at a time, and we will not usually take any other enforcement action if deductions from benefit are being made. Consideration will be given to the debt amount owed and any ongoing liabilities when determining this route of recovery.

Attachment to Members Allowances

If a Liability Order is obtained in respect of an elected member of the Council, a deduction can be made from the member's allowance. The deduction rate is 40%. Elected members who are in arrears with their Council Tax may also be subject to a restriction in their voting rights at Council meetings.

Enforcement Agents

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:

- The Business Rate payer has not engaged or offered a suitable repayment plan for the debt, or paid the debt as agreed
- The Council Tax debtor has not paid the debt in full or has not kept up with instalment arrangements, and
- An Attachment of Earnings Order is not viable, and
- Deductions from Benefits cannot be made.

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. The fees that an Enforcement Agent will charge to the debtor are prescribed in the Taking Control of Goods Act 2014. The Enforcement Agent will collect the Compliance Fee first if payments are made then apportion the subsequent payments between the debt and Enforcement fees incurred.

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)

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

The Enforcement Agent has the power to remove goods that belong to the debtor/business, to pay the outstanding debt. To ensure fair practice the Enforcement Agent will:

- Contact the debtor before removing goods and handle all goods with care
- Store the goods securely in accordance with Regulations
- Do not remove any essential items required for day-to day living or for business use
- Do not remove items belonging to a child, elderly or disabled person
- Follow all statutory requirements, such as vehicles clamped for 2 hours before a removal occurs.

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 is economical for the Council to take any further action.

Charging Orders

Where the debtor 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.

A Charging Order secures the debt owed and does not enforce the debt as other recovery methods do. We may forego the security if other recovery options become more viable. However, in some cases the Council may force the sale of the property to recover the debt. Each case is looked at individually with the Council normally taking legal advice in such cases. The Council will usually add additional legal fees on to the debt.

Bankruptcy/Liquidation

Where the overall debt exceeds £5,000 the Council may consider bankruptcy/liquidation proceedings. 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 for Council Tax or commence a Winding Up petition against the company in the High Court for Business Rates. In most cases, the Court will expect the Council to have exhausted all other methods of recovery, including referral to Enforcement Agents.

In deciding if bankruptcy/liquidation proceedings is appropriate, the Council must 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/company and what action they have taken to improve their financial situation.

Bankruptcy/Liquidation is very often a last resort action where the debtor is wilfully refusing to pay their Council Tax or Business Rates 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.

Committal to Prison

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. This requires attendance at the Magistrates' Court to enable a means enquiry to be conducted to see whether failure to pay is due to 'wilful refusal' or 'culpable neglect'.

If the Magistrates decide that failure to pay was not due to wilful refusal or culpable neglect, they have the power to remit all or part of the debt. However, they are only entitled to remit the debt based on inability to pay.

Legal precedents exist confirming that Magistrates should not commit forthwith without either considering alternatives or having made suspended orders to coerce payment. Once

a suspended order has been made, debtors are obliged to pay as required by the order. If the debtor fails to pay, the Magistrates are entitled to remove the suspension and order that the debtor serves the sentence. In these cases, the Council will give debtors an opportunity to attend hearings to show cause why they have not paid. The term of imprisonment will not exceed three months for each Liability Order.

Committal is very much a 'last resort' action which is available to the Council, it 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.

Whilst this option is available, it is not currently used by Darlington Borough Council.

See Appendix 2 regarding Debt Recovery following the granting of the Liability Order.

Vulnerability

We recognise that some members of the community may be considered vulnerable and therefore require additional support in dealing with their financial affairs and that these vulnerabilities may not always be obvious. The cause of the vulnerability may be temporary or permanent in nature and the degree of vulnerability will vary widely. We will consider each case on an individual basis and on its own merit as vulnerability does not necessarily mean that a person will not be required to pay amounts they are legally obliged to pay.

There is no legal definition for vulnerability, but this could include:

- A recent bereavement
- Mental health issues
- Long-term or terminal illness
- Dementia or brain injury
- Difficulty in communication

The Council must also adhere to the Equality Act 2010, where we have a legal duty to make reasonable adjustments and have regard to protected characteristics. Once a vulnerability issue is identified we will provide the right support that is appropriate.

Breathing Space

The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 is a government scheme, which allows for temporary protection from creditors while professional debt advice is sought. The temporary protection lasts for up to 60 days and ensures enforcement action cannot be taken within this time frame, creditors cannot attempt contact nor add interest or charges.

If the individual is receiving mental health crisis treatment, then the protection lasts for the length of the treatment plus another 30 days.

Once confirmation of Breathing Space is received from the Insolvency Service, recovery of Council Tax debt is suspended, except for debt subject to Attachment of Earnings orders and deductions from benefits.

During Breathing Space, it is essential that any existing payment arrangements, including unsummonsed Council Tax instalments are maintained.

Debts where we are unable to recover

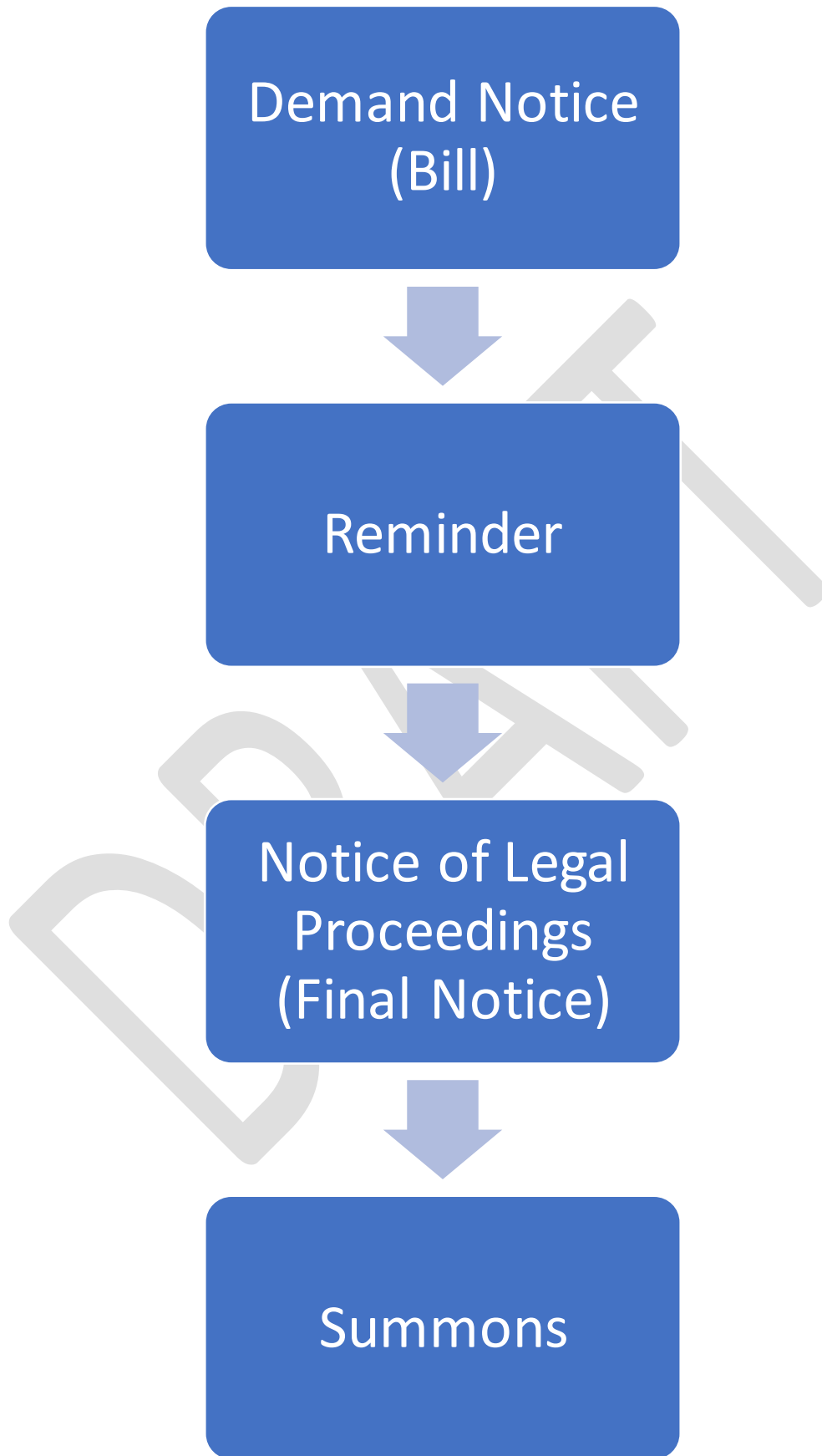
Whilst we will make every effort to pursue outstanding debts, it is recognised that in some circumstances some amounts are not recoverable. Good practice dictates that where debt is irrecoverable, prompt and regular write-off action should be undertaken. The reasoning behind the debt being written off should demonstrate one or more of the following conditions:

- Legal action is unlikely to be successful
- The debt is no longer cost effective to recover
- Recovery of the debt would place the debtor into hardship
- The debt is not recoverable for legal reasons
- No funds are available in a deceased estate
- Legal action would cost more than the actual debt
- Tracing of a debtor has been unsuccessful
- The debt is subject to a form of insolvency
- The debt has been created by an error within the Council
- The debt has been remitted by the Court.

We do have a right to reinstate any debt, subject to statutory deadlines, where it becomes apparent that the write-off reasoning is no longer applicable, for example a debtor has subsequently been traced.

Where a debt for Council Tax or Business Rates is subject to voluntary insolvency, we must cease all recovery action and submit the appropriate paperwork to the relevant Insolvency Practitioner for their consideration. This debt is initially written-off but may be subject to dividend payments.

Appendix 1 – Pre-summons collection process



Appendix 2 – Recovery and Enforcement Process

