

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

13 MARCH 2014

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Leader of the Council – Councillor Cook

Corporate Management & Finance – Lead Cabinet Member – Councillor Harrington

WELFARE REFORM – TRANSFORMING DEBT RECOVERY

1. Summary

This report describes changes to legislation governing enforcement agent activities, which will take effect from April 2014. The changes will impact on enforcement action for non-payment of Council Tax, Business Rates and parking/bus lane offence fines; and the new fee structures will impact on debtors. In the light of these changes and their potential implications, a piece of work has been carried out to investigate the practicalities, risks and business case for creating an internal enforcement service. This has concluded that an in-house enforcement service would bring a number of benefits that are described in the report, primarily enabling a holistic approach to debt recovery, and an appropriate level of support for vulnerable residents and those facing the impact of welfare reform.

2. Recommendations

1. That the new legislation and its implications be noted.
2. That Cabinet note the benefits of adopting a holistic approach to debt recovery highlighted in the report and approve the creation of an internal enforcement service, with a target live date of September 2014. Initially this would be for the collection of council tax, business rates and unpaid parking fines and bus lane offences, then rolling out to include commercial rents and any other debts outstanding to the Council that are enforceable under the new legislation.
3. That the new service operates alongside a “scaled down” external enforcement agent service to cover the transition period, out of area cases, cases where specialist removal of goods is necessary and to complete collections on cases that had already been referred for action.
4. That as the service develops, further work be undertaken to explore the option of developing a reciprocal arrangement with other Councils’ in-house enforcement services in the region, to assist with business continuity and to look at collecting respective debts.
5. That Cabinet approve an allocation of £83,500 from the transformation fund to support the start-up costs of the new service.

3. Reasons for the Recommendations/Decision(s)

The proposals will deliver a customer oriented, complete enforcement service that will promote and identify customers' entitlement to advice and assistance such as discounts and reliefs. They will help to maximise customers, income and help to mitigate the impact of the legislative changes. The Council will have more control over its enforcement activities and flexibility in charging fees.

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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SUMMARY

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RECOMMENDATIONS

1. That the new legislation and its implications be noted.
2. That Cabinet note the benefits of adopting a holistic approach to debt recovery highlighted in the report and approve the creation of an internal enforcement service, with a target live date of September 2014. Initially this would be for the collection of council tax, business rates and unpaid parking fines and bus lane offences, then rolling out to include commercial rents and any other debts outstanding to the Council that are enforceable under the new legislation.
3. That the new service operates alongside a “scaled down” external enforcement agent service to cover the transition period, out of area cases, cases where specialist removal of goods is necessary and to complete collections on cases that had already been referred for action.
4. That as the service develops, further work be undertaken to explore the option of developing a reciprocal arrangement with other Councils’ in-house enforcement services in the region, to assist with business continuity and to look at collecting respective debts.
5. That Cabinet approve an allocation of £83,500 from the transformation fund to support the start-up costs of the new service.

DETAIL

1. Reform and regulation of the bailiff industry and the replacement of common law distress (removal and sale of goods by a bailiff) with new legislation has been in the pipeline for over 10 years. The Tribunal, Courts and Enforcement Act 2007 replaced distress with a process called “taking control of goods”, whereby property and/or goods transfer from a debtor to “the control of the law”. The “Taking Control of Goods Regulations” followed in July 2013 and regulations making provision for the fees to be charged to debtors were made in January 2014. A decision surrounding the application of VAT to fees are still to be made, however given the timescales for implementation, they are expected very shortly.
2. It is also a policy objective of the Ministry of Justice to regulate bailiffs. Regulations are to be issued shortly which will introduce a new “strengthened” certification process, requiring individual certification, which will be granted to applicants that can demonstrate they have knowledge of the relevant law, documentation, processes and understanding of how to deal with vulnerable people. In addition, bailiffs are now to be called Enforcement Agents.
3. The July 2013 regulations detail the procedure for taking control of goods, covering matters such as:
 - Goods that are exempt from removal;
 - Notice periods and the content of notices (taking control of goods must happen within 12 months of giving notice that the case has been referred to an Enforcement Agent) ;
 - Hours of entry to premises for the purpose of taking control of goods;
 - Means of access;
 - The circumstances in which the taking of goods is not permitted, for example when the only person present is a child or vulnerable person;
 - Methods of sale, which can include internet auctions such as e-Bay
4. Under the Council’s collection policy, bailiff referrals are used as a last resort in Council Tax enforcement, where attachment of earnings or attachment of benefit is not possible and an arrangement for payment has not been made/kept. Once a debt passes to the external bailiff company, council officers have very little involvement in the case and communication is between the debtor and the bailiff company. This means that opportunities for officers to gather information about debtors circumstances that might lead to awards of discount or relief, or identification of alternative means of recovering the debt or chances to maximise income can be missed.
5. Wherever possible, the smaller (20%) Council Tax debts arising from the introduction of Council Tax Support are being enforced by deductions from DWP Benefits, however this arrangement is not sustainable in the longer term as the deduction rates are not sufficient to cover ongoing charges. This means that alternative methods of recovery will eventually have to be employed to avoid arrears accruing. For business rates there is no alternative to bailiff action when a debt remains unpaid and for parking/bus lane offences, the debt is referred to a bailiff once a warrant is issued under the statutory enforcement process.
6. The table shows the number of cases referred to bailiffs during 2012/2013 and 2013/2014 April – December:

	Council Tax	Business Rates	Car Parking Fines
2012/2013	5072	298	438
2013/2014 (Apr – Dec)	3013	140	295

The New Fee Structure

7. The new fee structure is intended to standardise and simplify the fees that enforcement agents can charge for the range of debts they collect, and to ensure that enforcement agents operate fairly towards debtors. However there are concerns about the scale of increase in fees and the level of the new fees in relation to the size of some of the debts that are currently referred to the bailiff. The current fee structure is far more complex and has a number of different stages where different levels of costs can be applied, making it open to abuse, however the fees charged in respect of the types of debt collected by the Council work out lower under this system.
8. Many of the Council Tax and Business Rates accounts currently referred to the bailiff for collection incur various visit fees, walking possession and levy fees in order to collect the debt. The new fee structure is intended to encourage debtors to pay their debts early in the process at “compliance” stage, thus avoiding a visit from the enforcement agent or further costs. Moreover, the introduction of a fee at compliance stage should incentivise enforcement agents to make greater attempts to recover the debt without visiting a debtor’s home.
9. The table contrasts fees payable under the current and new arrangement for several scenarios for a Council Tax debt of £1,000 or less paid at different stages.

Present Fees	New Fees
STAGE 1	
Account referred to bailiff for collection, first visit made and enquiry raised/vulnerability established. £24.50 First Visit Total £24.50	£75.00 Compliance stage Total £75.00
OR	
Account referred to bailiff for collection, first visit and arrangement made. £24.50 First Visit £12.00 Walking Possession £24.50 Header H fee £53.00 levy fee Total £114.00	
STAGE 2	
As above (the stage 1 process under the present fee structure overlaps with the stage 2 process in the new fee structure) First visit and arrangement made Total £114.00	No response at Compliance stage – visit required £75.00 Compliance stage £235.00 Enforcement stage Total £310.00
OR	
No response to first visit (e.g. debtor not at home) and arrangement made after 2nd visit £24.50 First Visit (unsuccessful) £12.00 Walking Possession £18.00 Second Visit £24.50 Header H fee £53.00 Levy fee Total £132.00	

OR	
(Stage 2 continued)	
Attendance to remove goods. £24.50 First Visit (unsuccessful) £12.00 Walking Possession £18.00 Second Visit £110.00 removal (van) visit £53.00 Levy fee Total £217.50	
STAGE 3	
Where goods are actually removed and sold £217.50 as above £150.00 (auctioneers commission) Total £367.50 plus “reasonable costs” of storing the goods before sale, auctioneers expenses and advertising fees	£75.00 Compliance stage £235.00 Enforcement stage £110.00 Sale stage Total £420.00 plus costs of the auction and “reasonable” expenses.

For car parking / bus lane offences there are also significant increases in fees:

Present Fees	New Fees
STAGE 1	
Debt referred to bailiff – letter issued £11.20 + VAT	Compliance Stage £75.00
STAGE 2	
The fee structure allows charges for up to 3 visits: Letter plus 1 visit: Total £40.94 + VAT Letter plus 2 visits: Total £79.00 + VAT Letter plus 3 visits: Total £127.72 + VAT Letter plus 3 visits and removal visit where goods are not removed: £217.72 + VAT	No response at Compliance stage – visit required £75.00 Compliance stage £235.00 Enforcement stage Total £310.00
STAGE 3	
Goods are removed and sold As above, plus up to £280 for removal and storage of goods/vehicle, plus auctioneers expenses Example of 3 visits followed by removal and sale of vehicle Total £252.72 + VAT plus auctioneers expenses	£75.00 Compliance stage £235.00 Enforcement stage £110.00 Sale stage Total £420.00 plus costs of the auction and “reasonable” expenses.

10. The compliance stage is a new stage within the process and a major change from existing practice. Currently the bailiff's first contact with a customer is by a visit, as this is the first chargeable action allowed under the present legislation. This first visit is often perceived to be aggressive enforcement action by customers and advisors. The new stage has been designed to allow the debtor one last chance to pay or make a payment arrangement before the enforcement agent actually knocks on the door. The enforcement stage is the second stage and would be the first time the enforcement agent visits the debtor's home or business. Unlike the current fee structure there is only one set fee at this stage to ensure that no additional or inappropriate fees can be applied.
11. The third stage (sale) fee structure again has been simplified. It should be noted that during 2012/13 and current year to date, for parking/bus lane offences, council tax and business rates debts, no goods have been seized and sold by the bailiff. The sale stage is very much the exception.
12. Based upon the number of bailiff warning notices issued and the number of Council Tax accounts referred for collection, around 55% of debtors referred for bailiff action will disregard the letter issued at compliance stage, and will only engage regarding payment of their debt when the enforcement agent makes a visit to their home. Therefore it is likely that, even with clear warnings as to potential costs, many cases will incur the £310.00 fees.
13. In 2012/13, 1039 council tax accounts with small balances between £45.00 and £100.00 were referred to the bailiff for collection. In future, we will need to consider if it is reasonable to refer an outstanding council tax debt of £45.00 to an enforcement agent for collection, when the debtor will incur an additional £75.00 fee and possibly a further £235.00 enforcement fee to ensure payment of the debt. The numbers of accounts with small balances to collect have increased significantly with the introduction of Local Council Tax Support. A referral to an enforcement agent would significantly increase the indebtedness of those on low incomes who are already struggling to pay their Council Tax. In addition, all the unpaid parking fines/bus lane offences that go to the bailiff are for £112.00 or less.
14. Given the increased fees and the twelve month time window during which an enforcement agent can take control of goods, it is appropriate to review the use enforcement agents for collecting Council Tax in the future. However we must remain mindful that as such action is already taken as a last resort, any reduction in enforcement activity is likely to have a detrimental effect on collection rates and income and could send out the wrong message about the Council's approach to collection of Council Tax. This review should consider the benefits, drawbacks and appropriateness of operating an in-house enforcement agent service as an alternative to employing the services of an external enforcement agent firm.

Current Bailiff Arrangements

15. We currently have contracts with two bailiff companies for the enforcement of Council Tax, Business Rates and parking fines. The contracts work by allowing the bailiffs to retain the fees that they collect from debtors, so there is no direct cost to the Council. The bailiff firms also do a small amount of process serving, such as service of legal notices and warrants of arrest.
16. The contracts expire on 30th April 2014, however there is an option to extend them for up to 24 months. In anticipation of the new legislation, special contract clauses were included that allow termination if a change is made to any Act or Regulation which affects provision of bailiff services.

An Internal Enforcement Agent Service

The Benefits

17. There would be many benefits associated with the provision of an internal enforcement agent function including:-

- A more joined up and streamlined approach to debt recovery by having day to day control of all enforcement activities within the Taxation service.
- The Enforcement Agents will promote and signpost customers to the different discretionary funding schemes that are available including the discretionary council tax hardship fund designed to support those council taxpayers who are really struggling to make their council tax payments. They will also promote the services of the Credit Union, where appropriate.
- By working closely with the Taxation team, the Enforcement Agents should be better able to promote and identify customers' entitlement to discounts, exemptions and reliefs, to maximise income for both council tax and business rates customers.
- Having an internal Enforcement Service should allow us to identify vulnerable customers and enable us to evaluate and monitor more closely the on-going impact of the welfare reform changes.
- There will be more flexibility regarding the fee charges levied; which will be useful given the level of costs attributed to the prescribed enforcement stages.
- Improving the overall council tax collection rates through setting up attachment of earnings or attachment to benefits where appropriate cases are identified, as these forms of enforcement action are not only better for the individual debtor but are a more efficient collection medium.
- The quarterly liaison meetings between the Taxation Service and the CAB could include discussions regarding the Council's Enforcement Service. This will enable any concerns and issues to be addressed in an open and constructive way, helping to maintain and build upon the existing relationship, which is already very good. In addition, the current referral protocol between Taxation and the CAB will be developed and extended to include the Enforcement Service, and referrals regarding debtors who may be vulnerable.
- Visiting debtors in their homes will assist with identification of possible fraud including single person discount fraud.

Feasibility

18. A feasibility study has been undertaken to establish whether setting up an in-house enforcement agent service is a viable option and the conclusion is positive. The following factors have been considered:

- Potential income vs costs;
- Benefits and drawbacks in terms of operations and for those that owe money to the Council;
- Practicalities around removal and sale of goods;
- ICT requirements;
- Staffing, supervision and safety;
- Training and certification arrangements;
- How we would deal with out of area cases.

19. The financial appraisal at **Appendix 1** demonstrates that an in-house enforcement function, with the costs of the running service being met from fee income would be more than self-funding, generating a surplus estimated at £214,000 per annum. There may also be collection benefits - our current bailiff provider's in-year collection rates are between 15% and 31% rising to 36% over long term; however those local authorities that have their own internal bailiff team report significantly better collection rates ranging from between 45% and 55%.

20. The new service would be managed as part of the Taxation Service and would initially enforce Council Tax, Business Rates and unpaid parking fines and bus lane offences. At a later date it could be extended to include commercial rents and any other debts outstanding to the Council that are enforceable under the new taking control of goods legislation. The team would be made up of two Enforcement Agents plus admin support.
21. The Enforcement Agents would attend the Council's internal Avoiding Violence and Breakaway Training courses and these would be supplemented by further training from the Prison Service and specialist training on the role of the Enforcement Agent which will be tailored to our working procedures and will also include one to one feedback and coaching in the live working environment. Safety of the enforcement agents will be paramount and will include use of tracking devices, protective clothing and body worn camera.
22. It is recognised that it is essential to appoint the right people to the Enforcement Agent roles; they will be pivotal to the success of the service. Other in-house providers have sometimes struggled if they have had long periods of sickness absence within the team, however in the longer term, the intention would be to look to develop reciprocal arrangements for cover with other in-house enforcement services within the region and in the short term, if necessary, cases could be referred to the existing external enforcement agent company to overcome any potential issues.
23. It will also be necessary to retain the services of an external enforcement agent, albeit in scaled down way to cover the transition period to the new arrangements, out of area cases, cases where specialist removal of goods is necessary and to complete collections on cases that had already been referred for action under the previous set of legislation. An existing contract(s) will be extended for 12 months in order to achieve this and allow time for a review of ongoing requirements.

Removal of goods

24. An analysis of current external bailiff activity indicates that removal of goods is very much the last resort, so much so that over the last 3 years there have been only one council tax and three business rate cases where goods have been removed. Discussions with other local authorities who currently have an in-house service indicate that this trend is mirrored in the services they provide too; however, it is recognised that in some cases it may be necessary to proceed to sale or disposal stage. Arrangements will be made with a local auction house for sale proceedings.

FINANCIAL IMPLICATIONS

25. The financial appraisal for an internal enforcement service is detailed at **Appendix 1** and suggests that, once up and running, the service will generate an annual surplus, estimated at £214,000 which will contribute towards the allocated Financial Challenge savings target for Customer Services and Taxation.
26. There are start-up costs for the new service, including a period during which the enforcement agents are undergoing their training and will not be generating income. These costs are detailed at **Appendix 2**. Cabinet are asked to approve an allocation of £83,500 from the transition fund to cover these costs.
27. As indicated in paragraph 19, it is anticipated that an internal enforcement service will recover a higher percentage of the outstanding debt than an external contractor. This will bring cash flow and collection fund benefits.

LEGAL IMPLICATIONS

28. The current external service providers have confirmed that TUPE does not apply.

RISK ASSESSMENT

29. The proposals contained in this report are categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

30. The proposals in the report support an aim within the Sustainable Community Strategy to assist residents that are affected by the welfare reform changes.

EQUALITIES IMPACT ASSESSMENT

31. This report has been subject to an Equality Impact Assessment and has been judged to have a positive impact. No remedial actions are required.

CONSULTATION INCLUDING WARD/COUNCILLORS

32. Consultation is not necessary.

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Education related? No

Background Papers None

Ward(s) and Ward Councillors: N/A

Property - There are no property implications

APPENDIX 1 - FINANCIAL APPRAISAL

INCOME						
Annual number of cases referred to Enforcements Agent for collection (estimate)		Assumed collection rate for the £75 compliance fee = 35%*	Income from Compliance Fees	Assumed collection rate for the £235 enforcement stage fee = 15%*	Income from enforcement stage fees	Total
Council Tax	5200	1820 cases	£136,500	780 cases	£183,300	£319,800
Business Rates	200	70 cases	£5,250	30 cases	£7,050	£12,300
Parking / Bus Lane Fines	350	122 cases	£9,150	53 cases	£12,455	£21,605
Total estimated annual income						£353,705
ANNUAL EXPENDITURE						
Staffing (salaries and on-costs)				£89,250		
Bailiff certification costs				£350		
ICT system costs including payment solutions				£19,000		
Mobile phone and other safety technology costs				£2,000		
Supplies and services (eg printing, stationery, postages, texting)				£15,000		
Transport costs				£14,000		
Total estimated annual expenditure						£139,600
Estimated Surplus						£214,105

* Estimated collection rate of fees only (not outstanding debt)

APPENDIX 2 – SET-UP COSTS

Description	Amount	Comment
Bailiff Bonds x 2	£20,500	Bond required and fee for setting up bond
Hardware costs	£6,000	PC and mobile devices to allow real time updates and for recording purposes
Payment collection solutions	£6,500	A new “fund” will need to be set up for accounting for income separately
Security devices	£3,500	Tracking system, stab vest, body worn cameras
Training	£6,000	
ICT systems	£18,500	Set up costs and development of necessary integrations and system for absconded debtors
Staffing costs	£22,500	Staff in post receiving training and setting up systems prior to any income generation.
TOTAL	£83,500	