



Wigan 
Council

Corporate Fair Debt Collection Policy

July 2024

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Introduction

This document details Wigan Council's Corporate Fair Debt Collection Policy (CFDCP) on the collection of money and debt owed to it. For the purposes of the policy, a debt is defined as any amount of income owed to the Council that has not been paid by the due date.

The CFDCP has been created in recognition that it is good practice to communicate our debt collection processes and also the support available to Council customers. The policy covers the Council's commitment to the fair collection of Council debts and to a more holistic, asset-based approach to debt collection and recovery.

The Council has a legal duty and responsibility to all residents and businesses of the borough to ensure that income due is paid promptly. It is important that we operate fair but firm processes, and that all charges due to the Council are paid in full and on time. Effective income management processes are critical to the delivery of overall Council service objectives and any money left uncollected has an impact on the Council's ability to deliver vital services to all residents of the borough.

Money owed to the Council can be a combination of statutory and non-statutory charges. The methods for billing and recovery of the statutory debts are largely prescribed by legislation and regulations.

Wigan Council follow all appropriate legislation and regulation concerning the recovery of statutory charges and adopt principles of sound financial management to support its approach to fair and responsible debt recovery.

The Council is committed to using the most effective recovery methods available and this policy ensures that the Council complies with relevant legislation, official guidance and best practice in meeting the following objectives:

- all debtors, taxpayers and ratepayers are treated fairly
- use of best practice is applied
- a coordinated approach to managing debt is followed
- to identify appropriate support which may be required and ensure individual circumstances are considered before recovery action is taken
- action taken is fair and open, and that no debtor receives less favourable treatment because of their race, nationality, colour, ethnic or national origin, religious belief, gender, marital status, sexual orientation, age or disability

Aims of the Policy

The aims of the Corporate Fair Debt Collection Policy are to ensure money owed to the Council is collected efficiently and timely, adopting a consistent, fair, and asset-based approach to debt collection across the Council. Our actions will be proportionate, consistent, transparent, and incorporate best practice. We aim to offer all debtors, where appropriate, a repayment plan which takes into account their personal financial circumstances.

We take a holistic approach to debt recovery, ensuring services look where appropriate to maximise customers' income and available discounts and reliefs before undertaking recovery actions.

Taking a pro-active, early intervention approach, engaging with customers regarding the money they owe is intended to reduce the requirement for subsequent enforcement action and additional customer charges and costs being added to outstanding debts. This approach should ensure that each debtor is treated fairly, as an individual and with compassion in cases where genuine financial difficulty is evident.

Scope of the Policy

This policy applies to the collection of:

- Council Tax
- Council Housing Rents
- Housing Benefit and Council Tax Reduction Overpayments
- National Non-Domestic Rates (Business Rates / NNDR)
- Social Care Financial Assessment Contributions
- Market stall charges
- Planning Applications, Building Regulations and Land Charges Fees
- Rental income from property, ground rents and leases
- Penalty Charge Notices for parking violations
- Other invoiced items, statutory charges and the supply of goods or services.

Debt Collection Principles - Overview

Different types of debt have different collection procedures, however every demand and invoice issued by the Council must be correctly addressed to the person or business who is liable to pay it and should wherever possible include a title, forename, initials, or business legal entity if applicable.

All demands will be issued as soon as practicable taking into account any legislative requirements. Invoices/Bills/Statements for services delivered by or on behalf of the Council will be raised prior to the service being received or as soon as possible thereafter. Where feasible, payment in advance of the service will be obtained. Recurring charges invoices will be issued in a timely manner to enable payment to be made ahead of the due date.

For all monies owed the Council will use the most appropriate and effective method of debt recovery to maximise cash collection and minimise costs. Where the potential for a statutory benefit, discount or relief exists in relation to the debt, efforts will be made to make the debtor aware of such opportunities and they will be assisted and encouraged to apply for such benefits/discounts etc.

The Council will seek to work with welfare organisations where the debtor recognises the benefits that these organisations can offer both the debtor and the Council in prioritising repayments to creditors and in maximising the income available to the debtor.

The Council uses every opportunity to engage with debtors and make 'affordable' payment arrangements with individual customers based on the circumstances and debt outstanding. Dependent upon their overall financial position customers may be signposted to an independent debt advice service.

The Council recognises that prompt recovery action is a key element for managing debt and maximising income and will:

- regularly monitor the level and age of debt
- set clear targets for the recovery of debt
- follow the recovery procedures in this policy
- set priorities for specific areas of debt and assess recovery methods to ensure maximum recovery

Where an external enforcement agency is used to deal with the recovery of debt the flow of information between the Council and the agency will be in a secure electronic format. Enforcement agents will make contact with debtors as part of a legal collection process.

Where legislation permits, the Council will seek to levy and recover from the debtor any costs and/or fees that are legitimately due from the debtor to the Council or its agents. Only in exceptional cases, where it would not be in the public interest to pursue costs and/or fees, will they be waived.

Counter Fraud Privacy Notice

The personal information we have collected from you will be shared with fraud prevention agencies who will use it to prevent fraud and money-laundering and to verify your identity. If fraud is detected, you could be refused certain services, finance, or employment.

Further details of how your information will be used by the Council and these fraud prevention agencies, and your data protection rights, can be found on the Wigan Council website here: <https://www.wigan.gov.uk/Docs/PDF/Council/Data-Protection-FOI/Privacy-notices/Legal/Counter-Fraud-Privacy-Notice.pdf>

Wigan Council will not accept deliberate manipulation or fraud, and any instances are taken very seriously and are actively investigated. Any individual who falsifies their records or dishonestly provides inaccurate information to make a financial or otherwise gain, will face prosecution. The Council reserves the right to recoup funds paid in error, or via fraudulent misappropriation.

Equalities

The Council is committed to equality and fairness. Equality is about ensuring people are treated fairly and given fair chances. It is also about ensuring that people receive fair outcomes in the standard of service they receive from the Council and equality of access to services. This incorporates everyone, regardless of their race, gender, age, religion or belief, sexual orientation, marital or civil partnership status or disability in line with the principles set out in the Equalities Act 2010. If required, the Council can provide translation services, or documents in alternative languages and formats e.g., Braille.

Council staff, representatives of the Council (including Enforcement Agencies) will treat debtors with courtesy at all times. All staff and representatives will behave in accordance with standards required by the Council. The use of inappropriate language and/or aggressive behaviour will not be tolerated.

Statutory Basis for the Policy

The Council's Fair Debt Collection Policy complies with the following national legislation:

- Local government Act 1972/2003
- The Housing Act 1985
- The Council Tax (Administration and Enforcement) Regulations 1992
- Local Government Finance Act 1992
- Traffic Management Order 2004
- The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 2006
- The Housing Benefit Regulations 2006
- The Housing Benefit (Persons who have attained the qualifying age for state Pension Credit) Regulations 2006
- Localism Act 2011
- The Care Act (Care and Support Statutory Guidance, Department of Health, October 2014)

Holistic Approach to Debt Collection

Wigan Council has always been committed to finding innovative solutions that prove mutually beneficial to our residents and our financial requirements.

Our approach to debt collection reflects this, with our Customer and Finance teams dedicated to providing a holistic approach to collecting money owed to the Council.

The Council's aim is to enable our customers to pay their bills and the amounts required, using the maximisation of customers income to help ensure they are paying only what is owed based on their individual circumstances. This will be achieved by

considering our individual customers' circumstances in their entirety, other priority debts owed, benefits and income they may be entitled to as well as any relevant discounts, exemptions, or reliefs we can apply based on debt type and individual eligibility.

The Council will be pro-active in attempting to identify those customers who may be finding it difficult to pay, seeking early engagement to put in place support and guidance aimed at preventing escalation of recovery action, avoid incurring additional debt recovery costs and safeguarding the customer's wellbeing and financial circumstances.

This may include signposting consenting customers to our internal support services and to external third parties and partners, who can offer free, independent, and impartial debt advice and/or other support that may benefit them.

Vulnerable Customers (Individuals)

There is no set definition of vulnerability in relation to poverty and the degree to which someone is considered vulnerable can vary widely. The causes of financial vulnerability can be broad and any condition or situation which affects a person's ability to manage their finances could make someone vulnerable for a period of time.

Some likely causes or examples of vulnerability could be:

- **Disabled people, including those with learning difficulties** where the disability specifically affects their ability to deal with their financial affairs.
- **People suffering from serious illness, being admitted into hospital, or mental health conditions** where their illness specifically affects their ability to deal with their financial affairs.
- **People undergoing significant changes in circumstances** such as being recently bereaved or having recently lost their job or their home.
- **People who have difficulty communicating in English** translation services are available for interaction with the Council, but where someone does not have the support of family members who can speak and read English, they may be more broadly financially excluded, and may be considered vulnerable in some cases.
- **People who have difficulty reading and writing** which is likely to prevent them from being able to read communications about their debt, and may have caused broader financial exclusion.

The above factors are not a list of reasons for automatic assessment as vulnerable, nor is it intended to be exhaustive. Assessment of vulnerability, and the steps taken to support a vulnerable customer, will be assessed by the Council on a case-by-case basis, based on the specific details provided by the customer.

Vulnerability does not exclude someone from paying a debt which they are legally obliged to, but we will provide additional support in their understanding of the debt and aim to minimise undue customer distress.

As a minimum, the identification of vulnerability will result in additional checks and system alerts on relevant Council databases where possible to ensure that the case is reviewed by a member of staff before any further action is taken.

Depending on the nature of the vulnerability there are a number of additional measures that the Council may feel it is appropriate to take:

- allowing a longer period to pay debts
- signposting and referral to other Council welfare support services and or appropriate independent advice and guidance
- temporarily suspending enforcement action
- providing additional support to overcome the vulnerability, such as home visits or assistance in completing forms
- reviewing eligibility for welfare benefits to ensure that these have been correctly assessed, and consider whether associated hardship loans or a Discretionary Housing Payment may be appropriate (rent/housing costs debts)

Council Principles of Fair Debt Collection

Wigan Council will adopt a pro-active approach of early intervention and prevention, aimed at engaging customers to help prevent the need to escalate unpaid or unactioned accounts. We will use plain English in correspondence and encourage customers to make contact early if they are unable to pay as requested or if their circumstances change to affect their repayment, as the Council may continue to act to collect a debt if there is a lack of engagement.

We want to help residents and businesses to meet their financial commitments, family obligations and responsibilities and recognise that at times some customers need additional support to overcome difficulties they are experiencing.

Part of our commitment will be to undertake where possible, income maximisation allocating benefits, discounts, exemptions, and reliefs prior to seeking recovery of debts.

The Council will work with individual customers to try and understand their income and expenditure based on the information they provide in order to put into place manageable, sustainable payment arrangements that account for priority debts.

We will proactively signpost (all information is within the Council's Website) and also refer consenting customers to guidance, help and support, including but not exclusively:

- [Wigan Council Welfare Support/Welfare Rights](#)
- [Wigan Council Budgeting Support](#)
- [Citizens Advice](#)
- [Money and Pensions Service](#)
- [Department for Work and Pensions](#)
- [National Debt Line](#)
- [Age UK](#)

- [Step-Change Debt Charity](#)
- [Unify Credit Union](#)
- [Wigan Council Business Advice Service](#)
- [Business Debt Line](#)

The Council will attempt to contact and engage with customers before debt enforcement action is taken using a variety of methods to facilitate personal contact with the debtor, including:

- Telephone calls
- Emails
- Website including Webchat
- Text messages
- Letters
- Home Visits

The Council will try to understand the customers full indebtedness to the Council and other financial commitments to help us and the customer manage payment levels and prevent potential recovery action that may incur additional costs and pressure. Extended payment arrangements beyond the current financial year, may be considered (subject to income and expenditure assessment) if the customer's personal and financial circumstances necessitate additional support.

In summary, the Council will :-

- Give clear adequate notification of the charges raised by the Council.
- Raise debts due in a prompt, consistent, and efficient manner.
- Clearly communicate with the debtor any changes to their debt.
- Publicise contact information relating to debt collection and recovery to ensure debtor contact at an early stage to arrange practical repayment plans and signpost debtors to appropriate support and advice, etc.

How the Council Collects Council Debts

All Council bills, statements, notices, and invoices will be sent as soon as possible and will include clear, relevant, and full information detailing:

- what the bill is for
- how much is due/when
- the amounts of any instalments/payment plan and when they are due (if the full balance is not due initially)
- options on how and where customers can pay
- how and who to contact for further information and advice if you have an enquiry or are having difficulty meeting your payments

Customers will be requested to pay in accordance with the appropriate legislation or legal agreement, as well as the timescale given on their bill or statement.

Direct Debit is our preferred default payment method wherever it is possible and practical taking account of the customers personal circumstances. Other alternate payment methods will be advertised on communications to customers and include:

- Online via Council website
- Chip/Pin at Council Life Centres
- Standing Order/Bank Transfer
- Council Secure Telephone Payment line (operated 24 hours)
- At Post Offices
- At PayPoint outlets

For full details of how to use these services please [click here](#).

If a customer does not pay or needs to change a scheduled payment arrangement, they are encouraged to inform the relevant service via the details provided on the bill/statement/invoice as early as possible. Customers will also be offered support and advice to help prevent any further financial difficulties. This may include signposting consenting customers to our internal support services and to external third parties and partners, who can offer free, independent, and impartial debt advice or other support that may benefit them.

Agreed affordable payment arrangements accounting for individual circumstance will support customers to maintain their commitment to clear any amounts due or overdue in an agreed reasonable timeframe. Following the issue of a Council bill if the balance becomes overdue, documentary reminder notices will be issued for the overdue amounts in accordance with any regulatory or legislative requirements. These communications will outline what the customer needs to do and make clear the potential consequences of continued non-payment.

Court and Enforcement Action

The Council has a legal duty and responsibility to all residents of the Borough to ensure that all income due is collected promptly.

If there is a lack of engagement or appropriate payment made, we will seek to recover monies owed through other means, this may include Court proceedings and further Enforcement Action. The Council has a separate Enforcement Policy, which can be found at [Wigan Council Enforcement Policy](#).

Any further collection action taken will depend upon the type of debt owed and the recovery remedies open to the Council in accordance with the statutory provisions relevant to the debt type.

The Council will seek to prioritise any further recovery remedies that prevent or limit customers accruing a higher level of additional costs. Attachment or Deduction of Earnings or Deductions of Benefits orders are preferred where possible, to prevent Enforcement Agent action and any additional duress to customers.

In the event of further non-payment or engagement and the absence of any other suitable recovery remedy, the Council may utilise certified Enforcement Agents to recover the amounts owed. As well as utilising Enforcement Agents, the Council may consider further Insolvency action, i.e., petition for Bankruptcy or the implementation of a Charging Order, by way of securing the debt against any property held if necessary/appropriate.

The Council is committed to using the most effective recovery methods it has available. The Corporate Fair Debt Collection Policy will ensure that the use of advanced recovery remedies such as Insolvency action or Charging Orders as methods of recovery is consistent, gives consideration to the consequences for the customer and deems them appropriate and complies with the relevant legislation and best practice.

Customer Experience and Support Debt Responsibilities

Non-payment of Council Tax and NDR (Business Rates)

Customers that fall into arrears will be contacted as soon as possible; this may include:

- Outbound telephone calls
- Emails
- Text messages
- Letters
- Reminder letters
- Final Notices
- Home or Business premise visits

Appropriate support will be considered during any engagement with the customer.

Following the issue of a bill advising of any amounts due, in the absence of the required payment or engagement following multiple attempts to supportively engage with the customer, and written reminders that outline what the customer needs to do (making clear the consequences of continued non-payment/contact) a summons to the Magistrates Court will be issued, which will result in costs being added to the balance outstanding.

When an account reaches summons stage, the yearly balance becomes due in full, and the customer loses the ability to pay by instalments in line with Regulations. However, where deemed appropriate the Council will continue to support customers with arrangements to pay back their debt once they have received a summons, provided they engage with the Council and make an appropriate payment arrangement.

If the balance is left unpaid following Court summons, an application will be made to the Magistrates Court to grant a Liability Order.

Following the granting of a Liability Order, the customer will be given a further opportunity to pay by instalments through a Special Arrangement. This arrangement

is issued to the customer with the Court Summons and comes into effect if the debt is not cleared before the hearing date. If customers do not make or maintain the arrangement, appropriate recovery action will be taken dependent on the known individual circumstances of the customer.

For Council Tax debts, the Council will prioritise direct Deduction from Benefits or Attachment of Earnings in preference to using Enforcement Agents and County Court action where possible and deemed appropriate.

A debt will only be referred to an Enforcement Agent when other alternatives have been exhausted or deemed inappropriate, at which point costs will be incurred in accordance with The Taking Control of Goods (Fees) Regulations 2014. Our internal Enforcement Agents will not consider carrying out a visit for at least thirty days from receipt of their instruction. During this time, they will issue a minimum of three letters whilst also attempting to engage with the customer by other means. If an external Enforcement Agent is instructed to recover a debt they will not consider carrying out a visit for at least fourteen days. During this period, they will attempt to contact the debtor by various means including letter, phone call and text message where available.

County Court proceedings will be used when other alternatives have been exhausted or the customer fails to pay or engage, these may include Charging Orders and Bankruptcy proceedings for individuals and Winding Up Petitions for businesses amongst other remedies. The costs of court action taken will be added to the balance outstanding.

Where an Enforcement Agent has been unable to collect or discharge a debt due to non-payment, insufficient goods or assets and all other recovery options have been exhausted, the council can apply to the Magistrates Court for a Means Enquiry Hearing with the potential of committal to prison.

During the hearing the Magistrates will review a customer's income and expenditure, set payment terms if appropriate or determine that failure to pay Council Tax (if you are an individual) or Business Rates (if you are a sole trader) is due to 'Wilful Refusal' or 'Culpable Neglect' if so a prison sentence not exceeding 90 days may be imposed.

Non-payment of Council Housing Rents

The Council will provide rent statements every three months (April, July, October, January) to all our tenants detailing the position of the rent account.

Customers that fall into arrears will be contacted as soon as possible; this may include:

- Outbound telephone calls
- Emails
- Text messages
- Letters (including first, final, and Court warnings)
- Reminders

- Home visits (no access cards left if no contact)

Where an initial request for payment is not made and in the absence of engagement from the tenant, written reminders will be issued for the overdue amounts in accordance with any regulatory or legislative requirements. These communications will outline what the customer needs to do and make clear the consequences of continued non-payment.

Where a tenant (in arrears) is identified as being in receipt of Universal Credit/Legacy Housing Benefits, and in order to avoid further recovery action and sustain the tenancy, payments will be sought directly via an Assisted Payment Arrangement from the Department for Work and Pensions.

Where engagement with a tenant in arrears is achieved, the Council will discuss the cause of the arrears, their financial situation and their family obligations and responsibilities, offering appropriate support. This support may include income maximisation and signposting consenting customers to third parties and partners to free independent and impartial debt advice or other support that may benefit them.

Agreed affordable voluntary payment arrangements accounting for individual circumstances will support tenants to maintain their commitment to clear their account in a reasonable timeframe. To support tenants Court action may be postponed if appropriate repayment plans are maintained.

If agreed payments have not been made in line with the customer's Tenancy Agreement, supportive reminders will be issued and where no payment has been secured and/or there is a lack of engagement a written Notice of Seeking Possession of the property will be delivered in line with The Housing Act 2004. A Notice of Seeking Possession is granted for a 12-month period after which it can be renewed.

Vulnerability will be considered by the service and if necessary, the Notice of Seeking Possession will be issued by hand, and an explanation provided to the tenant and/or their representative of what it means and any following action that may take place.

To avoid Court action, following the issue of a Notice of Seeking Possession, we will further attempt to contact the customer utilising a number of contact methods to secure engagement, offer support and discuss affordable repayment plans to help maintain tenancies and prevent homelessness.

In the absence of adequate payments and/or engagement, a County Court Summons will be issued to the tenant and additional costs will be sought at the Hearing. Once a customer has received a Summons, the Council will continue to support tenants with arrangements to pay back their arrears, if they engage with the Council.

In the absence of engagement from the tenant and an agreed payment arrangement being maintained following the Court summons, an application will be made to the Court to grant a Possession Order for the property along with a Money Judgement Order.

The Court decides whether a Possession Order and Money Judgement Order should be made and if the tenant should pay the costs incurred by the Council in taking Court action.

If, following a Possession Order and Money Judgement Order being granted, sufficient payments are being made and maintained the Council will support tenants to sustain this.

If there are insufficient payments following the granting of a Possession Order, an application for the grant of a warrant will then be made to the Court. The Court can award several Orders, viz.:-

- **Immediate Possession Order**: where the Court agrees with Wigan Council and the Council can apply via the PCOL website immediately to set an eviction date with Bailiffs.
- **14 Day Possession Order**: where the Council can apply for a warrant for eviction 14 days after the Order date.
- **Suspended Possession Order**: where the tenant agrees with the Court an amount for them to pay consistently towards their Housing Rents. Assuming this amount is subsequently paid as agreed in Court, Wigan Council cannot enforce this Order for eviction as long as the payment arrangement is maintained.

The Council will support tenants to pay back their rent arrears before starting costly Court action that may lead to eviction. Eviction for rent arrears is a last resort and only once all reasonable efforts have been made to resolve through engagement, support, and payment arrangements in line with the Court Order.

The council offer further [support and advice if you are at risk of being made homeless](#).

Non-payment of Former Tenant Arrears

Where a Wigan Council housing tenancy ends and a balance of rent arrears remains outstanding, this debt will then be categorised as Former Tenant Arrears.

The Council will undertake a variety of engagement attempts as soon as possible following a tenancy termination, with the aim of recovering the outstanding balance whilst supporting the customer to make an affordable arrangement based on their current circumstances.

These contact methods may include:

- Outbound telephone calls
- Emails
- Text messages
- Letters
- Home Visits

Where all engagement and/or repayment attempts have been exhausted and proven unsuccessful, accounts may be referred to an external Agent for recovery.

Should contact attempts and engagement to repay the balance remain unsuccessful, it may be deemed necessary to commence County Court proceedings with a view to obtaining a Money Judgement Order, further costs may be incurred by the debtor at this stage.

If a Money Judgement Order is obtained through County Court proceedings, this could result in an Attachment of Earnings Order being applied so the outstanding balance is recovered directly from a debtor's wages or a Charging Order being obtained.

Financial Services Debts Responsibilities (Other Council Debts)

Such debts will have been raised on an invoice or periodic statement and include:-

- Adult Care Services (Assessed Financial Contributions)
- Housing Properties Rechargeable Repairs
- Commercial Rents
- Sundry Debts
- Housing Benefit Overpayments
- Parking Penalties

Where payments in line with the customer's invoice/bill/statement or any agreed alternate payment arrangement have not been made, and all other attempts to engage with the customer or recover the debt have been exhausted, the Council may decide to take County Court action as a last resort.

Prior to the issue of the County Court summons we will undertake a variety of attempts to contact the customer to secure engagement and payments and avoid Court action. These will include:

- Phone
- Email
- Text
- Letter

In the absence of sufficient payments and or engagement the Council will take further action to secure recovery of the debt, this may include:

- County Court Judgements
- Deductions from ongoing benefits
- Attachment of Earnings
- Court Bailiff Action

Adult Social Care and Support

In all instances the Council will follow Annex D to the Care and Support statutory guidance and associated legislation when seeking to recover this category of debt.

The Council is mindful that unlike council tax or rent arrears debt, the local authority is not dealing with the general population. Our debt recovery systems have been designed with a full understanding of the needs and capacities of this population to engage with the system.

The principles regarding adult social care debt recovery are set out below for information. This “Fair Debt Collection Policy” applies to adult social care debt where alternative methods to recover the debt, have been attempted and where it has been determined to issue a claim and subsequent enforcement through the county court.

Charges for Care and Support

A person or their representative should be informed that care and support is a chargeable service prior to any form of Council funded care or support being arranged. A financial assessment must be completed to determine the financial amount an individual can afford to pay, except where a person does not wish to complete a financial assessment and agrees to pay the full cost for any care or support.

The person’s authority must be obtained before sending invoices (monthly cumulative amount outstanding statements) to any representative, unless the representative has legal authority, such as Lasting Power of Attorney (LPA) for finances and/or property. The outcome of the financial assessment will be confirmed in writing to the person (or their representative), as well as information about how and when charges will be collected, and how to request a review or appeal a charge. Monthly statements will be issued in accordance with the Council’s Care Services charging schedule.

Legal and Policy Framework

Sections 14, 17 and 69-70 of the Care Act 2014, provide a framework that enables a Council to charge a person when meeting their assessed care and support needs.

The Council must only use the debt recovery powers under section 69 of the Care Act 2014 in order to recover debts from the date the Act came into force, including debts that were incurred before that date.

Section 4 of the Care Act 2014 places a duty on the Council to provide information and advice that is accessible, including financial information.

The Care and Support (Charging and Assessment of Resources) Regulations 2014; and the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 set out the legal framework and the Council’s responsibilities in greater detail.

The Care and Support Statutory Guidance issued by the Department of Health and Social Care, provides Councils with guidance on the application of the law. Annex D of the guidance covers the principles underpinning the approach to debt recovery, options for debt recovery, and processes around debt recovery.

Section 70 of the Care Act provides the Council with powers to recover charges from a third party where a person has transferred assets to them in order to avoid paying their assessed charges. Section 423 (*transactions defrauding creditors*) of the Insolvency Act 1986 provides additional avenues to recover debts where a person may have transferred or sold their assets to a third party.

Principles

- Good management of Council debts is a priority and income due must be collected efficiently and effectively, whilst balancing the needs and implications of and for individuals.
- Individuals are charged for a range of care and support services as outlined in the Councils Care Services Charging Policy.
- The Council's statutory duty of care towards people assessed as requiring care and support services remains and assessed services must be provided irrespective of accrued debt. However, it should also consider how different approaches might impact on a person's wellbeing, in line with the general duty to promote a person's wellbeing.
- If there are doubts about a person's capacity or safeguarding concerns the matter will be referred immediately to social care professionals to investigate and make a determination.
- If an individual, or the person acting as their representative, fails to pay the contribution within the timeframe specified by the Council and does not make contact with the Council by either disputing the charge, reporting a change in circumstances, or requesting a review of the associated financial assessment, the Council will assume that the individual, or the person acting as their representative is withholding payment without just cause and commence recovery action.
- The time period to recover debt accrued after the commencement of the Care Act 2014 is six years from the date the charge became due to the Council.
- Where a Deferred Payment Agreement (DPA) could be offered i.e. a person meets the eligibility criteria for a DPA, debt recovery through County Court does not apply unless the person has been offered a DPA as a means to recover sums owed in the first instance. "Eligibility criteria" includes both the national criteria (i.e. criteria set in legislation) and any additional local criteria used in deciding whether to offer DPAs. Only where a person is not eligible or has refused, will the Council proceed to recover the debt through the County Court.

Reasons for Non-Payment or Disputed Invoice

A dispute may arise for a number of reasons. All disputed invoices will be placed on hold, investigated fully and resolved in a timely manner. Reasons for non-payment may be:-

- Issues with service provision - this may be due to services not being received or the person being dissatisfied with the standard of services received.
- Change in financial circumstances – a reduction in income or increase in expenses. This should be resolved via a review of the financial assessment to determine accurate financial liability.
- No Attorney or Deputy in place - in some cases the person will lack capacity and an officer within the Council has not been appointed to act on the person's behalf. Statements should continue to be issued, but recovery actioned suspended until someone has been given legal authority to act for the person.
- Financial abuse - it may become clear that non-payment may have occurred due to the person having been the victim of financial abuse. An Adult safeguarding referral should immediately be made in such circumstances.
- Person believes they are entitled to Continuing Health Care (CHC) – if a person believes they are entitled to CHC funded by the NHS, and is awaiting the outcome of an assessment, statements for any Council social care funded services will continue to be issued until CHC funded care has been confirmed. CHC may not cover the full cost of care so some level of payments should be encouraged during the CHC assessment period.
- Person states they cannot afford the charge – if a financial assessment has been undertaken then the person should be able to afford the charge. The person should be supported with getting debt management advice by referral to relevant agencies.
- Person disagrees with the legislation that allows the Council to charge for the service- in such cases debt recovery processes should be followed as outlined in this policy.

Suspending Recovery of a Debt (Reviews)

An individual has the right to ask the Council to review the financial assessment that has been used to establish their care charges. This may be due to a change in financial circumstances, or because there is disagreement with the calculation of the financial assessment.

If the individual has requested such a review any debt recovery action relating to the charge will be suspended, although the Council will continue to raise charges and send statements until a decision regarding the charge in question has been made. If following the review, the charge remains due then appropriate debt recovery action will be resumed. If the charge is increased or reduced, an appropriate adjustment will be made to the next Council Social Care statement to be issued.

Complaints

A person may wish to make a complaint about any aspect of the way the Council uses its powers under the Care Act. Information and advice about how to lodge a complaint will be provided in financial assessment notifications but will also be provided upon request where a dispute has not been resolved to the charge payer's satisfaction.

Any debt recovery action relating to the charge in question will be suspended (pending any issues relating to the Limitation period) whilst the complaint process takes place, although the Council will continue to raise charges and send statements until a decision regarding the charge in question has been made.

Recovery of Charges

When an invoice is not paid by the due date, the Council will consider the full range of options available to recover debt, and recognises the greater a person's need, the more effort will need to be made to resolve the issue positively.

Within the Care Act is an obligation to have considered and evidenced the person's well-being. This should be followed through within debt recovery processes.

Where the debtor is unable to pay invoices for care and support charges, either in full or in part, they should notify the Council as soon as they can so that the Council can discuss any issues with them and find a solution.

Options may include negotiating a repayment plan, the family gaining a power of attorney or deputyship or the Council applying to be a Deputy.

If a person has mental capacity to make financial decisions, the Council may proceed to recover debts owed through the County Court, this action will be taken as a last resort, after all reasonable alternative avenues have been taken to recover the debt and it is economically viable to do so. The Council will have regard to Practice Direction – Pre-Action Conduct and Protocols - Civil Procedure Rules provided by the Ministry of Justice and any associated guidance when doing so.

Recovering from an estate - The Council will make a claim against the estate of a deceased person. The process for citation and application for a grant to a creditor is governed mainly by the Non-contention Probate Rules 1987.

Diminishing or Lacking Mental Capacity Concerning Finances

Where a debt may have accrued as a result of diminishing or lack of mental capacity, for example where the person is no longer able to understand financial obligations, the matter will be referred to the relevant locality team for an early review of their care and support needs, so the individual's allocated worker can undertake a mental capacity assessment concerning their ability to manage their own finances. Should they be found to lack capacity, a best interest decision will follow thereafter. Full consideration of all available options will be made, which can include the need for

the individual to have an appointed DWP Benefits Appointee (this can be a Council officer as last resort), or for a Court appointed Deputy to be made.

Writing Off Council Debts

The Council considers all of the money it is owed to be recoverable, and all debts will be subject to the Council's recovery procedures. However, the Council also recognises that where it would be disproportionate to continue attempts to collect a debt or where the probability of recovery is extremely low, prompt write off is good practice.

The level and intensity of recovery action will vary depending on the debt. Each stage of the recovery process will increase the total cost of recovery and the Council must ensure the process is cost effective.

Consideration will be given the value of the debt before costs are added to ensure a proportional approach is taken.

An effective write off process is an essential part of a recovery strategy, and it helps to ensure:

- proactive debt management
- effective and proportionate use of resources targeted at arrears which have the greatest chance of being recovered to maximise the overall collection rate
- aged debts are considered for write off where full accounting provision for non-recovery has already been made
- a balance between protecting the Council's financial position and making sure anti-poverty issues are considered will be undertaken.

Debts will be written off in accordance with statutory provisions where:

- recovery of the amount owed is statute barred in accordance with the Limitation Act 1980
- the debtor has been declared bankrupt, has entered into a Debt Relief Order, or an Individual Voluntary Arrangement (IVA) has been approved by creditors and Insolvency legislation prevents any further collection or enforcement of the amount owed
- a business has been dissolved, liquidated or a Company Voluntary Arrangement (CVA) has been approved by creditors and Insolvency legislation prevents any further collection or enforcement of the amount owed

Debts will be considered for write off in the following circumstances or instances:

- where there is no ongoing Council service provision associated with the debt
- the debtor's age, health, or social situation make it inappropriate to pursue the debt
- if the debtor is deceased and there are no funds in the estate to pay the amounts owed

- a Charging Order has been successfully applied, but the sale of a property is not adequate to clear the debt
- it is considered by an Enforcement Agent that the debtor has no goods to sell
- the debtor cannot be traced after twelve months (absconded)
- the debt is deemed uneconomical to pursue
- all other options have been considered and the debt is too old to pursue (Statute of Limitations)

Conclusion – How The Council Will Deliver The Policy

The Council will take steps to:

- Give early advice to the debtor on repayment options and where to get assistance with debt problems.
- Make all advice on how and where to pay clear and simple.
- Raise awareness of a debt as quickly as possible and take action when it says it will if the amount remains unpaid.
- Raise the implications for non-payment - review all reminders and letters periodically, change type face, font, printing and paper colours, if required to heighten the impact.
- Review each case individually, taking into account the known circumstances of that customer if possible and endeavouring to find a remedy before taking any proceedings.
- If an account remains unpaid advise the debtor what will happen and let them know which organisation or agencies can advise them and how they can get in touch with them.

Rights Of Appeal

Customers can appeal about decisions the Council may have taken by the following means:

- Valuation Tribunal - for customers who believe the Council has acted incorrectly on a Council Tax billing matter or Non-Domestic Rates completion notices.
- Appeal Tribunal - for decisions made on Housing Benefit/Council Tax Reduction claims.
- County Court - for customers defending action to repossess Council houses, action taken to recover Housing Benefit/Council Tax Reduction overpayments and for sundry debts (miscellaneous charges).
- Magistrates Court - for customers who are aggrieved by the recovery process for Council Tax, Fixed Penalties and Non-Domestic Rates and for Non-Domestic Rates payers who believe the Council acted incorrectly on a billing matter.

Complaints Process

Should any debtor feel dissatisfied with how they have been treated the Council has a two stage formal complaints procedure which can be accessed at <https://www.wigan.gov.uk/Council/Contact-us/Council-Complaints.aspx>

The corporate complaints procedure provides the Council with the opportunity to investigate and, where appropriate, provide a remedy in circumstances where the Council is alleged to have been guilty of "maladministration" which has caused injustice (and where there is no other reasonable avenue available to the complainant to appeal or seek redress). It is important to note, however, that the corporate complaints procedure cannot investigate objections against the merits of a decision which has been properly taken and which the complainant does not agree with.

Collection Pathway Analysis

The following table sets out the various collection pathways for the major debt topics within the Council's debt portfolio, however it should be noted that the Council operates many of its recovery pathways in cooperation with private and public sector partners to rationalise services and achieve efficiency.

As such the Council retains the option to utilise collection and enforcement agents from both the private sector and the courts to carry out associated or appropriate enforcement actions on behalf of the Council to prevent or mitigate the need to escalate debts along the collection pathway shown below.

| <u>Category of Debt</u> | <u>Billing Method</u> | <u>Collection Pathway</u> | <u>Appeal Body</u> | <u>Final Council Action*</u> |
|---|---|------------------------------------|--|---|
| Council Tax | Annual Bill | Magistrates Court, County Court | Valuation Office Agency /Valuation Tribunal Service | Fine, insolvency and/or custodial sentence |
| NDR | Annual Bill | Magistrates Court, County Court | Valuation Office Agency /Valuation Tribunal Service | Fine, insolvency and/or custodial sentence |
| Housing Rents | Annual notification of weekly charge | County Court | Application to District Judge | Possession action and eviction |
| Housing Benefit/Council Tax Reduction Overpayments | Invoice | County Court | Tribunal and Appeals Service | Deductions from wages/benefits, seizing possessions/bank assets, charging property. |
| Adult Care Services (Assessed Financial Contributions) | Statement invoice | County Court | Judicial Review via the High Court | Deductions from wages/benefits, seizing possessions/bank assets, charging property. |
| Ground Rents | Annual Invoice | County Court | Application to District Judge | Deductions from wages/benefits, seizing possessions/bank assets, charging property. |
| Housing Rechargeable Repairs | Invoice | County Court | Application to District Judge | Deductions from wages/benefits, seizing possessions/bank assets, charging property. |
| Commercial Rents | Periodical Invoice | County or High Court | Application to the Court/Judge | Possession action and eviction |
| Parking Penalties | Penalty Notice | County Court | Independent Adjudicator | Bailiff action – seizing of vehicle//goods amounting to the original debt and charges associated to non-payment of debt |
| Sundry Debt | Invoice | County Court | Application to District Judge | Deductions from wages/benefits, seizing possessions/bank assets, charging property. |

* Action following the exhaustion of all prescribed/standard recovery efforts e.g.: after written, electronic, verbal contacts and reminders have failed to illicit a sustainable payment response from the debtor.