

REPORT TO:		Cabinet	
DATE:		15 January 2020	
PORTFOLIO:		Cllr Joyce Plummer - Resources	
REPORT AUTHOR:		Rachael Walker, Customer Contact Manager	
TITLE OF REPORT:		Council Tax and National Non Domestic Rates Insolvency Policy	
EXEMPT REPORT (Local Government Act 1972, Schedule 12A)	No	Not applicable	
KEY DECISION:	No	If yes, date of publication:	

1. Purpose of Report

- 1.1 To seek Cabinet approval for the adoption of a new Council Tax and National Non Domestic Rates Insolvency Policy – replacing a previous version from 2012.

2. Recommendations

- 2.1 That the Council Tax and National Non Domestic Rates Insolvency Policy attached at Appendix 1 is approved and adopted.

3. Reasons for Recommendations and Background

- 3.1 The Council Tax and National Non Domestic Rates (business rates) Collection and Recovery Policy provides a foundation for our operations as it outlines the service that taxpayers can expect to receive as well as a transparent structure for the collection and recovery of tax due to the Council; a function which is essential to the funding of public services.
- 3.2 Reduced Government funding places greater emphasis each year on the importance of collecting and recovering Council Tax and Business Rates and as further pilots for the local retention of Business Rates continue to refine the Government's intentions for Business Rate retention schemes, it is required that our policies reflect our practices and essential that all policies provide for a robust but fair collection and recovery process.
- 3.3 The Council Tax and National Non Domestic Rates Insolvency Policy sets out our main processes and guidance on our practices for ratepayers when dealing with Insolvency for Council Tax and NNDR liabilities.
- 3.4 In 2019/20, the Council have examined 25 accounts to determine whether they meet the legal criteria for commencement of insolvency, winding up or bankruptcy proceedings ("insolvency"). Four insolvency hearings were scheduled for December 2019 with a further four cases awaiting hearing dates. In total, we have

served 17 statutory demands (the preliminary step in bankruptcy proceedings) with a total value of over £112,000.

- 3.5 While the overall goal for insolvency is payment of arrears, the initiation of the insolvency process has meant that a number of debtors have engaged with us when other contact methods at our disposal in the recovery of arrears have not provided enough incentive to contact us and deal with the debts.
- 3.6 The new policy differs from the 2012 policy in that it includes changes made to debt thresholds for individuals, updated references to Insolvency Rules 2016 and an updated pro forma for officers to use. In the last 12 months, the Revenues team working alongside colleagues in Legal Services have increased our efforts to recover debt via insolvency and while in general our procedures remain largely the same, smaller incremental changes such as these warranted a review of the policy as a whole.

4. Alternative Options considered and Reasons for Rejection

- 4.1 Collection and Recovery of Council Tax and business rates works within legislative frameworks and the Council adopted its current guidelines in 2012. Remaining with this policy does not affect the Council's ability to collect and recover local taxes however the incremental changes made since 2012 means that regular update and review provides a more accurate reflection of everyday practices.
- 4.2 The Insolvency Policy has been updated to reflect guidance provided by the Local Government and Social Care Ombudsman issued as a result of their findings from complaints regarding the handling of insolvency proceedings by local authorities. The guidance recommends that a robust, up to date procedure is in place and that all information, inquiries and account files are ordered in such a way as to demonstrate the council's consistency of decision making and justification for insolvency – this is reflected in the updated referral forms and policy.

5. Consultations

- 5.1 Officers in Revenues, Benefits and Customer Contact have been consulted as well and colleagues in Legal Services.

6. Implications

Financial implications (including any future financial commitments for the Council)	The collection of local taxes remains a priority for the Benefits, Revenues and Customer Contact service and having up to date policies provides the necessary framework for officers. While there is no direct financial obligation for the Council as a result of this policy review, having up to date policies underpins the efforts to increase collections rates annually.
Legal and human rights implications	All billing, collection and recovery is done within legislative frameworks and guidance. Any and all legal and human rights implications have been considered and balanced against the rights of the

	<p>individual and the obligations placed on the authority for the collection of local taxes. The protection of vulnerable groups and individuals has been considered extensively as have the rights of our residents and customers at each stage of the collection and recovery process. Legal implications and human rights have been considered at each stage and the policy intentions within this report are considered proportionate and justifiable when balanced against the rights of the individual.</p>
<p>Assessment of risk</p>	<p>Having up to date policies reinforces the department's mandate to collect taxes on behalf of the Council and provides necessary transparency for residents – both of which lessens the risk of accusations of maladministration.</p>
<p>Equality and diversity implications <i>A Customer First Analysis should be completed in relation to policy decisions and should be attached as an appendix to the report.</i></p>	<p>The Council is subject to the public sector equality duty introduced by the Equality Act 2010. When making a decision in respect of the recommendations in this report Cabinet must have regard to the need to:</p> <ul style="list-style-type: none"> • eliminate unlawful discrimination, harassment and victimisation; and • advance equality of opportunity between those who share a relevant protected characteristic and those who don't; and • foster good relations between those who share a relevant protected characteristic and those who don't. <p>For these purposes the relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. To assist the Cabinet in this regard a Customer First Analysis has been carried out for all this policy and presented with this report. Cabinet is advised to consider the Customer First Analyses and associated obligations in respect of the public sector equality duty when making a decision in respect of the recommendations contained in this report.</p>

7. **Local Government (Access to Information) Act 1985:**
List of Background Papers

7.1 [Hyndburn Borough Council Insolvency Policy 2012](#)



Council Tax and NNDR Insolvency Policy

January 2020

1. Introduction

- 1.1 This policy covers the main processes adopted by Hyndburn Borough Council in its use of insolvency for Council Tax and National Non Domestic Rates payers and is guidance on our practices in order to provide transparency and to ensure consistency and compliance with relevant legislation.
- 1.2 The Council has a duty to collect Council Tax and National Non Domestic Rates – within this includes a duty to maximise the amount collected in order to provide for local services and to provide a fair and balanced approach to collection from tax payers who do pay and those who do not. This policy is intended to support our [Council Tax and National Non Domestic Rates Collection and Recovery Policy](#).

2. Legislation

- 2.1 The legal requirements are contained within
 - The Insolvency Act 1986
 - The Council Tax (Administration and Enforcement) Regulation 1992
 - The Non Domestic Rating (Collection and Enforcement)(Local Lists) Regulations 1989
 - The Local Authorities (Contracting out of Tax Billing, Collection and Enforcement Functions) Order 1996
 - The Insolvency (England and Wales) Rules 2016
 - Practice Direction on Insolvency
- 2.2 Bankruptcy action can be taken against any debtor who owes in excess of £5,000 to creditors and who, for whatever reason, is unable to satisfy their creditor's claims in full. A debtor may initiate action by petitioning for their own bankruptcy or may voluntarily wind up their own company. Compulsory liquidation or a winding up

petition may be issued against a company if it owes more than £750 and the petitioner can prove that the company cannot pay its debt.

2.3 [Further details on Insolvency can be found on the Insolvency Service's website.](#)

3. Authorisation and Decision Making

3.1 All cases under consideration for bankruptcy / insolvency proceedings will be assessed by the Revenues Manager in consultation with Revenues Officers. The decision to pursue bankruptcy / insolvency will be made on a case by case basis in full consideration of this guidance and all the available facts. Appropriate cases will be referred to the Council's solicitor who is authorised to deal with all matters connected with bankruptcy / insolvency from the issue of the statutory demand to dealing with contested matters.

3.2 Fees or costs incurred by the Council, if awarded by the court, will be added to the outstanding debt and will need to be paid as part of any settlement.

4. Consideration of Cases

4.1 Bankruptcy and/or winding up orders will be considered on a case by case basis once a debt reaches the financial thresholds of at least £5,000 for an individual or £750 for a company. The circumstances below are intended as a guide to those considerations; this list is not exhaustive or absolute.

- a. The Council has evidence or reason to believe that the debtor has sufficient assets to ensure the debt is recoverable by the Official Receiver or the Trustee;
- b. All other recovery options have been tried and/or examined and the recovery options remaining include insolvency or committal. Insolvency may then be considered to be the most appropriate and/or effective method for the debtor, particularly when considered against committal;
- c. The Council and its enforcement agent have made all reasonable attempts to establish a payment arrangement and to engage with the taxpayer;
- d. Details of the taxpayer's financial circumstances including details of capital held have been made available (either by the debtor or as a result of the Council's inquiries); Where all reasonable checks have been made and specific assets cannot be identified, insolvency may still be considered appropriate when there are indicators that the debtor is one of high material worth, for example renting a high value property or having a high salaried profession;

- e. Where insolvency action may encourage payment from specific groups of debtors such as company directors, self-employed people and those needing finance;
- f. Where the debtor is a habitual non-payer, insolvency may be considered at the earliest opportunity in the financial year when other recovery methods are considered to be futile based on payment history.

4.2 In addition, consideration must also be given to:

- g. The debtor's personal circumstances, including any evidence of vulnerability for any member of the debtor's household. This will be done in accordance with the Council's Vulnerability Policy;
- h. The potential impact on other individuals such as any joint owner(s), partners or dependents;
- i. Where there is an outstanding mortgage on a property, to whether it is likely that the property will be repossessed.
- j. Any other information brought to the Council's attention which may not make insolvency an appropriate course of action at this time. Information about temporary circumstances which may impact on our decision making may be reconsidered at a future date.

5. Decision making

5.1 The more information held about the debtor, the more efficient the decision making process will be, and the more effective this method of recovery will be. As part of this, the Revenues officer will seek to build a picture of the debtor and their circumstances using the list below, which again is not exhaustive or absolute:

- a. Financial information made available by the debtor;
- b. Demanding financial information from the debtor in writing following a Liability Order being granted;
- c. Checking all Council Tax records to see if there is any reason that insolvency would not be appropriate;
- d. Checking all Housing Benefit and Council Tax Support records for any evidence that insolvency would not be appropriate;
- e. Checking with Adult Social Care to see if there are any issues known to them that would make bankruptcy action inappropriate;
- f. Checking the Electoral Register both in Hyndburn and any other Council area if we have reason to believe the debtor lives in that area;
- g. Checking with H.M. Land Registry to confirm property assets;
- h. Checking Council Tax and benefit records for details of any other properties held, any tenancies in place and any potential rent income generated by tenanted properties;

- i. Checking with a credit reference agency for information on outgoings, requests for finance, mortgages and other financial information;
- j. Checking with Registered Social Landlords for former council house sales records to determine those recently acquiring assets;
- k. Checking known or potential employment records;
- l. Checking benefit overpayment records and Council Tax records (or Business Rates records when assessing a winding up petition for Business Rates);
- m. Checking Companies House records for business information;
- n. Checking that all Council Tax liabilities are correct, in so far as any exemptions or discounts have been applied based on information supplied to or known to the Council.

5.3 In all cases the history of successful and unsuccessful contact will be included, a chronology of all letters/emails sent, visits and telephone calls made and relevant notes.

5.4 In all cases a summary of action and reasons for the consideration of insolvency proceedings will be provided by the Revenues Manager which will include any evidence of non-payment where the Council has reason to believe that the debtor has had the means to pay but has not done so either as a result of wilful refusal or culpable neglect.

5.5 A case file including the check-list at 5.1 will be prepared and if appropriate, will be passed to the Council's solicitor to proceed with the insolvency process.

6. Complaints

6.1 Complaints about the handling of any account will be dealt with in accordance with the Council's general complaints policy which can be found at www.hyndburnbc.gov.uk/complaints

7. Equality and diversity

7.1 A Customer First Analysis accompanies this policy. No adverse impact has been identified that may discriminate against any group with a protected characteristic as defined by the Equality Act 2010 and outlined in the Public Sector Equality Duty.

8. Review/approval

8.1 This policy will be reviewed annually and updated if required.

9. Data Protection

- 9.1 Details of how we use taxpayers' data for the collection and recover of Council Tax and business rates can be found at www.hyndburnbc.gov.uk/data-privacy

Customer First Analysis – Insolvency Policy January 2020

1. Purpose

- What are you trying to achieve with the policy / service / function?

This analysis covers the Council's Council Tax and National Non Domestic Rates Insolvency Policy 2019.

- Who defines and manages it?

The Head of Benefits, Revenues and Customer Contact.

- Who do you intend to benefit from it and how?

Taxpayers will have access to the Council's Council Tax and National Non Domestic Rates Collection and Recovery Policy which outlines what residents of the borough can expect from a robust and transparent collections policy as the collection and recovery of Council Tax and NNDR is essential to the funding of public services. The updated Insolvency Policy expands on recovery action taken once other avenues have been explored.

- What could prevent people from getting the most out of the policy / service / function?

Lack of awareness of the policy – however, this policy is readily available, it is accessible, written in plain English and additional support or explanation of the policy is available if needed. All relevant staff have been trained on the details of this policy and its importance to every day administration.

- How will you get your customers involved in the analysis and how will you tell people about it?

Customers will be informed via normal communication methods and the policies will be available online as well as in hard copy.

2. Evidence

- How will you know if the policy delivers its intended outcome / benefits?

Adherence to the policy will be evident in the Council's practices – it is hoped that a clear and robust policy will support an increase in collection rates.

- How satisfied are your customers and how do you know?

In relation to this policy, it is not possible to say.

- What existing data do you have on the people that use the service and the wider population?

We hold all relevant data on our Council Tax and Business Rates customers as well as the wider population.

- What other information would it be useful to have? How could you get this?

None

- Are you breaking down data by equality groups where relevant (such as by gender, age, disability, ethnicity, sexual orientation, marital status, religion and belief, pregnancy and maternity)?

No – while we have diversity statistics on our population as a whole we are not able to cross-reference this with our Council Tax/NNDR base.

- Are you using partners, stakeholders, and councillors to get information and feedback?

As part of our ongoing management of the processes, yes.

3. Impact

- Are some people benefiting more – or less - than others? If so, why might this be?

No.

4. Actions

- If the evidence suggests that the policy / service / function benefits a particular group – or disadvantages another - is there a justifiable reason for this and if so, what is it?

n/a

- Is it discriminatory in any way?

No

- Is there a possible impact in relationships or perceptions between different parts of the community?

No.

- What measures can you put in place to reduce disadvantages?

n/a

- Do you need to consult further?

Not at this stage.

- Have you identified any potential improvements to customer service?

The specialist recovery work undertaken once an account progresses to Insolvency will be documented consistently with the aim of providing improved access to information and to support our Solicitor in Court. It is intended that this will also improve processing times which in turn impacts on customer service.

- Who should you tell about the outcomes of this analysis?

Appendix 2

This analysis will be made available alongside our Collection and Recovery Policy to inform residents.

- Have you built the actions into your Business Plan with a clear timescale?

n/a

- When will this assessment need to be repeated?

With any major changes to collection and recovery policies in the future.

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Dated: December 2019