

Debt Recovery and Write-off Policy

Council Tax, Non-Domestic Rates and Sundry Debt



1. Introduction

- 1.1 The Council is responsible for collecting debt in an effective and efficient manner, using all methods of recovery at its disposal to maximise income collection and to keep levels of written-off debt to a minimum.
- 1.2 The Council recovers debt for a variety of services including Council Tax, Non-Domestic Rates, Rents and Sundry Debts.

2. Council Tax

2.1 Statutory demand for payment

Council Tax is payable in 10 instalments on or before 28 April to 28 January of each financial year; or in a single lump sum payment on or before 31 May. A demand for payment that falls due between January and March will only be offered one instalment.

2.2 Non statutory demand for payment

A repayment schedule that does not conform to the statutory demand schedule is considered to be “special arrangement”; for example, agreeing with the debtor to spread payments over the full 12 months in the year. These arrangements are made on an individual basis and should only be considered if the statutory repayment scheme cannot be adhered to.

2.3 Recovery action for non-payment

2.3.1 Recovery action starts as soon as one instalment is missed. It is a statutory requirement that a reminder is issued requesting payment within 7 days. In practice, this reminder will normally be issued between 7 and 10 days after the missed payment date. If, as a result of the reminder, payment is made no further action will be taken. If more than two reminders are issued within the financial year the right to make further payment by instalments is lost on the third occasion and the full debt that remains outstanding will become due and payable as a single payment.

2.3.2 If, following the issue of a reminder, payment is still not received a Final Notice will be issued requesting payment within 14 days. It is a statutory requirement to issue this notice; the right to pay by instalments will have been lost by this stage and the full amount will be outstanding. The notice will advise that further non-payment will result in the application to the Sheriff Court for a Summary Warrant.

2.3.3 If, following the issue of the Final Notice, the debt remains unpaid a Summary Warrant will be applied for to the Sheriff Court and a Statutory Penalty of 10% will be added onto the outstanding debt. The debtor will be advised that a Summary Warrant for the recovery of the debt has been granted that a Statutory Penalty has been applied to the debt; also that further non-payment will result in the Summary Warrant being passed to the Sheriff Officers for collection of the debt.

3. Non-Domestic Rates

3.1 Statutory demand for payment

Non-Domestic Rates are payable in 10 instalments on or before 15 May to 15 February of each financial year; or in a single lump sum payment on or before 30 September. If the demand notice is issued after the first month of the year, for part of the year, instalments will begin in the month following the issue of the bill and will end in February.

3.2 Recovery action for non-payment

3.2.1 If the ratepayer elects to make payment by instalments and makes less than four instalments by 30 September, a Final Notice will be issued for the outstanding balance for the remainder of the year and the right to pay by further instalments is lost.

3.2.2 After 30 September a Final Notice for the full year's balance will be issued if the ratepayer is two monthly instalments in arrears.

3.2.3 Upon issue of a Final Notice the ratepayer will be asked to make payment within 14 days. Further non-payment may result in an application being made to the Sheriff Court for a Summary Warrant, which will incur an additional Statutory Penalty of 10% being added to the outstanding balance. The debtor will be advised that a Summary Warrant has been granted and the Statutory Penalty has been applied to the debt; also that further non-payment will result in the Summary Warrant being passed to the Sheriff Officers for collection of the debt.

4. Council Tax and Non-Domestic Rates – Summary Warrant

4.1 Once a Final Notice has been issued to the taxpayer the Council can apply to the Sheriff Court for a Summary Warrant. Once granted it allows the application of a 10% Statutory Penalty to be added to the outstanding balance and permits the Council to pursue recovery by further legal action called diligence (see notes at point 6 for a more detailed explanation).

4.2 In order to execute diligence the Council has to seek the assistance of Sheriff Officers. Once the Summary Warrant has been signed by the Sheriff it is forwarded to the Sheriff Officers to collect the sums owed.

5. Sundry Debt

- 5.1 The Council issues invoices for a variety of sundry debts such as Harbour Charges, Burial Fees, Home Care Charges, Residential and Respite Care charges, Corporate Property rentals, Parking Fines, Waste Collection, Quarry Sales, Education Fees, Housing Charges, Housing Benefit Overpayments, Former Tenant rent Arrears etc.
- 5.2 Invoices should, where possible, only be raised if the sum outstanding is £5 or greater. There may be instances where it is necessary for an invoice to be issued for a sum below £5 but in these instances, where possible, consideration should be given to alternatives such as requesting cash payment or in the event of frequent charges invoicing at less frequent intervals.
- 5.3 Recovery of Sundry Debt
- 5.3.1 Recovery action will commence 30 days after the issue of the demand for payment, following which a Reminder Notice will be issued. Further non-payment will result in the issue of a Final Notice following which further non-payment will result in the debt being referred to the Sheriff Officer, who will then pursue the debt on the Council's behalf; resulting in Court action if appropriate and necessary. If Court action is successful a "decree" for payment will be awarded against the debtor in favour of the Council.
- 5.3.2 If the debtor is in financial difficulty, or cannot make payment in full, repayment arrangements can be arranged to make payments over a period of time.
- 5.3.3 The Council use Sheriff Officers to pursue debts on its behalf where all other recovery action has failed.
- 5.4 The Debtors (Scotland) Act 1987 regulates recovery of sundry debt and the type of action that can be taken to recover debt will depend on the amount of money owed.
- 5.4.1 A Small Claims Action - a creditor can raise a Small Claims action in the Sheriff Court for debts up to £3,000. It is designed to be a cheap, quick and simplified form of Court action for recovering debt. If the claim is worth less than £200 no court expenses will normally be awarded by the Court. If the value of the claim is between £200 and £1,500 the maximum court expenses that can be awarded against the debtor is £150. If the value of the claim is between £1,500 and £3,000 the maximum court expenses that can be awarded against the debtor is 10% of the value of the claim.
- 5.4.2 A Summary Cause Action - A creditor can raise a Summary Cause action in the Sheriff Court for debts over £3,000 and up to and including £5,000. As a general rule, court expenses are awarded to the person

who succeeds in the case and are due to be paid by the unsuccessful party.

5.4.3 Ordinary Cause Action - A creditor can raise an Ordinary Cause action in the Sheriff Court for debts above £5,000.

5.5 Once court action has been raised a summons will be issued to the debtor confirming the court hearing. It will give a return date and a hearing date (usually 7 days after return date). The debtor must contact the Court by the Return Date to advise of the debtor's position in respect of the action.

5.5.1 If it is an individual that is being taken to court they can:

5.5.1.1 admit the debt and settle in full, along with expenses, with the creditor. If this happens before the calling date in court, the Council should ensure, subject to cleared funds having been received, that the Court is advised at the calling date;

5.5.1.2 admit the debt and make a written application to the court for a time to pay order, which the creditor will have to decide if it is in acceptable terms. If so the Court can be advised at the calling date. If not, again the Court can be advised. A decree can be granted incorporating a time to pay direction and if so and complied with by the debtor the decree cannot be enforced as the agreement is in place;

5.5.1.3 dispute the debt and attend the court in person to put their case.

5.5.2 If it is not an individual that is being taken to court they can admit the debt and settle in full; or dispute the debt and attend court to put their case.

5.5.3 On the calling day in court the debtor, solicitor etc may attend. At this first calling of the case the Sheriff may note the issues in dispute, provide further time for written reasons to be provided, and as is more usual, fix a date for a hearing at which and witnesses will be called and evidence be heard. After hearing the case the Sheriff may:-

5.5.3.1 issue his decision; or

5.5.3.2 adjourn to issue a written decision later.

The decisions that the Sheriff can make are:-

5.5.3.3 decree of Absolvitor – dismiss the case and absolving the defender from liability;

5.5.3.4 decree with a time to pay direction referred to at 5.5.1.2 above;

- 5.5.3.5 decree with no time to pay referred to at 5.5.1.2 above;
- 5.5.3.6 the decree referred to a 5.5.3.4 and 5.5.3.5 above can be for the full sum or such other sum as the Sheriff determines;
- 5.5.3.7 the Sheriff can award expenses in whole or in part or each party has to meet their own expenses “no expenses due to or by”.

If claimed at the outset and the claim is successful interest is generally added onto the sum claimed for at the judicial rate from the date of service (citation).

The decree is granted on the date of the Sheriff’s decision and an extract of it is provided 14 days later by the Sheriff Clerk.

- 5.5.4 Once the decree has been awarded it is the responsibility of the Council to arrange for service of a Charge for Payment upon the debtor by Sheriff Officers. This is a demand for payment within a prescribed period, usually 14 days. Without the Charge being served no further enforcement can be taken to recover the debt. This charges the debtor to make payment of outstanding sum plus interest. The original decree must be sent to the Sheriff Officer straight away to be served.
- 5.5.5 Once a case is raised and served on a defender, there are potential cost implications should the Council decide not to pursue the matter.

6. Diligence

- 6.1 A Summary Warrant (for Council Tax and Non-Domestic Rates) or a Decree for Payment (any other debt), followed by the serving of a Charge for Payment, allows enforcement action called diligence to be taken to recover the debt. Diligence is normally undertaken by Sheriff Officers and includes:
 - 6.1.1 Earnings Arrestments - including Conjoined Arrestment Orders (where more than one creditor is seeking an arrestment against the same earnings);
 - 6.1.2 Bank Arrestments - before applying for an arrestment the funds must be available in the bank account on the date of the arrestment. If no funds are available the arrestment will not attach and the costs incurred are not charged to the debtor;
 - 6.1.3 Income Support/Jobseekers Allowance deductions (Council Tax only, these are requested by the Council only);
 - 6.1.4 Attachments - the Sheriff Officer will attach goods, value them for sale, and if the debt is not paid within a specified period the goods will be sold. An Exceptional Attachment applies to individuals, sole

traders and partnerships and cannot be executed without an Order being granted in Court. If granted, an auction will take place to realise the value of goods attached;

- 6.1.5 Decree of Adjudication - this provides the creditor with security over the debtor's property for the amount of money owed. It is normal that the property will already have been inhibited by the creditor to prevent ownership of the property being transferred. After a period of 10 years the creditor can obtain ownership if the debt remains unpaid, by taking further court action;
- 6.1.6 Sequestration for Rent - mainly used for where a landlord of a commercial property is owed rent. The landlord obtains certain rights over moveable goods within the property as security for rent arrears. If successful, the Sheriff Officer will prepare an inventory and arrange for the goods to be sold;
- 6.1.7 Sequestration (see additional notes at point 8 below).

7. The role of the Sheriff Officer

- 7.1 For Council Tax, Non-Domestic Rates and Sundry debts Sheriff Officers act as debt collectors and have the ability to enforce the legal remedies for recovery of such debts.
- 7.2 Sheriff Officers are able to enforce court orders of the civil courts, including Summary Warrants for Council Tax and Non-Domestic Rates debt and court decrees for other debts.
- 7.3 They can also serve citations to compel a defender to appear in court and if necessary, will personally make enquiries to locate the defender so that the citation can be delivered successfully. If a defender cannot be traced other methods of citation are available.
- 7.4 Where sundry debt is owed to the Council, such as Harbour Dues or Quarry Sales, an application for a Summary Warrant is not an option and no 10% surcharge will be added. In order to commence the diligence process a decree for non-payment must have been granted in the Sheriff Court.
- 7.5 Once the decree has been awarded it is the responsibility of the Sheriff Officer to serve a Charge for Payment upon the defender, demanding payment within a prescribed period, usually 14 days. Without the Charge being served no further enforcement action can be taken to recover the debt. If a decree is awarded the Council must still request the Sheriff Officer to serve the Charge. This allows diligence such as Earnings Arrestment to be applied.
- 7.6 A Sheriff Officer is an officer of the civil court and can only operate in the geographical area for which they hold a commission. A Messenger-at-Arms can operate in any area in Scotland. Both are employed within private business partnerships with fees charged being regulated by Law.

- 7.7 Sheriff Officers can also apply for inhibitions, stopping someone from taking a particular course of action, for example to stop a defender disposing of property to avoid an Attachment being served. They do not present or defend the actions in Court, which is carried out by solicitors. They also serve court summons in person or by post. A 3 year training period is required to be competent.
- 7.8 Upon receiving the request to recover Council Tax, Non-Domestic Rates or Sundry Debt for the Council, whether on Summary Warrant or not, they will in the first instance send a letter to the debtor, failing which they will phone. A visit may be made to the debtor's address to complete a pre-litigation report, ascertaining other debts and report on premises such as owner, tenant, earning and to gather information.
- 7.9 Court action in respect of sundry debts will not proceed without the Council's instruction.

8. Insolvency and Sequestration

- 8.1 Insolvency is the term used if a debtor can no longer pay the debts that they are owed (they have more liabilities than realisable assets). Insolvency includes Sequestration (bankruptcy), Liquidation, Receivership and Administration.
- 8.2 Sequestration is often referred to as bankruptcy and applies to individuals and partnerships, but not companies. The assets and property of the debtor are transferred to a Trustee who administers the estate and is obliged to generate these assets into money and distribute the proceeds amongst the creditors.
- 8.3 An application for sequestration must be made to the court and if granted will last for one year after which the debtor will be discharged. If the debtor has not been cooperative, the trustee may ask for the court to defer the discharge.
- 8.4 Applying for sequestration.
- 8.4.1 The debtor must owe a total debt of £1,500 or more; they must be living in Scotland (or have lived in Scotland sometime during the last year); they must not have been made bankrupt in the last 5 years. Additionally:
- 8.4.1.1 a creditor must be willing to agree to a debtor being made bankrupt; or
- 8.4.1.2 the debtor is "Apparently Insolvent", which can be proved by having received a Charge for Payment or a Statutory Demand (a legal document with the words "Statutory Demand" at the top); both of which are normally served on the debtor by a Sheriff Officer; or
- 8.4.1.3 the debtor has low income and low assets (LILA). This means someone with a gross weekly income or no more than

the minimum standard wage for a 40 hour week and has no single asset worth more than £1,000 and total assets not worth more than £10,000. The debtor must also not own or jointly own a house or any other property or land.

- 8.4.2 A Petition for Sequestration requires to be presented. The petition for sequestration may nominate an Insolvency Practitioner to act initially as an Interim Trustee, to manage and protect the estate. Otherwise, the court will appoint the Accountant in Bankruptcy as the Interim Trustee. The Interim Trustee will notify the creditors of the sequestration and advertise the insolvency in the Edinburgh Gazette. A meeting of creditors may be called to advise on the prospects of receiving a dividend, but there is no requirement to attend. A Permanent Trustee will then be appointed to request information from the debtor and realise any assets for the benefit of the creditors.
- 8.5 Once the debtor has been sequestrated any diligence (recovery action permitted by the court such as earnings/bank arrestments, attachments, income support/jobseeker allowance deductions) currently in progress must end and no further diligence can be started.
 - 8.5.1 The Interim Trustee will ask the Council for details of the outstanding debt as at the date of sequestration. Any new debt occurring from the date of sequestration can be pursued in the normal manner.
- 8.6 Some debts may still be recoverable at the end of the discharge period, such as debts arising from frauds. In most cases it is unlikely that any payment will be released until the end of the discharge period.
- 8.7 Internal procedures to be adopted following Sequestration or Insolvency.
 - 8.7.1 All papers in relation to the Sequestration or Insolvency are to be retained in a central file;
 - 8.7.2 Advise Trustee of the amount of all debt owed to the Council up to the relevant date subject to 8.8 below;
 - 8.7.3 Stop any recovery action on the debt up to the relevant date and inform the Sheriff Officers if the debt is also with them;
 - 8.7.4 Arrange for write-off to be authorised for any debt owed up to the relevant date subject to 8.8 below;
 - 8.7.5 Continue to pursue any debt raised after the relevant date in accordance with standard recovery processes subject to 8.8 below;
 - 8.7.6 Write-on any dividend received from the Trustee, likely to be received at the end of the discharge period subject to 8.8 below.
- 8.8 Where a debt is held jointly in more than one name, in the event of one of the jointly responsible parties being sequestrated, the other party will still remain responsible for the full debt. In these circumstances the debt should

not be written-off, albeit the sequestrated party will no longer be considered responsible for the debt.

- 8.9 In the event of the Council considering petitioning for sequestration it should be discussed and approved by the Head of Finance. This should only be likely where it is known that the debtor owns property and where there may be some realisable equity following any sale of the property by the trustee. Consideration should also be given to the costs of such an action against the likely benefit to the Council.

9. Alternatives to sequestration

- 9.1 Debt Management Plan – an informal arrangement to repay debts over an extended period of time.
- 9.2 Debt Arrangement Scheme (DAS) – a statutory scheme run by the Scottish Government to help pay multiple debts without the hassle or threat of court action from creditors. The scheme is delivered by Approved Money Advisors at the Citizens Advice Bureau who will arrange for a DAS repayment plan to be formally approved and implemented.
- 9.3 Trust Deeds - if the income and assets of the debtor are sufficient to meet at least some of the debt owed they can voluntarily sign a deed in favour of a trustee. The primary aim is the payment of debt to creditors. It does not involve a court appearance or an application to the court but could result in the loss of the family home, savings and insurance policies.
- 9.3.1 The Trust Deed must become protected before it legally stops a creditor from taking Court action against the debtor. The deed must be advertised in the Edinburgh Gazette and all creditors must be written to enclosing a Statement of Assets and Liabilities, along with the background of the situation and details of income and expenditure. The Trustee will arrange for the payment of the debt but the creditor should continue to pay any current bills that become due, similar to sequestration.

10. Liquidation, Receivership and Administration

- 10.1 This form of insolvency applies to companies and is regulated by the Insolvency Act 1986.
- 10.2 Receivership is only available to the holder of a floating charge, such as a bank, over the company. The holder of the floating charge appoints a receiver in order to secure their debt and perhaps realise the assets to protect the interests of the charge holder and other creditors.
- 10.3 Liquidation is the equivalent of sequestration for a company. A Liquidator is appointed to gather the company's assets to pay the creditors. The company will end as a going concern unless the directors can find the money from outwith the business to keep it trading.

- 10.4 An Administrative Order is designed to allow the company some breathing space from its creditors and allow the best course of action to be taken to resolve the situation. A formal proposal is put to the creditors, which may include the sale of assets. An Administrator is appointed to help trade the company out of its financial difficulties. It is an alternative to winding up and is used mainly by large companies where there is the prospect of something being saved for the creditors. It prevents the company from being wound up, securities being enforced or new legal proceedings being actioned.

11 Prescription

- 11.1 In general the law allows a maximum period of 5 years for a creditor to raise proceedings to recover sums owed (being the prescriptive period). Debts should be recovered timeously. If, however, the debtor acknowledges the debt during this period, for example, by making payments or a letter of acknowledgement, that period is interrupted and further advice should be sought.

12 Death of a Debtor

- 12.1 There can often be problems associated with the recovery of the debts of a deceased person as there may be no funds to settle the debt or an executor cannot be identified. All efforts must however be taken to ensure that debts are paid from the estate wherever possible.
- 12.2 The role of an executor in winding up an estate - If the deceased person has not left a will, the court will appoint an executor, whose responsibility is to ascertain a valuation of the deceased person's debts and liabilities. Once this information has been obtained they will have to apply to the court for confirmation of the estate, which when granted gives the executor the authority to realise the assets, such as bank accounts, by producing the confirmation certificate. It is the executor's duty to ensure that the debts of the deceased person are settled.
- 12.3 In some instances the assets can be transferred without confirmation: for example, if there are few assets and the value is low. If the gross value of the assets is under £25,000 the Sheriff Clerk can assist the Executors to prepare an inventory in order to apply for Confirmation. This means that it is not always necessary to employ a solicitor to undertake the duties. There is no requirement for a formal valuation of household contents provided the estimate is genuine but a professional valuation will be required for items such as a house.
- 12.4 For the first six months after the death of the deceased person the executor is not obliged to settle ordinary debts without at first settling privileged debts such as funeral expenses. Any creditors who take action to recover ordinary debts within six months of the death will rank equally with each other for settlement. The executor can after the six month period settle all debts without regard to any claim that has not been intimated. If the debts are

settled before the six month period has elapsed the executor will personally be responsible for any subsequent claim that cannot be paid due to insufficient funds.

- 12.5 It is therefore important that debts are notified to the executor within six months of the death of the deceased person. An executor may contact the debtor if it is known that a debt exists but it would also be beneficial to look for announcements in the local press to ensure that a claim is submitted. If an executor cannot be traced, the Sheriff Clerk can be written to ask if confirmation of the estate has been submitted (this should not be done too soon after the death in order to allow for confirmation to be submitted).
- 12.6 For Council Tax purposes an exemption may apply following the death of a person, if the tax would otherwise be met from the estate of that person. The exemption could apply for up to six months from the date of the Grant of Confirmation, but will end sooner if the estate is settled and ownership, or the tenancy, of the property transferred. It should not be assumed however that the person residing in a property prior to their death would remain responsible after their death: for example, a person who has a life-rent in a property will be responsible for Council Tax as long as they are considered to be residing in the property. Following their death the ownership of the property is not in dispute and liability for the Council Tax would immediately transfer to the actual owner.

13 Debt Advice

- 13.1 In many cases the debtor will not be able to settle the debt owed in full or within previously indicated timescales. An arrangement may have to be set up to take account of available funds, period of payment, settlement of ongoing debts and any other debts that may be owed. Any arrangement should be firm, realistic and paid on a date that ultimately will result in payment actually being made.
- 13.2 The debtor will often feel comfortable with the arrangement and adhere to its terms. The Council does not, however, have the expertise to give a debtor specialist debt advice or advice on managing their budget and some people will require further help to repay their debts.
- 13.3 Orkney Citizens Advice Bureau (CAB) provide professionally qualified Approved Money Advisors. The debtor should be advised of this service and encouraged to seek assistance, which is free and independent.
- 13.4 All debt communications, such as reminders, should make reference to the availability of debt advice.

14 Writing-off debt

- 14.1 The Council policy for writing-off debt, as contained in the Financial Regulations, gives the Head of Finance the authority to write-off debt considered irrecoverable on the following principles:

- 14.1.1 Unable to trace;
 - 14.1.2 Bankrupted/Sequestrated;
 - 14.1.3 Uneconomical to pursue;
 - 14.1.4 Unrealistic prospect of recovery
- 14.2 All debts above £5 must be authorised for write-off by the Head of Finance. All avenues must be explored before a debt is written-off and factors such as cost and likelihood of recovery must be taken into account. The following procedures should be followed if it is felt that the debt is not recoverable:
- 14.2.1 If it is felt that the debt is appropriate to be considered for write-off a formal request should be completed for authorisation. This request should be completed and passed onto each of the relevant council sections that may have debt outstanding. This will provide a full picture of the circumstances and actions taken to date and allow all debt for the same debtor to be written-off at once. It will also show the true extent of the debt in case it is felt that other courses of action should still be explored.
 - 14.2.2 Each section should provide a summary of the debt being pursued and amount still outstanding. Information should also include details of the action taken to recover the debt to date, the reasons for not being able to pursue the debt further, the last date of any payment, any previous arrangements, any details such as a change of address, dates of birth if known and any other details that might not be known by all sections individually. If the debtor is deceased provide details of the steps taken to identify an executor.
 - 14.2.3 If the debtor has moved abroad, consideration should be given to the costs of recovery.
 - 14.2.4 Consideration should also be given to undertaking a trace of any 'Gone Away' debtor, for example by the Sheriff Officer to undertake a debtor trace. In special circumstances diligence can still be enforced if the debtor cannot be traced, for example the owner of an empty property, by taking Court Action.
 - 14.2.5 Overpayments of Housing Benefit that may have 'Gone Away' should be traced through the Department for Work and Pensions Customer Information System (CIS) to trace the current address of the debtor.
- 14.3 Once the write-off request form has been completed it should be passed to the Revenues Manager for a review of the circumstances and to ensure that all courses of action have been examined. The request will then be forwarded to the Director of Finance and Housing for authorisation, after which the debts will be written-off on the respective financial systems.

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