

<b>OVERVIEW AND SCRUTINY REVIEW PANEL – ENFORCEMENT AGENTS</b>
<b>26 OCTOBER 2015</b>
<b>TO REVIEW THE USE OF ENFORCEMENT AGENTS BY NOTTINGHAM CITY COUNCIL</b>
<b>REPORT OF HEAD OF DEMOCRATIC SERVICES</b>

**1. Purpose**

- 1.1 To review the use of enforcement agents by Nottingham City Council, with a focus on council tax collection.

**2. Action required**

The Committee is asked to

- 2.1 use the information received at the meeting to scrutinise the use of enforcement agents in Nottingham in relation to council tax collection; and
- 2.2 identify any relevant recommendations for improvements and any potential areas for further scrutiny activity in the future.

**3. Background information**

- 3.1 Families can fall into debt for a variety of reasons; however one of the primary and priority debts that families can face is when they have fallen behind on paying their council tax.
- 3.2 Reform and regulation of the bailiff industry and the replacement of common law distress known as removal and sale of goods by a bailiff, with new legislation had been in the pipeline for over 10 years. The Tribunal, Courts and Enforcement Act 2007 replaced distress with a process called “taking control of goods”, whereby property and / or goods transferred from a debtor to “the control of the law”. The “Taking Control of Goods Regulations” followed in July 2013 and the regulations making provision for the fees to be charged to debtors were made in March 2014. The Ministry of Justice have also sought to regulate bailiffs. Regulations have now introduced a new certification process requiring individual certification, which will be granted to applicants that can demonstrate they have knowledge of the relevant law, documentation, processes and understanding of how to deal with vulnerable people. In addition, bailiffs are now referred to as enforcement agents.
- 3.3 In April 2014, new procedures and a fee scale relating to the enforcement of debts, such as the non-payment of Council Tax, Business Rates, Child Support awards, Magistrates’ Court fines, Road

Traffic penalties (PCNs) and commercial rent. Such debts are enforced by enforcement agents, formerly referred to as bailiffs.

- 3.4 When such debts are passed by creditors, in the majority of cases by the local authority, an account is set up by the enforcement company tasked with enforcing the debt. A fee of £75 will be added to the account by the enforcement agency. Debtors are then sent a Notice of Enforcement which outlines the details of the outstanding debt; this is referred to as the compliance stage. During this stage, debtors do not get a visit from an enforcement agent and therefore can avoid a visit by arranging a payment schedule and adhering to a payment agreement. If contact is not made with the enforcement agent during the compliance stage, the matter is then moved to the enforcement stage which entails a visit, or a series of visits from an enforcement agent and a further fee of £235. At this stage, debtors risk having their possessions seized by the enforcement agent and subsequently removed and sold, if full payment is not made. If goods are seized and removed there is an additional sale stage fee of £110.
- 3.5 To supplement the new procedures introduced in April 2014, The Ministry of Justice released supporting guidance intended for use by all enforcement agents, public and private, the enforcement agencies that employ them and the major creditors who use their services<sup>1</sup>. Private sector enforcement agents who are recovering debt owed to the public sector perform the vast majority of enforcement work and in order to improve the public's perception of the profession, enforcement agents and those who employ them or use their services must maintain high standards of business ethics and practice.
- 3.6 The guidance prescribes good practice for the conduct and professionalism of enforcement agents, such as:
- Enforcement agents must not be deceitful by misrepresenting their powers, qualifications, capacities, experience or abilities, including, but not restricted to;
  - Falsely implying or stating that action can or will be taken when legally it cannot be taken by that agent
  - Falsely implying or stating that a particular course of action will ensue before it is possible to know whether such action would be permissible
  - Falsely implying or stating that action has been taken when it has not

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<sup>1</sup> Ministry of Justice, 2014, Taking Control of Goods: National Standards

- Falsely implying or stating that a debtor refusing entry to a property is classed as an offence.
- 3.7 Enforcement agents must not act in a threatening manner when visiting the debtor by making gestures or taking actions which could reasonably be construed as suggesting harm or risk of harm to debtors, their families, appointed third parties or property.
- 3.8 Despite the introduction of this guidance, StepChange Debt Charity found that:
- In 12% of cases bailiffs visited the home outside 'reasonable hours' of 6am – 9pm;
  - In 17% of cases bailiffs continued action despite clients agreeing to a repayment plan;
  - In 3% of cases, bailiffs entered the home when only children were in;
  - In 5% of cases, people said that enforcement agents contacted their friends and family about their debt.<sup>2</sup>
- 3.9 StepChange also found that the fees are considered to be high, with 87% of those who faced bailiff enforcement action said they were charged at £75 for being sent a letter about the bailiff enforcement, 58% said they were charged at least £235 for a visit from the bailiff and 15% said they were charged a further £110 for their goods to be sold, paying £420 in total.<sup>3</sup>

#### Council tax debts

- 3.10 Council tax arrears are one of the fastest growing debt problems witnessed in the last four years, second only to payday loans.<sup>4</sup> The debt charity StepChange found that in 2010, just 10% of clients had arrears on their council tax bills. In 2014, this had grown to 28%. On average, the clients of StepChange owe £832 in council tax arrears, up from £675 in 2010.
- 3.11 This is part of a changing picture of the kind of problems that people in problem debt encounter. Figures obtained from StepChange show that people with council tax arrears are more likely to be families with children (53% of StepChange clients with council tax arrears have children at home). People with council tax arrears are also more likely to be women, (64% of StepChange clients are women) and 25% of households with council tax arrears are single parent families.<sup>5</sup>

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<sup>2</sup> StepChange Debt Charity client survey, 2015. Sample: 1,087 clients with council tax arrears who came to the charity for advice in 2014. Fieldwork conducted February 2015.

<sup>3</sup> StepChange Debt Charity client survey, 2015. Sample: 1,087 clients with council tax arrears who came to the charity for advice in 2014. Fieldwork conducted February 2015.

<sup>4</sup> Council tax debts, how to deal with the growing arrears crisis tipping families into problem debt, StepChange Debt Charity, 2015

<sup>5</sup> Council tax debts, how to deal with the growing arrears crisis tipping families into problem debt, StepChange Debt Charity, 2015

3.12 Research conducted by StepChange found that the approach creditors take has a significant bearing on the mental health, finance and the consequent actions taken by debtors. Where people get help via affordable payment plans, they have a greater chance of getting back onto a steady financial footing:

- 79% said that their anxiety reduced ;
- 74% are able to sleep more easily;
- 60% said it stabilised their finances.<sup>6</sup>

### The Children's Society

3.13 In March 2015, The Children's Society published a report, titled 'the Wolf at the Door', looking at how council tax debt collection is harming children.<sup>7</sup> Evidence gathered by the Children's Society suggests that the presence of children is overwhelmingly associated with a greater likelihood of financial difficulties, regardless of whether children are being brought up by one or two adults. For many families, council tax arrears are the result of several factors combined, driven principally by demands for full annual payment just seven days after a first reminder following a missed payment, which can be hundreds of pounds.

3.14 Councils of course, have a duty to reclaim council tax payments and for many, the localisation of council tax benefit has resulted in residents being asked to pay council tax whilst living on an income below the poverty line. Research from the Institute for Fiscal Studies has shown that following a 10% cut worth £414 million in central government funding, many low-income working age families were paying council tax for the first time.<sup>8</sup>

3.15 The Children's Society report found that many local authorities are failing to provide sufficient support and advice to families struggling with council tax debt by using damaging debt practices. This leaves families worrying about potential bailiff visits and court summons, which has a damaging impact on children's and parents' emotional and physical health. The report calls on local authorities to do more to support families struggling with council tax debts and recognise the additional vulnerability that families with children and young people living independently for the first time face if they fall behind with their bills.<sup>9</sup>

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<sup>6</sup> StepChange Debt Charity client survey, 2014. Sample: 923 StepChange Debt Charity clients who came for advice in 2013. Fieldwork conducted June-July 2014.

<sup>7</sup> The Children's Society, the Wolf at the Door - How council tax debt collection is harming children, The Children's Society, March 2015.

<sup>8</sup> Cuts to council tax support increase numbers seeking debt advice, Institute for Fiscal Studies, <http://www.ifs.org.uk/publications/7058>

<sup>9</sup> The Children's Society found that 900,000 families who have faced council tax debt, amongst those currently in council tax debt, the average debt is about £420. The Wolf at the Door, The Children's Society, March 2015.

3.16 The Children's Society made a number of recommendations in their report, which have been outlined below.

### 3.17 The Children's Society headline recommendations for councils

- Councils should not engage bailiffs for collecting council tax debt for families with children. This is particularly important for the most vulnerable families.
- Families with children should be given at least one opportunity to bring their account back up to date and have their monthly instalments reinstated.
- Local authorities should improve the way in which they provide independent advice and support for families with children and vulnerable young people who fall behind on their council tax.
- Councils should always allow families to negotiate repayments even when the debt has been referred to an enforcement agency.
- Councils should put in place a 'breathing space' scheme for families with children under 18 which places accounts on hold while the family receives independent and free debt advice.
- Care leavers should be eligible for 100% council tax support until the age of 21.
- Court proceedings should not be pursued if a repayment plan for council tax debt has been agreed and is being observed by the family or young person.
- Councils should review their council tax collection policy and include the following groups as being particularly vulnerable:
  - Care leavers;
  - Families with children under 18 in receipt of council tax support or housing benefit;
  - Families with disabled children.

### 3.18 Children's Society headline recommendations for enforcement agents

- Enforcement agencies should always give opportunities to access advice and negotiate repayments to families they visit.
- Enforcement agencies should review their policies to ensure their methods of collecting debt are considerate of children being in the home.

### 3.19 Recommendations for central government

- The National Standards for Bailiffs and Enforcement Agents should be updated to include all families with children under 18 in their recommended list of vulnerable groups.
- Collection reporting to the Department for Communities and Local Government should be updated to include reporting on the number of households, with an attachment from benefits order to prevent councils being encouraged to use debt collection practices that are harmful to children.

### Local Context

3.20 Nottingham City Council's debt collection includes the use of enforcement agents as part of the recovery programme. The strategy, detailed below, is based on best practice and incorporates mandatory legal requirements.

3.21 The Council has contracts with three Enforcement Agent companies and over the last 2 financial years, the following number of liability orders and value of council tax debt has been passed to the Enforcement Agents for recovery:

	No of liability orders	Value of debt (£m)	Recovered (£m)
2013/14	17,881	£10.9m	£2.3m
2014/15	14,046	£9.3m	£2.2m

### Other Local authorities

3.22 Virtually all local authorities utilise a form of enforcement agents. Core city local authorities have been approached to share their debt escalation processes and use of enforcement agents. This information is detailed in the table below:

Local Authority	Use external enforcement agents?	Use enforcement agents for council tax reduction cases?	Use EAs for non-council tax reduction cases?	Minimum debt to enforcement agents
Birmingham City	Yes	Yes, but those on passported benefits	Yes	£150
Bristol City	Yes	Yes	Yes	£50
Leeds City	Yes	No	Yes	£50
Liverpool City	Yes	No	Yes	£100
Newcastle City	Yes – to support in house service	Yes, but only up to compliance stage	Yes	£10
Nottingham City	Yes	Yes	Yes	£70

- 3.23 The table above shows that local authorities currently have different approaches to the treatment of council tax debt where households are in receipt of council tax reductions, there are also recognisable variations in the minimum level of debt that is considered suitable for enforcement agent activity, ranging from £10 to £150 minimum referral level. Significantly, all core cities use enforcement agents as part of their debt recovery toolkits.
- 3.24 Newcastle City Council use a hybrid model of enforcement and in July 2014, agreed to implement an internal enforcement service. It was felt that this offered a more joined up and streamlined approach to debt recovery and, by working closely with the income and recovery team, the enforcement agents should be better able to promote and identify customers' entitlement to discount, exemptions and relief.
- 3.25 It is worth noting that the same three enforcement companies used for council tax collection in Nottingham are also used for business rates. However, there is an additional charge at the enforcement stage of 7.5% for the value of debts above £1500. The Council's Processing and Enforcement Team also use the same three enforcement agency companies as used for council tax recovery, mainly for the recovery of penalty charge notices and bus lane penalty charges. The Council's Processing and Enforcement Team also undertake recovery activity for Leicester City Council bus lane violations.

#### Nottingham City Council's Process and applicable charges

- 3.26 The passage below outlines the Council's process and charge stage. The parts in italics below are the additional safety nets introduced by the Council to filter out citizens who may be vulnerable or in of additional support.
1. Council tax bill issued
  2. Reminder issued\*
  3. Summons issued. *Letter inserted offering the opportunity to be referred to an advice agency.*
  4. Liability Order requested at the Magistrate's Court
  5. If the Council have details of benefits or employment, they would seek to reduce/attach to earnings at this stage, rather than escalate to enforcement agents.
  6. *Enforcement Agencies send a Pre-Compliance Notice. There is no fee at this stage, the new regulations removed this stage but the Council has instructed their agents to carry out this process*

*as a final opportunity to pay without enforcement fees. Many other local authorities do not do this.*

*This notice includes a questionnaire and asks citizens if they would like to make an offer of payment and if they need help from an advice agency. If requests for advice are received, a 30 day hold is put onto the account and a referral sent to an advice provider.*

Enforcement agencies seek to make payment arrangement within the Council guidelines, for example, if before October, the debt to be paid within the financial year, if after October, and the debt to be cleared within 12 months.

If the citizen cannot afford to do this, a Means Enquiry Form is sent to understand the financial circumstance of the citizen.

7. Enforcement Agencies send a Compliance notice. There is a £75 fee at this stage (dictated by regulations).

*This notice includes a questionnaire and asks citizens if they would like to make an offer of payment and if they need help from an advice agency. Requests for advice are returned to the Council, a 30 day hold is put on the account and a referral is sent to an advice provider.*

The Enforcement Agent seeks to make a payment arrangement within City Council guidelines, for example, if before October, the debt to be paid within the financial year, if after October, and the debt to be cleared within 12 months. If the citizen cannot afford to do this, a Means Enquiry Form is sent to understand the financial circumstance of the citizen.

8. Enforcement Agencies visit the citizen. There is a £235 fee at this stage (dictated by regulations). Further fees may be added if there is an 'intention to remove goods' and agents would seek payment in full initially but would accept payment arrangements if the citizen signs a 'taking control of goods' agreement.

If a citizen makes a payment arrangement with the Enforcement Agent, at either the compliance or enforcement stage, but then defaults on it, the Enforcement Agent would make a number of attempts to contact the citizen in order to make a new arrangement. In reality, they would make at least 4 new arrangements.

\*if a citizen receives a reminder, brings their account up to date then receives a reminder again for another instalment within the financial year, on the third occasion they would be issued a final reminder. This removes their



opportunity to pay by instalments and the Council requests the balance in full – which is a statutory requirement.

### Focus for the review

3.27 Members are asked to use the information included in the report to scrutinise the use of enforcement agents in Nottingham relation to council tax collection.

3.28 The review will focus on the following areas:

- The use of enforcement agents following the introduction of new legislation seeking to balance the ability to collect debt with the rights of the creditor to receive effective and proportionate enforcement.
- What are the problems with the current system of debt recovery in Nottingham?
- Is the criteria used by this Council to refer cases to bailiffs reasonable?
- Are the processes adopted by this Council in relation to the use of enforcement agents reasonable and are they applied reasonably?
- How does this Council compare with other authorities in terms of fairness and effectiveness?
- In March 2015, the Children’s Society published a report regarding the impact of debt collection on children and young people. How does this Council compare with the recommendations made by the Children’s Society in its report, ‘The Wolf at the Door’?
- How practical are the recommendations made by the Children’s Society in its report?
- What is the impact of any recommendation not only on the debtor but also on the service and service users not in debt?
- Would the collection of debt by this Council be improved for both debtors and enforcement agents by being provided in-house by this Council, either totally or partially?

### **4. List of attached information**

4.1 None

### **5. Background papers, other than published works or those disclosing exempt or confidential information**

5.1 None

## **6. Published documents referred to in compiling this report**

- 6.1 Ministry of Justice, 2014, Taking Control of Goods: National Standards
- 6.2 Local Government Ombudsman, 2013, Taking Possession: Councils' use of bailiffs for local debt collection.
- 6.3 Department for Communities and Local Government, 17 June 2013. 'Clampdown on councils using heavy-handed bailiffs'.
- 6.4 StepChange Debt Charity, Council tax debts, how to deal with the growing arrears crisis tipping families into problem debt, 2015.
- 6.5 The Children's Society, the Wolf at the Door - How council tax debt collection is harming children, The Children's Society, March 2015.

## **7. Wards affected**

- 7.1 Citywide

## **8. Contact information**

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