

Cabinet

20th November 2008



Council Tax and Business Rates Recovery Timetables and Enforcements, Council Tax on Second Homes and Benefit Fraud

**Joint Report of Stuart Crowe, County Treasurer and
Gary Ridley, Acting Chief Executive, Wear Valley District Council
[Cabinet Portfolio Member for Corporate Resources,
Councillor Michele Hodgson]**

Purpose of Report

- 1 To seek Member approval for policies/procedures in respect of:
 - (i) Council Tax and Business Rates Recovery timetables and Enforcements.
 - (ii) Council Tax and Second Homes.
 - (iii) Benefit Fraud.

Background

- 2 The above policies/procedures are currently carried out by the 7 District Councils. They all contain aspects of service delivery which have a highly visible public interface and as such it is important that the unitary Authority standardise service delivery post vesting day.
- 3 The attached reports are built around best practice and existing practice, and once agreed can start to be implemented in advance of vesting day (with the exception of the Second Homes report). This will help to ensure a seamless transition to the new Authority and also enable adequate publicity to be issued.
- 4 The following paragraphs outline the main recommendations in relation to each policy/procedure with narrative where appropriate.

Council Tax and Business Rates

5 The main recommendations are as follows:

(i) Council Tax

In relation to Council Tax, the Districts use varying recovery timetables and enforcement methods which are detailed in Annex A. It is recommended that the table below be used for the basis of council tax recovery. This is considered necessary in order to maximise collection rate performance, standardise service delivery and make early contact with debtors.

Stage	Dates
1 st Instalment due	1 st April (10 instalments per year in-line with statutory scheme)
1 st Reminder	14 days after instalment date
Cancellation Notice	24 days after instalment date
Summons	38 days after instalment date
Liability Order	53-59 days after instalment date
Enforcement	67-76 days after instalment date

It is recommended that the following methods of enforcement be used where appropriate:

- Attachment of earnings/benefits/members' allowances
- Bailiff
- Insolvency
- Charging Order
- Committal
- Prosecution for failure to provide information

In support of the above timetable and enforcement action, detailed procedures exist which will take into account customer care, equality and diversity and performance management arrangements so as to ensure consistency of service delivery and outcomes.

(ii) Business Rates

In relation to Business Rates, the Districts again use varying recovery timetables and enforcement methods which are detailed in Annex A. It is recommended that the table below be used for the basis of business rate recovery. This is considered necessary in order to maximise collection rate performance, standardise service delivery and make early contact with debtors.

Stage	Dates
1 st Instalment due	1 st April
1 st Reminder	14 days after instalment date
Cancellation Notice	24 days after instalment date
Summons	38 days after instalment date
Liability Order	53-59 days after instalment date
Enforcement	67-76 days after instalment date

It is recommended that the following methods of enforcement be used where appropriate.

- Bailiff
- Insolvency
- Security for unpaid rates
- Committal

In support of the above timetable and enforcement action, detailed procedures also exist which will take into account customer care, equality and diversity and performance management arrangements so as to ensure consistency of service delivery and outcomes.

(iii) Second Homes

Annex B includes a report on Second Homes. At present the District Councils give the following discounts for second homes.

	Current Discount Given	Number of properties
Chester-le-Street	10%	135
Derwentside	50%	43
Durham	50%	46
Easington	50%	0
Sedgefield	50%	51
Teesdale	10%	244
Wear Valley	50%	706

The above shows that maintaining the existing position is not viable post vesting day as this would result in varying amounts of council tax being charged. It is recommended that only the minimum discount i.e. 10% be given. This will generate an additional £0.15m p.a. and will act as an incentive to bring empty properties back into use.

(iv) Fraud Policy

Annexes C and D set out a report and policy in relation to benefit fraud. Overall, in 2007/08 District Council performance was above average as measured by Best Value Performance Indicators. Benefit fraud is a key aspect of the overall benefit service and it is important that the Authority is seen to be taken a pro-active approach in this area.

It is important that the policy gives due regard to the circumstances of each individual case before a decision is taken as to the appropriate course of action. It is recommended that Annex D should be agreed.

Customer Care

- 6 Given the high visibility of these elements of service delivery appropriate publicity will need to be given in order to minimise potential complaints or adverse reaction. Training will also be given to staff to ensure consistency of treatment of customers. Thirdly, wherever possible between now and vesting day, procedures should be amended which are consistent with the annexes to this report in order to ensure a seamless transition where possible.

Seminar

- 7 A Seminar was held on 3rd November which was attended by 46 Councillors. Issues raised by Members were mainly around fairness and firmness of treatment for those who were experiencing difficulty in making payment because of age or infirmity or ability to pay. Particular questions were raised about the content and tone of letters which are sent out to these people who were finding it difficult to pay.

All of the concerns can be addressed by a sensible and sympathetic approach to customer care with clear communication to residents setting out what is expected of them and what they can expect from the Council as outlined above.

Conclusion and Recommendation

- 8 The Revenues and Benefits service is one which is delivered to all households and has a high visibility. Where the service is delivered well, it can have a positive impact upon the Authority's reputation but where it is delivered poorly can also undermine the Authority's reputation. The annexes to this report seek to ensure that there is a consistent approach to service delivery leading to high performance.

9 It is recommended that the report and annexes be agreed.

Contact: Stuart Crowe Tel: 0191 383 3550

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p/reports/ct17-08

1. **Introduction**

This report sets out recommendations regarding the enforcement actions and timetable for recovery of council tax and National Non-domestic rates for the Unitary Authority. These recommendations will seek to be effective from April 2009.

2. **Background**

2.1. At present, the 7 District Councils collect council tax on behalf of DCC, DPA and themselves. They also collect NNDR on behalf of the Government with all proceeds being paid to the Government.

2.2. Whilst the collection of local taxes is heavily regulated there exists significant variation across the Districts in terms of the tools of collection, and the timescales of debt recovery. These combine with resource inputs to affect performance in terms of collection rates and costs of service delivery.

2.3. The recommendations are built on the principle of maximising the collection of tax through effective recovery action i.e. action which is timely, uses proportionate and available methods of recovery and offers flexibility where appropriate.

2.4. The following paragraphs deal with Council Tax and NNDR separately in terms of recovery timescales and enforcement methods.

3. **Statutory Scheme for Council Tax Collection**

3.1. A statutory scheme exists for the collection of Council Tax. This is outlined below: -

- i) A reminder can be issued as soon as an instalment is missed.
- ii) A summons can be issued 14 days after a reminder which has been ignored
- iii) A liability order can be obtained 15 days after the summons',
- iv) The subsequent choice of enforcement is up to the Council in accordance with regulations.

3.2. The above seeks to make early contact with debtors.

3.3. Following the statutory scheme means that if a reminder is ignored, summons costs are added to the bill once the summons is issued. This creates further hardship by increasing the level of indebtedness.

Council Tax Overview of current processes and timescales

Council Tax

4.1 The table below shows current processes, timescales and performance for council tax.

	C le St	Derwent	Durham	Eas	Sedge	Tees	WV
1st Instalment due	1/04	1/04	1/04	1/04	1/04	1/04	1/04
1st reminder - days after instalment	14	14	15-22	30-35	14	14	14
cancellation /final notice - days after instalment	39	n/a	36-43	45-50	28	42	24
Summons - days after instalment	69	37-40	50-57	60-65	42	56	34
liability order - days after instalment	86	54-56	71-78	85-90	56	77	50
Referred to Bailiff - days after liability order	15	15	14	14	28	28	14
In year collection performance	97.5%	98%	98.2%	96.3%	95.3%	98.8%	99.4%
Direct Debit penetration	76%	60%	53%	58%	52%	57%	67%

Definitions

- a) Cancellation of Instalments/ Final Notice – The right to pay by instalments is lost and the whole amount becomes due.
- b) Summons – An application is made to the Magistrates Court to obtain a Liability Order.
- c) Liability Order – An all purpose order which allows several recourses of recovery e.g. attachment of earnings order.

4.2 The above shows –

- a) Wear Valley has the shortest recovery cycle at 50 days and Easington the longest at 85-90 days. Easington issue 1st reminders after all other Districts
- b) generally, the higher performing authorities have shorter recovery timescales. The national average performance for District Councils in 2006/07 is 98.2%, and top quartile is 98.00%
- c) Derwentside follow the statutory scheme provided by the Council Tax Regulations. Therefore, where there is no payment after a reminder has been issued, Derwentside issue a summons 37-40 days after the instalment is due. Cancellation notices are issued where payment(s) have been made where a second reminder has been issued, and where there is a further failure to pay.

- d) given the significant variations shown above, customer care issues need to be considered as part of any changes made to procedures. Adequate and early information/publicity would be needed to educate the public as to any changes. This is a key issue to be addressed.

Benchmarking

4.3 The table below shows what other local authorities have in place:-

	North Tyneside	South Tyneside	Gateshead	Sunderland	Newcastle	Stockton	Darlington
1st instalment due	1 st	1 st	1 st	5 th	1 st	1 st	1 st
Days to reminder	14	15	14	30	14	14	21
Days to CAN / Final Notice	-	-	28	60	28	28	42
Days to summons	28-35	29	42	90	42	42	63
Collection Rates 2007/08	97.1%	96.6%	96.4%	95.8%	95.8%	97.1%	96.6%

4.4 The above table shows that most authorities issue cancellation notices and have broadly similar timescales (except Sunderland) for recovery of council tax. It also shows that 2 of the 4 best performers do not issue cancellation notices. Generally, the same timescales are also used for NNDR.

Enforcement

4.5 Other enforcement methods which were used are as follows :-

	Cle St	Derwent	Durham	Eas	Sedge	Tees	WV
Attachment of earnings/benefits/members allowances	Yes	Yes	Yes	Yes	Yes Not for 3 years	Yes	yes
Use of Committal	No	Yes	No	Yes		no	Yes
Use of Insolvency	No	Yes	No	Yes	No	no	Yes
Use of Charging orders	No	Yes	no	Yes	No	no	No
Prosecution for failure to provide information	No	Yes	No	No	No	No	No

4.6 The table below shows the approximate frequency of use of the above methods in 2007/08 (need the figures finalised)

	Chester	Derwent	Durham	Easington	Sedgefield	Tees	WV
Attachment of earnings/benefits/members allowances	95	261	342	345	560	15	278
Use of Committal	0	13	0	25	0	0	2
Use of Insolvency	0	0	0	25	0		7
Use of Charging orders	0	31	0	48	0	0	0
Prosecution for failure to provide information	0	111	0	0	0	0	0

4.7 The above shows that on occasion, and with care, all courses of recovery are used including committal to prison and insolvency proceedings. However, an early recovery process can reduce the need to resort to the above types of action.

5. **Council Tax Good Practice**

5.1 Both the Audit Commission (in 1995) and former ODPM (in 2004) have produced good practice in relation to tax collection. Whilst the AC best practice is old, it is still valid today. The good practice from the Audit Commission (page 50 of the guidance) suggests: -

- a) a clear link between speedy recovery action and improved cash flow leading to higher collection rates
- b) a reminder be sent 7 days after an instalment is missed, with no more than 21 days elapsing from instalment date. All Authorities except Easington achieve this.
- c) a summons may be sent at least 21 days after the reminder, with no more than 35 days elapsing from instalment date. Only Wear Valley achieves this.
- d) a liability order may be obtained 15 days after the summons, with no more than 77 days elapsing from instalment date. All Authorities except Chester le Street achieve this.

5.2 Good Practice from the ODPM suggests: -

- Commitment from the Council is vital. If the Authority threatens a resident with an action but does not follow through, the Authority's reputation could be adversely affected. The Authority should move through each recovery stage promptly. This makes determination to carry things through important (para. 8.3 of the guidance).

- That there is a clear link to the benefit service (para. 9.2 of the guidance) i.e. council tax due could be claimed from council tax benefit. This makes anti-poverty works (e.g. benefit take up) vital in order to maximise customer care and performance.
- Direct debit is recognised as being cheaper and easier to administer than other collection methods (para. 0.1 of the guidance) and councils should promote take-up.

6 **Customer Care Issues**

- 6.1 Given the variation in service delivery it is important to recognise the implications for customers should changes be made. These are considered below: -
- i) Making early contact with debtors is favoured by debt advice agencies. This helps the debtor to address the problem, protects the Council's position and maximises the time available for payment arrangements to be made. This tends to imply an early recovery process.
 - ii) There needs to be a balance struck between the costs of recovery/enforcement and improved cash flow/collection rates. The 2009/10 budget assumes a collection rate (all years) of 99%. This level of performance would make the Authority the best performing Authority, for its size, in England and achieve top quartile performance by some margin.
 - iii) The customers' needs should be of prime importance. This means that the Authority needs to be seen to be firm but fair with non-payers, in the eyes of those who do pay. This also means that there needs to be equality of treatment across the County. Thirdly, early intervention should result in support mechanisms (e.g. benefit take up/debt advice/exemptions/payment arrangements) being offered in order to minimise the escalation of recovery action.
 - iv) Once clear recovery processes are agreed these will need to be incorporated into a Debt Management Policy covering all of the Authority's debts.
 - v) Districts with shorter recovery timetables tend to issue fewer summons/ referrals to bailiffs being used. This results in less staff time being spent on summons/bailiff work, however this is offset by additional reminders being sent out earlier than the process. A shorter timescale will result in more recovery action in the first year (in terms of reminders) of the new Authority until the public become familiar with the process employed.

6.2 Queries about bills produced for 2009/10, will be handled as at present by locally based district staff until other options have been evaluated.

7. **Council Tax Recovery Recommendations**

7.1 The recommendations shown below bring forward recovery action to improve performance. Cancellation notices continue to be issued as this is the existing practice across 6 of the 7 districts. This cancellation notice forms an additional step in the recovery process compared to the statutory scheme as outlined in section 3, and gives customers an additional opportunity to pay without adding legal costs to their debt. The use of this will, in large part, be a new element of the recovery process in Derwentside.

7.2 The timetable below seeks to follow good practice as identified by the Audit Commission in terms of timescales.

7.3 The following recovery dates are recommended: -

Stage	Dates	Comment
1 st Instalment due	1 st April (10 instalments per year in-line with statutory scheme)	A small number of charge payers in Sedgefield still have a 1 st instalment date of 1 st May. It is recommended that these be brought forward to April.
1 st Reminder	14 days after instalment date	This will impact upon Easington most significantly, followed by Durham City.
Cancellation Notice	24 days after instalment date	This will impact most significantly upon Easington followed by Chester le Street. Also Derwentside and Teesdale do not issue Cancellation Notices and this will increase customer care but may result in additional workload for staff initially.
Summons	38 days after instalment date	This will impact most significantly upon Chester le Street followed by Easington.
Liability Order	53-59 days after instalment date	This will impact upon all authorities except Derwentside, Sedgefield and Wear Valley.
Enforcement	67-76 days after instalment date	This will impact upon all authorities except Derwentside and Wear Valley.

8 **Council Tax Enforcement**

8.1 The following enforcement actions are recommended but will only be used when all other attempts to recover sums outstanding have been exhausted.

- Attachment of earnings/benefits/members allowances
- Bailiff
- Insolvency
- Charging Order
- Committal
- Prosecution for failure to provide information

9 **NNDR Overview and current processes and timescales**

9.1 The table below shows the current processes, timescales and performance for NNDR.

	C le St	Derw	Durham	Eas	Sedge	Tees	WV
1st instalment due	1/04	1/04	1/04	1/04	1/04	1/04	1/04
1st reminder - days after instalment	14	14	15-22	30-35	14	14	14
Cancellation - days after instalment	45		36-43	60	28	42	24
Summons - days after instalment	60	37-40	50-57	90	42	56	34
Liability order - days after instalment	75	54-56	71-78	120	56	77	50
Pre bailiff letter - days after liability order	1	1	4	1	1	7	7
Referred to Bailiff - days after liability order	14	15	14	14	15	21	14
In year collection performance	96.7%	99.3%	98.2%	97.8%	99.1%	99.6%	99.4%
Direct Debit penetration	50%	53%	42%	42%	45%	49%	56%

9.2 The above shows: -

- a) Generally, the speedier the process the higher the collection rate. The 2006/07 national average performance for Districts is 99.02%. Four districts achieved this in 2007/08. (The 2007/08 national figures are not yet available).
- b) Wear Valley has the shortest recovery timetable and Easington the longest.
- c) Only Derwentside does not issue Cancellation Notices.

9.3 In terms of enforcement action :-

	C le St	Derwent	Durham	Eas	Sedge	Tees	WV
Use of committal proceedings	No	yes	no	no	No	no	Yes
Use of insolvency proceedings	No	yes	no	yes	No	no	Yes
Use of charging orders	No	Yes	no	no	No	no	No

9.4 The table below shows the levels of use of the above in 2007/08.

	C le St	Derwent	Durham	Eas	Sedge	Tees	WV
Use of committal proceedings	0	13	0	25	0	0	2
Use of insolvency proceedings	0	0	0	25	0	0	7
Use of charging orders	0	31	0	48	0	0	0

9.5 The above shows that all methods are used. Again, if used in appropriate cases, they can help to improve collection performance.

10 **NNDR Recovery Recommendations**

10.1 The recommendations in the table below seek to bring forward recovery action in order to improve performance. It is proposed that a cancellation notice continues to be issued as this is the existing practice across 6 of the 7 districts. This cancellation notice forms an additional step in the recovery process compared to the statutory scheme as outlined in section 3. The use of this will be a new element of the recovery process in Derwentside.

10.2 The following table is recommended: -

Stage	Dates	Comment
1 st Instalment due	1 st April	A small number of charge payers in Sedgefield still have a 1 st instalment date of 1 st May. It is recommended that these be brought forward to April.
1 st Reminder	14 days after instalment date	This will impact upon Easington most significantly, followed by Durham City.
Cancellation Notice	24 days after instalment date	This will impact most significantly upon Chester le Street followed by Easington. Also Derwentside do not issue Cancellation Notices and this will increase customer care but may result in additional workload for

		staff initially.
Summons	38 days after instalment date	This will impact most significantly upon Chester le Street followed by Easington.
Liability Order	53-59 days after instalment date	This will impact upon all authorities except Derwentside, Sedgefield and Wear Valley.
Enforcement	67-76 days after instalment date	This will impact upon all authorities except Derwentside and Wear Valley.

11 **NNDR Enforcement**

11.1 The following enforcement actions are recommended: -

- Bailiff
- Insolvency
- Security for unpaid rates
- Committal

11.2 The above types of recovery action will be made when all other avenues have been exhausted.

12 **Implementation**

12.1 There are several key risks associated with implementing the recommendations within this report. These are:

- (i) Negative publicity from the public may arise due to the bringing forward of recovery action. This may be mitigated through adequate publicity being given out as early as practicably possible and a clear recovery timetable being included with the bill.
- (ii) I.T. issues. It is a relatively straightforward matter to alter I.T. system parameters to give practical expression to revised recovery dates. It will be necessary to carry out testing to ensure that systems are capable of producing documents as agreed.
- (iii) Court dates will need to be agreed in advance in order to adhere to the agreed timetable. This may require an element of flexibility between the courts and the Council.
- (iv) Management control needs to be of prime importance i.e. from an equality perspective managers need to ensure that recovery dates are adhered to. This may be significant given that the service is likely to remain de-centralised during the first year of operation.

- 12.2 The risks identified above, are capable of being managed provided that adequate managerial input and controls are in place. Once agreed it is vital that recovery timetables are adhered to so as not to undermine performance. It needs to be remembered that the budget for 2009/10 and beyond assumes an all year collection rate of 99% for council tax. Failure to achieve this by 1% will cost the Council approximately £2.2m per annum.

13 **Resource Implications**

- 13.1 At present, it is difficult to accurately quantify the precise resource implications of agreeing the recommendations included within the report. However, the overall resources currently available to the County shall be adequate. That said, bringing recovery action forward, especially in the case of Easington, will result in more reminders being issued in the early months of the new Authority. This may require a small amount of overtime to be worked or the re-prioritisation of existing work. This is a managerial challenge to resolve which will be taken into account when detailed work on structures and processes is carried out. That said, this may lead to fewer summons/bailiff cases which will result in less work for staff and lower costs for customers.

14 **Performance Management**

- 14.1 When agreed, it is important that procedures are implemented at a local level. It is intended that a performance management process will be used to ensure that procedures are adhered to. This is important given that the service will be delivered from 7 sites and that consistency of service delivery needs to be demonstrated.

15 **Equality and Diversity**

- 15.1 Research from NOP found that 17% of individuals aged 16+ (and 47% of individuals in socio economic group E) do not have a bank account. This means that these individuals are more liable to receive recovery action as they are not paying by direct debit. In other words they will receive a reminder even though they may be regular payers depending on when in the month they pay. This is inequitable compared to end of the month direct debit payers who will not receive reminders. Detailed procedures are being drafted to address this issue. Moreover, a full impact assessment will be carried out once the full procedures have been finalised.

16 Conclusion

- 16.1 The above shows that there are significant variations in terms of service provision. Thus there is a need to standardise processes where possible. In doing so a balance needs to be struck between : -
- encouraging payment;
 - focusing on customer care issues and minimising hardship;
 - ensuring efficiencies;
 - maximising performance; and
 - taking proportionate action
- 16.2 The recommendations therefore seek to bring forward recovery action and promote efficiency and accountability, leading to improved performance.
- 16.3 There is also consensus amongst the Revenues and Benefits Managers that an earlier recovery timetable is the way forward.
- 16.4 Finally, it is vital that adequate notice be given to customers, staff, members and welfare agencies (e.g. CAB) of any changes in order to minimise complaints and confusion in the first year.

17. Recommendations

- 17.1 These are :

Council tax

- 17.2 The following recovery dates are recommended: -

Stage	Dates	Comment
1 st Instalment due	1 st April (10 instalments per year in-line with statutory scheme)	A small number of charge payers in Sedgefield still have a 1 st instalment date of 1 st May. It is recommended that these be brought forward to April.
1 st Reminder	14 days after instalment date	This will impact upon Easington most significantly, followed by Durham City.
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17.3 The following enforcement actions are recommended but will only be used when all other attempts to recover sums outstanding have been exhausted.

- Attachment of earnings/benefits/members allowances
- Bailiff
- Insolvency
- Charging Order
- Prosecution for failure to provide information
- Committal

NNDR

17.4 The following table is recommended: -

Stage	Dates	Comment
1 st Instalment due	1 st April	A small number of charge payers in Sedgefield still have a 1 st instalment date of 1 st May. It is recommended that these be brought forward to April.
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17.5 The following enforcement actions are recommended: -

- Bailiff
- Insolvency
- Security for unpaid rates
- Committal

Background

- 1 From 1st April 2004 legislation (Local Government Finance Act 1992 New Section 11A) has allowed authorities the discretion to reduce the 50% Council Tax discount on second homes to 10%. Any revenue generated by a reduction in discount can be retained by the Authority.
- 2 In the 2007/08 financial year two of the district councils (Chester-le-Street and Teesdale) have taken advantage of this discretion and charge 90% tax to second home owners. Four of the district authorities continue to give 50% discount and one district has no second homes.

Wider Housing and Economic Issues

- 3 A possible benefit of reducing/eliminating the discount would be to bring properties back into the local housing markets on the basis that it would reduce competition.
- 4 Against this certain properties may only have planning permission as a holiday home which may preclude owners from bringing them back into full time use without renewed planning permission.
- 5 The County Council bid identifies a key priority for improvement as tackling imbalances between local needs and provision. This policy tool should help to achieve this.

Financial Implications

- 6 The table below shows the implications of granting the varying amounts of discount across the whole county based on 2008/09 financial year figures and the second homes recorded at the current time.

	10% discount	20% discount	30% discount	40% discount	50% discount
County Durham Council	£153,000 gain	£82,000 gain	£12,000 gain	£59,000 loss	£128,000 loss

7 The table below shows the above figures on a district basis:

	Current Discount Given	Number of properties	Proposed Discount				
			10%	20%	30%	40%	50%
			£000	£000	£000	£000	£000
Chester-le-Street	10%	135	0	12	24	37	48
Derwentside	50%	43	-19	-14	-9	-5	0
Durham	50%	46	-21	-16	-10	-5	0
Easington	50%	0	0	0	0	0	0
Sedgefield	50%	51	-19	-14	-10	-5	0
Teesdale	10%	244	0	20	40	60	80
Wear Valley	50%	706	-94	-70	-47	-23	0
			-153	-82	-12	59	128

- 8 The figures take into account the income gain or loss of equalizing the discount in all seven authorities. and the figures are calculated based on a 98% collection rate.
- 9 Given the above it is proposed that the policy on second home discount be set at 10% in order to maximise the financial benefit to the new Authority. The table at paragraph 9 shows the incidence of this effect across each district.
- 10 It is difficult to estimate any additional cost arising from collecting these higher amounts. However it is expected that this will be contained within existing resources. The additional Council Tax collected represents a small amount of the overall tax yield and is therefore not expected to have an impact on collection rates in future years.

Customer Care

- 11 The issuing of Council Tax bills will be an early interface between the new Authority and the citizen. It is therefore important that any changes to discounts are flagged up early and clear justification given for the change in order for citizens to accept a higher charge in advance of any due date for payment.
- 12 Other Authorities in the area offer the following levels of discount:
- Gateshead 50%
 - North Tyneside 10%
 - South Tyneside 50%
 - South Lakes 10%
 - Eden 10%
 - Richmondshire 10%
 - Hambleton 10%

- Middlesbrough 50%
- Stockton 10%

The above shows that a number of neighbouring Authorities have reduced the discount given.

Conclusion

- 13 The difference in income to the authority by equalizing the discount, shown on the table above, is between a gain of £153,000 and a loss of £128,000. In order to maximise the financial return from Council Tax it is proposed to set a discount of 10% on second homes.
- 14 Reducing the discount given on second homes should act as an incentive to bring empty properties back into use which will support housing objectives.
- 15 It is recommended that a 10% Council Tax discount on second homes be introduced from 2009/10.

1 **Background**

At present all 7 district council operate a fraud prosecution process. In recent years the amount of activity undertaken by other districts has increased as a result of an increased emphasis from central government on the prevention and detection of benefit fraud (supported by several best value performance indicators) and financial incentives given to local authorities to tackle fraud.

The attached policy seeks to use the following types of sanction: -

- Prosecutions, these will be used for the most serious cases and will only be used where the authority is satisfied that an investigation has been carried out in accordance with the Criminal Procedure and Investigations Act 1996 and Police and Criminal Evidence Act 1984. Relevant personal and social factors will be taken into account before any decision to prosecute is taken.
- Administrative Penalties, these will be used for less serious cases and again will take into account personal circumstances.
- Cautions, these are warnings given in certain circumstances where either of the above actions are not appropriate and there is admission of the offence. These will relate to relatively minor incidences of benefit fraud.

The Authority will always take into account: -

- The value of the financial loss involved
- The standard of the evidence obtained during the investigation
- Type of fraud
- Any mitigating or aggravating circumstances that might be present

before a decision is made to impose a sanction on the offender.

2 **Implementation**

There is little variance in the prosecution policies currently in place across the districts. Consequently, once the policy has been agreed it is feasible that implementation could go ahead in each district prior to vesting day with the agreement of service heads.

A detailed training procedure will be provided for relevant staff in advance of implementation.

3 **Performance**

The table below shows performance of each district 2007/08 in relation to this element of service. It is noteworthy that no district was in the

bottom quartile.

AUTHORITY	NUMBER OF SANCTIONS	QUARTILE
Chester le Street	57	Top
Derwentside	78	Top
Durham City	28	Below average
Easington	78	Above average
Sedgefield	87	Top
Teesdale	7	Below average
Wear Valley	73	Top
Unitary Total	408	

Overall the table shows above average performance across the board. Whilst BVPIs are no longer relevant for this service they may be retained as a useful indicator of performance in future years.

4 **Financial**

It is the Authorities duty to investigate fraudulent claims as a protection of the public purse. The regulations allow monies recovered, as a result of the repayment of fraudulently overpaid benefit, to be kept by the authority along with any amount of administrative penalties collected.

5 **Recommendation**

It is recommended that the report and annex be agreed.

BENEFITS DIVISION

Fraud Prosecution Policy

Introduction

The Authority is committed to the prevention and detection of benefit fraud. It will endeavour to ensure that customers receive the benefit to which they are entitled and operate robust procedures that minimise the potential for public funds to be abused.

This policy sets out what actions will be taken in dealing with cases of benefit fraud, the criteria used to decide whether a sanction is appropriate and provides assurance that decisions are consistent and fair.

The Authority will always take into account:

- The value of the financial loss involved
- The standard of the evidence obtained during the investigation
- Type of fraud
- Any mitigating or aggravating circumstances that might be present.

By taking action against fraudulent offenders, the Authority will convey the message to the public that abuse of the benefits system will not be tolerated.

This policy is underpinned by a comprehensive set of procedures.

Decision Making

A decision on sanctions will be made independently of the investigation team. A designated officer(s) will make this decision having full disclosure of the investigation.

Forms of Sanction will Include

- Prosecution
- Offer of an Administrative Penalty
- Offer of a Caution.

Prosecution

In the most serious of cases, the Authority will give consideration to the prosecution of those offenders suspected to have committed benefit fraud.

Prosecution may be brought for a suspected offence under the following legislation:

- The Social Security Administration Act 1992 (as amended)
- The Theft Act 1968 (as amended)
- The Fraud Act 2006
- Any other relevant provision in law

The Authority must be satisfied that the investigation has been conducted efficiently and in accordance with the Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984. Where administrative failures or unnecessary delays are evident, the Authority will take these factors into consideration but they will not preclude a prosecution if the offence is serious.

In deciding whether prosecution is an appropriate course of action, the Authority will be guided by the Code for Crown Prosecutors and will only initiate legal action if it is in the public interest to do so. When necessary, advice will be obtained from an appropriate source, usually the prosecuting solicitor.

Whilst it will form a part of the decision making process, the value of any financial loss is only one factor to be taken into consideration when determining whether a prosecution is appropriate. Other factors such as the nature and duration of the offence, the method of commission and its severity will need to be considered.

Personal and social factors will also be evaluated, including:

- The physical and/or mental health of the customer
- Their age and the likely effect of prosecution
- Their ability to understand proceedings
- Their domestic situation
- The effect upon any third parties

Similarly, aggravating factors will also be considered, such as:

- Any element of conspiracy or collusion
- Previous fraud sanctions or convictions
- Was there any degree of premeditation?
- Is this type of offence prevalent within the area?
- Has an offer of a caution or penalty been refused?

The above illustrates factors, which will be considered in deciding whether to prosecute an individual. It does not represent an exhaustive list of individual circumstances, which will be taken into account, and should be read in conjunction with the Administrative Penalties and Cautions sections.

Any decision taken under this policy will be fully documented and the factors used in reaching the decision recorded.

In the event of a prosecution not being the preferred option, alternative sanctions may only be considered if the case could be successfully prosecuted if the offer of a sanction is refused.

Administrative Penalties

Section 115A of the Social Security and Administration Act 1992 as inserted by section 15 of the Social Security Fraud Act 1997 allows the Authority to apply a penalty equal to 30% of the total benefit overpayment as an alternative to prosecution. Administrative penalties are offered on behalf of the Secretary of State and there is no right of appeal. Having agreed to pay a penalty, there is a twenty-eight day period in which a person has the right to change their decision. If a penalty is refused or withdrawn, the Authority should consider whether to prosecute; therefore all cases must be of a prosecutable standard and satisfy the evidential and public interest test.

For an offer of an administrative penalty to be made, the following criteria should be met:

- There are grounds for instituting criminal proceedings but the case is not so serious that prosecution should be considered from the outset.
- The offender's history of previous convictions/cautions has been taken into account.
- The offer of a penalty would not cause severe financial hardship or put a vulnerable person at risk.

There will be occasions where not all of the above criteria are met, however an administrative penalty may still be appropriate. Every case will be considered on its own merits and legal advice will be sought where there is doubt whether an administrative penalty is an appropriate method of disposal.

Cautions

A caution is a meaningful warning given in certain circumstances as an alternative to prosecution and where an offer of an administrative penalty is not appropriate. Should the offender decline the offer of a caution then consideration will be given to initiating criminal proceedings, therefore all cases must be of a prosecutable standard and satisfy the evidential and public interest test.

For an offer of a caution to be made, the following criteria should be met:

- The offender is eighteen years of age or over.
- There are grounds for instituting criminal proceedings but the case is not so serious that prosecution should be considered from the outset.
- The offence is relatively minor.
- The offender's history of previous convictions/cautions has been taken into account.
- There has been a clear, reliable and recordable admission of the offence, which is compliant with the Police and Criminal Evidence Act.

There will be occasions where not all of the above criteria are met, however a caution may still be appropriate. Every case will be considered on its own merits and legal advice will be sought where there is doubt whether a caution is an appropriate method of disposal.

Partnership

Where appropriate, joint sanction work with the Department for Work and Pensions will be considered in accordance with the Fraud Partnership Agreement. Joint sanction work will also be considered with other agencies i.e. Her Majesty's Revenues & Customs, Police.

Publicity

Consideration will be given to whether the outcome of any sanction case should be reported to the community via various media channels. Publicity, where appropriate, will ensure the profile of counter-fraud activity remains at a level, which will contribute to ensuring the key objectives of preventing and detecting fraud are met.

Appendix 1: Implications

Local Government Reorganisation

(Does the decision impact upon a future Unitary Council?)

Yes

Finance

These reports recommend adoption of a set of policies and procedures to standardise a range of services relating to Council Tax Rates and Benefit Fraud. The approach recommended will contribute to maximising income for the Unitary Council.

Staffing

Staff will need to adopt new policies and procedures.

Equality and Diversity

None

Accommodation

None

Crime and disorder

None

Sustainability

None

Human rights

None

Localities and Rurality

None

Young people

None

Consultation

None

Health

None