

DELEGATED DECISION

Corporate Management Team

4 February 2021



**Recommencing Recovery Action –
Council Tax & Business Rates Arrears**

Report of Paul Darby, Corporate Director of Resources (Interim)

Councillor Alan Napier, Cabinet Portfolio Holder for Finance

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 To provide an update on the current position regarding Council tax and Business Rates collection.
- 2 To outline proposals for the recommencement of formal recovery action for Council Tax and Business Rates, which was suspended from 20 March 2020 following COVID-19 lockdown, up to and including final demand stage.

Executive summary

- 3 COVID-19 and the subsequent lock-down has impacted many households and businesses. The impact has been widespread, but we have focussed on protecting residents and businesses which are considered to be financially vulnerable with a reduced propensity to pay.
- 4 In response to the COVID-19 pandemic and anticipated financial impacts, CMT agreed to the suspension of all recovery action on 20 March 2020.
- 5 The Council's decision to suspend all recovery action was made to ensure that support could be provided to ease pressure at a time when households were severely impacted by the restrictions imposed by the pandemic. However, consideration needs now to be fully made of the fine balance between helping those residents and businesses who are

unable to pay and also enabling the Council to have a more formal dialogue with those households or businesses where debts may be building to unmanageable levels as a result of a lack of engagement with the Council.

- 6 Recovery action cannot remain suspended indefinitely and to continue to do nothing to progress the outstanding arrears of households and businesses may result in criticism by debt support and advice agencies. Whilst residents and businesses have a duty to maintain contact with their creditors, as a creditor the Council also has a duty to ensure that those in debt or arrears have full details of their position. Many of those with Council Tax and / or Business Rates arrears have had no contact or communication since summer 2020.
- 7 COVID19 and the subsequent postponement and suspension of recovery action continues to have a significant and detrimental impact upon in-year collection and cash flows.
- 8 The in-year collection rate for Council Tax has been protected somewhat by the circa £3.9M hardship top-up payments credited to date to the accounts of working age CTR claimants who had a net liability to pay.
- 9 In- year collection has however continued to fall month on month. At the end of December 2020 Council Tax in-year collection was 3.19%points below the same position in 2019 and Business Rates was 4.15%points below the same point last year. The gap between the in year Council Tax and Business Rates collection rates this year compared to last year has widened as the year has progressed.
- 10 As the year has progressed the majority of LA7 Councils have restarted formal recovery action. Those that have restarted formal recovery action are reporting an immediate impact on payment and subsequently in year collection rate. Whilst all LA's have reported a reduction in their in-year collection year on year; there is now a wider gap in terms of Durham's in year rate compared to others due to the lack of formal action being taken in Durham.
- 11 At the end of December 2020 there were 21,799 Council Tax accounts in arrears in respect of the 2020/21 financial year. The total value of Council Tax outstanding against these accounts was £13,347,692.
- 12 Of the 21,799 Council tax accounts in arrears, the following is worth noting:
 - The full balance is outstanding on 12,692 of these accounts; meaning that no payment has been made towards these accounts.

- Less than a third of outstanding accounts, 6,191 accounts, have been subject to recovery action in previous years. This means that the majority of the accounts in arrears - 15,608 accounts - may have fallen into arrears for the first time, suggesting that the COVID 19 pandemic has impacted their ability to pay.
 - Of the 21,799 accounts in arrears only 1,724 accounts, 7.91%, have been or are subject to an element of 'means tested benefit', reducing their liability.
- 13 In total 32,504 soft reminders have been issued to date, 31,212 in respect of Council Tax and 1,292 in respect of Business Rates. The overall response to the reminders was disappointing in terms of customer contacts and impacts. Between 13 July 2020 and 24 December 2020 in total 5,876 calls were received, of which only a third, 1,797, - 33.5%, were as a direct result of a soft reminder. The calls received represent only 17.19% of the total number of soft reminders issued and 5.76% for those calling as a result of a soft reminder.
- 14 Proactive contact was also made to those accounts where direct debit instructions have been cancelled to try to prevent those accounts falling into arrears. In terms of outbound calls, 4,340 calls were made between 5 October 2020 and 24 December 2020. In addition, the team were unable to trace telephone numbers for 1,142 accounts and failed to make contact, after three attempts, with a further 1,140 accounts.
- 15 The contact arising from the soft reminder and proactive calls resulted in 1,236 accounts having some sort of Council Tax payment arrangement or the potential to reduce the amount outstanding (those referred to make an application for a Council Tax exemption or discount or Council Tax Reduction). An additional 287 customers received advice and information, including signposting
- 16 The proposals outlined in this report seek to restart formal recovery action outlining proposals for the current 2020/21 financial year, previous financial year and the forthcoming 2021/22 financial year.
- 17 The report also highlights the introduction of what is known as the "Breathing Space Scheme" which will impact recovery processes and may impact Council Tax collection in the short term. The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 have been laid, introducing the Scheme from 4 May 2021.
- 18 The regulations set out a debt respite scheme for individuals in problem debt; providing eligible people in problem debt, who receive professional debt advice, access to a sixty-day period in which interest, fees and charges are frozen and enforcement action is paused – referred to as "breathing space". For individuals receiving mental health

crisis treatment, the regulations establish an alternative route to accessing the protections of a moratorium, ensuring that the protections are in place for the duration of the customer's crisis treatment.

- 19 Breathing Space will apply to a wide range of debts including, Council Tax, Business Rates, sundry debt and Parking Fines. A statutory debt repayment plan (DRP) will enable those in problem debt to enter a statutory agreement with their creditors to repay their debts in full over a reasonable timeframe. In exceptional cases, a DRP could last for more than 7 years for vulnerable debtors on low income but cannot extend beyond 10 years. Individuals entering into a DRP would receive legal protections from creditor enforcement action for the duration of their plan and relief from interest and charges. These new regulations will be subject to a further report to Management Team.

Recommendation(s)

- 20 That the Corporate Director, Resources, utilising the delegated powers afforded to him under Paragraphs 1 and 22, Table 7 of the Councils Constitution approve:
- (a) Reinstating recovery actions up to summons stage commencing in February 2021 for the 2020/21 financial year and previous years.
 - (b) Payment arrangements being extended into 2022/23 upon request to allow extra time for the 2020/21 liabilities to be recovered;
 - (c) That External Enforcement Agents are given permission to recommence telephone engagement with residents and businesses but that no enforcement actions (visits etc) to be undertaken at this stage;
 - (d) A further report is brought back to CMT in June to review the position in terms of the next steps of court summonses and liability orders and other enforcement action, including consideration of the position in respect of Enforcement Agent compliance and the visits stages of the enforcement process;
 - (e) A further report on the "Breathing Space Scheme" is brought back to a future Management Team meeting for consideration of the implications on debt recovery for the Council and the actions that need to be put into place to comply with the new regulations.
 - (f) A full review of debt which is about to become statute barred from the 2015/16 financial year and prior years, continues to be undertaken, with a view to writing-off that debt (current estimates

indicate this could be up to £2.8M) before this years' annual billing process;

Background

- 21 In response to the COVID 19 pandemic and anticipated financial impacts CMT agreed the suspension of all recovery action on 20 March 2020. This included an already planned Magistrates Court Hearing for non-payment of Council Tax and Business Rates, for which summonses had already been issued; these summonses have subsequently been withdrawn, and all Enforcement Agent actions paused.
- 22 The current situation is that no formal recovery action has been taken in respect of the 2020/21 financial year, as well as for previous financial years and this includes no action being progressed by the Council's Enforcement Agents.
- 23 Prior to the cessation of recovery action, there were 4,681 Council Tax and 165 Business Rates accounts at 'cancellation' or 'Final Notice stage' for prior years debts. The next escalation in the recovery cycle would have been to issue a summons for non-payment, at which point residents and businesses would incur additional fees. In order to ease the financial pressure on households and businesses and although not a legal requirement, the Council withdrew these notices, resetting those accounts to 'bill stage'. This meant residents and businesses were afforded the opportunity to contact the Council and access a suite of supportive measures put in place to ease the financial situation and enable customers to discuss payment options without incurring additional fees.
- 24 As well as suspending and freezing all recovery action, the Council has also implemented a series of wider supportive measures which include:
- Extending the Council Tax Hardship Fund payments to £300 per household, pro rata for those owing less than £300, for those working-age LCTRS claimants left with a Council Tax liability after the award of LCTRS reductions. As at 24 January 2021, there have been 22,460 top-ups awarded amounting to £3.9M of support. As a result of further funding, support will continue in 2021/22 with the extension of the Council Tax Hardship Fund, with payments up to £300 per qualifying household.
 - Offering a Deferred Payment Scheme where commencement of payments for Council Tax and Business Rates could be delayed; this support, initially offered to 1 June 2020 was extended to 31 January 2021.
 - Paying out Business Grants quickly and efficiently, proactively calling and visiting businesses to support maximum take-up; with access to support being made as streamlined and as easy as possible

- Made enhancements to the Welfare Assistance scheme and provided additional funding to support Discretionary Housing Payments.
- 25 On 18 June 2020 CMT agreed to the continued suspension of formal recovery actions and the adoption of non-statutory recovery action i.e. to issue 'soft' reminders or nudge letters in July, August and October to those residents and businesses who had not made a payment in the current financial year.
- 26 CMT also agreed to the commencement of proactive support / recovery telephone calls to those households who had not made contact following receipt of the soft reminder letters, offering help and support to customers with growing debt.
- 27 Since September 2020, all residents and businesses have been subjected to further restrictions as a result of measures to contain the virus. The introduction of a tiering system resulted in County Durham being subject to tier 2 restrictions, followed by a second four-week national lockdown from 5 November 2020 to 2 December 2020 which meant the closure of all non-essential retail and all hospitality and leisure venues, and the introduction of a tougher and more restrictive tiering system from 3 December 2020. County Durham was placed under tier 3 restrictions from 3 December 2020 meaning that all hospitality remained closed, followed by tier 4 restrictions from 31 December resulting in the closure of all non-essential retail and all hospitality and leisure venues once again. A third national lockdown is now in place until at least mid-February.
- 28 These restrictions and subsequent lockdown have undoubtedly had a negative impact on personal and business finances and customers' ability to pay Council Tax and/or Business Rates despite the supportive measures available.

Current Position

- 29 COVID19 and the subsequent postponement and suspension of recovery action continues to have a significant and detrimental impact upon in-year collection and cash flows.
- 30 The in-year collection rate for Council Tax has been protected somewhat by the circa £3.9M hardship top-up payments that have been credited to date to the accounts of CTR claimants who had a net liability to pay.
- 31 The issue of the soft reminders and subsequent pro-active calls has however had no significant impact on the in-year collection of Council Tax or Business Rates. In- year collection has continued to fall month

on month. At the end of December 2020 Council Tax in-year collection was 3.19% below the same position in 2019 and Business Rates was 4.15%points below the same point last year as shown below:

Council Tax in Year Collection									
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019/20	10.29%	19.49%	28.51%	37.53%	46.78%	55.96%	65.32%	74.62%	83.71%
2020/21	10.34%	18.98%	27.72%	36.55%	44.79%	53.94%	62.61%	71.66%	80.52%
	0.05%	-0.51%	-0.79%	-0.98%	-1.99%	-2.02%	-2.71%	-2.96%	-3.19%
Business Rates in Year Collection									
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019/20	17.13%	25.68%	34.36%	42.26%	51.26%	58.73%	67.26%	75.35%	83.27%
2020/21	10.57%	14.76%	33.80%	41.10%	48.80%	56.73%	64.30%	71.46%	79.12%
	-6.56%	-10.92%	-0.56%	-1.16%	-2.46%	-2.00%	-2.96%	-3.89%	-4.15%

- 32 Regionally all Councils reported a decrease in their in-year Council Tax collection, the average being 1.51% at the end of the second quarter. The reduction in the in-year collection rate ranged from 2.52% at worst to 0.56% at best. This trend continued onto the third quarter however, those Councils which have reinstated the formal recovery process are reporting smaller reductions in Council Tax collection.

Council Tax	30.09.2019	30.09.2020	Difference	30.12.2019	30.12.2020	Difference
Newcastle	54.90%	52.61%	-2.29%	81.60%	78.81%	-2.79%
Gateshead	53.71%			79.58%	77.88%	-1.70%
Sunderland	52.55%	51.35%	-1.20%	77.83%	76.03%	-1.80%
South Tyneside	59.91%	57.90%	-2.01%	87.02%	84.50%	-2.52%
North Tyneside	53.40%	52.59%	-0.81%	79.39%	78.78%	-0.61%
Northumberland	55.98%	55.25%	-0.73%	83.40%	82.68%	-0.72%
Durham	55.96%	53.94%	-2.02%	83.71%	80.52%	-3.19%
Hartlepool	54.00%	51.48%	-2.52%	80.11%	77.43%	-2.68%
Middlesbrough	53.03%	51.75%	-1.28%	77.93%	77.17%	-0.76%
Stockton	54.52%	52.80%	-1.72%	81.00%	78.79%	-2.21%
Darlington	53.28%	52.72%	-0.56%	79.22%	78.58%	-0.64%
Redcar & Cleveland	53.86%			79.79%		

- 33 The Business Rates position is less consistent. Whilst most Councils reported a reduction in their in-year collection rate at the end of the second quarter, three reported an increase in collection. Of those reporting a reduction, this ranged from 5.27% at worst and 1.26% at best, the average being 1.10%. The variation in the in-year collection rate grew in the third quarter ranging from a reduction of 8.17% at worst to 1.39% at best.

Business Rates	30.09.2019	30.09.2020	Difference	30.012.2019	30.012.2020	Difference
Newcastle	55.50%	52.32%	-3.18%	81.00%	77.07%	-3.93%
Gateshead	56.25%			80.61%	72.44%	-8.17%
Sunderland	58.66%	53.39%	-5.27%	83.57%	79.09%	-4.48%
South Tyneside	65.11%	65.38%	0.27%	86.44%	87.25%	0.81%
North Tyneside	57.58%	52.98%	-4.60%	81.73%	78.92%	-2.83%
Northumberland	57.99%	56.63%	-1.36%	82.22%	78.42%	-3.80%
Durham	58.73%	56.73%	-2.00%	83.27%	79.12%	-4.15%
Hartlepool	55.00%	51.87%	-3.13%	81.07%	73.69%	-7.38%
Middlesbrough	59.37%	67.61%	8.24%	82.91%	80.00%	-2.91%
Stockton	56.49%	55.23%	-1.26%	82.77%	81.38%	-1.39%
Darlington	56.77%	58.09%	1.32%	80.78%	83.34%	2.56%
Redcar & Cleveland	56.12%			81.30%	79.97%	-1.33%

34 National data is not available, however updates from a recent IRRV forum involving 45 councils, suggested that the average Council Tax collection rate fell by 0.8% and Business Rates collection by 8% by the end of October 2020. Many also expect an acceleration in the decline of the high street as a result of the COVID 19 pandemic.

35 The local and national picture in respect of recovery actions is mixed. Many have adopted a similar approach to Durham's whilst some have already recommenced formal recovery actions. Those that have restarted formal recovery actions have reported a noticeable impact on payment.

36 The majority of LA7 councils have reported taking a 'softer' approach to the collection of Business Rates and all have reported a reduction in Business Rates collection; their approaches are set out below:

NE Authority	Recovery Position
North Tyneside	Issued formal reminders & final demands for Council Tax Court availability has prevented summonses being issued for Council Tax Taking a softer approach with Business Rates
South Tyneside	Issued formal reminders Not progressing to summons stage at the moment
Gateshead	Soft reminders only, no formal recovery action Welfare telephone calls being undertaken
Sunderland	Issued formal reminders Not progressing to summons stage at the moment
Northumberland	Formal reminders, final demands and summonses issued Enforcement for Council Tax being undertaken and plan to send Business Rates cases to EAs this month
Newcastle	Issued formal reminders, final demands Court availability has prevented summonses being issued Taking a softer approach with Business Rates

- 37 The Council's external Enforcement Agent contractor has indicated that 74 out of 100 of their local authority clients have issued instructions to fully reinstate enforcement action across all debt types including Council Tax and Business Rates. A further 10 clients have issued instructions to reinstate action without visits. Since the latest lockdown, 3 have suspended visits during lockdown and one has suspended all action. We are one of only 12 of the Enforcement Agent contracts not to have taken any enforcement action since March 2020.

2020/2021 Accounts

- 38 At the end of December 2020 there were 21,799 Council Tax accounts in arrears in respect of 2020/21 liability. The total value of Council Tax outstanding against these accounts was £13,347,692.
- 39 The full balance is outstanding on 12,692 of the 21,799 accounts meaning that no payment has been made towards these accounts.
- 40 Of the 21,799 accounts in arrears only 1,724 of these accounts have been or are subject to an element of 'means tested benefit'. In terms of these 1,724 accounts, no payment has been made for 1,037 of these; payment has been made against the remaining 687 accounts at some time during the year, however accounts have subsequently fallen into arrears. As these accounts have been subject to an element of means-tested benefit, it is not unreasonable to assume that the liable persons may be potentially financially vulnerable.
- 41 Less than a third of those 21,799 accounts in arrears, 6,191 accounts, have been subject to recovery action in previous years. This means that the majority of the accounts in arrears, the remaining 15,608 accounts may have fallen into arrears for the first time, suggesting that the COVID 19 pandemic may have impacted their ability to pay.
- 42 Bands A to C account for 93.05% of accounts in arrears, which is representative of the tax base. However, a number of accounts owe in excess of £1,500, £2,000 and £3,000 which may suggest that these are accounts subject to a premium charge e.g. long term empty premium, own more than one property or may have moved from a property in a high band at some point during the year.
- 43 The spread of accounts in arrears in terms of banding is shown in the following table:

Band	Band Charge	Volume	%	A/Cs owing less than £1,500	A/Cs owing over £1,500	A/Cs owing over £2,000	A/Cs owing over £3,000
A	£1,316.56	16,624	76.26%	16,070	282	204	68
B	£1,535.99	2,323	10.66%	2,224	78	14	7
C	£1,755.41	1,337	6.13%	1,201	125	9	2
D	£1,974.84	877	4.02%	730	117	24	6
E	£2,413.69	384	1.76%	250	92	37	5
F	£2,852.55	146	0.67%	80	37	24	5
G	£3,291.40	86	0.39%	33	27	19	7
H	£3,949.68	22	0.10%	3	12	4	3
Total		21,799	100.00%	20,591	770	335	103

- 44 It is very difficult to assess whether accounts have fallen into arrears as a direct result of genuine financial hardship as a result of the COVID 19 pandemic e.g. as a result of a reduction in household income or because no formal recovery action has taken place. Anecdotally the Collections practitioners regularly report that some customers do not make payment or seek support until formal recovery action is undertaken and even then, this is often not until the point where a summons has been issued or liability order obtained.
- 45 In addition to those accounts in arrears a further 3,742 accounts are now subject to a Special Payment Arrangement (SPAR), where customers have agreed a payment arrangement rather than adopt the standard instalment plan. Of the 3,742 SPARs 2,337 will clear accounts in the current financial year, the remaining 1,405 will clear their account by the end of the 2021/22 financial year.

Business Rates

- 46 Undoubtedly, the COVID 19 pandemic and subsequent lockdowns have had a significant impact on businesses despite the range of supportive measures introduced. The Business Rates collectible net debit has reduced by 37.34% in 2020/21, compared to the 2019/20 financial year, as a result of the increased reliefs/discretionary reliefs, meaning that some ratepayers will have nothing or a significantly reduced bill to pay.
- 47 At the end of December 2020, 786 accounts were in arrears of which over three quarters, 619 accounts, have made no payment in the current financial year. The total value of Business Rates outstanding against the 786 accounts was £3,847,051.
- 48 Of those accounts in arrears only 77 accounts, 9.8%, have been subject to recovery action in previous years, highlighting the devastating impact

the COVID-19 pandemic has had and continues to have on local businesses.

Business Rates Accounts in Arrears	Volume	Value
BR – all a/cs	786	£3,847,051
No payment received	619	£2,694,196
BR a/cs – subject to recovery action in previous years (with & without current balance)	77	£371,559

- 49 Further analysis of those accounts in arrears indicates that 244 businesses owe in excess of £10,000 and 80 businesses have multiple accounts in arrears. Further analysis is being carried out to understand how many of these businesses have been directly or indirectly impacted as a result of the pandemic.

Impact of ‘Soft’ Reminders and Pro-active Calls

- 50 In total 32,504 soft reminders have been issued to date, 31,212 in respect of Council Tax and 1,292 in respect of Business Rates. Overall response to the reminders has been disappointing in terms of customer contacts. Between 13 July 2020 and 24 December 2020 in total 5,876 calls were received, of which only a third, 1,797, - 33.5%, were as a direct result of a soft reminder. The calls received represent only 17.19% of the total number of soft reminders issued and 5.76% for those calling as a result of a soft reminder.
- 51 CMT agreed to the commencement of proactive support / recovery telephone calls to those households who had not made contact following receipt of the soft reminder letters on 28 September 2020. Proactive contact has also been made to those accounts where direct debit instructions have been cancelled to try to prevent those accounts falling into arrears. In terms of outbound calls, 4,340 call were made between 5 October 2020 and 24 December 2020. In addition, the team were unable to trace telephone numbers for 1,142 accounts and failed to make contact, after three attempts, with a further 1,140 account holders.
- 52 Whilst the outcomes of both incoming and outbound calls may look disappointing, 1,236 calls resulted in some sort of Council Tax payment arrangement or the potential to reduce the amount outstanding (those referred to make an application for a Council Tax exemption or discount or Council Tax Reduction). An additional 287 callers received advice and information, including signposting. All callers were given the opportunity to discuss their individual circumstances and offered an income and expenditure review. The purpose of the calls was not to coerce payment which is reflected in the number of SPARs set-up.

Council Tax	13 Jul to 31 Jul	3 Aug to 28 Aug	31 Aug to 2 Oct	05 Oct to 30 Oct	02 Nov to 27 Nov	30 Nov to 25 Dec	Total
Defer to September to March	71	38	12	4	0	0	125
SPAR - clear a/c in current year	122	72	28	42	13	0	277
SPAR - clear a/c by end 2021/22	60	78	47	67	35	12	299
Reprofile instalments	107	31	16	30	3	1	188
LCTR referral	76	52	20	48	10	1	207
Exemption/discount referral	36	29	11	51	13	0	140
General advice / info given	125	57	33	53	19	0	287

53 The number of contacts from Business Rates customers has also been low, however, this could be attributed to the positive interventions and support offered as part of the Business Grants take-up proactively calling and visiting businesses.

54 Anecdotal feedback from call handlers suggests that the soft reminders have been well received, with both residents and businesses having commented positively in terms of the timing, language and information provided; and particularly the council's intention to offer support and assistance during this time.

Business Rates	13 Jul to 1 Jul	1 Aug to 30 Aug	31 Aug to 2 Oct	05 Oct to 30 Oct	02 Nov to 27 Nov	30 Nov to 25 Dec	Total
Defer to September to March	4	3	0	1	0	0	8
Special Arrangement	1	3	1	0	0	0	5
Small Business Grants	0	1	0	1	0	0	2
Referred to BR Team	7	0	0	0	0	0	7
General advice / info given	3	2	1	2	0	0	8

Recovery and Enforcement Action

55 Recovery action for non-payment of Council Tax and Business Rates follows a statutory process, generally broken down between pre and post court or 'Enforcement' action stages, the table below provides further detail of the current process:

Council Tax	Business Rates
Recovery Action	Recovery Action
Reminder or / and Final Notice Issued	Reminder or / and Final Notice
Summons Issued	Summons
Recovery Court Action	Recovery Court Action
Liability Order in the Magistrates Court	Liability Order in the Magistrates Court
Payment Arrangement	Payment Arrangement
Attachment of Benefits	
Attachment of Earnings	
Attachment of Allowances (Members)	
Enforcement Action	Enforcement Action
Referral to Enforcement Agent (Bailiff) – debt must be £75 or more	Referral to Enforcement Agent (Bailiff) – debt must be £75 or more
Insolvency (bankruptcy/winding up) - debt must be £750 or more for Winding Up proceedings and £5,000 or more for bankruptcy	Insolvency (bankruptcy/winding up) - debt must be £750 or more for Winding Up proceedings and £5,000 or more for bankruptcy
Enforcement	Enforcement
Charging Order - debt must be £1,000 or more	Committal to Prison (individual only)
Committal to Prison	

- 56 When statutory recovery action is reinstated automated repayment arrangements (AutoSpars) will be offered at the final notice and summons stages of the recovery process.
- 57 AutoSpars afford residents and businesses an additional opportunity to make payment by instalments. Details of the arrangement are sent ahead of formal recovery documentation. If the resident or business enters into a payment arrangement, the recovery process is immediately stopped in respect of the final demand; as it is once a liability order is obtained in respect of those issued with a summons.
- 58 Not only do AutoSpars offer residents and businesses the additional opportunity to enter into a payment arrangement without the need to contact the Council, it also enables the Council to proactively engage and support those in need and who may be potentially financially vulnerable. Additionally, if residents or businesses take-up the payment arrangement at the summons stage it will result in fewer people attending the magistrates court as well as resulting in fewer manual special arrangements requests after court action.
- 59 A special payment arrangement request form (SPAR) has been developed and deployed to the suite of self-service forms available via OpenPortal, the Council's digital engagement platform.

- 60 The form can be accessed at any recovery stage in the recovery process allowing residents and businesses to self-serve removing the need for the customer to contact the council in order to make a payment arrangement, improving the customer journey for those residents and businesses preferring to self-serve at a time convenient to them or conduct their business with the Council electronically.
- 61 As well as enhancing the digital offer to residents and businesses and reducing contacts through other channels, it reduces the time and risk of error when setting-up special arrangements in the back office, releasing resource and building capacity to proactively engage and support those in need and who may be potentially financially vulnerable.
- 62 Under normal circumstances, residents and businesses are encouraged to complete payment arrangements within the current financial year and arrangements spanning financial years are discouraged. However, the form offers the flexibility to replicate current more flexible arrangements available to residents and businesses i.e. extend payment arrangements into 2021/22. Since a soft launch of the form in November 2020, 101 SPAR forms have been submitted.

Next Steps

- 63 When the initial decision to suspend recovery action was agreed in March 2020 no one foresaw that the COVID 19 pandemic would still be impacting the country to the degree that it is, that a third national lockdown would be in place, that tier restrictions were likely to be ongoing for the foreseeable future and that financial support schemes including the Furlough Scheme and Business Support Grants would be extended until April 2021.
- 64 The Council has had to strike a fine balance between helping those residents and businesses who can't pay and not allowing residents and businesses to build debts to unmanageable levels through a lack of engagement with the Council. There is also the issue of the Council being seen to manage its debt effectively. Therefore, consideration needs to be made of the timing of recommencing recovery action. Whilst residents and businesses have a duty to maintain contact with their creditors, as a creditor the Council also has a duty to ensure that those in debt or arrears have full details of their position. Many of those with Council Tax and / or Business Rates arrears have had no contact or communication since summer 2020.
- 65 Restarting recovery action after such a lengthy suspension will require careful planning and preparation. As well as considering the current 2020/21 financial year, previous years as well as the forthcoming financial year must be considered as part of the planning process. Substantial volumes of recovery documentation will be generated to

initiate the process across all years and all recovery stages, meaning the issue of documentation will need to be staggered to ensure that sufficient capacity across Customer Services and the Collections Team is available to manage the inevitable influx of contact and to support residents and businesses. From an administrative perspective it may take the full 2021/22 financial year to catch-up / recover from what has been a full year without recovery action.

- 66 As the financial impact of the COVID 19 pandemic is likely to impact families and businesses throughout 2021/22 and beyond, continued flexibility to support residents and businesses is critical to all recovery plans. The Council has taken a flexible approach to payments and SPARs throughout 2020, enabling residents and businesses to extend payment arrangements into 2021/22. Therefore, it is recommended that this flexibility is extended into 2022/23, effectively giving residents and businesses up to 24 months to repay outstanding charges and forthcoming charges i.e. 2021/22 charges, which may minimise any immediate financial difficulties.
- 67 The availability for court time and capacity may impact enforcement processes throughout the forthcoming year. Before summonses can be issued, cases must be listed with the courts. Whilst courts have been operating for some months, although to a limited degree, and have continued throughout the most recent lockdown, there are reports of substantial backlogs and civil debt hearings such as Council Tax and Business Rates are not being prioritised.
- 68 Ordinarily two courts hear Council Tax and Business Rates cases, within Durham they are in Peterlee and Newton Aycliffe. Court listings for the 2021/22 financial year will not be published until February 2020 however court officials have indicated that Council Tax and Business Rates hearings will be restricted to Peterlee and that the numbers listed at each hearing are likely to be restricted. Therefore, progression of cases through the later stages of the recovery process may be delayed.
- 69 Once recovery action does start the introduction of what is known as the Breathing Space Scheme will impact recovery processes and may impact Council Tax collection in the short term. The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 have been laid, introducing the Scheme from 4 May 2021.
- 70 The regulations establish the first part of a debt respite scheme for individuals in problem debt. They give eligible people in problem debt, who receive professional debt advice, access to a sixty-day period in which interest, fees and charges are frozen and enforcement action is paused – referred to as “breathing space”. For individuals receiving mental health crisis treatment, the regulations establish an alternate

route to access the protections of a moratorium and ensure that the protections are in place for the duration of the customer's crisis treatment.

- 71 Breathing Space will apply to a wide range of debts including, Council Tax, Business Rates, sundry debt and Parking Fines. A statutory debt repayment plan (DRP) will enable those in problem debt to enter a statutory agreement with their creditors to repay their debts in full over a reasonable timeframe. In exceptional cases, a DRP could last for more than 7 years for vulnerable debtors on low income but cannot extend beyond 10 years. Individuals entering into a DRP would receive legal protections from creditor enforcement action for the duration of their plan and relief from interest and charges.
- 72 A further report outlining the detail of the regulations and practical implications will be brought back to a future management team meeting.

Current year 2020/21 recovery

- 73 After careful consideration, it is recommended that statutory recovery action up to summons stage should commence in February 2021:
- Issue statutory reminders from February – issued in batches throughout February / March
 - Issue final demands from April
 - Bring an update report to CMT in June, including recommendations to progress recovery actions and agree when summons may be issued
 - Take a supportive approach to SPARs, including offering flexibility to extend instalments into 2022/23, undertaking income & expenditure reviews to ensure affordability and sustainability, and identify additional financial support i.e. UC, LCTR etc.
 - Undertake targeted proactive engagement with businesses to establish those significantly impacted by the pandemic as opposed to those where the pandemic has had limited impact and have chosen not to pay.
- 74 Whilst this proposal will result in the issue of a first reminder at a time when 2021/22 annual Council Tax and Business Rates bills will be issued, the Council has a duty to keep residents and businesses abreast of their debt position. Additionally, those Councils where recovery action has been restarted, have reported a positive impact on their collection rate.

Previous years

- 75 A review of previous years accounts i.e. pre 2020/21 accounts has indicated that there are 8,731 accounts to progress to a final notice and ultimately to a summons stage, including to 4,681 cases withdrawn from the courts earlier in 2020.
- 76 In most cases, residents will have had no contact from the Council for a year and in the cases where a payment arrangement has been defaulted upon during the 2020/21 financial year, will have had no contact to notify them that the arrangement has been broken. In such cases the Council has a duty to notify residents and businesses of the debt position. Therefore, a final notice must be issued in advance of a summons in all cases. Although not legally required to do, this will offer further support to residents and businesses affording them an opportunity to contact the Council and access a suite of supportive measures already in place and to discuss payment options without incurring additional fees.
- 77 With this in mind it is proposed that recovery action in respect of previous years recommences in February 2021 following the same principles as that outlined for the current financial year i.e. start statutory recovery action up to summons stage from February 2021:
- Issue statutory reminders from February – issued in batches throughout February / March
 - Issue final demands from April
 - Bring an update report to CMT in June, including recommendations to progress recovery actions and agree when summons may be issued
 - Take a supportive approach to SPARs, including offering flexibility to extend instalments into 2022/23, undertaking income & expenditure review to ensure affordability and sustainability, and identify additional financial support i.e. UC, LCTR etc.
 - Undertake targeted proactive engagement with businesses to establish those significantly impacted by the pandemic as opposed to those where the pandemic has had limited impact and have chosen not to pay.
- 78 A full review of debt which is or is about to become statute barred, from the 2015/16 financial year and prior years is ongoing, with a view to writing-off that debt before this years' annual billing process. Early estimates indicate that up to £2.8M may be subject to write-off, in addition to in-year write-offs. The total debt written-off in 2020/21 may reach circa £5M, significantly more than amounts written-off in previous

years. This is as a direct impact of the COVID 19 pandemic and decision to suspend recovery action.

Future years 2021/22 recovery

- 79 Starting recovery action for 2020/21 and previous year from February 2021 will generate a significant amount of correspondence and an inevitable influx of calls from residents and businesses, in addition to the increase in calls resulting from the issue of annual Council Tax and Business Rates bills. Therefore, it is recommended that recovery action for 2021/22 commences in June 2021:
- Issue statutory reminders from June / July
 - Issue final demands from July /August
 - Include recommendations to agree when summons may be issued as part of the CMT report to be considered in June 21
 - Take a supportive approach to SPARs, including offering flexibility to extend instalments into 2022/23, undertaking income & expenditure reviews to ensure affordability and sustainability, and identify additional financial support i.e. UC, LCTR etc.
- 80 Delaying action until this time will ensure that Council resources do not become overwhelmed with calls, whilst at the same time still affording residents and businesses the statutory ten months repayment plan should they wish to clear their account within the 2021/22 financial year. For those that do not, enabling repayments to be extended up to twenty months i.e. up to March 2022.
- 81 Finalisation of a recovery timetable forms part of the annual billing process. Dates for each stage of the recovery process will be scheduled around the multiple payment groups i.e. dates and frequencies to ensure that all accounts are selected at the appropriate time to progress through the recovery process. These dates are pre-recorded into system parameters as part of the annual billing process and will be set to reflect the proposals in this report.
- 82 At the beginning of the pandemic the Government introduced a 12-month Business Rate holiday for all retail, hospitality and leisure businesses. These reliefs are due to end March 2021, which will inevitably add additional financial pressures on those businesses most impacted by the pandemic as a result of multiple lockdowns and ongoing trading restrictions. The Government may review current reliefs and may introduce new or additional relief schemes for 2021/22; it is expected that an announcement will not be made on this until the budget announcement in early March. Either way, businesses are likely to struggle in the new financial year.

- 83 Flexibility in terms of the payment of Business Rates will be a critical factor for businesses in the next financial year. Therefore, whilst it is recommended to adopt the standard recovery process outlined above, it is also recommended that proactive contact is maintained with businesses before progressing to summons stage to support those genuinely struggling as a result of the ongoing impacts of the pandemic and to continue to discuss the situation with those choosing not to pay.

Enforcement Agents

- 84 The Council instructed its Enforcement Agents to cease all action on 20 March 2020. This was followed by Government guidance to suspend Enforcement Agent action. Whilst Enforcement Agents have been able to operate and visit since 23 August 2020, all actions in respect of the Council's accounts remain suspended.
- 85 The *Taking Control of Goods Regulations 2013* prescribe that Enforcement Agents have 12 months from the issue of a Notice of Enforcement in which to take control of goods i.e. seek payment. Therefore, if payment is not secured within 12 months agents are unable to enforce the debt and cases are returned to the creditor. When a debtor enters into an arrangement, the expiry date is extended to one year after any payment default.
- 86 The Ministry of Justice made an amendment to the Regulations to address the original lockdown in 2020. The amendment states that if a case expired between the 26 February 2020 and 23 September 2020 it was automatically extended by a further year, allowing enforcement visits from 24 August 2020.
- 87 Enforcement Agents have been returning expired cases since September 2020. As enforcement power for Council Tax and Business Rates is given by the Liability Order, which does not expire, cases may be reissued to Enforcement Agents to start the process again with a new Notice of Enforcement.

Equita

- 88 The previous contractual arrangements with the Enforcement Agents came to an end in June 2020, at which time the Council's own internal Enforcement Service was due to be established. A new separate contract was established from 1 July 2020 for out of county debt and to supplement the in-house service should the need arise in terms of in-county debt.
- 89 The previous contract made provision for the orderly transition of cases and accounts at the end of the contract period. There is a recognised exit strategy which enables Enforcement Agents to conclude actions within agreed timescales before returning cases and accounts and

enables Enforcement Agents to retain those cases and accounts where residents and businesses are making payments to remain with the Enforcement Agent to collect the debt and the fees due. However, if residents and businesses default on payments the case is returned to the Council to consider the next steps. These arrangements enable Enforcement Agents to recover fees for work they have done and not been paid for at the point a contract comes to an end.

90 Despite the suspension of all recovery action, the transition process and return cases and accounts from the Enforcement Agent no longer contracted by the Council has been ongoing. Following a failure to comply with Council instructions the decision has now been made to recall all cases including those cases subject to a payment arrangement and those making payment.

91 This means that in total 2,728 cases will be returned, 2,667 Council Tax cases and 61 Business Rates cases. This includes 661 cases with a payment arrangement - 648 Council Tax cases and 13 Business Rates cases. All are subject to review upon return with consideration being given to the most appropriate action including write-off, waiver of fees and re-referral for enforcement, taking into account the restrictions imposed by the Taking Control of Goods Regulations. Again, as no action has been taken for almost a year, a communication must be sent to all explaining the recall of cases and future plans. In the case of those cases with a payment arrangement, immediate contact must be made to inform them of the change and instruct them to pay the Council.

Returned cases	Council Tax	Business Rates
Compliance Stage - £75 fee	377	6
Enforcement Stage - £215 fee	2,290	55
Payment Arrangement	648	13

Jacobs

92 A single external Enforcement Agent appointed to manage 'out of area' referrals and to provide some resilience / business continuity to the new in-house service was also engaged under the previous contract, therefore there are no plans to recall cases from this Enforcement Agent. However, existing instructions to suspend all recovery action has been confirmed by the Agent and no action will be taken until instructions are received from the Council.

93 This agent currently has 3,193 cases with a total value of £1.8M, 3,162 Council Tax cases and 31 Business Rates cases. This agent also has 1,222 cases with a current payment arrangement, 1,208 Council Tax cases and 14 Business Rates cases.

	Council Tax	Business Rates	Value
Compliance Stage - £75 fee	1,320	8	£746,184
Enforcement Stage - £215 fee	1,842	23	£1,079,918
Payment Arrangement	1,208	14	£620,645
Cases 'in trace'	104	13	

- 94 Whilst all enforcement action remains suspended, the agent is awaiting further instruction. As the agent is acting on behalf of the council, the duty to ensure that those in debt or arrears have full details of their position is the same as that of the Council. The Enforcement Agent is in the same position as the Council i.e. having had no engagement with residents and businesses for almost a full year.
- 95 With this in mind, it is recommended that the Enforcement Agent is given the authority to start a programme of telephone re-engagement with their clients in February / March, prioritising those relating to broken payment arrangements. This intervention is not ordinarily part of the enforcement process and will offer residents and businesses the opportunity to discuss their current circumstances and, as the agent, make use of the Standard Financial Statement (SFS) to offer the opportunity of undertaking an income & expenditure review to ensure affordability and sustainability of any payment arrangement without incurring additional costs. The Agent has reported that this approach has been adopted by many of their clients since August 2020 and that high rates of engagement have removed the need for visits, minimising additional enforcement costs e.g. for those where payment arrangements have been broken, those engaging have not incurred additional compliance or enforcement costs.
- 96 All visits will continue to be suspended until a further report is brought back for consideration in June 2021.

County Durham Outreach and Support

- 97 On 4 September 2019 CMT approved the creation of an Internal Enforcement Agents Service, effective from 1 July 2020. The new service, County Durham Outreach and Support (CDOS) will manage 'in-area' cases.
- 98 The establishment of the new service has been overseen by a separate Internal Enforcement Agent Service Project with governance provided by a project board. Inevitably, COVID 19 has significantly impacted the project, delaying systems development but most significantly training and certification of enforcement agents. The team however have supported other aspects of the business, processing Business Grant payments and undertaking proactive support / recovery telephone calls.

The team have also been studying towards Enforcement Agent certification.

- 99 CDOS have recruited two certificated agents and two new enforcement agents. Enforcement Agents must be certificated by the County Court before they are able to undertake enforcement activities. Before the courts will consider certification, all Enforcement Agents must hold the Taking Control of Goods level 2 qualification. The qualification requires a minimum of 40 hours of guided learning of which and at least 24 hours pre reading, revision and practical experience with a certificated agent ahead of an examination.
- 100 Exam sites remain closed, with no indication when they may reopen, and as recovery and enforcement action remains suspended the agents have been unable to compete certification and therefore will be unable to enforce debt when authority to resume enforcement action is given.
- 101 It is proposed that the CDOS team support the review of cases returned from the previous Enforcement Agent contractor i.e. Equita. Once cases have been reviewed and those cases requiring ongoing enforcement action are identified; to adopt a similar approach to that proposed for Jacobs, proactively engaging with residents and businesses by telephone outside of the standard enforcement process.
- 102 This approach offers residents and businesses the opportunity to discuss their current circumstances and, as the agent, make use of the Standard Financial Statement (SFS) to offer the opportunity of undertaking an income & expenditure review to ensure affordability and sustainability of any payment arrangement without incurring additional costs.
- 103 In addition to offering support, this approach will give CDOS the opportunity to test systems and processes and at the same time offer the team the opportunity to gain some practical experience.
- 104 As with the contracted Agent, no visits will be considered until a further report is brought back in June for consideration. At the point where visits are approved, accompanied visits would be undertaken to support the certification process. All actions will benefit the customer, in that they will not incur additional enforcement fees.

Conclusion

- 105 COVID 19 and the subsequent lock-down has impacted many households and businesses. These negative impacts may have had a greater adverse effect on those considered to be vulnerable or shielded, as well as those residents and businesses considered to be financially vulnerable with a reduced propensity to pay.

- 106 The Council's decision to suspend all recovery action was aimed at supporting households and businesses during an extremely challenging time; however, consideration needs to be made of the Council's position in relation to its recovery processes, in order to continue to support and assist those residents and businesses who can't pay and also to prevent debts from building to unsustainable levels.
- 107 The proposals outlined in this report ensure that the Council's statutory requirements to bill and collect Council Tax and Business Rates are fulfilled whilst offering support to residents and businesses with robust plans in place to ensure that a supportive approach continues which will safeguard those who are financially vulnerable.

Background papers

- List any papers required by law / None

Other useful documents

- Restoration Group Briefing Note 18 June 2020 - Proposals for Recommencing Debt Recovery Action for Council Tax and Business Rates
- CMT Report 28 September 2020 – Recommencing Recovery Action for Council Tax and Business Rates

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Appendix 1: Implications

Legal Implications

The Council has a duty to ensure that all collection processes comply with the relevant legislation, which includes:

Council Tax (Administration and Enforcement) Regulations 1992

Non-Domestic Rating (Collection and Enforcement)(Local Lists) 1989

County Courts Act 1984, Practice Directions and Civil Procedure Rules 1998

Charging Orders Act 1979

Social Security Administration Act 1992

Civil Enforcement of Parking Contraventions (England) General Regulations 2007

Insolvency Act 1986

Tribunal Courts and Enforcement Act 2007

Taking Control of Goods Regulations 2014

Taking Control of Goods (National Standards) 2014

Finance

Billing and collection of the amounts owed to the Council contributes to the budgets used to fund local and essential services. Effective collection and recovery are essential and will directly impact the funding and delivery of local services.

Consultation

Consultation has been undertaken with the wider financial service, strategic management and operational debt collection management, as well as internal and external partners and stakeholders, including Citizens Advice County Durham, and Internal Audit.

Equality and Diversity / Public Sector Equality Duty

The Council's Hardship policy sets out the support given to address vulnerability and hardship.

Climate Change

None

Human Rights

None

Crime and Disorder

None

Staffing

None

Accommodation

None

Risk

There is always a risk of legal challenge when pursuing debt. However, all actions taken comply with legislative requirements, government guidelines and best practice.

There are robust processes and procedures to ensure that cases subject to more serious recovery actions are fully vetted and meet a defined selection of criteria to minimise the risk of negative publicity for the Council.

Performance management and quality assurance measures are in place to ensure compliance.

Procurement

None that are specific to this report.