

Surrey Heath Borough Council
Performance and Finance Scrutiny Committee
13 July 2022

**Update on the use of Enforcement Agents for collection of
arrears in Council Tax**

Portfolio Holder: Cllr Robin Perry – Finance
Strategic Director: Bob Watson, Strategic Director Finance and Customer Service
Report Author: Robert Fox – Revenues and Benefits Manager
Date Portfolio Holder signed off the report 01 July 2022
Wards Affected: All

Summary and purpose

To inform members of the usage of Enforcement Agents (EA) in the collection of Council Tax arrears. This report was requested at the Performance and Finance Scrutiny Committee meeting held on 9 March 2022.

Recommendation

The Committee is advised

- i) To note the Council's proactive approach and positive track record in collecting unpaid Council Tax and recovering arrears
- ii) to identify any further improvements to the Council's approach that should be explored

1. Background and Supporting Information

- 1.1. Surrey Heath Borough Council, as a Billing Authority, is expected to collect the council tax due from the 37,947 domestic properties in the Borough. The current net collectible debit in 2022/23 is **£86.804 million**. The tax collected is in respect of the precepts set by Surrey Heath Borough Council, Surrey County Council, Surrey Police and Crime Commissioner and the Parish Councils or the Special Expenses for Frimley and Camberley and payments are made to the major preceptors over the course of the financial year.
- 1.2. Surrey Heath Borough Council follows the provisions of the relevant legislation for the collection of council tax.
- 1.3. The initial stage of the collection process is to issue a bill detailing the monthly instalments due. At the start of the financial year monthly instalment plans are available for either 10 month or 12 month plans. For new accounts opened during the year the number of instalments is the number of whole months remaining in the financial year less one.

- 1.4. Where a council tax payer fails to make a payment of an instalment that is due in accordance with the details shown on the demand notice the following stages of the recovery process then occur:
- A SMS (text message) is sent reminding the liable party their payment is overdue.
 - A reminder is sent giving the liable party 14 days to bring the payments up to date.
 - If no payment is made then the whole balance outstanding for the remainder of the year becomes due.
 - If the account is brought up to date and then a subsequent instalment is not paid a second reminder is sent, again requesting that the payments on the account is brought up to date; once again if no payment is made then the whole balance for the year becomes due.
 - A 'Final Notice' is issued if a council tax payer defaults on their instalments due for a third time. At this point the right to pay be instalments is lost.
 - If after the issue of any of the above three recovery notices the payments on the account are not brought up to date, than a Summons is issued.
 - The issue of a summons incurs the cost of £80.50. Of this, £80.00 relates to costs incurred by Surrey Heath Borough Council in respect of the cost of the work done to this point. The £0.50 is the charge made by the Magistrates Court for each summons.
 - At the Liability Court hearing, in the Magistrates Court, Surrey Heath Borough Council will request that the Liability Order be granted and the costs approved.
 - Once the Liability Order has been granted a 7-day letter is issued requesting the council tax payer makes an arrangement to pay and that not doing so will result in appropriate recovery action being taken.
 - The recovery powers granted by the Liability Order are not used if the council tax payer makes and keeps to an acceptable payment plan that will be agreed between the revenues service and the tax-payer.
- 1.7 At every stage in the process the Council would prefer to work with residents to come up with a solution. The Revenues Team works with Surrey Heath Citizens Advice and Frontline Debt Service to ensure those residents struggling to meet household expenditure, not just council tax, receive help, support and advice about the sources of funding available, such as the Household Support Fund.
- 1.8 The Revenues team seek to, and do, make appropriate payment arrangements in the vast majority of cases. Unfortunately, in some cases, it is only when the Council initiates a recovery process that the tax-payer starts a payment plan or debt management discussion.
- 1.9 At all stages of recovery, the revenues service will ensure that any appropriate discount, exemption or Local Council Tax Support has been applied for and awarded. The team will also seek to help the resident with identifying other benefits they may be entitled to and also to find the most appropriate way to pay the outstanding balance to make the process easier fore the resident.
- 1.10 If, however, no payment plan is made, or if it is not adhered to or there has been no contact from the Council Tax payer there are a number of options available to the Council to enforce the Liability Order.

- 1.11. The Liability Order powers are:
- Obtain information about the liable parties financial circumstances to enable the best course of recovery action to be assessed and assess the ability to pay.
 - Make an attachment of earnings order.
 - Apply to the Department for Work and Pensions for a deduction from Universal Credit, Income support, Jobseeker's Allowance, Employment Support Allowance or Pension Credit.
 - Use of Enforcement Agents to take control of goods
 - Apply a charging order against the dwelling in respect of which the debtor's liability arose.
 - Apply for a bankruptcy order.
- 1.12. The use of Enforcement Agents is strictly regulated and they have to abide by an industry Code of Conduct. For Council Tax (unlike Income Tax) an Enforcement Agent cannot force their way in to a home to seize property, nor can they visit between 9pm and 6am. They can seize property outside the home, for example a car. Enforcement Agents have access to check DVLA records and finance plans and would not seize a vehicle if it was owned by anyone other than the debtor or is subject to a finance plan.
- 1.13. The main contribution of Enforcement Agents is as a last resort to enable residents to engage in the process and get help, rather than continue to ignore the issue, and allow their debts to continue to mount up with potentially devastating consequences.
- 1.14. Where Enforcement Agent action to seize goods has been unsuccessful because there are no or insufficient goods the local authority may seek committal. Imprisonment is a coercive measure designed to extract payment from a debtor. It is not a punishment for the failure to pay nor is it imposed as a deterrent. To date, the Council has not taken this step.
- 1.15. In this year, 2022/23, Surrey Heath Borough Council has issued:-
- 38,132 – Annual Bills
 - 120 – SMS reminders
 - 2,601 – 1st reminders
 - 292 2nd reminders
 - 5 – final notices
 - 1,153 – summons
 - 81 – liability Orders granted (from 154 summons issued)
- 1.16. These figures illustrate that a large proportion of residents who have missed a payment rectify the situation before the Council actually goes to court.
- 1.17. As at 31 March 2022 there was £3,324,762.59 outstanding in council tax for the period 1 April 1993 to 31 March 2022 (a period of 29 years). Over the same period the collectable debit is £1,328,744,827, which gives a collection rate of 99.7%.
- 1.18. The Revenues team are in discussion with a telephony company who have worked successfully with Middlesbrough Council to “stop the knock”. The software they provide will make calls to debtors about to be referred to the next stage of enforcement and giving them the option to “press ‘1’” and be connected to discuss payment options directly with one of the revenues team - not a chatbot or third party, but SHBC revenues staff.

- 1.19. This software, whilst still being investigated looks to offer, an additional recovery stage in assisting debtors to make affordable payment arrangements prior to any further enforcement action.

2. Reasons for Recommendation

- 2.1. To ensure that the Council complies with its duty that any council tax due is continued to be collected
- 2.2. To ensure Surrey Heath Borough Council has the funds available to pay the major preceptors and to provide its own services.
- 2.3. To continue to support residents who have difficulty paying by the early intervention of debt issues.
- 2.4. To maintain top quartile in year collection rates and our reputation as an efficient collector of local taxation.

3. Proposal and Alternative Options

- 3.1. If the use of Enforcement Agents in the collection of unpaid Council Tax was discontinued recovery of unpaid council tax would rely on the other methods of recovery allowed once a Liability Order has been granted.
- 3.2. A Liability Order allows any of the following methods to be used in addition to the use of Enforcement Agents:
 - Make an attachment of earnings order
 - Make an attachment order to an elected members allowances
 - Apply to the Department for Work and Pensions for a deduction from Universal Credit, Income support, Jobseeker's Allowance, Employment Support Allowance or Pension Credit
 - Apply a charging order against the dwelling in respect of which the debtor's liability arose
 - Apply for a bankruptcy order.
- 3.3. The Liability Order gives SHBC the power to obtain information from the debtor about their financial circumstances that allows SHBC to assess the course of recovery action to be taken.
- 3.4. If the debtor does not provide the requested financial information and we do not hold any information to allow an informed decision to be made (i.e. the debtor is in receipt of Local Council Tax Support) we would under the current procedure pass the debt to the Enforcement Agent, after first sending 7 day warning letter to the debtor.
- 3.5. The debtor does not have to supply the financial information, unless the information is requested in writing. Once supplied the debtor does not have to report any change in their circumstances, unless requested in writing by SHBC.
- 3.6. If the debtor fails to provide the requested information, in the absence of being able to refer the debt to the Enforcement Agents, we have the powers to find the non-responder guilty of a criminal offence. The Magistrates Court can fine the debtor up to £a maximum of £500.

- 3.7. If the debtor knowingly or recklessly supplies information they know to be false they could be found guilty of a criminal offence by the Magistrates Court and fined up to a maximum of £1000.
- 3.8. The additional work needed to write to debtors to request financial information, monitor the return and check the validity of the information will need to be resourced as there is no capacity within the current staffing levels to absorb this work.
- 3.9. There is also the additional work to refer to the Magistrates Court to be found guilty of the criminal offence of either non-response or recklessly providing false information.
- 3.10. Non-payment of council tax is not a criminal offence, even if committal to prison is used this is a civil process.
- 3.11. This would be an additional demand on Magistrates Court time.
- 3.12. Should a debtor continue to refuse to supply truthful information regarding their financial circumstances remedies for recovery are limited, if Enforcement Agents are not to be used.
- 3.13. Bankruptcy relies of the debt being in excess of £5000.
- 3.14. Attachment of earnings cannot be used as we would not know the employment details
- 3.15. Attachment to benefits could not be used if details of benefits being paid were not known
- 3.16. For a property owner a Charging Order could be applied for in the debt is in excess of £1000.
- 3.17. Committal to prison cannot be used as the commencement of this action relies on an attempt to recover the debt by use of Enforcement Agents to seize goods has been unsuccessful.

4. Contribution to the Council's Five Year Strategy

- 4.1. Effective and efficient collection of Council tax will allow the Council to continue to deliver services to residents in accordance with the five-year strategy.

5. Resource Implications

- 5.1. Non recovery of council tax results in less money being available to fund vital public services across the County

6. Section 151 Officer Comments:

- 6.1. Since 2016 the revenue support from central government has reduced to zero. This means the Council is increasingly reliant on local taxation to fund its services (both statutory and non-statutory). Each 1% of uncollected council tax costs SCC, Surrey Police and SHBC £83,000.

7. Legal and Governance Issues

- 7.1. The Council has a statutory duty to collect Council tax under section 18 of The Council Tax (Administration and Enforcement) Regulations 1992. Section 45 of the Regulations allows the Council to appoint enforcement agents to enforce liability to pay by taking control of goods in accordance with the procedure set out in Schedule 12 of the Tribunals, Courts and Enforcement Act 2007.
- 7.2. Guidance published by the Ministry of Housing, Communities and Local Government in August 2021 (*Council tax collection: best practice guidance for local authorities*) confirms at section 7 “*Effective use of enforcement agents can also be an important way of recovering council tax debt where the authority is satisfied that there are no other appropriate mechanisms for recovering that debt.*”

8. Monitoring Officer Comments:

- 8.1. To ensure robust governance, in terms of complying with the statutory duty to collect Council tax, the Council is strongly advised to maintain all legal options to recover Council tax including the option to instruct enforcement agents. The Council should have due regard to the guidance referred to in section 7.2 when considering instructing enforcement agents.

9. Other Considerations and Impacts

Environment and Climate Change

- 9.1. None

Equalities and Human Rights

- 9.2. The Council applies its processes in accordance with the various Equalities acts.

Risk Management

- 9.3. Failure to collect council tax exposes the Council to both financial and reputational risk.

Community Engagement

- 9.4. Often the failure to pay council tax is the first red flag to debt issues for individuals. The Council’s revenues team will help all residents with debt support through its own processes and working in conjunction with partner organisations (eg: CASH).

Background Papers: None

Annexes: None