

Torbay Council Fair Debt Collection Policy

# Collection of Council Tax; Business Rates; Housing Benefit Overpayments; Sundry Debts and Miscellaneous Income; and Parking Penalty Charge Notices

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Table of Contents

[Collection of Council Tax; Business Rates; Housing Benefit Overpayments; Sundry Debts and Miscellaneous Income; and Parking Penalty Charge Notices 1](#_Toc5115666)

[1. Reasons for introducing the Policy 3](#_Toc5115667)

[2. Policy Statement 3](#_Toc5115668)

[3. Key principles 3](#_Toc5115669)

[4. How we will go about it 4](#_Toc5115670)

[i. Proportionate 4](#_Toc5115671)

[ii. Consistent 4](#_Toc5115672)

[iii. Transparent 4](#_Toc5115673)

[5. Appropriate costs/fees 5](#_Toc5115674)

[5.1. Billing and recovery 5](#_Toc5115675)

[5.2. Correspondence 6](#_Toc5115676)

[5.3. Payment and arrangements 6](#_Toc5115677)

[5.4. Contact and advice 7](#_Toc5115678)

[5.5. Debt advice agencies 7](#_Toc5115679)

[5.6. Multiple debts 7](#_Toc5115680)

[5.7. Enforcement Agents 8](#_Toc5115681)

[5.8. Charging order, bankruptcy or committal to prison 8](#_Toc5115682)

[5.9. Vulnerability 9](#_Toc5115683)

[5.9.1. What does vulnerable mean? 9](#_Toc5115684)

[5.9.2. Ways we support customers who are vulnerable 10](#_Toc5115685)

[5.10. Write-offs 11](#_Toc5115686)

[6. Specific policy areas 12](#_Toc5115687)

[7. Who is responsible for delivery? 12](#_Toc5115688)

[8. Outcome and performance monitoring 13](#_Toc5115689)

[9. Policy consultation 13](#_Toc5115690)

[10. Policy review 14](#_Toc5115691)

[11. Related policies and strategies 14](#_Toc5115692)

# Reasons for introducing the Policy

The purpose of this policy is to establish guidelines for the recovery of monies owed to Torbay Council and its subsidiary companies (hereinafter referred to as ‘the Council’) and to set out the usual processes which will be used to collect them.

It is important that the Council collect monies owed to it in a timely manner which is consistent and sensitive. This policy sets out the general principles for Council service areas who raise bills or invoices for payment. The Council will process personal information and financial details for the purposes of collecting taxes and other revenue. Information will be shared with debt collection and tracing agencies, local and central government, courts and tribunals and the police where appropriate to recover monies owed and to prevent and detect fraud in accordance with the Council’s data protection registration and the requirements of the General Data Protection Regulation.

# Policy Statement

The key aim of this policy is to strike a fair balance between the collection of monies owed due to the Council and the social needs of our customers. In doing so:

* The Council recognises that preventing debt accruing is essential, and the need to have skilled and trained staff to ensure that during every contact customers receive high quality advice.
* The Council will, where possible, request that payment is made in advance of services being provided to avoid the unnecessary accumulation of debt.
* The Council will ensure that all teams within the Council who bill and collect income will do so in a fair, cost effective, consistent and timely manner. We recognise that persons who owe money to the Council are individuals who expect to be treated fairly, regardless of age, gender, race, religion, disability and sexual orientation.
* The Council will process and share data relating to customers across its service areas, to deliver and improve services and to fulfil its statutory services in accordance with the General Data Protection Regulation (GDPR).
* The Council will seek to maximise income collection, taking into account the individual customers’ circumstances and ability to pay and so distinguish between customers who won’t pay and those who genuinely cannot pay.
* The Council encourages anyone in financial difficulty who is genuinely finding it difficult to make payments to contact us promptly to discuss their circumstances. The Council will then, where possible, accept an affordable payment plan to recover the monies owed.
* The Council will balance the potential loss of monies owed against the costs of compliance and recovery.
* The Council will provide advice or signpost those owing money to the Council to appropriate support, to ensure its customers are maximising reliefs, discounts or benefit entitlements.

# Key principles

When considering individual customers’ circumstances, there are key principles common to all types of debt:

* The need to distinguish between priority and non-priority debts (see appendix 1).
* To promote a professional, consistent and timely approach to billing and collection of income due.
* To maximise income collection by determining the most appropriate and effective methods of debt recovery for each case.
* To encourage customers to contact and work with the Council at the earliest possible opportunity to encourage debt prevention and payment of monies owed.
* To recover and clear non-recurring debts within a maximum period of 12 months.
* To ensure that all debt types are recovered in accordance with legislation and good practice.
* To treat individuals fairly and consistently, in accordance with Human Rights, GDPR and Equalities legislation.
* To take into account debts owed to the Council when considering entering into contractual arrangements with individuals or companies.
* The Council, where applicable, apply Pre-Action Protocols for Debt Claims.

# How we will go about it

This policy applies to the collection of debts including:

* Council Tax
* Business Rates (including Business Improvement Districts)
* Housing Benefit overpayments
* Sundry Debtor Invoices (raised on FIMS or other Council Financial systems)
* Parking Penalty Charge Notices

The Council’s approach will be proportionate, consistent and transparent for all of our customers. The Council will aim to deliver these services in accordance with its Core Values and Themes.

### Proportionate

This means the Council will consider the individual customers’ circumstances and will aim to strike a balance between the risk of potential loss of monies owed to the Council, against the costs of action to recover the debt.

### Consistent

This means that the Council will be consistent in the advice we give and the use we make of our recovery powers and procedures. This does not simply mean uniformity of approach, as there will be the need to take into account the individual circumstances of the customer, including their family and social circumstances, their payment history and ability to pay.

### Transparent

This means the Council will help customers to understand what is expected of them and what they can expect from the Council, including the need for the Council to take recovery action before the debt becomes unmanageable for the customer.

There are specific rules relating to the recovery of each debt type. There are a number of appendices detailing these specifics, [part](#_Specific_policy_areas) 6 of this policy provides information relating to the appendices.

# Appropriate costs/fees

The Council will, where legislation permits, apply and seek to recover from the customer, costs of fees which the Council or their instructed agents have to pay in recovering monies owed. Only in exceptional cases, where it would not be in the public interest to pursue such costs and fees, will they be waived.

With this in mind, we will aim to deliver the following standards to all of our customers:

## Billing and recovery

The Council will identify the person who is liable to pay the bill or invoice. Once billed/invoiced the onus switches to the customer to prove they are not responsible for that debt. Invoices will be raised prior to service provision wherever possible and payment will be expected either in whole or in part prior to the provision of services.

The Council will ensure that all bills and invoices for all debt types will clearly show:

* The property address or service for which the bill or invoice is for.
* The date on which the bill or invoice was issued.
* The amount of the bill or invoice, including any VAT which may apply, and the date by which it is due to be paid.
* The bill or invoice will reflect the availability of reductions, discounts and exemptions, for example Local Council Tax Reduction Support or Small Business Rates Relief.
* The bill or invoice will have a contact point for all enquiries and the Council will encourage customers to make use of online contact, as this is the most efficient method for dealing with enquiries.

Where legal proceedings have been initiated against an individual, that individual should reside at the address we hold at the time these proceedings commence. ‘Care of’ addresses should not be used unless there are exceptional circumstances to do so. In order to permit this, it will need to be agreed with a supervisor or manager of the Council’s service area and the owner/occupier of that address will need to give their permission in writing to the Council for their address to be used.

* Documents relating to monies owed to the Council will be kept securely and then destroyed in accordance with the Council’s Records Retention Schedule.
* The Council will use the most appropriate and effective method of debt recovery in order to maximise income collection.
* The Council will issue recovery documents, such as reminders or summons documents, which are applicable to the debt type. Details of notices to be issued can be found in the appendix relevant to the type of debt. The notices will be in a format and style that makes them readily identifiable as being issued by the Council.
* Where customers fail to advise the Council of changes in the circumstances relating to Council Tax, they may be subject to penalties which are recoverable with the Council Tax.
* The Council may use credit reference agency data for the collection of taxes and the tracing of absconders.
* Where required, members of the Council’s debt teams will review an account during the recovery cycle to enable disputes to be resolved and hardship or vulnerability issues to be considered. Where appropriate, an extended arrangement may be made where an immediate payment in not possible due to the individual’s circumstances.
* Where there is a potential entitlement to an exemption, relief or discount then the customer will be made aware of them and encouraged to apply for them.

The Council recognises that prompt recovery action is a key action to managing debt and maximising the collection of monies owed. The Council therefore aims to:

* Regularly review and monitor the level and age of debt.
* Have clear written policies and procedures.
* Regularly review the use of available methods of recovery to ensure effectiveness.
* To review and document irrecoverable debts (and those where recovery is not economic) for write-off by the Council.

## Correspondence

In our correspondence, the Council will:

* Ensure that correspondence is written in plain English and will avoid the use of jargon. Where there is a legal process, the Council will use the wording prescribed by legislation.
* Clearly set out the terms of any payment plan and potential consequences and subsequent fees which may be incurred if the bill or invoice is not paid.
* Where requested, produce documents in a different format or language to help support customers so that they are not at a disadvantage when using our services.
* Where details are held, the Council may contact the customer by SMS text should their account fall into arrears.
* The Council will use social media, such as Facebook or Twitter, to inform the public and promote payment of bills, awareness of payment methods and ways to reduce their bills.

## Payment and arrangements

The Council will:

* Encourage our customers to pay promptly and regularly.
* Provide a range of payment methods which will be detailed on documents issued and on the website.
* Promote Direct Debit, as this is a proven method for ensuring that payments are made on time.
* For each debt type, agree a framework for making payment arrangements. This will be detailed in the appendices.
* Agree an alternative payment arrangement, where appropriate.
* Encourage customers to pay online through the Council website or by using the automated telephone payment line.
* When making a payment arrangement, get as much detail as possible about a customer’s individual circumstances in order to make an accurate assessment of their ability to pay. This may require the customer to complete an income and expenditure form.
* Monitor arrangements and where the customer fails to maintain the agreed payments, recovery action may be commenced and this may be without the need for any further reminder or warning.

## Contact and advice

The Council will encourage early contact and publicise our contact methods. These are:

* Through the use of electronic contact forms which are available on the Council’s website.
* Telephone
* Email
* Letter

Where appropriate the Council will:

* Be consistent, fair and firm in respect of monies owed and our manner will be courteous.
* Check whether the customers are entitled to any reduction, discount or exemption.
* Set out in communications where there is a right of appeal against a decision.
* Be proactive and support customers to maximise housing benefit and council tax support take-up.
* Where appropriate, signpost the customer to the Discretionary Housing Payment Scheme (DHP) or the Exceptional Hardship Scheme (EH).
* Ensure that where further enforcement action is required, the process has been clearly explained, preferably in writing with timescales set out and a distinction made between advice and legal requirements.
* Make arrangements for appropriate customer contact where a customer is deemed to be vulnerable, including visiting a customer in their own home.
* Advise customers to seek independent legal advice

## Debt advice agencies

We will only refer customers to accredited specialist debt services, ideally where free advice is offered. The list of organisations we will refer people to includes, but is not restricted to:

* Citizen’s Advice Bureau
* Homemaker
* National Debtline
* Christians Against Poverty

## Multiple debts

When we are aware that a customer has multiple debt types owed to the Council and is having difficulty in paying them, consideration will be given to priority debts

The hierarchy of debts owed to the Council has been ranked as follows:

* Parking Penalty Charge Notices
* Housing Benefit Overpayments/Social Care Debt
* Sundry Debts
* Council Tax
* National Non Domestic Rates (Business Rates)
* Business Improvement Districts (BIDs)

Where we identify that a customer already holds debt with the Council, we may consider this when deciding whether to enter into further contractual arrangements with customers. For example, if a customer already holds significant Council Tax debt and they apply for a Beach Hut site, their application may be refused or only awarded on the condition that Council Tax debts are cleared.

## Taking Control of Goods - Enforcement Agents

The Taking Control of Good Regulations 2013 govern the usage of enforcement agents to collect the following debts on behalf of the Council:

* Council Tax
* National Non-Domestic Rates
* Penalty Charge Notices (Parking)

The Council will use enforcement agents that have been appointed under the Council’s procurement processes and will work in accordance with an agreed contract and where in place, a service level agreement. The service level agreement will specify the terms in which they will operate, including:

* Enforcement agents to always act in a professional, responsible and courteous manner and operate in accordance with current legislation.
* Maintain accurate records of all action taken by them and to contact the Council immediately where they identify a customer to be vulnerable and await further guidance by the Council on appropriate action to be taken. This must be recorded by both the enforcement agent and the Council on the customer’s file and retained by each party.
* Transfer information between the Council and the enforcement agent using an agreed secure electronic transfer method.
* Use of the fees structure for the collection of statutory debts, as prescribed under The Taking Control of Goods Regulations 2013 and 2014. The fees are owed to the enforcement agent and **not** the Council.

The Council expects Enforcement Agent companies employed by it to work in a professional manner and to take into account its Policies and Codes of Conduct, including:

* Torbay Council Equality Policy
* Torbay Council Policies on Safeguarding
* Data Protection Policy and the General Data Protection Regulation (Data Protection Act 2018)
* Civil Enforcement Agency Code of Conduct
* National Standards for Enforcement Agents

## Charging order, Wind-Up Petition, bankruptcy or committal to prison

The Council will consider further action which is appropriate to the level of debt, type of debt and circumstances of the debtor.

The Council will consider using charging orders, as an alternative to bankruptcy/winding-up petition or committal to prison, providing there is sufficient equity in the property to secure the debt.

Where the Council has obtained a charging order it may apply to the County Court to bring about an enforced sale of an asset in order to recover a debt or to bring an empty property back into use.

Before deciding what course of action is appropriate, the Council should ensure that the following steps have been taken and documented:

* Reasonable efforts have been made to contact the customer in person, including visiting them in their home, if appropriate.
* A review of the history of the debt and attempts which have been made to date to recover it.
* The Council has gathered sufficient evidence about the customer’s circumstances, including credit reference agency reports, information from property valuation websites and social media sources while ensuring compliance with the principles of the Human Rights Act 1998 (HRA).
* Assessing whether there is a realistic prospect of recovering the debt by other means and within a reasonable timescale.
* All reasonable enquiries have been made into the individual’s personal circumstances.
* Considering information about the past, present, disputed or outstanding benefit, Council tax Support or discount/exemption claims.
* Considering the consequences in terms of the possible loss of a person’s liberty if they are committed to prison and the impact this will have on their personal circumstances.

The Council will always send a letter warning the customer of our proposed action at least 28 days before applying to the Court. The letter must include information:

* Warning of the serious consequences of either a charging order, enforced sale on a charging order, bankruptcy, or committal to prison and their continual failure to pay the debt; and
* Urging the customer to seek independent impartial advice and include details of where they may get free local and independent advice.

## Vulnerability

It is important that the Council and those acting on our behalf recognise individuals who appear to be vulnerable and endeavour to identify and put into place additional measures to ensure that vulnerable individuals are treated appropriately. The fact that a person is vulnerable does not take away their obligation to meet their liabilities, but this will necessitate consideration of the appropriateness and course of any recovery action we take.

### What does vulnerable mean?

The policy does not specify any particular groups of people who may be considered vulnerable. Many of our customers may be vulnerable, or become vulnerable, on a temporary or permanent basis, due to their personal circumstances at a specific point in time. The person may have a mental health and/or physical health issue which may make them vulnerable at that point in time.

For example, but not an exhaustive list, someone who:

* Has permanent severe learning difficulties, and is incapable of understanding or defending themselves, even with the assistance of an appointee, guardian, support worker, is still likely to be considered as vulnerable.
* Is disabled but is capable of managing their own affairs, including financial matters, may not be considered vulnerable.
* Has recently suffered a bereavement or ill health which may make the individual vulnerable temporarily.

The Council will listen to our customers and establish how best we can support them. The Council will consider and assess the need for support for each individual case based on their personal circumstances at the appropriate time. To achieve this the Council including persons or agents acting on its behalf will need to consider the following when dealing with potentially vulnerable customers in debt:

* Does the customer understand the action that is being taken?
* What level of support is available or is required to enable the customer to understand?
* How can this support be provided to ensure that the customer understands?

### Ways we support customers who are vulnerable

The Council will seek to ensure that vulnerable customers understand that where there are monies owed and that action is being taken to collect the debt, it may be appropriate to consider alternative ways of resolving the situation. Accordingly when dealing with a vulnerable customer, the Council will:

* Consider the appropriateness of the recovery action being taken. For example, recovering outstanding Council Tax by applying a deduction from benefit rather than referring a debt to an enforcement agent.
* May put recovery action on hold for a period of time to allow the customer the opportunity to obtain advice or support.
* Direct our customers to sources of free and impartial debt advice, as listed above.
* Where appropriate, liaise with debt advice agencies to agree repayment schedules that are affordable and recognise a customer's need to pay priority debts.
* Publicise debt advice contact details with our literature.
* Where a customer has multiple debts with the Council, develop a joint strategy for repayment of those debts.
* Where permitted to in law, share data regarding vulnerable customers with other interested parties.
* Ensure that our staff are fully trained and have appropriate skills to identify vulnerability and signpost customers to local support agencies and networks.
* Take a proactive approach to engage our customers to try and identify any issues they have and seek to establish whether they have a support framework in place.
* With appropriate consents in place, liaise with identified third parties.

Where a customer contacts the Council, or organisation acting on its behalf, such as enforcement agents, to advise that they consider they have a physical or mental disability, they will be asked to provide supporting evidence to either party. This may include requesting a letter from a doctor or support worker, or other supporting information, indicating how their health problem affects their ability to function and deal with their financial affairs.

On receipt of such evidence, it will be at the Council’s discretion to determine the extent of the affect outlined in the supporting evidence. Enforcement agents acting for the Council will consider information concerning whether a person is vulnerable, and will make any necessary adjustments to the way the debt is administered, for example, by the use of their welfare teams. Where the customer has a clear inability to deal with their financial affairs, the debt will be either recalled by the Council or returned by the enforcement agent company.

It should be noted that the above list is not exhaustive and other ways to support our customer may be identified and pursued where appropriate.

## Write-offs

As part of an effective debt management policy, it is good practice and important to identify debts which may need to be written off. Debts will be assessed and if considered irrecoverable they will be subject to a write off process that is consistent with good accounting practices and covered by the Councils Financial Regulations. The Council will seek to minimise the amount of debt written off by taking all appropriate action to recover what is owing. Income deemed irrecoverable must satisfy one of a predetermined set of criteria including but not restricted to:

#### Irrecoverable debts

These are debts where the Council has no or limited discretion over writing off the debt as they are enforced by legislation:

* Insolvency (bankruptcy, liquidation, Debt Relief Orders, Individual Voluntary Arrangements, etc.)
* Remitted by the courts
* Time barred (the Limitation Act 1980)
* Traffic Management Act 2004

#### Debts where recovery action may be inappropriate

These are debts where designated officers, for example, the Corporate Debt Manager or other service managers will have approval to recommend write off under the Council’s Financial Regulations. This may apply where:

* The customer is evidenced as vulnerable due to mental or physical health issues and it is inappropriate to pursue enforcement action.
* The customer cannot be traced after the following checks are undertaken: credit reference check, internal and external systems, internet and social media sources.
* All available recovery options have been exhausted.
* It is considered the cost of recovery action would exceed the cost of taking effective enforcement action.
* It is not in the public interest to pursue, e.g. at risk and vulnerable customers or where there is evidenced financial hardship.
* The customer has died and there are no or insufficient funds in the estate.

Authorisation for write-offs is carried out in accordance with the Council’s Financial Regulations.

Write-offs for all debt types will be written off on a quarterly basis, June (Q1), September (Q2), December (Q3) and by the end of the financial year March (Q4). All write-offs for debts over £5k need to be reported to Overview and Scrutiny Committee.

Where a debt is written off it does not rule out the possibility of writing the debt back and pursuing it in accordance with legislative requirements. This would apply, for example, where a customer has left with no forwarding address but is subsequently traced. Another example, being where there is an insolvency which fails or is revoked, or where monies are received by the Council at a later date, an equivalent sum may be written back. Where the debt has been written off for over twelve months, before writing the debt back consideration should be given to whether it is reasonable to do so and there are realistic prospects of collecting the outstanding debt.

#### Credit Notes

The Council will only issue credit notes where it identifies that the original amount invoiced was incorrect. Credit notes will not be used to write-off a valid outstanding debt, which should follow the write-off procedures set out above. Any credit notes issued will clearly identify the invoice to which they apply.

#### Credits

Torbay Council will make reasonable efforts to refund customers where they are in credit, unless the customer has another debt with the Council, in which case credit balances will be used to offset the debt.

# Specific policy areas

Debts covered by the Policy are set out in the respective appendices:

Appendix 1 – Priority Debts

Appendix 2 – Council Tax

Appendix 3 – National Non-Domestic Rates (Business Rates)

Appendix 4 – Housing Benefit Overpayments

Appendix 5 – Sundry Debts and Other Miscellaneous Income

# Who is responsible for delivery?

Ownership and implementation of this Policy within the Council rests with each service lead. The Section 151 Officer for Torbay Council is ultimately responsible for overseeing the collection of income due to the Council.

# Outcome and performance monitoring

We will monitor the effectiveness of this Policy through internal management, the Council’s Complaints procedures and by taking into account the following indicators:

* The annual collection rate for Council Tax and Business Rates, which will be monitored on a monthly and quarterly basis. A target in-year collection rate will be set for each year and a target for arrears collection.
* Housing Benefit Overpayments will be measured in accordance with indicators based on the debt raised, the income received and percentage collected and written off during the financial year. The collection rates will be benchmarked against other councils, for example through the quarterly Devon Revenue Managers Meetings, Housing Benefit Liaison Group, DCLG, etc.
* For Sundry Debtors there will be measures of performance for debts raised, income received and percentage collected and written off within the financial year.
* For Parking Penalty Charge Notices (PCNs) there will be measures in terms of numbers of PCNs raised, the income received and percentage collected and written off within the financial year.
* There will be analysis of the number and value of cases reaching each recovery stage.
* There will be an analysis of number and value of cases with arrears outstanding at year end.
* The total amount of the arrears outstanding at year end and analysed by recovery stage.
* The total number of complaints received about our failure to follow the Council’s Debt Policy.
* The number and value of debts written off. All debts over £5k need to be reported to the Overview and Scrutiny Committee. The Corporate Debt Manager will be responsible for test checking a 2.5% sample of Council Tax, Business Rates and Housing Benefit Overpayment debts written off.
* The number of cases being referred to each enforcement agent company and their individual collection rate.
* The regular review of internal controls and annual internal and external audit.
* There will be regular reviews of equality impact assessments.

# Policy review

We will review the Debt Policy periodically and update the Policy and relevant appendices in the light of:

* Legislative changes.
* Feedback from our monitoring of this Policy.
* Equalities input.
* Changes to the economic climate, both locally and nationally.
* Changes to the Council’s Corporate Strategy.

We will also review in line with the Council’s Financial Regulations to ensure compliance.

This policy will be managed by the Chief Finance (Section 151) Officer on an annual basis.

# Related policies and strategies

The Council’s Core Themes and Values

[The Council’s Equality Policy](http://www.torbay.gov.uk/council/policies/corporate/equalities/)

Customer Service Commitments

Communications Plan

[Data protection legislation, including the General Data Protection Regulation and Data Protection Act 2018](http://www.torbay.gov.uk/council/information-and-data/data-protection/about-dp/)

[Information Rights Policy](http://www.torbay.gov.uk/council/information-and-data/data-protection/your-rights/)

[CIVEA (The Civil Enforcement Association) Code of Conduct](http://www.civea.co.uk/code-practice/)

[Local Government Ombudsman Focus report issued October 2011](http://www.lgo.org.uk/assets/attach/1782/FR%20-%20Using%20bankruptcy%20for%20council%20tax%20debts%20Oct%202011.pdf)

The Council’s Money Laundering Policy

[National Standards for Taking Control of Goods issued by Ministry of Justice April 2014](https://www.gov.uk/government/publications/bailiffs-and-enforcement-agents-national-standards)

[Counter Fraud Policy](http://www.torbay.gov.uk/council/policies/finance-policies/fraud-and-corruption/)

[Corporate Sanction and Prosecution Policy](http://www.torbay.gov.uk/council/policies/finance-policies/sanction-and-prosecution/)