Appendix 3

Non-Domestic Rates (Business Rates) - Recovery process and procedures

The collection and recovery of Business Rates is set out In accordance with the Local Government Finance Act 1988 and subsequent regulations and subsequent amendments.

The administration, collection and recovery rests with the Council’s S151 Officer.

Non Domestic Rates, commonly known as business rates, are levied on a national basis but the local authority is responsible for billing and collection including appropriate recovery measures.

The Council believes that preventing arrears from building up is essential. The collection of Business Rates will become more important as the Government changes the funding arrangements by phasing out specific grants to Councils, in return for allowing them to retain a higher proportion of their Business Rate income. The administration process includes the following options:-

* We offer two dates for direct debit payments as we recognise that this is a proven cost effective method for ensuring that customers payments are made on time
* We offer a wide choice of other payment options that we advertise on all our bills and recovery documents
* We issue reminders, cancellation notices and summonses in accordance with an annual recovery timetable.
* We provide up to date advice on reductions, exemptions and reliefs and on how to pay our website and in our leaflets and other contacts with our customers.
* We will not refuse any payment which reduces the debt. However, if it is less than the requested amount, or does not reduce the on-going liability, then further recovery action may continue
* We will make arrangements taking into consideration the fluctuations in income, common to seasonal businesses, and place the emphasis for repayment on times of likely maximum business activity

When a ratepayer liable for Non-Domestic Rates has not made the due payments, the Council will take the following action:

## Reminder

When a statutory instalment has not been paid, we send a reminder notice which shows the amount which is due to be paid within seven days.

The notice also warns that failure to comply, or if any further instalments are missed, the right to pay by instalments in the current financial year will be lost.

## Final notice

If the instalments are not brought up to date in accordance with the first reminder notice the full unpaid balance for the year becomes due.

We then send a final notice showing the full amount due and the date by which it must be paid (for instance, within seven days from the date of the final notice).

## Summons

Where the final notice has been issued and the outstanding balance has not been paid in full by the due date, then the Council will lay a complaint before the South and West Devon Magistrates Court. The schedule of cases will be signed by a Legal Advisor, who will have delegated authority under legislation relating to procedures to be followed in the Magistrates Court.

The summonses and signatures are in a format agreed with the South and West Devon Magistrates Court in accordance with the Magistrates Court Act 1980 and other relevant legislation.

The summons will include an arrangement which the customer may pay to clear the debt, however, this arrangement will include £60.00 costs which are reasonably incurred in the generation of the summons. Provided these payments are made by the due dates then no further action will be taken.

The summons will clearly explain what is owed and the consequences of non- payment, including appropriate information on how to contact the Council and how to pay. Customers will be encouraged to make contact if they disagree with the amount owed or are experiencing difficulty in making payments.

Unless the council has made a mistake in issuing the summons, proceedings will only be stopped if the debt and costs are paid in full prior to the court date. At this stage, we still make arrangements to pay but this does not stop the application to the court for a Liability Order. We will not refuse part payments in order to reduce the debt.

## Liability Order

If the sum is not paid in full by the court date, then the Council will make an application to the South and West Devon Magistrates Court for a Liability Order to be made, together with the Council’s application for costs. The costs which are reasonably incurred in obtaining the Liability Order is £25.00, which is added to the debt.

When making the application for the Liability Order, the Council will be required to evidence that the charge has been set by central government.

The Council will also be required to evidence that bills, reminder notices and, where required, final notices have been issued, together with the method of service used and the date of posting of the summons.

### Defences include the following:

* Procedures for proceedings invalid, for example, required documents not issued.
* Business rates not demanded correctly or incorrectly demanded, for example, less than 14 days’ notice between the issue and the first instalment.
* The charge has not been raised in accordance with the entry contained in the Rating List.
* The balance due has been paid, will need to provide supporting evidence.
* More than six years have elapsed since the debt became due.
* Insolvency proceedings have commenced.
* The person rated is not in occupation.
* The description in the List includes parts not occupied by the ratepayer.

### The following defences are not considered valid:

* Inability to pay.
* The Rateable value in the List is incorrect.
* There is an appeal outstanding.

## Recovery action after a Liability Order is made

Once the council has obtained a Liability Order this provides the Council with a range of options which may be used to recover the debt, including:

* Enforcement agent action – if the customer has failed to make and maintain an agreed payment plan, we can instruct Enforcement Agents (Bailiffs) to recover the debt in accordance with The Taking Control of Goods Regulations 2013.
  + Enforcement Agents may seize and sell goods to the value of the outstanding debt, plus their fees. The additional statutory charges will be added to the debt and the liable person is responsible to pay them.
* Insolvency action – we may petition for bankruptcy or for the winding up of a company, depending on whether the customer is an individual or a company. Although the Insolvency Act 1986 does not stipulate that a Liability Order must be obtained before taking insolvency action, the Council will endeavour to do so.
* Committal to prison (individuals or business partnerships only). Where bailiff action has been unsuccessful the Council will consider issuing a committal summons for the customer to be committed to prison for non-payment.
* Insolvency action may be commenced for bankruptcy individuals or winding up proceedings for limited companies.

More detail relating to referrals to Enforcement Agents, Charging Orders, Insolvency and Committal can be found in the Fair Debt Policy.

We always make it clear to ratepayers that recovery action will not be suspended pending any appeal they may have made to the Valuation Office Agency.

Insolvency and committal to prison are all dealt with on an individual basis and potential cases are considered by a Recovery panel who will authorise the commencement of proceedings. More information relating to the Council’s usage of insolvency and committal proceedings can be found in the Council’s Fair Debt Policy.