Appendix 5

Sundry Debt and Miscellaneous Income

# Service area/debt type

# Sundry debts and miscellaneous income includes any other income due to the Council that is not Council Tax, Business Rates or parking Penalty Charge Notices. Customers can be individuals, partnerships, limited companies or organisations and the charges due could be for a requested service or have arisen due to a statutory liability. Invoices are raised by services from across the Council and legislation governing a debtor’s liability to pay a sundry debtor invoice may differ dependant on the type of debt being invoiced however recovery for non-payment is governed by the following legislation and rules:

* The Late Payment of Commercial Debts (Interest) Act 1998
* The Civil Procedure Rules
* Section 69 of the County Court Act 1984 or Section 35A of the Supreme Court Act 1981
* Pre Action Protocols for Debt Claims

# Pre-court action

An initial invoice is issued and if payment is not received on time a first reminder letter is issued. The first reminder is normally issued after 23 days of a missed payment but it could be sooner dependant on the debtor’s payment terms. A final reminder is then issued after a further 14 days which stipulates that failure to pay may result in either the debt being passed to a collection agent or a County Court Money Claim being issued.

Each outstanding invoice is reviewed and a decision is made to either refer the debt to collection agents or to commence legal proceedings to recover the debt. If the debt relates to a non-statutory service which is provided by the Council the service could be withdrawn at this stage until the debt has been repaid in full. If a debt is returned from a collection agent as uncollectable legal proceedings may also be commenced to recover the debt.

For commercial debts, under the Late Payment of Commercial Debts (Interest) Act 1998 the Council is entitled to charge interest on late payments at a rate of 8% (simple), usually 30 days from the date of the invoice. In addition the Council is entitled to charge compensation at the rates identified in the Act.

## [Pre-Action Protocols for Debt Claims](https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/pre-action-protocol-for-debt-claims.pdf)

Once a decision has been made to commence legal proceedings and issue a County Court Money Claim the Pre-Action Protocols must be followed. These Protocols apply to individuals or sole traders and do not apply to business to business debt, unless the business is a sole trader. The purpose of these protocols is to encourage early engagement and communication between both parties.

A letter of claim is sent to the debtor, along with copy invoice, statement of account, copy of any signed contract, information sheet, reply form and financial statement for the debtor to complete and return within 30 days. A letter of claim must also state if any interest and admin charges have been imposed since the debt was incurred.

For a business to business debt, a letter of claim is also sent with a copy invoice and any additional information deemed appropriate to expedite payment. The business has 30 days to respond to the letter.

# Court action

A money claim is issued through the County Court, and where a money claim is issued the debtor may become liable for court costs, fixed costs and interest. The amount of court cost and fixed costs applied are dependent on the amount being claimed (including any interest) and are governed by the Civil Procedure Rules. Interest is calculated at 8% of per annum pursuant to Section 69 of the County Court Act 1964 or in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

The County Court send the money claim form to the defendant (debtor), together with the Response Pack, containing forms for “Admission”, Defence and Counterclaim” and “Acknowledge of Service”.

These forms offer the defendant the following options:

* Payment in full
* Admitting the whole claim or part of it, giving details of financial situation and making an offer or payment.
* Defending the claim and/or
* Making a counterclaim.

If a defendant wishes to defend the claim, they can acknowledge service within 14 days stating their intentions and then must file a defence within 14 days of acknowledgement. The defendant must choose one of these options within 14 days of the date of service of the claim form, if the defendant fails to respond to the court claim within the 14 day period given, the Claimant (the Council) will request judgement in default.

If the defendant files a defence, a copy will be sent to the claimant by the Court and the case will automatically be moved to the defendant’s home court. The claimant and the defendant will be sent a directions questionnaire by the Court which, must be completed within the time stated by the Court. At this point both the claimant and the defendant can agree to use the Courts mediation service in an attempt to settle the claim without the need to hold a hearing. Both parties must agree to use the mediation service and any agreement reached through the mediation service is legally binding on all parties.

If the claim cannot be settled by mediation the case will be heard by a district judge and if the case is proven the claimant will be granted judgement.

**The above is only a brief outline of the court procedures and a defendant/ debtor should always seek independent legal advice or contact their local Court for further information and advice.**

# Post Court recovery

Once judgement has been granted if a debtor fails to pay, the Council can ask the Court to enforce the judgement and can apply to the Court to collect the debt using one of the following options:

* A warrant of execution (sending Enforcement Agents to collect payment or remove and auction goods to the value of the debt). More detail relating to referrals to Enforcement Agents can be found in the Fair Debt Policy.
* Where the debt exceeds £600 then the Council may refer the case for enforcement by the High Court through the sheriff.
* An attachment of earnings order (deductions from wages/salary)
* A third party debt order (usually used to freeze money in bank or building society accounts).
* A Charging Order (a charge on land or property owned by the debtor). More detail relating to usage of Charging Orders, can be found in the Fair Debt Policy.

The Council can ask for an ‘order to obtain information’, to find out about the debtors finances. This information can be used to decide on which enforcement action to take. The Court would send an ‘order to attend court for questioning’ form in the post. If issued the debtor will need to attend a hearing at the Court and take proof of income and spending such as:

* Pay slips
* Bank statements
* Bills

**Bankruptcy/Winding-Up Order -** If a debtor still refuses to pay, the Council can petition the court to make the debtor bankrupt to recover the debt if the debt is over £5000. More details relating to the Council’s usage of Insolvency can be found in the Fair Debt Policy.