

<b>Decision maker:</b>	<b>Chief Finance Officer</b>
<b>Decision date:</b>	<b>Tuesday 14 November</b>
<b>Title of report:</b>	<b>Debt enforcement contract award</b>
<b>Report by:</b>	<b>Head of corporate finance</b>

## **Classification**

Open

## **Decision type**

Non-key

## **Wards affected**

(All Wards);

## **Purpose and summary**

To approve the award of the debtor enforcement contracts following a procurement exercise. The contract award is to replace the existing contracts on their expiry.

Herefordshire council bills approximately 85,000 dwellings for council tax and approximately 8,000 businesses for business rates.

When payment is overdue the council is committed to using the most effective debt recovery methods available whilst ensuring that all debtors, taxpayers and ratepayers are treated fairly, appropriate support is identified, debtor circumstances are taken into consideration and any action that is taken is fair and open.

The continued use of debt enforcement agency services, following the exhaustion of all other debt collection opportunities and where considered appropriate, is recommended to ensure the council continues to effectively collect monies owed. This is because the council has both a legal duty and a responsibility to its citizens to ensure that income due is paid

The total amount of overdue debt sent to the council's current enforcement agent in the last twelve months was 2,983 council tax cases with an overdue balance of £2.0m and 91 business rates cases with an overdue balance of £0.4m. In addition 1,242 traffic management enforcement warrants with unpaid debt from Penalty Charge Notices totalling approximately £0.1m.

The council uses debt enforcement agencies to collect overdue debtor balances in line with the council's debt recovery policy

(<http://councillors.herefordshire.gov.uk/documents/s50035301/Appx%20A%20Debt%20Recovery%20Policy.pdf> ).

A competitive re-procurement exercise has been completed via a YPO framework agreement (Agency Enforcement) to determine the award of a contract to provide the debt recovery enforcement service at a nil cost to the council. Enforcement Agent fees or charges are to be paid by the debtor and are to be levied in accordance with the Taking Control of Goods (Fees) Regulations 2014.

## Recommendation(s)

That:

- (a) Contracts for the supply of Enforcement Agency Services (Traffic Management Warrant & Revenues and Benefits) for a period of up to five years from 1<sup>st</sup> February 2020 be awarded to Bristow and Sutor (revenues and benefits) and Jacobs (traffic management warrants).**

## Alternative options

1. To not award the debt enforcement contract. This is not recommended as it would mean that debt recovery action could not be completed on overdue balances meaning that collection rates are likely to fall and the writing off of sums due may increase. This would have a direct impact on the council's overall budget and create an inequality between those debtors that pay and those that do not. Councils can utilise court powers to recover income and to not do so would effectively render the council powerless to collect overdue debt.
2. Another alternative could be for the council to pursue and recover debt using its own resources without contracting a third party. This is not recommended due to the cost of carrying out such activities associated with debt collection, including the ability to recover monies from debtors living outside the county.

## Key considerations

3. The council is committed to using the most effective debt recovery methods available whilst ensuring that the council complies with relevant legislation, official guidance and best practice in meeting the following objectives outlined in the Debt Recovery Policy:
  - all debtors, taxpayers and ratepayers are treated fairly
  - use of best practice is adopted
  - a coordinated approach to managing debt is followed
  - to identify appropriate support which may be required and ensure circumstances are taken into consideration
  - action taken is fair and open, and that no debtor receives less favourable treatment because of their race, nationality, colour, ethnic or national origin, religious belief, gender, marital status, sexual orientation, age or disability.
4. For all overdue monies owed, and in each case, the council will use the most appropriate and effective method of debt recovery in order to maximise collection and minimise

costs. In some cases this may involve registering the amount due as a debt with the Court, and then instructing Enforcement Agents to collect the debt on its behalf.

5. Councils have prescribed collection and enforcement routes set out in legislation with clear legal routes to take for the collection of debt. For local taxation a liability order to undertake various further enforcement options without requiring further court action exists and for parking penalty charge notices there are rules as set out in the traffic management act on the collection of the warrant issued and if the warrant is uncollected this can be transferred for further enforcement action as appropriate.
6. It is only when all routes available to the council to obtain payment of an overdue amount have been exhausted that the matter is considered for referral onto Enforcement Agents to recover.
7. Where there is a potential for a statutory benefit or discount exists in relation to a debt, efforts will be made to make the debtor aware of such opportunities and they will be assisted and encouraged to apply for these.
8. The council will seek to work with welfare organisations where the debtor recognises the benefits that these organisations can offer both the debtor and the council in prioritising repayments to creditors and in maximising the income available to the debtor.
9. The council uses every opportunity, where appropriate, to engage with debtors and make 'bespoke' payment arrangements, where available, with individual customers based on the circumstances and debt outstanding. Dependent upon their overall financial position customers may be signposted to an independent debt advice service.
10. External enforcement agencies are only used where it is considered appropriate. There is no cost to the council and the costs passed onto the debtor are prescribed in legislation under the Taking Control of Goods (Fees) Regulations 2014 (<http://www.legislation.gov.uk/ukxi/2014/1/schedule/made> )
11. Where an external enforcement agency is used to deal with the recovery of debt the flow of information between the council and the agency will be in a secure electronic format. Enforcement agents will make contact with debtors as part of a legal collection process.
12. The council has separated 'Revenues and Benefits plus Sundry debts' (for all council debt collection excluding parking fines) and 'Traffic Management Warrant Enforcement debts' (a separate arrangement for the collection of overdue parking fines) into two enforcement contracts awarded to different suppliers. This is to ensure the different statutory debt recovery requirements and collection timetables are adhered to.
13. The contract is for a 3 year period with the option to extend for a further 2 years. The extension option is available if the need is determined to continue and satisfactory contract performance is being maintained.
14. Where legislation permits, the council will seek to levy and recover from the debtor any costs and/or fees that are legitimately due from the debtor to the council or its agents. Only in exceptional cases, where it would not be in the public interest to pursue costs and/or fees, will they be waived.
15. The council raises debtor accounts for a variety of services, a summary of the debt collection process before referring to the enforcement agent for each debtor type is shown below. The process followed for debt collection has not changed.

## **Council tax**

16. Reminders and final notices will be issued to council tax debtors in accordance with statutory timescales.
17. No more than three reminders are issued in a financial year, a maximum of two instalment reminders and one final notice. Following the issue of a final notice the council will consider a non-statutory instalment agreement based on individual circumstances.
18. If payments are not then made in accordance with the instalment reminder or any non-statutory instalment agreement, the council tax for the full year falls due and the right to pay by instalments is lost. A summons will be issued and costs being added at this stage, being the summons issue fee payable to the Magistrates Court and the council costs (currently £82.50).
19. Where the summonsed amount has not been cleared in full, the Magistrates Court will be asked to grant a Liability Order in order to allow the council to recover the debt or, in those cases where an arrangement is in place to protect the rights of the council and to expedite recovery in case of default.
20. When the Liability Order has been obtained, and where no arrangement is in place, the Recovery Team will look at each account and make a decision as to the appropriate recovery action.
21. The Recovery Team will consider the availability to utilise an attachment of earnings, any discounts, exemptions or support. They will attempt to contact the debtor via telephone and/or email to make a suitable arrangement to pay.
22. If contact cannot be made because there are no contact details available or they are incorrect or unobtainable, then a letter will be sent detailing the debt and advising that contact should be made, otherwise a referral will be made to the enforcement agency. This letter provides details of the fees incurred if a referral is made, compliance fee on referral (at £75) with an enforcement fee if a visit (at £235) has to be made.
23. In the absence of a response to this letter the account will be referred to the Enforcement Agency, unless it is not considered economically viable to do so.
24. Notwithstanding any of the above any notes on an account indicating particular individual circumstances that may mean the standard recovery process is not appropriate will be taken into consideration.

## **Business rates**

25. Reminders and final notices will be issued in accordance with statutory timescales.
26. No more than two reminders are issued in a financial year, one instalment reminder and one final notice. Following the issue of a final notice the council will consider a non-statutory instalment agreement based on individual circumstances.
27. If payments are not then made in accordance with the instalment reminder or any non-statutory instalment agreement the rates for the full year falls due and the right to pay by instalments is lost. A summons will be issued with costs being added at this stage, these are the summons issue fee payable to the Magistrates Court and the council costs (£82.50).

28. Where the summonsed amount has not been cleared in full the Magistrates Court will be asked to grant a Liability Order in order to allow the council to recover the debt or, in those cases where an arrangement is in place, to protect the rights of the council and to expedite recovery in case of default.
29. Following the granting of a Liability Order the debtor will be given an opportunity to make a suitable payment arrangement. If this payment arrangement is not maintained, or one cannot be made, a letter will be sent detailing the debt and advising that should contact not be made the matter will be referred to the enforcement agency. This letter provides details of the fees incurred if a referral is made, a compliance fee on referral (£75) and an enforcement fee if a visit has to be made (£235).
30. In the absence of a response to this letter, unless uneconomical to pursue, the account will be referred to the enforcement agency.

### **Parking penalty charge notices**

31. A motorist receives a Penalty Charge Notice (PCN) to their vehicle outlining the amount to pay in respect of a parking contravention; a discounted amount of 50% will be accepted if this is paid within 14 days.
32. If no payment is received within 28 days, the contravention is reviewed, and a Notice to Owner is sent to the registered keeper of the vehicle, outlining the amount due.
33. If no payment is received, and there is no formal representation, after a further 28 days a Charge Certificate is issued to the registered keepers address which increases the amount due by 50%.
34. If payment is still not made steps will be taken by the council to register the amount due as a debt with the Traffic Enforcement Centre, in order to obtain a Warrant. This will increase the amount due by £8 to cover the cost of this registration process. From this an Order for Recovery is issued to the Debtor.
35. If this is not paid within 21 days, the case will be reviewed once more and a Warrant is Executed and sent to the Enforcement Agents in order to recover the debt. At this stage the Enforcement Agents add their fee in accordance with the regulations (point 10 above).
36. These steps are taken as prescribed by the relevant legislation.

### **Sundry debt balances**

37. Where the debt balance has not been settled prior to the service being provided then an invoice will be raised. The usual process for invoices not settled as expected will be as follows:-
  - One reminder will be issued where payment is not made by the due date.
  - Where payment is not made following the issue of a reminder a final notice will be issued detailing the recovery options. Recovery action will be taken in liaison with the service area.
  - Where invoices are queried/disputed email contact will be made with the service area to facilitate a response to the customer.

- Pursue by phone and if neither full payment nor arrangement made then a referral to the Debt Collection Agency will be considered.

## **Procurement Process**

34. A competitive tender process was undertaken via a YPO framework agreement - Enforcement Agency Services 953. All 14 suppliers were invited to submit a tender response by the deadline of 11th October 2019. One bid was received for the Revenues & Benefits contract and two bids received for the Traffic Management Warrant Enforcement contract. Responses were evaluated in accordance with the evaluation criteria set out in the tender documents and the most economically advantageous tender for each contract has been recommended for award.

## **Enforcement agency debt recovery process**

38. Following referral of overdue debt to the enforcement agent the agent will send a pre compliance letter to the debtor providing them with a further opportunity to pay without a debt recovery fee being applied.
39. Tracing and collection activity does not provide for collection of any additional fees by the enforcement agent over and above the face value amount shown on the relevant warrant or any other appropriate documentation supplied by the Council.
40. The council is committed to providing a quality service and expects all agents to meet the standards set for all Council staff. The enforcement agency will ensure that at all times their employees act in a responsible and professional manner.
41. In all cases the Enforcement Agent's initial contact with the debtor will be with the intention of obtaining immediate and full payment.
42. The Enforcement Agent shall adhere to all relevant legislation including the Taking Control of Goods Regulations 2013; Taking Control of Goods (Fees) Regulations 2014; Certification of Enforcement Agents Regulations 2014, Data Protection Act 2018 and General Data Protection Regulations.
43. The council seeks to recover the debt as quickly as reasonably practicable without imposing unreasonable hardship and having regard to Safeguarding and Equality Legislation.
44. The enforcement agents are contractually committed to identifying potential vulnerable debtor cases, these are referred back to the council before any further action is taken and any fees chargeable to the debtor by the debt enforcement agent are waived by them.

The recommended suppliers currently provide this service to the council and the current service is considered satisfactory. Performance is good with collection rates in the last twelve months being at 53.1% of the debt referred, resulting in £1m of debt repayments being received. The council receives monthly performance reports from its dedicated account manager to ensure that all case actions are being conducted effectively. The council also has access to real time data on line. This will continue under the new contracts.

## Community impact

45. This decision report recommends continuing with existing practices therefore there is not expected to be any change to the community impact of this decision. The council maintains a hardship fund that individuals facing temporary financial hardship can apply for debt relief due to the individual's circumstances. These are considered on a case by case basis, £15k of hardship relief to 39 customers has been awarded in line with the discretionary policy criteria in the last twelve months.
46. Herefordshire Councils Corporate Plan 2016 – 2020 outlines the council's objective to "*Secure better services, quality of life and value for money*".
47. The new supplier(s) is contractually required, under the provisions of the contract, to maintain professional standards as set by the enforcement industry. They are therefore required to be a member of The Civil Enforcement Association (CIVEA) who, amongst other requirements, outline their expectations in terms of the conduct and practices of their members.

## Equality duty

48. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:  
  
A public authority must, in the exercise of its functions, have due regard to the need to -
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
49. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision report continues the current regulatory debt recovery function that align to the equalities duties, we do not believe that it will have an additional impact on our equality duty.
50. The protection of vulnerable persons is also a priority for the Council, and this is outlined with the Debt Recovery Policy ([link above](#)). Consideration will be given all cases involving vulnerable debtors on the most appropriate course of action to take. This may, for example, involve allowing more time to pay before a case being sent to Enforcement Agents or accepting a reduced amount.
51. Specifically on referral to debt enforcement agent all staff are trained in the correct application of their Vulnerable Debtor Policy and Safeguarding Policy, Safeguarding and Ethical Policies, as well as their Code of Conduct to ensure vulnerable debtors are identified early and treated fairly.

52. Specialist training, including assessment of understanding, is delivered to enforcement agents annually by the Money Advice Trust, Royal College of Psychiatrists and Money Advice Liaison Group. This includes benefit entitlement and debt and welfare advice.
53. At all stages of the enforcement process enforcement agent staff will assess a customer's financial circumstance and will assist potentially vulnerable customers to complete common financial statements and the sharing of advice sheets with details of third-party agencies that provide free advice/support.

## Resource implications

54. The award of the enforcement agent contract has no direct cost and is a continuation of the currently process therefore no additional resources will be required. Value for money must also be considered when providing council services, and debt owed must therefore be collected. This contract provides for this to be done at no cost to the council. Quality assessment has been undertaken with both suppliers, where their track record for recovering debt has been examined, this will ensure that the council maximise its collection of income through these contracts.
55. Herefordshire continues to maintain a good council tax (Ctax) and business rate (NNDR) debt collection rate as shown in the table below.

	17/18	18/19
Ctax Collection	98.30%	98.20%
National Average for Unitary	96.90%	96.80%
NNDR Collection	98.60%	98.20%
National Average for Unitary	98.20%	98.20%

56. Herefordshire council has approximately 85,000 dwellings for council tax and approximately 8,000 businesses for business rates. The total amount of debt sent to the council's current enforcement agent over the last 2 years is shown in the table(s) below:-

Year commencing	No. of Council Tax Debt Collection Cases	Amount
01.04.2017	3,026	£2.0m
01.04.2018	2,983	£2.0m
<b>Overall Total</b>	<b>6,009</b>	<b>£4.0m</b>

Year commencing	No. of Non Domestic Rates Debt Collection Cases	Amount
01.04.2017	97	£0.4m
01.04.2018	91	£0.4m



<b>Overall Total</b>	<b>188</b>	<b>£0.8m</b>
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57. In addition, based on average current referral rates 1,242 traffic management enforcement warrants are expected to be passed to enforcement agents in order to recovery unpaid debt from Penalty Charge Notices totalling approximately £0.1m.

58. Following the completion of debt recovery action debts can be written off, for example if the debtor cannot be traced, if the debtor has deceased without assets or further action is not deemed cost effective or appropriate. A summary of debts written off is shown in the table below.

	<b>2016/17 £000</b>	<b>2017/18 £000</b>	<b>2018/19 £000</b>
Total amount written off	492	905	1,026
Council tax charged	92,097	96,876	123,323
Business rates charged	47,610	48,970	48,641
General debtors charged	50,842	59,228	60,147

## Legal implications

59. Given that there is no cost to the council by virtue of the fact that any enforcement fees are recovered from the debtor, this is effectively a concession contract for which the threshold under the Concession Contracts Regulations 2016 is £4.5 million. The estimated fees payable to the recovery agents by the debtors could reach £2.2m over the five year term.

60. A competitive tender process was undertaken via a YPO framework agreement and so the procurement of this Service is compliant with the Concession Contracts Regulations 2016 as that Framework will have been procured in accordance with the Regulations. The procurement process ensured that the providers committed to meeting GDPR 2018 (Inc. article 26), Data Protection Act 2018, the Payment Card Industry Data Security Standard and the FoI Act 2000 requirements.

61. The providers are registered with the Information Commissioner's Office and implement a Privacy Policy, Data Protection Policy, Document Retention Policy, and Confidentiality Policy. The providers also hold the associated accreditations including secure card processing.

## Risk management

62. To not continue using a debt enforcement agency is likely to result in a reduction in the collection of monies due. Referring debt to an enforcement agency service is a last resort and follows a comprehensive review of the individual's circumstances however the council is duty bound to attempt to recover the charges raised to ensure it can continue to fund the services the council provides.

## **Consultees**

None

## **Appendices**

None

## **Background papers**

None identified