



Cabinet
13 September 2016

**Report from the Chief Finance
Officer**

For Action

**Fair Debt Recovery Policy, and In-House Enforcement
Agents (Bailiffs) Service**

1. Summary

- 1.1 As a result of continuing budget pressures, recovery of Council debts has become of paramount importance, and the need to maintain and improve performance in this area will only increase going forward.
- 1.2 A review of Debt Recovery across the Council in 2015 prompted creation of a Debt Board, chaired by the Chief Finance Officer, to increase visibility of Council debts, and to improve performance. Amongst other things, the work of the board has highlighted the need to agree a Council-wide approach to debt recovery, which will make clear the obligations of debtors, and ensure that officers are able to take a proportionate and consistent approach to recovery, which enables them to be firm where appropriate. This work has also raised the question of whether the Council should consider bringing debt enforcement activities in-house in order to improve control over Enforcement Agents (Bailiffs) acting to collect Council debts, whilst also potentially generating a new income stream for the Council. Some other councils have done this with reasonable success.
- 1.3 This report outlines the principles that should form the backbone of a Council-wide Fair Debt Policy, and will provide suggestions as to how vulnerable debtors and those with multiple debts should be dealt with.
- 1.4 This report also reviews the nature and performance of current arrangements with respect to Enforcement Agents (Bailiffs) across the Council. It describes the experiences of some other authorities who have chosen to move away from the traditional outsourced arrangements, and considers the potential costs and benefits of creation of an in-house team.

2. Recommendations

That Cabinet:

- 2.1 Approves the suggested overarching principles for a Council-Wide Fair Debt Policy
- 2.2 Approves the suggested approaches to individuals with multiple debts, vulnerable debtors, and those in financial difficulty.
- 2.3 Approves the recommendation to create an in-house bailiff service as part of our approach to collecting Council debts, to be implemented as existing arrangements come to an end.
- 2.4 Notes the justification for recruiting Enforcement Agents outside of the Council's standard employment terms and conditions, in order to implement performance related pay, and gives authority to recruit on this basis.

3. Corporate Debt Policy

Context

- 3.1 Local authorities have strong cash flows, backed by predictable government grants and relatively stable income from local taxes. As such, many authorities have historically not needed to have robust performance monitoring in place for debt recovery, nor have they had to use the same approach and processes that would normally be employed by private sector creditors. However, the importance of good performance in this area will only grow as Councils become more reliant on income from taxation and commercial activities, and the proportion of their income that comes from grants continues to fall.
- 3.2 The Council bills individuals and organisations some £300m each year, much of which is for local taxes. As at 31st March 2016, the total balance of debt owed to the Council had reached nearly £90m, with the greatest contribution being made by Housing Benefit Overpayments (£35m) and Council Tax / Business rates (£31m). In order to address performance in this area more proactively, a review of debt recovery processes, systems and structures across Brent was carried out in 2015. Recommendations stemming from the review included:
 - The need to gradually move from the existing disparate debt recovery functions to a model that centralises and makes better use of the debt recovery expertise available,
 - The need to improve automation and functionality of many Council systems used for recovery, and
 - The need to ensure greater uniformity of the debtor experience, and enable a person-centric approach to be taken to individuals with multiple debts for the first time.

- 3.3 A Debt Board was formed in December 2015, with the role of scrutinising performance, and overseeing the implementation of a number of initiatives in order to achieve the broad goals above:
- Creation of a set of key performance indicators for debt, which are monitored monthly to give greater corporate visibility of the totality of Council debt
 - The Debt Recovery Team within the Legal department that was created for the Adult Social Care project has been expanded and has begun to take on a variety of cases from across the Council,
 - Consideration of our options with respect to procuring a purpose-built debt recovery system which will aim to improve automation of recovery processes, enable implementation of new technologies and payment methods, improve the quality of management information, and will enable multiple debtors to be managed by a single caseworker,
 - Creation of a staff group with representatives from across the Council to lead on sharing best practice across all debts teams,
 - Bulk analysis of aged debt to support decisions around write-off and help focus resources on the most collectable accounts
 - The allocation of a revolving fund to add resources to departments for one-off “spend to save” initiatives, such as recruiting a HB assessor to work in temporary housing to review former tenant accounts, and identify where HB had been underpaid – an initiative which cleared over £200,000 of tenant debt, at a resource cost of £9,000.
- 3.4 The Debt Board’s aim is to improve collection performance to generate increased income, and minimise the need for write offs; with a view to generating £1m budget savings from 17/18 onwards through reductions to bad debt provision across the Council.
- 3.5 Both the review, and continued engagement with debt recovery staff, has highlighted that one of the key hurdles to effectively recovering Council debts is the widely held belief that local authority debts are somehow “less important” debts, despite the often severe sanctions that could result from non-payment. This has been perpetuated over the years by a lack of escalation of recovery action, perhaps due to hesitance of how escalation against seemingly vulnerable debtors will be perceived, or perhaps because of a perception, whether justified or not, that management decisions will not always be backed up if unwarranted complaints are submitted. An agreed set of debt collection principles, as set out in this report, will help with this.
- 3.6 Whether or not this perception of the Council as a “soft” creditor is widespread, there is an obvious benefit to formally setting out the Council’s approach with respect to collecting its income, and taking enforcement action against debts which remain unpaid. Doing so does not imply an intention to become more robust across the board, rather that we need to be better able to assess a debtors ability to pay, and use fair and appropriate means to recover that debt, supporting people where there is a genuine need. We need to be clear about when decisions will be taken, by whom, and what factual information will be taken into account in making those decisions. It also means that we need to invest in educating our debtors, ensuring that they can access

any necessary support in managing their finances, but also that they fully understand their obligations with regards to Council debts, and the potential consequences if they refuse to pay.

Proposed Policy Intent and Principles

- 3.7 The proposed over-arching policy statement below articulates the Council's position and intent:

Brent Council has a legal duty to ensure the prompt and cost effective billing, collection and recovery of all sums due to the Council. Timely and cost-efficient collection of debts is critical to ensuring that the Council is able to provide essential services, and the Council is committed to maximising income collection using fair, consistent and proportionate means.

The Council provides a wide range of services to residents and businesses, each of which is governed by specific regulations setting out how the service will be provided, liability to pay, and how any overdue amounts will be collected. This policy seeks to set out the key principles that the Council will aim to apply in order to ensure that it is 'fair but firm', and can strike the necessary balance between dealing sensitively with those customers in genuine financial difficulty, whilst also using the full range of recovery methods where a customer has the means to pay but fails to do so.

- 3.8 The scope of the policy will include all key Council revenue streams, including but not limited to:
- Council Tax
 - Non-Domestic Rates (Business Rates)
 - Housing Benefit Overpayments
 - Housing rents and temporary accommodation charges
 - Leasehold Major works and service charges
 - Sundry Debts collected by the Financial Services Centre (FSC)
- 3.9 The following guiding principles will be consistently applied to all categories of Council debt, and in all interactions with our customers:

Principle 1 – Clear charges and recovery processes

- **We will** make debtors aware of the value and nature of debt they owe to the council, and the potential implications if the debt is not paid
- **We expect** customers to contact us as soon as they receive notification if they wish to dispute a charge or feel unable to pay.

Principle 2 – Easy and flexible payment

- **We will** accept a range of payment methods and frequencies, and will endeavour to ensure that making payments is easy for customers, aiming where appropriate to prevent arrears occurring by encouraging payment in advance, or Direct Debit payments.

- **We expect** customers to take advantage of the range of payment methods available in order to pay on time, and to contact us quickly if they need to request additional flexibility.

Principle 3 – Early intervention

- **Where practical we will** seek to prevent enforcement by notifying customers who fall into debt at an early stage to ensure they are aware that debt has accrued.
- **We expect** customers to respond promptly to any contact we attempt to make with them.

Principle 4 – Clear communication

- **We will** use a range of communication methods to ensure that debtors know how to make payments, and how to contact us if they are struggling to pay
- **We expect** customers to tell us promptly if their contact details change, and to be courteous to our staff

Principle 5 – Support for individuals who demonstrate that they can't pay

- **Where an individual is identified as being in financial difficulty, we will** ensure they are referred both to relevant internal departments and appropriate sources of independent advice and guidance. In specific circumstances we may consider setting aside a portion of an individual's debt in order to prevent exacerbating severe indebtedness
- **We expect** customers to take ownership of their finances, to engage positively with any support provided, to provide any requested information within the specified timescale, and to comply with the terms of any agreement made.

Principle 6 – We will take enforcement action where individuals “Won't Pay”

- **We will** use a variety of debt recovery methods to collect debts from those that can, but won't pay, and wherever enforcement becomes necessary, any costs incurred will be passed on to the debtor.
- **We will** ensure that all enforcement action taken is proportionate, and complies with relevant legislation; but to be fair to those who do pay, and to try to deter wilful non-payment, we will always seek the maximum penalty where an individual commits fraud.

Vulnerable Debtors

- 3.10 The Council's website, standard letters and debt recovery staff all provide debtors with details of how they can access independent advice and support in relation to their finances, however we recognise that some individuals will require additional measures in order to be able to adequately manage their finances and repay the money owed.

3.11 There is no set definition of vulnerability in relation to poverty, and the degree to which someone is considered vulnerable can vary widely. The causes of financial vulnerability are incredibly broad, and any condition or situation which affects a person's ability to manage their finances could make someone vulnerable for a period of time.

3.12 Some likely causes or examples of vulnerability could be:

- **Disabled people, including those with learning difficulties** - where their disability specifically affects their ability to deal with their financial affairs
- **People suffering from serious illness, including mental health conditions** - where their disability specifically affects their ability to deal with their financial affairs
- **People who have difficulty communicating in English** – translation services are available for interaction with the Council, but where someone does not have the support of family members who can speak and read English, they may be more broadly financially excluded, and may be considered vulnerable in some cases
- **People who have difficulty reading and writing** – which is likely to prevent them from being able to read notices or warnings in relation to their debt, and may have caused broader financial exclusion
- **People undergoing significant changes in circumstances** – such as being recently bereaved, or having recently lost their job or their home.

3.13 The above does not constitute a list of reasons for automatic assessment as vulnerable, nor is it intended to be exhaustive. Assessment of vulnerability, and the steps taken to support a vulnerable debtor, will be assessed by the Council on a case by case basis, based on the specific details provided by the customer.

3.14 The identification of vulnerability does not excuse someone from paying a debt which they are legally obliged to pay. It does, however, mean that the Council will provide additional support in understanding the debt, and aim to minimise undue distress.

3.15 As a minimum, the identification of vulnerability will result in additional management control. Flags may be used on the relevant debt management system to alert any staff dealing with the case, and automated escalation will be halted to ensure that the case is reviewed by a member of staff before any further action is taken.

3.16 Depending on the nature of the vulnerability that is identified, there are a number of additional measures that the Council may feel it is appropriate to make:

- Allowing longer to pay
- Referral to independent advice and guidance
- Temporarily halting enforcement action
- Providing additional support to overcome the vulnerability, such as home visits or assistance completing forms
- Reviewing eligibility for benefits to ensure that these have been correctly assessed, and consider whether hardship loans or DHP may be appropriate

- Where advocates or representatives have been appointed, ensure that the appropriate evidence has been provided and accounts are updated.

Support for those with Problem Debts

- 3.17 Whether or not an individual is vulnerable and needs additional support to manage their finances is often independent of whether the debtor actually has the means to pay. As described in the principles outlined in this paper, the Council will aim to assess a debtors' ability to pay their debt, and to tailor our approach where it is identified that someone is struggling to clear their debts.
- 3.18 The Council's Financial Inclusion Strategy sets out Brent's overall approach to addressing the causes of financial exclusion by helping residents move into and retain sustainable employment, overcome high levels of debt, and access mainstream banking and affordable credit. The Council's approach to recovering its own debt will support these objectives.
- 3.19 In addition to provision of, and referral to, appropriate sources of advice and guidance through our existing advice contracts, the Council will seek to support debtors to overcome problematic debt and promote access to affordable credit by;
- Continuing to operate a policy of setting aside a portion of the outstanding balance where it is identified that a debtor does not have the means to pay the full amount. It would not be practical to implement a prescriptive set of criteria for the cases in which we will consider this, so it will be left to manager's discretion, but as a minimum it will only be considered where an individual has engaged with financial assessments, and has kept to the affordable payment plan that has been agreed for a period of time.
 - Considering alternative models to promoting affordable credit such as a partnership with a credit union in order to offer affordable credit to encourage responsible borrowing, and specifically to release debtors from high interest payday and doorstep loans where we are made aware of them. This approach has worked well in Newham, where the MoneyWorks service has a successful partnership with London Community Credit Union. Newham's service has been visited by staff, and an analysis of this approach will now be included in the ongoing review of the LWA scheme, and the Outcome Based Review (OBR) process, but will not be specifically be linked to development of a corporate debt policy.

Multiple Debtors

- 3.20 We know that individuals struggling with problematic debt are likely to owe multiple debts to the Council. Client Index data suggests that there could be over 3,700 individuals who owe more than one debt with respect to Council Tax, Rent Arrears, and Housing Benefit Overpayments, and 300 people who owe all three.
- 3.21 Historically, it has been difficult to take a holistic view of an individuals' debt due to each account being held and managed on disparate systems, making it impossible for a single officer to manage multiple accounts across different services. The Debt Board

is currently looking at options for procuring a debt system that is able to give us additional functionality; including enabling multiple debts to be managed through a single point of contact. Once in place, this will minimise the opportunity for distress, reduce the amount of contact the customer needs to make, and ensure that the Council is in the best possible position to understand the totality of the individual's circumstances, and thus is better able to provide appropriate advice and assistance.

3.22 Once the required functionality is available, where individuals have multiple debts to the Council, we will seek to enter into a single affordable payment arrangement which covers all their debts.

3.23 When entering into arrangements for multiple debts, council debts will be prioritised or weighted in the following order:

- Council Tax
- Rent / Temporary Accommodation Charges
- Court fines associated with Council Debts
- Adult Social Care Contributions
- Leasehold Service Charges & Major Works Costs
- Housing Benefit Overpayments
- Sundry Debts
- Parking Charges
- Former Tenant arrears

3.24 This ranking reflects the need to repay "priority" debts, which have more serious consequences, such as losing your home or being found guilty of a criminal offence, before less serious "non-priority" debts. (The Citizen's Advice Bureaux guidance on priority and non-priority debts can be found in Appendix A.) It also reflects the need to keep on top of recurring debts, with these featuring higher in the list, and one-off debts lower down.

Write-offs

3.25 As part of sound financial management, the Council will periodically write-off debts that it considers are not possible, or cost effective to recover. By definition, the council does not write-off debts at the request of the debtor, however in appropriate circumstances it may consider setting aside a portion of the debt in line with the principles laid out above.

4. Approach to Enforcement

Context

4.1 As part of our approach to enforcing debts, the Council should give consideration to creation of an in-house enforcement team, to replace existing 3rd party arrangements. Existing arrangements generally come at zero cost to the council, and minimise our exposure to this commercial activity. However, in light of the Council's wider Civic Enterprise agenda, and the goals laid out earlier in this paper with respect to debt

recovery, there may be value in altering this approach in order to take greater control of individuals who enforce debts for the council, and to retain income generated by statutory fees, rather than passing this on to private sector enforcement agents. While there are no immediate plans to centralise all our debt recovery functions, but there is a recognised need to create a “Centre of Excellence” on debt recovery, and having a central specialist enforcement function that could operate on different types of debt would fit well with this vision.

- 4.2 The Taking Control of Goods Regulations came into force in April 2014, introducing a new fee structure for the activities used to recover debts. The new rules replaced an arrangement where fees varied according to debt type, and where certain fees could be charged multiple times, resulting in a confusing environment for debtors, and a very high rate of disputes over enforcement fees.
- 4.3 The reforms also formally recognised vulnerability of debtors for the first time. While the legislation doesn’t attempt to rigidly define who can be considered vulnerable, it does make training on identifying and dealing with vulnerable people a mandatory requirement for certification as an Enforcement Agent. It also provides for vulnerable debtors to be given the opportunity to seek advice before enforcement fees are incurred.
- 4.4 The introduction of a more transparent fee system, and recognition of the need to allow for additional support for vulnerable debtors, has made this a more palatable proposal for local authorities, and a number of London authorities have now created in-house teams, citing the following benefits:
 - improved debt collection
 - greater control of enforcement activities and introduction of a more sensitive approach to collection
 - improved intelligence from enforcement agents on debtors’ circumstances
 - surplus income generated on top of recovering the costs of the service from retained fees.

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Current Arrangements

- 4.5 There is no universal contract for enforcement activity to collect the Council’s debt. Different service areas have individual, sometimes fairly complex, arrangements - often with more than one enforcement agency. In some areas, we have indirect relationships via more generic debt collection agencies who perform a range of functions for us, whilst in others we have no long term relationship, but make referrals to external agencies on an ad hoc basis, as and when the need arises.
- 4.6 The current arrangements that the various departments of the Council currently have in place are laid out in the table below.

| Service Area / Debt Type | Contractual arrangements / costs | Contract End Date (if applicable) |
|-------------------------------------|--|--|
| Parking | Bailiff income comes from statutory fees, 100% of debt collected is returned to the council. | 30 th June 2017 (with an option to further extend for 1 year) |
| Council Tax / NNDR | Bailiff income comes from statutory fees, 100% of debt collected is returned to the council. | Part of the Capita contract –due to expire in April 2019 |
| Sundry Debts | Arrangement with a Debt Collection firm who undertake a variety of activities in relation to aged debt, including provision of Enforcement Agents. Contractor retains 15% of any debt collected (i.e. 85% returned to the council), but if nothing is collected, no fee is payable. | No overarching contract in place, and referrals are made on an individual basis. |
| ASC / Legal | Bailiff income comes from statutory fees, 100% of debt collected is returned to the council. If no collection achieved, fee is a flat £75+VAT. | No overarching contract in place, and referrals are made on an individual basis. |
| Housing Benefit Overpayments | Provided through insolvency solicitors when needed. | No overarching contract in place, and referrals are made on an individual basis. |
| BHP – Former Tenant Arrears | Specific one-off arrangement with a Debt Collection firm who undertake trace and collection activities, including enforcement. Contractor retains 35% of any debt collected (i.e. 65% returned to the council), but if nothing is collected, no fee is payable. | A specific sample of aged FTA debts was passed over in 2015, and continues to be worked by the firm, but there is no long-term contract in place for newer FTAs. |

- 4.7 Most service areas make so few referrals to debt collection agencies and Enforcement Agents that there is no need for a high level, long-term contract, and it is practical to make referrals on an ad hoc basis. Only two service areas, Parking and Council Tax / NNDR, refer enough cases to Enforcement Agents to make individual referrals impractical, and warrant the need for an over-arching contract. The first of these contracts (Parking) is not due to expire until the end of June 2017, and as discussed in paragraph 4.19 initial modelling suggests it would not be viable to create an in-house service for parking debts alone. However there may be opportunity to negotiate that a proportion of warrants are allocated to an in-house team before the expiry of a contract.
- 4.8 Almost all the arrangements with Enforcement Agencies are zero cost to the Council, as the agencies get their income through retention of the statutory fees. The exceptions to this are where we employ debt collection firms to undertake trace and collect activities, where often the service is provided on a shared return basis, but the fees applied are effectively covering collection activities rather than enforcement.

Current Performance

- 4.9 There is considerable variation in the performance of bailiffs for different types of debt within Brent. Most services do not pass enough debt to Enforcement Agencies in order to reliably assess performance, so only Council Tax, Business rates and Parking will be considered.

| Debt Type | Performance 14/15 | Performance 15/16 |
|-------------|-------------------|---------------------|
| Council Tax | 14.09% | 12.27% |
| NNDR | 18.31% | 14.95% |
| Parking | 15.16% | 15.29% ¹ |

In-house arrangements in other authorities

- 4.10 A number of other London authorities have implemented an in-house service, including;
- Merton (since 2003, and operating as a shared service with Sutton since 2012)
 - Lewisham (since 2015)
 - Havering / Newham (through the OneSource shared service arrangement)

¹ n.b. Parking data is not available for the 15/16 financial year, so the calendar year 2015 is shown as the most suitable comparator.

- 4.11 Merton achieves a 45% collection rate on Council Tax and NNDR debts, and a 35% collection rate on parking debts, and the enforcement fees that they generate covers the £450k per annum service budget and delivers roughly £500k surplus back into the general fund.
- 4.12 Merton attribute this success to the fact that rather than cherry-picking warrants as a third party bailiff usually would, every debt is pursued, which they feel may have improved the perception that debtors can “get away with” not paying and led to improved collection rates. In addition, they report that staff are more accountable, giving the service manager more control, and that they enter into a significantly higher proportion of longer, more flexible payment arrangements with debtors than a private firm would.
- 4.13 Lewisham’s service has now been in place for a full financial year, and a recent report for their Public Accounts Select Committee³ stated “After one full financial year the service has improved the enforcement collection rate when compared to our external contractor for the year prior, increased the amount of information used to maintain the database, accepted more long term payment plans where appropriate, reduced the number of complaints and generated a surplus income of £200k.”

Table 1 - Volume of cases referred to Lewisham Enforcement Agency and value

| Apr 15 to Mar 16 | No. of cases | Value | Collected* | % |
|------------------|--------------|-------------|------------|-----|
| Council Tax | 17,212 | £10,864,788 | £2,280,272 | 21% |
| Business Rates | 225 | £625,756 | £104,911 | 17% |
| Total | 17,437 | £11,490,544 | £2,385,183 | 21% |

Table 2 - Fees raised and collected

| Apr 15 to Mar 16 | | Value raised | Collected* | % |
|------------------|--|--------------|------------|-----|
| Council Tax | | £3,357,014 | £691,718 | 21% |
| Business Rates | | £72,088 | £12,227 | 17% |
| Total | | £3,429,102 | £703,945 | 21% |

n.b. these figures include payments due on arrangement, so these should not be directly compared to the performance figures in table 4.9.

Comparison of fees

- 4.14 The legislation has standardised fees that can be charged at each stage of enforcement action, as laid out in the table below.

³ Source:

<http://councilmeetings.lewisham.gov.uk/documents/s42858/PAC%20EA%20update%200416%20report%20final.pdf>

| Stage of process | Action | Fixed Fee | Percentage Fee (Debts over £1500 only) |
|------------------|---|-----------|--|
| Compliance | Writing to inform you of the debt, requesting payment, issuing an enforcement notice | £75 | 0% |
| Enforcement | Visiting your home or business premises to take control of goods, including everything involved in identifying, valuing and taking control of your belongings | £235 | 7.5% |
| Sale | Removing and selling the belongings that were taken control of in the previous stage | £110 | 7.5% |

4.15 In line with best practice, the Council currently sends a “pre-enforcement letter” whenever a case is passed over to bailiffs, urging the debtor to clear the debt before enforcement fees are incurred. Both Lewisham and Merton send a further letter after the debt has been passed to their in-house bailiff services, advising that the debt has now been escalated to the enforcement stage, but offering one more opportunity to make payment before any fees are incurred. For an in-house team, waiving the compliance fee is a small price to pay for ensuring the debt is cleared cost-effectively, whilst preventing unnecessary indebtedness for their residents. For a private sector firm, there is no incentive to do this, as the income collected is passed to the client, and they retain nothing for their work. It should be noted that some bailiff firms do include an opportunity to pay before applying fees, but the practice is by no means universally applied.

4.16 This may in part explain why private bailiff firms appear to generate more income from warrants than local authority teams do. Lewisham’s figures show that they raise an average of £196 from each warrant that is passed to their in-house team. Merton raised an average of £214 per warrant in 2011 (this was under the old fee structure, but roughly marries with their current levels of income and number of warrants). In contrast, Equita were passed 11,000 Brent Council Tax warrants in 2015/16, from which they collected £750,000. Assuming these were collected at the same rate as the Council Tax debt associated with each one⁴, it suggests Equita are generating £487 per warrant.

⁴ The legislation states that when payments are made, they should be allocated to bailiff's compliance fees first, and once this is cleared, further fees are shared on a pro-rata basis between the debt itself, and the court costs. In practice this means that if a payment plan is lapsed, the recovery rate of fees may be higher than the recovery rate of the actual debt.

- 4.17 Whatever the exact cause of the differences in income generated in bailiff fees, the variation in itself gives further evidence of the need to exert greater control over the fees that are charged to our debtors by bringing this function in house.

Consideration of Parking Enforcement

- 4.18 For debts of Council Tax, NNDR, Housing Benefit Overpayments, and many fees and charges, debtors are concentrated within borough boundaries. For others, notably Parking, debtors are far less likely to be local. An analysis of 10,695 PCNs issued in 2015 revealed that only 7% (780 PCNs) were vehicles registered to Brent residents.
- 4.19 Assuming that the number of PCNs issued, and the relative proportion of PCNs issued to vehicles registered in the borough remains broadly the same, roughly 1600 warrants for PCN debts would relate to borough residents. Given a suggested caseload of 3,000 warrants per EA per year, it is unlikely to be viable to create an in-house service to deal with parking debts alone.
- 4.20 While a significant portion of out of borough debtors may be local enough to be managed by a locally-based team, there will clearly remain a significant caseload of debtors which can only practically be managed by retaining an external agency who have a national reach, and have access to technology such as Automatic Number Plate Recognition (ANPR) which would not be practical for us to implement.
- 4.21 In addition to this, the fees generated on average by each parking warrant are significantly lower than are achieved for (see Financial Implications below), and additional capital costs for items such as clamps would be incurred, making it unlikely that the Council would be able to recover the costs it incurs in running the service.
- 4.22 Finally, the key driver behind bringing enforcement in-house is that we can better control enforcement activities carried out with our residents, and use the service to gather greater intelligence on our debtors, which is of limited value to us if the vast majority of parking debtors are not residents of Brent.
- 4.23 As such it is recommended that if we decide to implement an in-house service, we do not include parking debts at this time.

Case volumes and staffing levels

- 4.24 Calculating potential service capacity is not an exact science, but other in-house models allow 3000-4000 warrants per enforcement agent (EA), and between 0.5-1FTE business support to each EA.
- 4.25 Capita issued 11,000 cases to bailiffs in 13/14, and 8,000 in 14/15 in respect of unpaid Council Tax, and 1,500 cases in both years in respect of NNDR – an average of 11,000 cases each year.

- 4.26 It is recommended that at least initially, we use the lower estimate of the number of cases that each EA could manage, and retain a third party EA arrangement to deal with surplus warrants. This would enable us to test out appropriate caseloads, provide capacity for peaks in demand, and mitigate against any potential drop in performance as the service is bedding in.
- 4.27 On this basis, a suggested service structure could be;
 Service manager / team leader x1
 Enforcement agents x 3.5
 Business Support x 3
- 4.28 Service costs, including staffing costs, are laid out in the “financial implications” section below.

Timescale for Implementation

- 4.29 Advice from other boroughs suggests it would take roughly 9 months from initial approval to go live with an in-house service, assuming the decision was taken to recruit experienced certified agents from the private sector rather than seconding staff internally and training them.
- 4.30 As presented in paragraph 4.6, the Council's existing Enforcement Agents for Council Tax and NNDR are provided through the Capita contract, which is not due to come to an end until April 2019. However, there may be an opportunity to negotiate that a portion of debts could be passed to an in-house service in parallel to Capita's arrangements with other bailiffs, in order to test out a scaled-back version of a full service.
- 4.31 The table below indicates the potential scheduling of high level milestones needed in order to implement the service.

| Milestone | Duration | Sequencing |
|---|-----------------|-------------------|
| Approval of business case by Cabinet | | Month 0 |
| Service Manager seconded / appointed | 2 months | Months 1-2 |
| System tender process | 2 months | Months 1-2 |
| System configuration | 4 months | Months 3-7 |
| JD writing and preparation for recruitment | 2 months | Months 3-4 |
| Process Design (incl. changes to recovery team processes) | 4 months | Months 4-7 |
| Facilities procurement (vehicle leasing / PPE / handheld devices etc) | 2 months | Months 4-5 |
| Recruitment Process (front line staff) | 3 months | Months 5-7 |
| Legal compliance (EA certification / bond issue) – if uncertified staff are appointed | 3 months | Months 8-9 (tbc) |

Financial Implications

Estimated Service Costs

4.32 Estimated costs of implementing and running an in-house service are laid out in the table below.

| Service Costs | One off costs £'000s | Ongoing annual costs £'000s | Notes |
|---------------------------------|-------------------------|--------------------------------|---|
| Team Leader / Manager Salary | | 56 | Based on PO4 plus 30% on costs (56k) |
| EA salaries | | 157.5 | Based on 25k (SO1) basic salary, plus a performance related pay element, and including on costs - expected to total 45k per FTE (based on Merton's costs) |
| Business Support | | 105 | Based on scale 6 plus 30% on costs (35k) |
| Vehicle Leasing | | 12 | 250 pcm (3k per year) per vehicle |
| IT System | 50 | 5 | 50k for purchase, c. 5k annual support costs (based on spend on "OneStep" software from other London Authorities) |
| Operational / Hardware Costs | | 20 | Body-Worn Video, GPS trackers etc (all negligible costs individually) |
| Storage and sale of goods costs | | 30 | Unknown how many cases are likely to reach sale stage, so this is purely indicative |
| Total Costs | 50 | 385.5 | |

4.33 Looking at the figures from Lewisham and Merton, an estimate of the average fee generated per warrant for Council Tax / NNDR is £200⁵. This fee is considerably lower for PCNs, which in 2015 generated an average fee of £35 per PCN issued to our bailiffs.

⁵ This is based on an average fee of £196 per warrant from Lewisham's PAC report, and £214 generated by Merton (source: <https://modern.gov.sutton.gov.uk/documents/s22041/list%2006%20del%2034-12.pdf>)

- 4.34 Assuming the number and value of warrants passed to bailiffs remains the same as recent years, the table below outlines the likely level of fees that would be collected if different collection rates are achieved.
- 4.35 This shows that the service would need to achieve roughly 17% collection rate in order to recover the costs of operating the service.
- 4.36 The table also shows that if this 17% target is reached, this would bring in a little over £4m in Council Tax Debt, almost £700,000 more than was achieved by our third party bailiffs in 2015/16.

| Collection rate | Income from statutory fees (£'000s) | Total Council Tax Debt Recovered (£'000s) | Surplus / Deficit compared to 15/16 (£'000s) |
|-----------------|-------------------------------------|---|--|
| 10.00% | £220 | £2,335 | -£1,057 |
| 12.50% | £275 | £2,919 | -£473 |
| 15.00% | £330 | £3,503 | £111 |
| 17.50% | £385 | £4,087 | £695 |
| 20.00% | £440 | £4,670 | £1,279 |
| 22.50% | £495 | £5,254 | £1,862 |
| 25.00% | £550 | £5,838 | £2,446 |
| 27.50% | £605 | £6,422 | £3,030 |
| 30.00% | £660 | £7,005 | £3,614 |

- 4.37 It is worth noting that while this is well below the rate achieved by Merton's long-established team (45%), and Lewisham's one year old one (21%), it is considerably higher than the performance achieved by the current private sector bailiffs arrangements (14% for Council Tax, and 15% for NNDR). As such this seems like a challenging, but not unrealistic target for year 1 performance.
- 4.38 As the service becomes gradually established, it would be expected to achieve much better collection rates, however it is wise to forecast prudently given our lack of experience in this area.

5. Staffing Implications

- 5.1 In the private sector, Enforcement Agents are generally recruited on the basis of a relatively low base salary, and additional performance related pay that enables them to earn commission based on the debts that they recover. In order to compete with the private sector and recruit and retain the best quality staff, most authorities that have

in-house EAs recruit them on the same basis; offering a low “retainer” salary, and a performance-based element which varies in relation to the value of debts recovered by the agent.

- 5.2 The only exception we have found to this approach from London authorities is Lewisham, who felt that with a thorough job evaluation process, and a robust approach to performance management, that it could compete with the private sector despite offering Enforcement Agents a fixed PO3 salary. Staff were recruited on 18 month fixed term contracts, and while performance management has broadly resulted in good results from the service, one contract is being allowed to lapse. Initially, there was no difficulty recruiting staff on the fixed salaries, however more recently this has posed a problem, as Croydon have recently begun recruiting for their own in-house service offering low base salary with additional performance related pay – which has resulted in Lewisham’s service manager, and a number of their Enforcement Agents moving over to Croydon’s new service.
- 5.3 This provides strong evidence that Brent would struggle to recruit, retain, and effectively performance manage the best agent unless it mirrors the private sector model of performance related pay.
- 5.4 As such it is recommended that a performance-based structure is adopted, with a base salary of c. £25,000 to mirror other London authorities, and ensure that the role exceeds the London Living Wage. Careful consideration will need to be given to the formula used to calculate any performance related pay element, and at what value this should be capped. A sensible approach might be to limit the overall “pot” available for all staff, and to employ a scaled approach to any additional payments according to the relative performance of each team member. The exact mechanism for how this should be achieved should be informed from the experience of other authorities, and it is suggested that it is reviewed each year.
- 5.5 Should any of our existing contractors employ staff who spend the majority of their time working specifically on Brent work, they may be subject to TUPE considerations. It isn’t currently known whether this applies, but given that our proposal is to mirror the arrangements in the private sector, this is unlikely to present a material obstacle to bringing the service in-house.
- 5.6 It is also important to note that there is a strong likelihood that as part of the Council’s wider commercialisation agenda, an independent trading entity would be created at some point. If such a structure were created, it would be able to recruit staff on different terms and conditions than those used by the council, and as such may be an ideal vehicle for testing a model such as this, especially in light of the fact that there is no immediate urgency to move the enforcement function in-house. It will also be useful to consider the timing of this; if staff are initially employed by the council and later transferred to a separate entity, the situation is considerably more complex than if they are employed by a trading arm in the first instance.

6. Legal Implications

- 6.1 The adoption and promotion of a Council-wide policy on debt recovery is intended to gain political buy-in, and assist recovery staff in their interactions with our customers through setting clear obligations. It does not propose any fundamental changes to the recovery process, and each debt type would continue to be collected in line with the relevant statutes.
- 6.2 The Council is already associated with enforcement agents and activities by contract. Regardless of whether these activities are carried out by an external agency, or an in-house team, they must be carried out in accordance with legislation, and codes of conduct must apply. Bringing this activity in-house will not materially change enforcement activities, but will enable the council to ensure that debts are enforced sensitively, and that flexible terms are offered where needed.
- 6.3 Regulation of enforcement activities is achieved through certifying individuals rather than organisations, so the Council would not need any particular legal status in order to carry out this function. The approach used by all authorities that we have spoken to is to employ certified enforcement agents, rather than recruiting existing authority staff and getting them certified.
- 6.4 In relation to procurement considerations, Enforcement Agency (Bailiffs) Services are deemed a service concession contract and therefore fall outside of the Public Contract Regulations 2016. They will also not be subject to the new Concessions Contracts Regulations 2016, because the value of the contracts falls well below the threshold of £4,104,394. As such there are no procurement regulations that would prevent us from bringing the service in-house.

7. Diversity Implications

- 7.1 As described above, the Council's approach to dealing with debtors remains fundamentally unchanged, and as such an Equality Analysis has not been carried out in relation to the proposed policy principles of; indeed it is hoped that through formalising and promoting our approach, and in particular the support that is available to vulnerable debtors, that we encourage engagement with vulnerable debtors who may traditionally have tried to ignore their debts.
- 7.2 An Equalities screening exercise has been carried out and is attached at Appendix B. This suggests that there would not be a need to carry out a full Equality Analysis.

Contact Officers

Conrad Hall, Chief Finance Officer
conrad.hall@brent.gov.uk

CONRAD HALL
Chief Finance Officer

Appendix A - CAB Priority debts listing

(Source: <https://www.citizensadvice.org.uk/debt-and-money/help-with-debt/how-to-sort-out-your-debts/>)

Priority debts include:

- mortgage or rent arrears. If you don't pay these, you could lose your home
- gas and electricity arrears. If you don't pay these, you can have your supply disconnected
- council tax arrears. If you don't pay these, a court can use bailiffs to take your goods. If, after this, you still have arrears unpaid, you can be sent to prison
- court fines such as magistrates' court fines for traffic offences. If you don't pay these, the court can use bailiffs to take your goods. If, after this, you still have arrears unpaid, you can be sent to prison. Parking penalties issued by local authorities are not priority debts
- arrears of maintenance payable to an ex-partner or children. This includes Child Support you owe to the Child Support Agency. If you don't pay these, a court can use bailiffs to take your goods. If, after this, you still have arrears unpaid, you can be sent to prison
- income tax or VAT arrears. You can be sent to prison for non-payment of income tax or VAT
- TV licence or TV licence arrears. It's a criminal offence to use a television without a licence. You could be fined.

In Northern Ireland, the courts don't use bailiffs but in some cases can use seizure orders on certain items.

You may have other debts which you think it is particularly important to pay. For example, if you're disabled and rely on your car to get around, you may need to make paying for your car a priority debt.

You need to think very carefully about which debts you treat as the most important ones. You must have very good reasons, as you might have to convince a court or your other creditors why it is reasonable for you to treat these debts as more important than others.

Non-priority debts include:

- benefits overpayments
- credit debts such as overdrafts, loans, hire purchase, credit card accounts and catalogues
- water and sewage charges – you can't be cut off for water debts
- student loans
- money borrowed from friends or family
- parking penalties issued by local authorities.

You can't be sent to prison for not paying non-priority debts. But if you don't make any offers to pay, without explaining why, your creditors may take you to court. If you still fail to pay when the court has ordered it, your creditors can take further action. For example, they can get another court order which allows them to send bailiffs round to take your property away. This will be sold to cover your debts.

If you don't keep up payments under a hire purchase agreement, the lender may be able to take back the goods. Depending on how much you have paid, the lender may not need to get a court order first.

Appendix B – Equality analysis screening

1. What are the objectives and expected outcomes of your proposal? Why is it needed? Make sure you highlight any proposed changes.

Enforcement Agents, whoever their employer, are certified individually, and their activities are governed by legislation, so bringing the service in-house would not result in any material change to the activities that an Enforcement Agent carries out. The only slight change would be that we would encourage directly employed staff to allow greater flexibility when setting payment arrangements. This would be entirely at the Agent's discretion, and they would be encouraged to make an assessment of the debtor's ability to pay in order to inform this.

The Council currently outsources its debt recovery enforcement function to third party Enforcement Agents, over whom it has limited control, and it is hoped that bringing this service in-house, and using directly employed staff to carry out existing enforcement activities, would deliver the following benefits:

- improved debt collection
- greater control of enforcement activities and introduction of a more sensitive approach to collection (e.g. additional warnings and more flexible, longer term payment plans)
- improved intelligence from enforcement agents on debtor's circumstances
- statutory fees normally paid to third party agencies would be retained by the Council to cover the costs of operating the service, with any surplus used to contribute to the cost of delivering other Council services.

2. Who is affected by the proposal? Consider residents, staff and external stakeholders.

- The Council's debtors (both individuals and businesses)
- External partners who provide support to those in financial difficulty
- Existing staff would not be affected by the proposals. This is an activity that we do not currently carry out, so there may be equality implications for newly recruited staff that would need to be considered if the decision is made to bring the service in-house.

3.1 Could the proposal impact on people in different ways because of their equality characteristics?

As described above, the actions of Enforcement Agents are governed by legislation, and a change in who employs them will not result in any material change to the activities that an Enforcement Agent carries out.

The only slight change would be that we would encourage directly employed staff to allow greater flexibility when setting payment arrangements. This would be entirely at the Agent's discretion, and they would be encouraged to make an assessment of the debtor's ability to pay, and use this as the only criteria when coming to an affordable payment arrangement. The decision would never be made on the basis of someone's equality characteristics, but it is recognised that in rare circumstances there may be a correlation between certain equality characteristics and a debtor's financial vulnerability; for example, someone who has recently given birth may be struggling financially, and someone who . These circumstances are not expected to be common though; financial vulnerability is likely to be as a result of a very wide range of circumstances, most of which are entirely independent of a person's equality characteristics.

Enforcement Agents would be expected to keep records of the reason why they have agreed a more flexible payment plan, and this could be periodically reviewed in order to monitor whether there are links between those affected by the change in our approach and the different equality groups.

3.2 Could the proposal have a disproportionate impact on some equality groups?

If you answered 'Yes' please indicate which equality characteristic(s) are impacted

It is hoped that the proposal will have a positive impact on the financially vulnerable, but this is not directly linked to equality characteristics.

3.3 Would the proposal change or remove services used by vulnerable groups of people?

The proposal will not result in any material changes to the Enforcement Activities that are carried out in the Council's name. These continue to be governed by the Taking Control of Goods Regulations 2014, which require Enforcement Agents to undertake training to enable them to identify and deal with vulnerable people, and to ensure vulnerable people are given the opportunity to seek advice before enforcement fees are incurred.

As described above, the only slight change will be the opportunity to offer more flexible payment terms to those who are in financial difficulty, which should result in a positive impact.

3.4 Does the proposal relate to an area with known inequalities?

For many debt types, we do not hold data on equality characteristics; because the debtor is a business, or because we do not have the justification for collecting it (e.g. Council Tax). As such we do not have a very good understanding of the equality profile of our debtors. However any impact of the very slight change that is being proposed will be a positive one, felt by the financially vulnerable, and not by any particular equality group.

3.5 Is the proposal likely to be sensitive or important for some people because of their equality characteristics?

As described above, the proposal will be more important for those who are financially vulnerable, but this is not directly linked to equality characteristics.

3.6 Does the proposal relate to one of Brent's equality objectives?

The proposal relates to equality objectives 4 and 5:

4. To ensure that local public services are responsive to different needs and treat users with dignity and respect

5. To develop and sustain a skilled and committed workforce able to meet the needs of all local people.

Recommend this EA for Full Analysis?

No