

## Policy & Resources Committee

## Agenda Item 19

**Subject:** Corporate Enforcement Services

**Date of meeting:** 7 July 2022

**Report of:** Chief Finance Officer

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**Ward(s) affected:** All

**For general release**

### **1 Purpose of the report and policy context**

- 1.1 The Council's Corporate Debt Policy outlines best practice in debt collection, emphasises the value of pre-enforcement actions and sets a pathway for the diminishing use of invasive or punitive collection methods. This best practice is based upon achieving better overall outcomes in terms of the amount of debt ultimately collected and the longer-term welfare objectives of supporting households to have a platform of financial stability without the stress of debt collection on their doorstep. Furthermore, good debt collection practice contributes to the mitigation of demand for social care, health and housing services from households falling into crisis.
- 1.2 The council's debt collection emphasis continues to move towards ensuring it exercises a full range of pre-enforcement engagement with debtors to establish affordable, sustainable repayment arrangements and avoids further escalation. Enforcement agents are therefore now only used in very exceptional circumstances, usually where there is repeated non-engagement or communication with the council by a business or individual.
- 1.3 However, while escalation of debt to outside agencies is diminishing, it is best practice for the authority to have an appropriate legal framework for the allocation of debt and to monitor performance. This is particularly important for harder to collect debts which may involve tracing of debts where businesses or individuals repeatedly refuse to engage with the council and may, in exceptional circumstances, require property visits. Therefore, this report seeks committee approval of a new process for the procurement of external Enforcement Services for Brighton & Hove City Council.
- 1.4 The details of this process are described within this report. It is designed to ensure the robust and ethical procurement of external Enforcement Agents. These Agents will collect Council debt in Brighton and Hove and outside of the city. They will visit properties to attempt to recover debt only in exceptional circumstances as defined in the Corporate Debt Policy (para's 8.3 to 8.4).

## **2 Recommendations**

- 2.1 That the Policy & Resources Committee approves the new process for the procurement of enforcement agent contracts via a Dynamic Purchasing System to replace the current informal Service Level Agreements and to ensure closer alignment of practice with the council's approved Corporate Debt Policy.

## **3 Context and background information**

- 3.1 In 2021 the Policy Resources & Growth Committee approved the latest version of the Corporate Debt Policy. The policy is periodically updated to reflect changes in council services or structures and/or for legislative changes and the latest version is attached as Appendix 1 to this report.
- 3.2 The responsibility to ensure the Policy is delivered falls upon the Corporate Debt Board. The board has four key principles:
- Establish a proportionate, fair and effective end to end approach to debt management;
  - Use analytics to understand the debt portfolio and drive best practice for debt management.
  - Instil an ethos of fairness, built upon principles that recognise the impact debt collection has on the vulnerable, and;
  - Have a proportionate enforcement response to those who do not pay on time.
- 3.3 The policy highlights the best practice that has been established to support residents who are vulnerable or experiencing hardship in dealing with their financial commitments relating to the council. The principles of early recognition and intervention, sustainable and affordable arrangements, and a pathway to advice and support are well embedded in the council.
- 3.4 Much of the council's debt portfolio is business debt and services operate with the appropriate checks and balances to collect this debt efficiently with full consideration of the social and economic value of local businesses.
- 3.5 The Corporate Debt Board recognises the commitment in Section 8 of the Corporate Debt Policy to achieve best practice in the use of enforcement agents. It commissioned a piece of work to achieve the stated objectives. This work uncovered a weakness in the current arrangements with enforcement companies. The proposal in this report seeks to address these weaknesses and provide a stronger platform for delivering the objectives set out in section 8 as follows:
- to reduce the use of Enforcement Agents;
  - to ensure any vulnerability and hardship cases identified at this late stage of the recovery process are appropriately responded to, and;
  - to ensure the portfolio of debt is appropriately managed and to ensure all parties adhere to the code of practice.
- 3.6 In April 2022 the Procurement Advisory Board approved a proposal for a new process to procure external Enforcement Agent services. It was confirmed in this meeting that there was a requirement to seek Committee approval. This is fully explained in the Legal Implications in section 8 below.

- 3.7 Services have been progressively working towards the objectives of the Corporate Debt Policy. The Corporate Debt Team, working closely with Debt Prevention and Welfare Support services have introduced debt segmentation, pro-active data analysis, early interventions, and targeted discretionary hardship awards. Consequently, debt is only passed by exception to enforcement agents once all other avenues have been exhausted.
- 3.8 The purpose of the proposed procurement exercise is to collate a small panel of external Enforcement Agent companies to perform this work for the council when required. In terms of enforcement management, it is considered best practice to manage cases across a number of external Enforcement Agents to be able to ensure performance levels are maintained.
- 3.9 Currently, the council does not have any formal contracts with the external Enforcement Agents that it uses. It does not pay them for their services. The incentive for the external Enforcement Agents is performance-related, either in terms of a percentage of the amount recovered or, more commonly, in terms of costs charged on the enforcement action. The costs are fixed and government regulated. External Enforcement Agents can charge a £75.00 Compliance Fee and a £235.00 visit fee if the customer does not respond to their attempts at contact (however, this does represent extra cost to the debtor, hence the best practice emphasis on earlier intervention to prevent this from arising). These fees are added to the debt and the debt enforcement companies keep these fees in the event of a recovery from the debtor. There is no cost to the Council for this work.
- 3.10 There is no contractual obligation to provide the companies with specified volumes of work and the council therefore retains full control over the debts passed to enforcement agents. The debts are not sold to the companies, they are collected on behalf of the council and as such can be withdrawn by the council at any stage.
- 3.11 Enforcement Agents are regulated by court certification supported by a qualifying exam. The *Taking Control of Goods (TCOG) Regulations 2013* and the enabling *Tribunals Courts and Enforcement (TCE) Act 2007* brought all Enforcement Agents under one set of regulations for the first time and clarified the law. There is also a set of National Standards that Enforcement Agents, EA companies and creditors are required to adhere to.
- 3.12 Regarding enforcement agent use, the Corporate Debt Policy states that:

8.3 *The council is committed to achieving this transition [i.e. moving to pre-enforcement recovery approaches] and therefore will:*

- *end the use Enforcement Agents for home visits in all but exceptional circumstances to collect Council Tax debt. Any action of this nature has to be approved by the Corporate Debt Board.*
- *aim to end the use of enforcement agent home visits to collect other council debt by 1 April 2023 in all but exceptional circumstances.*

8.4 *After the dates specified in 8.3, exceptional circumstances will be*

*determined by the Corporate Debt Board after all other collection options have been exhausted.*

- 3.13 There are also other in-house interventions that will further reduce the number of cases passed to external Enforcement Agents. Namely, the aforementioned segmentation of debt (identifying different cohorts of customers/residents), use of discretionary funds, outbound campaigns of contact and referrals to welfare services. This work is carried out by the Corporate Debt Team and the Debt Prevention Team.
- 3.14 For context, in 2018/19, the last full tax year of enforcement activity before the Pandemic, the council collected approximately £445m of fees, charges, rents, council tax and business rates. Of this amount £363m was to support council services and the remaining £82m is collected on behalf of government, police and fire authorities. The amount referred to Enforcement Agents in 2018/19 was £7.1m which proportionally is approximately 1.5% of the total debt that was to be collected. There are no comparable figures for subsequent years due to the Pandemic but there is some confidence that best practice is reducing referrals year on year.

#### ***The New Procurement Proposal***

- 3.15 To ensure the council has in place robust contractual arrangements with Enforcement Agents to enable it to monitor and manage performance and ensure alignment of practice with the Corporate Debt Policy, a new procurement process is proposed with the following aims:
- In line with a report to Procurement Advisory Board on 04/04/22 the procurement will seek to engage fewer companies with more detailed performance and practice requirements via a Dynamic Purchasing System, specifically, YPO Enforcement Agency Service DPS 953.
  - This will put in place fully compliant, legally authorised contractual agreements with a small panel of external Enforcement Agents.
  - The council will have an escalation point for hard to collect to debt, avoiding creation of any 'debt pocket' as per the aims of the Corporate Debt Policy.
  - To provide support to maintain or improve current collection levels.
  - To maintain an alternative route to identify vulnerability. Where contact or engagement with the debtor has not been possible, sometimes it is only when an agent visits an address that a vulnerability becomes apparent.
  - There is no internal enforcement team due to the aim of minimising this approach over time.
  - That there is no cost to the council for using external Enforcement Agents.

## **4 Analysis and consideration of alternative options**

- 4.1 In presenting this proposal, officers have worked with the council's legal team to identify a process that is in keeping with best practice, meets the objectives of the Corporate Debt Policy and is legally robust. Officers identified policy approaches in other Local Authorities and discussed a full range of options with the council's legal team to develop the best proposal.
- 4.2 Without a procurement process being carried out, the council is vulnerable to challenge as to how some companies are chosen for work and others not. If

formal contracts are put in place with successful bidders, then the council can also performance-manage the work of the successful companies and formally address any poor practice identified.

- 4.3 As noted above, the Members of the Procurement Advisory Board have also considered the options and are supportive of the proposed route to achieve a more compliant and legally robust arrangement.
- 4.4 Not procuring Enforcement Agent services would provide even further opportunity for those businesses and individuals who repeatedly refuse to engage with the council regarding non-payment of debts to be let off the hook and push either the burden of funding council services, or cutting services due to non-collection, onto other residents. It would also remove a further means of detecting other issues or vulnerabilities in relation to a business or household.

## **5 Community engagement and consultation**

- 5.1 The Corporate Debt Team is working with the local Citizens Advice Bureau with regard to the council's Council Tax Protocol. The main requirements are incorporated in the council's Corporate Debt Policy.
- 5.2 The council works with a wide range of Community & Voluntary Sector partners and has a deep understanding of the causes and impacts of debt. The Corporate Debt Policy was widely consulted on and underpins the approach set out in this report. Enforcement agent use in this context is complimentary to the council's overall approach to managing debt alongside the support it provides through its funding of money advice partners, provision of a wide range of advice and signposting services including everything from the provision of welfare benefits and welfare rights support through to distribution of discretionary hardship funds.

## **6 Conclusion**

- 6.1 The council currently only has Service Level Agreements with its panel of external Enforcement Agents. These Service Level Agreements are based upon industry knowledge and historic relationships. Although the council does not pay for these services, the Corporate Debt Team has recognised that this is not best practice and following legal advice it intends to make a transition to a Dynamic Purchasing System. The recommended course of action is that the council should procure external Enforcement Agent Services and have full legal oversight of contracts entered into with the successful bidders. This will ensure alignment of practice with the Corporate Debt Policy.

## **7 Financial implications**

- 7.1 There are no direct financial implications of the council using external Enforcement Agents. Currently, the companies that are used are not paid directly for their work by the council. This will remain the same if the proposed new contracts are awarded.
- 7.2 Any reduction in the volume of debt that reaches the enforcement stage of recovery may support improvements in the level of debt collected and reduce the incidence of arrears, thereby reducing bad debt provisions and debt write off.

- 7.3 However, offset against this there may be a reduction in income raised for the court costs of Liability Orders at the Magistrates Court, which are added on to the debt and paid to the council in the event of a recovery. Any impacts on income collection will be reflected through the Targeted Budget Management (TBM) reports that are submitted regularly to the Policy & Resources Committee, as well as future years' budget estimates.

Name of finance officer consulted: Jeff Coates Date consulted 11/05/22

## **8 Legal implications**

- 8.1 The procurement of the proposed enforcement contracts from a third-party Dynamic Purchasing System (DPS) must be carried out in accordance with all relevant public procurement legislation as well as the council's Contract Standing Orders (CSOs).

### Standard Legal implications for procurement of a DPS (over threshold)

A DPS is similar to an electronic framework agreement, but new suppliers can join it at any time. It is to be run as a completely electronic process and should be set up using the restricted procedure and some other conditions (as set out in Regulation 34 of the Public Contracts Regulations 2015). The DPS involves a two-stage process. Firstly, in the initial set up stage, all suppliers who meet the selection criteria and are not excluded, must be admitted to the DPS. Contracting authorities of the DPS must not impose any limit on the number of suppliers that may join. Unlike framework agreements, suppliers can also apply to join the DPS at any point during its lifetime. Secondly individual contracts are awarded. During this second stage the authority invites all suppliers on the DPS (or the relevant category within the DPS) to bid for the specific contract. The DPS should be set up and run, in accordance with the Regulations as well as the Council's Contract Standing Orders (CSOs).

- 8.2 Additional legal implications where Social Value has been considered in the report.

The Public Service (Social Value) Act 2012 defines social value as 'improvement to economic, social and environmental well-being of the relevant area' and requires specific consideration by the council prior to starting a procurement process of how to improve these benefits through the procurement and how to undertake a procurement process with a view to securing that improvement. In addition, The Public Contracts Regulations 2015 expressly allow contracting authorities to incorporate social and environmental factors into specifications for a contract, award criteria and contract conditions provided they are linked to the subject matter of the contract, proportionate to what is being procured, do not result in unequal treatment of bidders, are free from discrimination and comply with the principle of transparency.

Name of lawyer consulted: Eleanor Richards Date consulted: 11/05/22

## **9 Equalities implications**

- 9.1 An Equalities Impact Assessment (EIA – Appendix 2) exists alongside the Corporate Debt Policy. Both documents are reviewed by the Corporate Debt Board on an annual basis.

## **10 Sustainability implications**

- 10.1 Most of the work done by the external Enforcement Agents will be done using digital technology. However, in exceptional circumstances they will visit addresses in the city. In these circumstances the council will encourage the external Enforcement Agents to use electric vehicles around the city and transition to 100% electric by 2030.
- 10.2 Where possible, if there are visits close together the council will encourage the external Enforcement Agents to walk between them to reduce congestion.
- 10.3 The council's Sustainable Procurement Policy will be followed during the procurement process.

## **11 Social Value and procurement implications**

- 11.1 The council will expect the external Enforcement Agents to contribute to local social value through employment and training of staff and through other offers to the community, such as providing debt surgeries for those needing extra help.
- 11.2 Note, the proposals in this report were agreed by the Procurement Advisory Board on 4 April 2022.

## **12 Crime & disorder implications:**

- 12.1 All Enforcement Agents are bound by the Taking Control of Goods (TCOG) Regulations 2013 and the enabling Tribunals, Courts and Enforcement (TCE) Act 2007.

## **13 Public health implications:**

- 13.1 As part of the aforementioned Regulations and Act, if an Enforcement Agent identifies vulnerability in the line of their duties they must stand down and refer the debt back to the creditor. Once identified to the Council there are numerous internal teams that can offer help or signpost to external help in the advice sector.

## **Supporting Documentation**

### **Appendices**

1. Corporate Debt Policy
2. Equalities Impact Assessment

