

REPORT TO: POLICY AND RESOURCES COMMITTEE – 15 OCTOBER 2001
REPORT ON: A NEW APPROACH TO DEBT MANAGEMENT
REPORT BY: DIRECTOR OF CORPORATE PLANNING
REPORT NO: 682-2001

1. PURPOSE OF REPORT

To advise members of proposals for an alternative to the system of poindings and warrant sales and to recommend a response to these proposals.

2. RECOMMENDATIONS

It is recommended that members:

- i) note the overall package of recommendations for a new approach to debt management
- ii) make specific comments on the 'questions for consultation' as set out in Appendix One to this report
- iii) ask the Scottish Executive to clarify the extent to which they will support the new approach by providing resources for education, welfare rights, money advice/debt counselling, legal support and alternative low cost financial services
- iv) ask the Scottish Executive to ensure that the legislation required to implement the new approach is implemented timeously, in order to be coterminous with the abolition of poindings and warrant sales

3. FINANCIAL IMPLICATIONS

None

4. EQUAL OPPORTUNITIES IMPLICATIONS

None

5. LOCAL AGENDA 21 IMPLICATIONS

None

6. BACKGROUND

- 6.1 Following the enactment of the Abolition of Poindings and Warrant Sales Act 2000, the diligence of poinding and warrant sale is to be abolished by 31 December 2002. When considering the Bill, the Justice and Home Affairs Committee of the Scottish Parliament recognised that an alternative would have to be put in place to avoid debtors evading payment of their debts, and called on the Scottish Executive to bring forward legislation for a humane and workable alternative. The Executive established a working group to

identify the essential elements of such an alternative, and that group has now produced its report for consultation.

6.2 The Working Group's deliberations were based on the essential principle that payment of legally confirmed debts cannot be optional, whether these debts arise from the purchase of goods and services; or whether they relate to the collection of local and central government taxation needed to provide essential public services for the community as a whole. The legal framework for dealing with debt must therefore be a comprehensive one. It must avoid leaving any wide loopholes which would encourage people to avoid paying their debts. To do so would damage the interests not just of creditors, but of other debtors, and ultimately of society as a whole. However, the working group suggests that a new system must ensure that debtors are treated humanely, that they are given every opportunity to resolve their situation without the need for enforcement action and that a clear distinction is drawn between those who cannot pay their debts and those who will not. Their report recommends:

- Nationwide provision of user-friendly information and advice for debtors
- Setting up a statutory debt arrangement scheme to help people pay debts in a managed way without the threat of enforcement action
- Creating new incentives for debtors and creditors to reach negotiated settlements
- Reforming the enforcement procedure to afford much greater protection to debtors in the event of legal action being necessary
- Introducing new safeguards to ensure the enforcement action can only be taken against those who can, but refuse to, pay their debts
- Assisting the debtor by providing opportunity for voluntary disclosure
- A final sanction against those who can pay but unreasonably refuse to sell valuable non-essential goods to meet their responsibilities (compulsory sale order). This would only happen in exceptional cases, where the court agreed there was good evidence that debtors were genuinely in a position to pay their debts by realising 'luxury' assets but persistently refused to co-operate. The courts would refuse compulsory sale orders where debtors genuinely could not pay, and there would be a list of items exempt from compulsory sale.
- Reforming the role and regulation of officers of court when carrying out enforcement action
- A wide range of further specific actions aimed at improving the regulation of credit and debt collection, and the way representation within the court system operates
- A fast-track process for compulsory sale in commercial cases (commercial attachment order)
- A review of the recovery of unpaid Council Tax and the use by local authorities of summary warrant procedure

The working group believes that this approach places an emphasis on dialogue and negotiation, rather than legal action, and will protect the most vulnerable while ensuring that the legitimate interests of creditors are adequately protected. A copy of the full report has been sent to group secretaries and is available in the members' lounge.

6.3 The Minister for Justice has stated that, subject to the outcome of consultations, his initial reaction to the report is very positive and he is minded to implement the approach the group recommends. His letter sets out a number of specific 'questions for consultation' which are reproduced in Appendix One.

6.4 It is recommended that the Council note the overall package of recommendations and make comments on the 'questions for consultations' as set out in bold type in Appendix One.

6.5 It should be noted that the Council has already agreed a comprehensive debt recovery strategy, aimed at taking action which is sensitive and effective (Report 183/1996). This policy places an emphasis on contact with debtors, encouragement for them to seek advice and counselling and realistic arrangements for payment based on ability to pay. The policy states that enforcement action such as warrant sales cannot be absolutely ruled out for legal reasons, but would only be considered as a last resort. In practice, the City Council has never used warrant sales and currently has around 70,000 individual arrangements for the repayment of outstanding Council Tax and Community Charge.

7. CONSULTATIONS

7.1 Dundee Anti-Poverty Forum has been asked for its views on the proposed new approach. Its overall conclusion is that the proposals are balanced and measured and would be difficult to argue against as a package, although they have concerns about the retention of a last resort procedure for compulsory sale of non-essential goods. The recommended response from the Council agrees with the majority of the working group that this last resort is necessary. Subject to this, the Forum's specific comments on the 'consultation questions' have been taken into account in formulating the recommended response from the City Council. A copy of their full comments has been sent to group secretaries and made available in the members' lounge.

7.2 The Directors of Support Services, Finance, Social Work and Neighbourhood Resources have also been consulted on this report.

Director of Corporate Planning Date

Background Papers

Striking the Balance:
Report of the Working Group on a Replacement for Pounding and Warrant Sale

Comments from Dundee Anti-Poverty Forum

Report to Dundee City Council Finance Committee – 24 June 1996:
Debt Recovery Strategy

STRIKING THE BALANCE : A NEW APPROACH TO DEBT MANAGEMENT

CONSULTATION QUESTIONS

1. Please state:

- your name, organisation and address
- whether you represent debtor, creditor or other interests

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The Council has an interest both as a creditor in its own right and as a representative of all interests in the city.

2. Do you agree with the guiding principles set out by the working group in their report – the need for responsible behaviour by both creditors and debtors, the principle of least coercion and the need to avoid loopholes in the law?

Yes

3. The working group argue that it is not possible to view poinding and warrant sale in isolation from its wider context, and identify a number of factors which they think need to be taken into account. Do you agree with their analysis: if not, what are the relevant factors to be borne in mind?

The Council recognises the need for a more comprehensive and strategic approach to debt management. This should address needs in relation to education, welfare rights information, money advice, legal support, greater regulation and accountability for debt management companies and greater access to low cost financial services.

4. The working group describe a number of key issues and pressing problems surrounding the operation of the existing system affecting both debtors and creditors, as well as the wider interests of society as a whole. Do you agree with their commentary? Are there any other issues that the group should also have considered?

While not a devolved responsibility, the Council endorses the view of the Dundee Anti-Poverty Forum that a review of the Social Fund should be carried out as part of a comprehensive social inclusion strategy. This should consider eligibility criteria, repayment schedules and the overall budget.

It is also suggested that the Executive explore the potential for a 'Register of Credit Granted' under which credit agreements are registered centrally and can be checked before further credit is granted. This may help prevent irresponsible lending and overborrowing.

5. Do you agree with the working group that the law must be able to oblige people to meet obligations which they should honour voluntarily?

Yes, on the understanding that support and protection is available to vulnerable debtors

6. The working group's research did not identify any other country that did not have some form of final enforcement. Do you agree with their view that some form of sanction is necessary in order to address the minority of people who can but refuse to pay their debts?

Yes, the Council agrees that a 'last resort' sanction is required where debtors refuse to co-operate, but this must be more humane and effective than the current system.

7. If so, do you agree with the working group that, excluding the possibility of civil imprisonment, the only alternative is to provide for some means of enforcement against valuable but non-essential property?

Yes, in principle, subject to detailed consideration of how this would operate in practice, including the list of exempt items and the way in which sales are enforced.

8. Do you agree with the working group that commercial and domestic cases should be treated differently?

Yes

9. Do you agree with the working group that improved advice and information for debtors at an early stage is the key to achieving better outcomes in resolving debt cases?

The Council believes that high quality welfare rights information, debt counselling and legal advice are vitally needed at an early stage and throughout the debt management process.

10. To what extent do you think access to information about debtor's circumstances has a role to play in securing better outcomes in debt cases?

This will assist in differentiating between those who can and cannot pay their debts and would therefore be helpful in pursuing the current recovery action, if the information is available at the earliest possible stage in the process.

11. To what extent do you think that allowing greater access to such information, were it to be achievable, would be acceptable to individuals and the business community? What issues do you think would have to be considered?

There will be a desire for some protection of personal and commercial confidentiality.

12. The group recommends a new judicially-supervised enforcement procedure which would also provide greater protection for the debtor and more opportunities to achieve negotiated settlement. To what extent do you think that such a procedure is necessary and appropriate? Please state your reasons.

The introduction of a judicially supervised enforcement procedure would allow a balanced approach which encourages negotiation and access to advice and information.

13. Do you think that such a procedure should take place in the Sheriff Court?

Holding proceedings in the Sheriff Court emphasises the seriousness of the issue and therefore acknowledges the interests of creditors, although there is an argument for holding the proceedings ‘in chambers’ rather than in open court to reduce the ‘fear’ factor for debtors. However, this will require the resources of the Sheriff Courts to be considerably enhanced if the system is not to become overburdened. A significant increase in the number of Sheriffs may be required to make this proposal practical.

14. Would the provision of additional information and advice alone, without any possibility of enforcement action, be a satisfactory approach for enabling debts to be recovered?

The Council agrees with the majority of the working group that the lack of enforcement action would leave a gap in the system.

15. To what extent do you agree that establishing a statutory debt arrangement scheme should be a central element of a new approach for the longer term?

Strongly agree.

16. The working group makes a series of broad recommendations for action on a wide front. To what extent do you agree with these recommendations?

- a) The need for plain English and user-friendly format for information aimed at debtors
- b) A review of policy on recovery of unpaid council tax and the use of local authorities of summary warrant procedure
- c) Increased debtor protections under summary warrants
- d) Rolling out the in-court adviser service more widely across Scotland
- e) A thoroughgoing review of the role of enforcement officers
- f) Additional judicial training on debt issues
- g) Consideration of the value of fitness tests applied to providers of debt and money advice
- h) Action with the UK Government to review the fitness tests required for those who extend credit
- i) Follow up of findings from DTI Over-Indebtedness Taskforce on responsible lending and borrowing, marketing and transparency of financial products and credit payments

The Council agrees with most of these recommendations. However, in view of its fiduciary duty to taxpayers to maximise the rate of Council Tax recovery, the Council has serious concerns about the implications of recommendation (b). The summary warrant procedure is an efficient method of enforcing the payment of Council Tax and, if the review does take place, the Council will wish to comment in detail on any proposals which could adversely impact on the recovery of Council Tax.

17. Which of the wider recommendations for reform mentioned in question 16, in your view, have the most significant contribution to make?

Greater accessibility to information and advice for debtors, training for judges and advice workers, measures to provide greater regulation of credit and lending, and a review of the role and training of enforcement officers.

18. If the working group's proposals were implemented, what impact do you think they would have
- a) on debtors?
 - b) on creditors?
 - c) on tax collection and recovery arrangements?
 - d) on the courts?

In general, the proposals would protect vulnerable debtors while also protecting the interests of creditors. The Council does have concerns about the impact on tax collection and recovery arrangements as highlighted in response to question 16. The courts would have a more effective and constructive role to play in resolution of debt problems, but will face an increase in workload with implications for staffing and accommodation.

19. Please feel free to comment further on any other aspect of the report and recommendations not mentioned above.

It is vital that the financial implications of the proposals are recognised. The Council would like to clarify the extent to which the Scottish Executive will support the new approach to debt management by providing additional resources for the delivery of education programmes, welfare rights information, money advice/debt counselling, legal support and the provision of alternative low cost financial services.

The provision of adequate funding is a key priority. Given existing financial constraints, it would be unrealistic to expect Councils to fund extra services without additional support.