

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>CABINET</b>
<b>DATE OF DECISION</b>	<b>October 2023</b>
<b>REPORT TITLE:</b>	<b>Recovery of Council Tax - Council Tax Support Claimants</b>
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<b>Allister Bannin,</b> Director of Finance
<b>LEAD OFFICER:</b>	<b>Catherine Black,</b> Head of Payments, Revenues, Benefits and Debt <b>Email: catherine.black@croydon.gov.uk Telephone: 27193</b>
<b>LEAD MEMBER:</b>	<b>Councillor Jason Cummings, Cabinet Member for Finance</b>
<b>KEY DECISION</b>	<b>No</b>
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>No</b>

## 1 SUMMARY OF REPORT

- 1.1 This report details the historic reasons why recovery of council tax for residents in receipt of council tax support has ceased.
- 1.2 This report shows the options available to the council for collection of unpaid council tax, the recovery process that residents who do not pay would face, and how the council aims to reduce debt in the borough using the methods of recovery available.

## 2 RECOMMENDATIONS

For the reasons set out in the report the Executive Mayor in Cabinet is recommended:

- 2.1 To agree to reinstate the council tax recovery process for residents in receipt of council tax support.

## 3 REASONS FOR RECOMMENDATIONS

- 3.1** There as a legacy decision which stated that residents in receipt of council tax support were not prompted for payments when they fail to pay their council tax. This can mean that residents are falling further into debt and the council is not doing everything within its power to support residents to break the cycle of indebtedness. Without an active recovery process in place residents are not being supported to pay their council tax and they are going to face unmanageable levels of debt that could otherwise be avoided.
- 3.2** The council has many schemes and offers available to residents to support the vulnerable few that cannot afford to pay their council tax. The council tax support scheme can provide up to 100% reduction to resident's council tax, the council tax hardship scheme is available to all residents to help reduce the 2023/24 council tax where the 14.99% increase in this year is unmanageable for low-income households.
- 3.3** These are a few ways that residents can receive a discount or reduction on their council tax and more help and details are available via the council's website, or from our council tax officers over the phone.
- 3.4** Because of changing the council tax support scheme to an income banded scheme, in April 2022 the Council decided to continue to not actively seek recovery of council tax for residents who are in receipt of council tax support. Further exacerbating the potential for residents to unknowingly fall into debt that could become unmanageable. Given the current financial state of the council and the levels of budget deficits it is facing, this option is now not financially viable. The council must do everything within its power to collect as much council tax as possible to become a financially sustainable council in the future.
- 3.5** The council should also support residents to break any cycle of debt they are facing sooner rather than later, and we should not knowingly allow debt to increase. The council will do all it can to support residents to pay their council tax contribution after any reductions or discounts have been applied, for example after council tax support has been awarded a resident may still have a portion of council tax to pay, it is this element of council tax is what we are supporting residents to pay.
- 3.6** The council also owes it all residents who do pay their council tax on time, including those in receipt of council tax support which should be noted is the majority of our residents, to recover council tax from those residents who do not pay council tax. The Council should support those residents who cannot pay council tax through payment arrangements and other previously mentioned support mechanisms.
- 3.7** Failure to recover council tax which is due means that the council is not collecting income which is anticipated to be paid to balance the budget and used to pay for services, including vital front-line services.

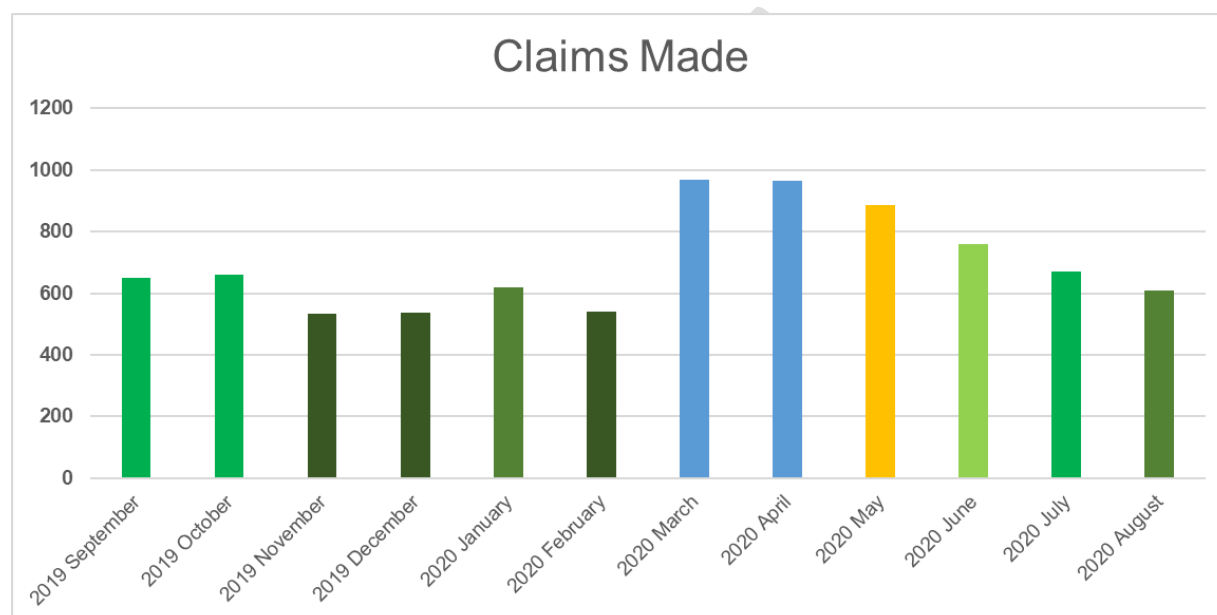
## **4 BACKGROUND AND DETAILS**

- 4.1** In 2020 the COVID-19 pandemic was beginning, and decisions were made at the time with best endeavours to reduce stress and anxiety for residents, in this case a decision was made to cease all recovery of council tax. The courts also closed, and legislation was changed to prevent any court action from being taken against residents and

business who did not pay their council tax or business rates. The decision to hold recovery of council tax was taken by G.O.L.D in April 2020.

**4.2** At the time it was a sensible approach as many residents had found themselves out of work, especially before the furlough scheme was introduced, however when it was introduced this was only offered at 80% of the employee's wages with businesses expected to make up the final 20% if they decided to.

**4.3** Croydon saw a rise in council tax support applications being made at the time, claims made between February 2020 and March 2020 doubled and remained higher than usual in April – June 2020. This is shown in the chart below.



**4.4**

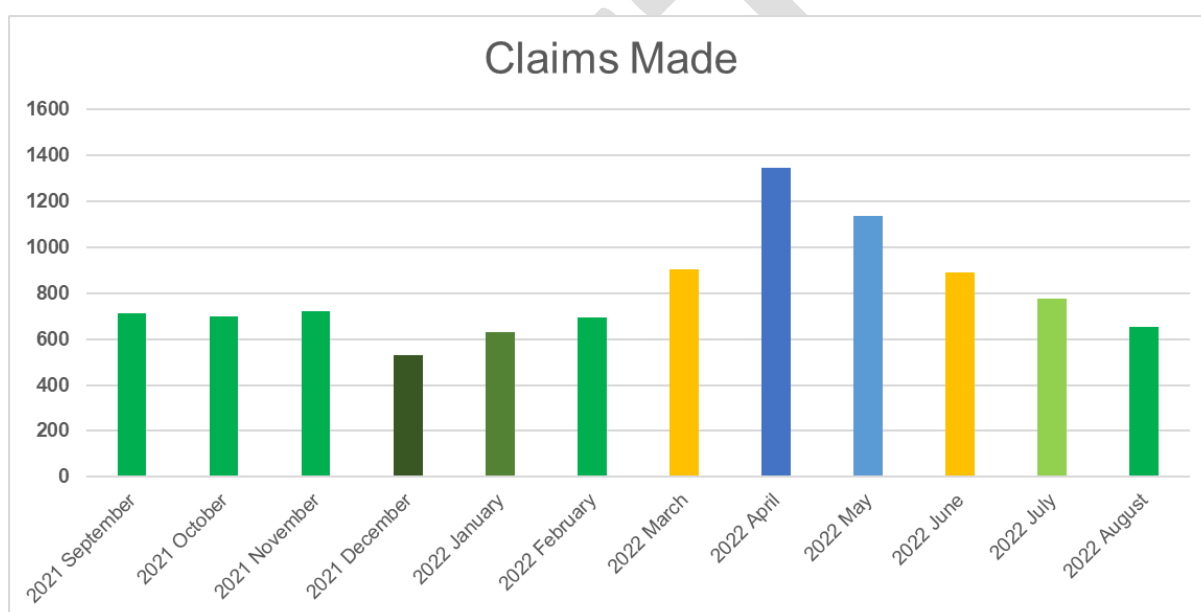
**4.5** The council's gold command team agreed to resume recovery again for unpaid council tax in April 2021 when the courts re-opened for virtual hearings.

**4.6** However, recovery was not continued for any resident in receipt of council tax support, as the government had issued a request for local authorities to make COVID-19 hardship payments to all financially vulnerable residents. It was therefore deemed not in keeping with the government scheme to resume recovery action against residents in receipt of council tax support.

**4.7** Moving forwards to 2021 and 2022 where the council's financial position was becoming clearer, proposals were being put forwards identifying ways to reduce spending and increase income.

**4.8** One proposal was that the council's council tax support scheme had become financially unsustainable and that moving to an income banded scheme would help to move the council in to a more sustainable direction. The proposal suggested that it would aim to make a financial contribution of £4.4m to the council's financial position and the income banded scheme was introduced in 2022 with a transitional period of 2 years.

- 4.9** To support residents in the transition from the old scheme to the new income banded scheme various measure were put in place.
- 4.10** The first measure was a transitional support scheme that would aim to assist any resident who had been significantly impacted by the change in the council tax support scheme by offering a top-up payment to their council tax account. This scheme had a fund of £2m attached to it and would span 2 years, up to 2024.
- 4.11** The second measure was that recovery action would continue to not take place for any residents in receipt of council tax support during this transition period. This comment was referenced in cabinet on Monday 24 January 2022, that there was no intention to change the council's practice in respect of these residents.
- 4.12** Shown in the graph below, the change in the scheme had made a significant impact to the number of new claims the council was receiving.



- 4.13**
- 4.14** Since April of 2022 there have been no significant changes to the scheme other than to resume non-dependant deductions for disabled not working residents where other members of the household are able to contribute to the household financially.
- 4.15** Due to constant fluctuation in the council tax support base, there are approximately 26,342 household that are currently excluded from recovery.
- 4.16** As at the end of June 2023 there were 6,482 accounts that had fallen behind on their council tax. This illustrates that most households are keeping up with their instalments and not falling into arrears.
- 4.17** Of those households who are in arrears, the arrears total value is £3.6m. To put this into context the net collectable debt for council tax in 2023/24 is £311m so the arrears of £3.6m is over 1% of the total base.
- 4.18** The number of households with arrears, the value of arrears, and the years they relate to are detailed in the table below. The total households will be more than 6,482 as a household could have arrears in multiple years. Note that 1 household may have

arrears in multiple years and therefore the total number of households below is greater than 6,482 due to duplication.

Year Outstanding For	Total Households	Total Outstanding Balance
2022	5,669	£ 2,322,547.00
2021	2,593	£ 804,199.29
2020	876	£ 354,107.44
2019	368	£ 90,287.10
2018	129	£ 33,901.57
2017	50	£ 14,198.36

**4.19**

**4.20** As shown, debt for residents in receipt of council tax support has over doubled between 2020 and 2021 and almost tripled from 2021 to 2022.

**4.21** The council should always seek to reduce rising debt in residents. Ensuring all residents are equally passed through the recovery process will help to prevent the build-up for debt.

**4.22** The council can offer help and support to residents who do fall behind with their council tax and steps in the recovery process ensure that the right method of collection is implemented. It is important that all residents are paying their council tax.

**4.23** The recovery process seeks to maximise the income for the council and as such is clear about the results of non-payment.

**4.24** As a summary of the recovery process is outlined below:

A resident will first be sent a bill with set instalments.

If the resident does not meet their instalments, then a reminder will be sent asking them to bring their account up to date before further action is taken.

If the resident does not act, then a summons will be issued, this has a current cost of £117.50.

Once the summons has been issued if the balance is not settled before the hearing date, a liability order will be granted at a current cost of £15.00 and a current court processing fee of £0.50 will be incurred. Once a liability order has been granted the council has additional powers for recovery including in relation to obtaining financial information including employment status and employer details; taking money directly from wages using an Attachment of Earnings Order; taking money directly from benefits, for example from Universal Credit; use of Enforcement Agents to take control of goods and sell them to pay the debt.

**4.25** This process, along with the prompts and notice of future action, may be what assists residents in keeping up to date with their council tax.

**4.26** It is unfortunate that there are costs incurred when going through the summons and liability order stages of recovery however, without these steps we cannot offer more

flexible arrangements to residents. Resident profiling will be completed when seeking to make payment arrangements so that all residents are given affordable arrangements.

- 4.27** Once a liability order is granted the council can make a request to the Department for Works and Pensions (DWP) for an attachment of benefits. This would mean that the resident would have a small deduction made against their attachable benefit (such as Universal Credit) weekly. Once in place the council would cease chasing for any payment on that debt while the DWP continues to provide payment as a deduction.
- 4.28** If a resident is not in receipt of an attachable benefit, but is known to be working, an attachment of earnings could be sought. The council would approach the resident's employer and request that a deduction be made from their wages before it is given to the resident. There are fixed percentage values that are deducted which can be a significant portion of a salary – therefore the council will always seek engagement with the resident before making an application directly to the employer.
- 4.29** When a resident does engage with the council and does want to arrange to pay by instalments, if a liability order has been granted this can be accepted. To ensure that recovery of council tax could continue, should the arrangement fail, the council will ask the resident to provide details of benefits or employment at the point of setting up the arrangement.
- 4.30** There are other options available, such as charging orders, bankruptcy, insolvency, and imprisonment. The council only seeks to use some of these powers where there is a wilful desire to avoid payment from the liable person to pay council tax.
- 4.31** Enforcement agents can be engaged to collect on behalf of the council. The council has an internal team as well as 6 external agencies that are in use for the collection of council tax, business rates and parking tickets.
- 4.32** Enforcement agents are all welfare trained and have resources available to help signpost residents that present as vulnerable. They also have discretion in clearing debts in part or in full on behalf of residents, they have food parcels and other support available to those they find in need as they engage with residents.
- 4.33** Initially an enforcement agent is intending to collect payment from residents, but we must be clear that there is vulnerability training and action taken when residents are in need. The enforcement agents are not only here to collect but also support our residents as well.
- 4.34** The council's approach would always be to seek the lowest cost option for residents, seeking arrangements in the first instance then, attachment of benefits, then attachment of earning and finally the assistance of enforcement agencies when other options have been exhausted and where more onerous options are deemed inappropriate, such as imprisonment.
- 4.35** Over the first 12 months of recovery, it is anticipated that the council tax service will be able to recover £400,000 of unpaid council tax through attachment of benefits.

## **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1** The alternatives to this proposal are to do nothing.
- 5.2** The council could choose that recovery of unpaid council tax from residents in receipt of council tax support is not resumed.
- 5.3** The council could also consider writing off the debt due to the fact that these residents are amongst the poorest in our borough with either low or no earnings.
- 5.4** However, it could be said that this is not a financially viable option going forwards and it is not recommended.

## **6 CONSULTATION**

- 6.1** Nationally we are also a strategic partner of the national Money Adviser Network formerly known as Money and Pensions Advice Service (MAPS). This is an arm's length body sponsored by the Department for Work and Pensions established at the beginning of 2019. They brought together The Money Advice Service, The Pensions Advisory Service and Pension Wise. They engage with HM Treasury on policy matters relating to financial capability and debt advice and their mission is to ensure everyone in the UK can easily access the information they need to make the right financial decisions for them throughout their lives. It is the largest single funder of free debt advice in England. We will work closely with the Money Adviser Network to offer support to our residents and consult with them regarding our approach to recovery action.
- 6.2** More locally we will consult with the Citizens Advice Bureaux to support residents who are in receipt of Council Tax Support to provide additional financial and debt advice services.
- 6.3** Through our Community and Voluntary Sector team we will advise all our Third Sector partners of the changes to recovery of Council Tax for residents in receipt of Council Tax Support and provide them with information on how they can support harder to reach resident who may contact them for help and advice.

## **7. CONTRIBUTION TO COUNCIL PRIORITIES**

- 7.1** The Executive Mayor's priority 1 is that the council balances its books, listens to residents, and delivers good sustainable services. We must get a grip on the finances and make the council financially sustainable.

## **8. IMPLICATIONS**

### **8.1 FINANCIAL IMPLICATIONS**

- 8.1.1** The council tax collection fund is where the financial impact will be noted.
- 8.1.2** There are currently 6,482 accounts excluded from recovery that are in arrears of council tax.
- 8.1.3** The total value of the arrears is £3.6m, which has no active recovery against it.
- 8.1.4** If the council focuses on attachment of benefits, we need to make assumptions that around 50% of residents claiming council tax support are in receipt of an attachable benefit for this case we assume that attachable benefit is Universal Credit.
- 8.1.5** Universal credit attachments allow up to a maximum of 25% deduction to the personal allowance. Which on average would equate to £107.13 per month. However not all residents are in receipt of full Universal Credit entitlement due to earned income or other factors, we have therefore assumed that 50% of entitlement could be subject to an attachment. An average deduction of £53.56 per month.
- 8.1.6** Not all cases that are put forward to the DWP are accepted either, there are times where our information is out of date and the resident is no longer receiving Universal Credit. As well as this, council tax is not the top priority debt for deductions to be made against. If the council is not the only creditor for the resident, then we may not be first in line to receive deductions. Again, assumptions must be made to expect that 50% of our requests to the DWP will result in no deductions being made.
- 8.1.7** With these things in mind, it is expected that the department will be able to process and request 200 attachment of benefits per month. If 50% of them are expected to result in no attachment that would leave 100 successful attachments.
- 8.1.8** Each month that passes more attachments would be in place increasing the collection of council tax by £5,000, cumulating to an expected increase in collection of £400,000 by the end of a 12-month period.
- 8.1.9** This is not a new income generation project; this is not a saving. This is council tax that the council should be collecting and very much needs, to be sustainable and deliver the balanced budget that was put forwards and agreed in March 2023.
- 8.1.10** Other recovery options will also be available to the council if commencement of recovery is agreed, but it is expected that attachment of benefits will be the primary method of collection.



### **8.1.11 Revenue and Capital consequences of report recommendation**

**8.1.12** Comments approved by Lesley Shields, Head of Finance for Assistant Chief Executive and Resources on behalf of the Director of Finance. 07/09/23

## **8.2 LEGAL IMPLICATIONS**

**8.2.1** The statutory recovery process for Council tax is set out in the Council Tax (Administration and Enforcement) Regulations 1992, as amended (“the 1992 Regulations”). Part V the 1992 Regulations, is concerned with the billing of persons liable to council tax. It requires, amongst other matters, billing authorities to serve demand notices each year on liable persons (regulations 18 to 22) identifying the payments to be made in respect of council tax and provides for the making of certain of such payments by instalments during the year (Part I of Schedule 1). Regulation 21 and Part II of Schedule 1 enable billing authorities to make schemes for payment by instalments in cases where rent is payable to them in respect of the dwelling concerned. Where a person fails to pay an instalment in accordance with Part I of Schedule 1 or a scheme under Part II of that Schedule, in certain cases the unpaid balance of the billing authority's estimate of the chargeable amount for the year concerned will become payable immediately (regulation 23).

**8.2.2** Part VI of the 1992 Regulations (regulations 32 to 57) is concerned with the enforcement of sums due under Part V. Once the Council has complied with the preliminary steps as set out in Regulation 33, including in relation to relevant notices, the Council (as billing authority) can seek to apply to the magistrate's court for a liability order to recover amounts payable to a billing authority which are unpaid (regulation 34). If a liability order is granted, the billing authority may request certain information of the debtor as to employment or income (regulation 36), apply to make an attachment of earnings order (regulations 37 to 43 and Schedules 3 and 4), seek an attachment of allowances order (regulation 44), apply for the commitment of the debtor to prison (regulations 47 and 48), prove the debt in insolvency (regulation 49), or apply for a charging order (regulation 50).

**8.2.3** Where an attachment of earnings order is sought, the Council would need to comply with statutory parameters in doing so, including that no order may be made the Council if the effect would be that the number of orders for the time being in force made by the Council in relation to the debtor in question exceeded two (Regulation 36). Therefore, if there are other attachment of earnings orders by the Council in place (whether for council tax or otherwise), this will impact on the ability of the Council to utilise this as a means of recovery.

**8.2.4** In respect of recovery of an unsecured statutory debt, such as Council tax which is not the subject of a liability order, the Limitation Act 1980 provides that no action to recover such a debt shall be brought after the expiration of six years from the date on which the cause of action accrued (section 9).

**8.2.5** Attachment of benefits is governed by Council Tax (Deductions from Income Support) Regulations 1993 as amended and Schedule 9 of the Social Security (Claims and Payments) Regulations 1987, as amended. The Department for Works and Pensions (DWP) has published recently updated guidance (22 August 2023) “A guide for local

authorities – arrears of Council Tax” which details the process to be followed (“the third-party deduction scheme”) and the circumstances under which DWP will consider making deductions from benefits. The third-party deduction scheme is designed to protect claimants in receipt of benefits. It is used when a claimant has arrears of essential household outgoings and has failed to budget for these bills. The guidance makes clear that other methods to recover the debt must have been tried, for example negotiating different ways of paying and managing bills before this approach is sought to be followed. Furthermore, there must be a threat of enforcement action before consideration is given to applying for a deduction and the Council would need to have a liability order in place before it proceeds via this route.

**8.2.6** The types of debts covered by the third-party deduction scheme are rated in a priority order. This reflects the degree of risk to the individual or their family by the enforcement action that may result from non-payment. There may only be a maximum of 3 deductions made at any one time, therefore where there are existing deductions, the order will determine whether or not the Council’s Council tax arrears will be recoverable via this means as it is a lower priority under this scheme. The order is:

1. housing costs for specific mortgage arrears
2. miscellaneous accommodation costs; care homes, private hospitals
3. hostel charges
4. rent arrears, including service charges
5. mains fuel costs; gas and electricity
6. water charges; water then sewerage if two debts
7. Council Tax and community charge arrears
8. fines
9. refugee integration loans
10. eligible loans

**8.2.7** In seeking to utilise the DWP third party deduction scheme, the Council will need to ensure that it complies with relevant Data Protection requirements, including where relevant compliance with the Memorandum of Understanding which the DWP has put in place between themselves and Councils in respect of benefits. These considerations are set out more fully in the Data Protection Implications section below.

**8.2.7** Where the department proposes to proceed via more onerous processes such as charging orders, bankruptcy, insolvency, and imprisonment specific legal advice will be required prior to pursuing these avenues in light of the parameters which apply and the processes which would need to be adhered to in that regard.

**8.2.8** Comments approved by the Head of Litigation and Corporate Law on behalf of the Director of Legal Services and Monitoring Officer. (Date 19/09/2023)

### **8.3 EQUALITIES IMPLICATIONS**

**8.3.1** The Council has a statutory duty, when exercising its functions, to comply with the provisions set out in the Sec 149 Equality Act 2010. The Council must, in the performance of its functions, therefore, have due regard to:

eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act.

advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**8.3.2** The scheme has no potential for discrimination in itself, the proposed change only seeks to revert back to a pre-covid state where council tax recovery for CTS residents was in place and would therefore be in line with all other recovery across the borough.

**8.3.3** The council will also seek the most effective recovery for residents and uses the recovery cycle decision tree to help aid that process. This means that if a resident is in arrears and a liability order is granted to recover those arrears and no arrangement has been made with the resident, then in the first instance a check for an attachable benefit is completed and an attachment to that benefit submitted. This ensures the most manageable payments are made – rather than cases going to enforcement agents where larger instalments may be asked for.

**8.3.4** An EQIA has been carried out and shows no overall adverse impact on any protected group.

**8.3.5** Comments approved by Naseer Ahmad on behalf of the Equalities Manager. (Date 25/08/2023)

## **8.4 DATA PROTECTION IMPACT ASSESSMENT**

**8.4.1** The council is currently in the process of working towards compliance of the DWPs Memorandum of Understanding (MOU) which includes a revised DPIA, this will be revised and expanded to include the processing of data to support the recovery of council tax and the use of the council's enforcement power e.g., attachments of benefit, attachments of earnings, use of enforcement agents. It will also encompass any data sharing in relation to alleged fraudulent activity.

## **9. APPENDICES**

**9.1** A - EQIA Council Tax Support Claimants

B - EQIA Data Pack Council Tax Support

## **10. BACKGROUND DOCUMENTS**

**10.1** None

**11. URGENCY**

**11.1** No

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