

**TAVISTOCK TOWN COUNCIL
BUDGET & POLICY COMMITTEE MEETING
Wednesday 24th July 2019
TAVISTOCK TOWN COUNCIL DEBTORS' PROCESS**

1. PURPOSE OF THE REPORT

For the Committee to consider an updated Debtors' Process, following a decision made by the Council at its Meeting on the 5th March, 2019 (Minute No. 299 refers).

2. CORPORATE POLICY CONSIDERATIONS

The collection of rent from the Council's tenants helps offset the level of Council Tax the residents of Tavistock are required to pay towards the costs of the services provided by the Town Council.

This is in accordance with section Ec5 of Tavistock Town Council's Strategic Plan 2017-2021, as below;

Ec5 Income generation – the Council will manage its commercial assets to provide income streams on a commercial basis to support the development and delivery of community services and benefits. The Council will also seek to develop new income streams which contribute to the local economy such as the bringing into use of the Butchers' Hall, securing of contracts to external bodies for services etc

3. LEGAL & RISK MANAGEMENT ISSUES

The effective management of debts serves to reduce the risk of loss, minimise potential for litigation and promotes good landlord tenant relationships.

4. ENVIRONMENTAL ISSUES

There are no related issues of significance arising from this report.

5. RESOURCE ISSUES

The resource issues associated with this report principally relate to the requirements of debt collection, internal administration and legal fees which, at best will be reduced, at worst no different arising from earlier intervention.

6. COMMUNICATIONS ISSUES

Liaison has taken place with the Solicitors to the Council.

7. RECOMMENDATIONS

That Tavistock Town Council endorse and adopt the amended Debtors' Process as set out in Appendix 2

1) BACKGROUND

The Council's decision arose due to a tenant, who habitually failed to pay rent until legal action was instigated against them, again appeared on the Debtors' Report for that Meeting.

The tenant had been issued with a S146 Notice but had paid the outstanding rent, plus the Council's legal costs, within the deadline set by the Notice which allows 14 days for a debt to be paid from the date the Notice is issued. Therefore no action to recover the property could be undertaken, as allowed by the Notice.

This was not the first occasion on which this particular tenant had fully paid a debt following the issue of a S146 Notice, and the Council felt that it was being used as a short-term lending facility. The net affect of this was to enable the tenant to avoid its obligations for up to 217 days.

As this tenant has several shops across the region, it was considered that the Tavistock shop was being used to 'prop up' other branches within the chain.

2) ANALYSIS

Following consultation with the Council's legal advisors, an amended and updated process is outlined in Appendix 2.

It is hoped that whilst this new Process will not remove all future debtors' issues, it may help mitigate some, specifically the issues referred to above.

Other options, as below, are also available but each has drawbacks and are therefore not being recommended as suitable courses of action;

- Peaceable Re-entry - Where an issue is in respect of rent arrears, a S146 Notice is not required by law, peaceable re-entry to a property can be undertaken without such a Notice having been issued, however;
 - this course of action **may** result in the rent and/or the Council's legal and other costs **not** being recovered, it may be just the property itself which is recovered;
 - if this course of action was undertaken the Council would need to be mindful that it may receive adverse publicity as such action could not be confidential;

- the property would inevitably remain vacant for a period of time whilst all legal processes are undertaken, a new tenant is identified etc., with loss of rent during that period;
 - there would still be resource implications to undertake and organise such action
- CRAR (Commercial Rent Arrears Recovery) - which involves instructing bailiffs to recover goods from a commercial premises, without giving prior notice, to offset rent arrears. Considerations for this method;
 - if the value of any recovered goods would be sufficient to cover the rent arrears;
 - goods cannot be seized to cover legal and other costs (i.e. bailiffs' costs and any outstanding legal fees);
 - again the possibility of adverse publicity for the Council, as again this would not be a confidential action;
 - there would still be resource implications to undertake and organise such action

3) CONCLUSION

The approach recommended represents a proportionate and appropriate means of managing potential persistent abuse, whilst not penalising genuine and otherwise rare cases.

The new Process, as outlined in Appendix 2 is therefore commended to Council.

**Jan Smallacombe
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TAVISTOCK TOWN COUNCIL**