Report to the Finance and Performance Management Cabinet Committee

Report reference: *FPM-027-2009/10*
Date of meeting: *17 January 2011*

Epping Forest District Council

Portfolio: **Finance and Economic Development.**

Subject: **Introduction of Credit Card Payments.**

Responsible Officer: **Rob Pavey** **(01992 564211).**

Democratic Services Officer: **Gary Woodhall** **(01992 564470).**

Recommendations/Decisions Required:

(1) That Members consider whether credit cards should be introduced as a payment method for all payments to the Council;

(2) That Members consider whether a surcharge of 1.6% should be applied to payments by credit card; and

(3) That, subject to the decisions above, the cost of implementing a credit card surcharge module across all card payment channels in the sum of £11,010 be approved.

Executive Summary:

Credit card payments are currently not accepted at the Council. This report re-visits this position and asks whether Members would like credit card payments to now be accepted and whether a surcharge of 1.6% should be applied to the payment by the customer to cover the transaction cost incurred by the Council. There would also be a cost of £11,010 to implement the necessary module to process any surcharge.

Reasons for Proposed Decision:

There is the option of extending card payments to include credit cards. There is also the option of passing on any transaction cost to the customer. To implement a surcharge would require additional work to be applied to the Council's payment systems.

Other Options for Action:

Members could decide not to introduce credit cards as a payment method or to introduce them with no surcharge.

Report:

1. The Council accepts debit cards for payment of bills for Council Tax or Housing Rents, and various other payments. Credit card payments to date have not been accepted due to the relatively high transaction costs and doubts over whether those transaction costs could legally be passed onto customers for payments of statutory bills such as Council Tax. Another consideration has been the fact that credit card payments can encourage people

who owe money to the authority to effectively borrow money on their credit card and incur additional high interest charges, and therefore exacerbate their indebtedness. This report re-visits the position regarding credit card payments which was originally agreed by Members in 2002, to assess whether credit card payments should now be accepted and whether the transaction cost for the credit card payment be passed onto the customer.

2.   The merchant fee cost to the Council for accepting a credit card payment is 1.6% of the value of the transaction. A debit card transaction costs 16p. Therefore, someone paying £1,000 in Council Tax by debit card would cost the Council 16p, whereas that same amount paid by credit card would cost £16.00. The example of Council Tax is used, because not only is it where the highest number of card transactions apply, but the Council would only retain £100.00 of the Council Tax in any case, (as the remainder is passed to other precepting bodies) and £16.00 has already been used to process the payment.

3.   Other Councils that accept credit card payments take one of two options with regard to the credit card fee. The first option is to pass the charge onto the debtor, but there are mixed views about whether it is legal to do this, particularly in relation to statutory bills. Authorities have taken Counsel's opinion on this and some have advised it is illegal to do so, whilst other opinion has stated it is legal to do so, providing it is just the cost to the Council that is passed on. The legal position is ambiguous and will ultimately only be settled by a test case. The only point of clarity that has emerged recently was a case involving London General Transport Services Ltd v London Borough of Camden 2009 relating to parking penalty charge notices where it was declared illegal to pass the charge on to the customer. Camden now does not pass the credit card fee onto the customer for any type of payment, not just penalty charge notices. Some other authorities have followed suit whilst others claim it just relates to parking matters. Advice was sought from the Council's own legal team and it was confirmed that this is an uncertain area of law at the moment.

4.   The second option that some Councils take is to absorb the cost of the credit card fee, either because they do not want to pass the charge on or they do not consider or are unsure whether it is legal to do so.

5.   Some authorities choose not to offer credit cards as a payment method as it can potentially encourage people who owe money to the authority to effectively borrow money on their credit card and incur additional high interest charges, and further exacerbate their overall indebtedness. This view must however be balanced with the right of an individual to choose the payment method they deem most suitable to their situation. It could also be seen that as the Council's own income streams become increasingly vital as Government grant reduces, the overriding need is to maximise the Council's income from whatever payment method is available.

6.   Should Members decide to approve credit cards as a payment method, an option, as previously discussed, is to levy a surcharge on the payment equivalent to the 1.6% transaction cost incurred by the Council, notwithstanding the legal uncertainties of this. To do this requires the implementation of a surcharge module across all the channels that accept card payments, including counter, telephone, internet and mobile payments. These channels are supplied by Capita and a quotation of £11,010 has been received for this work to be undertaken. The cost of this work would be met from the ICT capital budget.

7.   This report in conclusion re-visits the situation as to whether the Council should now accept credit card payments and also whether any surcharge should be passed onto the customer. With regards to the latter point there is no common legal opinion on this so it is for Members to decide if they would wish to impose this surcharge. However, given the potential cost of each credit card transaction to the Council, it would seem applying a surcharge is the only cost-effective solution. To give Members an idea of the potential cost if a surcharge was

not applied the following estimate can be made. In 2009/10 the Council received around £9 million pound in debit card payments. Should half of that amount have been paid by credit card then the transaction cost to the Council would have been £72,000.

Resource Implications:

Cost of £11,010 for implementing the credit card surcharge module across all payment channels.

Legal and Governance Implications:

The legal position with regard to passing on a credit card surcharge for statutory debts is as yet unresolved.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

Consultation with CIPFA and other authorities has shown a mixed picture. Not all authorities accept payment by credit card and, of those that do, not all pass the transaction cost on to the debtor.

Background Papers:

None.

Impact Assessments:

Risk Management
There is a risk that to apply a credit card surcharge to payments such as statutory debts could at some stage be declared illegal, and the Council could have to pay any surcharges back to customers and adverse publicity would follow. The counter risk is that by not accepting payments by credit card the Council will fail to maximise income.

Equality and Diversity:
Did the initial assessment of the proposals contained in this report for   No
relevance to the Council's general equality duties, reveal any potentially
adverse equality implications?

Where equality implications were identified through the initial assessment   No
process, has a formal Equality Impact Assessment been undertaken?

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.