



EXECUTIVE BOARD DECISION

REPORT OF:	Executive Member for Finance and Governance
LEAD OFFICERS:	Director of Growth and Development Director of HR, Legal and Governance Director of Finance
DATE:	10 th December 2020

PORTFOLIO/S AFFECTED:	Finance and Governance
WARD/S AFFECTED:	All
KEY DECISION:	YES NO

SUBJECT: Write-Off of irrecoverable debt

1. EXECUTIVE SUMMARY

The report details several debtor accounts that have proved irrecoverable and as such, in line with the Financial Procedure Rules within the Council's Constitution (Section 7 B.7.), are presented to the Executive Board for consideration for write-off.

This report is presented at a time when the duration and intensity of the economic impact of the COVID-19 pandemic is acknowledged and recognised has a major contributing factor in a number of the businesses cases set out in this report.

During these difficult times the Government has recognised this and has legislated to protect commercial tenants and thereby placing restraints on landlord's ability to recover outstanding rents.

2. RECOMMENDATIONS

That the Executive Board;

1. Notes the amounts of each of the debts below and the action taken to date, in respect of the debts;
2. Approves the write-off of the debts as detailed below.

3. BACKGROUND

The Council's Standing Orders and Financial Regulations stipulate that:

- the Director of Finance may authorise the write off of any individual debt up to the value of £5,000.
- for those debts above £5,000 and below £30,000, the Director of Finance, in conjunction with the Executive Member for Finance and Governance, can authorise the write off
- for those individual cases where the debt is over £30,000, the case must be referred to the Executive Board for authorisation.

In arriving at a decision to write off a debt, Officers must pursue a rigorous process to establish whether funds can be recovered before concluding as a last resort, that the debt is deemed to be irrecoverable. The Companies identified in this report have been requested and pursued as appropriate for the outstanding payments.

Unfortunately it has not been possible to recover the money owed to the Council.

4. KEY ISSUES & RISKS

The individual cases below are presented for write-off with details of the amount of the debt and a summary of what this relates to, along with the actions taken by Officers that have now resulted in the request to the Executive Board for write-off:

Company 1

Request for write-off: £45,506.51 (comprising £32,808.69 Sundry Debts and £12,697.82 Business Rates)

Details of the debt:

£350.00	Trade Waste
£1,498.01	Insurance
£22,209.65	Rent
£8,751.03	Utilities
£12,697.82	Business Rates

Recovery Action Taken:

With regards to the liability for Business Rates, this ran from 6th October 2017 to 17th January 2019. The initial bill was issued on the 30th November 2017 and was followed by an Annual bill in March 2018 for the new financial year (2018/19). Recovery notices were issued promptly following non-payment of the instalments by the Ratepayer. Following non-payment, two summonses were issued and Liability Orders obtained, one on 27th February 2018, and one on 30th April 2019. Action was taken to enforce the Liability Orders, however, Enforcement Agents found that the registered office had been empty since 24th May 2018.

With regard to the other debts, all notices were issued in accordance with the lease and 'Reminder Letters' were also issued in accordance with standard debt recovery processes. The lease provided for a Guarantor, who was also pursued for the debt. A Letter before action was sent in July 2018 but no response was received. Tracing agents were employed but they were unable to trace either the Leasee or the Guarantor. Court action was considered, but as the debtor has no assets it was deemed unviable to peruse the debt.

The Company was dissolved on the 27th August 2019.

Company 2

Request for write-off: £53,389.28

Details of the debt:

£11,629.92	Utilities
£1,200.00	Advertising
£22,029.65	Rent
£544.81	Insurance
£17,984.90	Business Rates

Recovery Action Taken:

Liability for occupation covered the period 11th May 2018 to 24th March 2019.

It has been identified that no invoices were raised during the occupation of the property as no lease was in place to enable the Finance Team to bill the occupier. This has resulted in the failure to collect funds due to the Council. These have been calculated to include the rent that would have been due as outlined in the Executive Board report granting authority for the lease. The processes and procedures are being reviewed and this is referenced in part 2.

It has been established that initially the Business Rates team were unable to issue a bill to the company until the Valuation Office Agency had conducted its work on the assessment. Once this had been completed, a bill was issued on the 26th June 2019. As this remained unpaid, a reminder notice and summons were issued. A court hearing took place on 1st October 2019 where a Liability Order was obtained. An additional letter requesting an offer of payment was issued on the 2nd October, however no contact was made by the business owner and the debt was referred to Enforcement Agents on the 9th January 2020.

We are aware that the Company was Dissolved on 28th January 2020.

In view of the fact that the tenant/occupier is a company that has been dissolved, coupled with fact that there is no executed lease in place it would be very difficult to legally pursue for the debt. Firstly, the Council would need to apply to Companies House for restoration of the company followed by an action on the basis of an implied lease. This would be difficult, costly and there is no guarantee of successful recovery.

Company 3

Request for write-off: £71,293.66

Details of the debt:

(£1,076.00)	Unallocated cash-receipt – payment on account
£65,825.91	Rent
£535.75	Insurance
£6,008.00	Business Rates

Recovery Action Taken:

Further to the above re company 2, a new company with a similar name took over. Arrears have been calculated in relation to the assumed period of occupation from 25th March 2019 as the council was initially unaware that a separate company was in situ.

No invoices were raised during this company's occupation of the property as no lease was in place.

An initial Business Rates bill was issued on the 16th October 2019 following receipt of information that a new company had taken over the business on 25th March 2019. A reminder was issued, however no further action could be taken due to the pandemic. It has been ascertained that the liability for Business Rates ended on 31st August 2020 when a new business moved in to the premises.

This company however is still showing at Companies House as an active company with the registered office still being the Council's premises.

Based on occupation from 25th March 2019 through to 31st August 2020, the figures above include the rent that would have been charged if a lease had been signed based on the figure that was presented to Executive

Board in seeking authority to grant the initial lease on the premise. The figures also reflect a £20,000 payment made by this company towards outstanding rental costs in September 2020.

The Council could seek recovery of the debt by pursuing the company but as referenced above there is no lease in place and any action would need to be based on an implied lease. In this context the absence of a lease makes the prospects of success in pursuing the debt unlikely and this would also very likely be an expensive course of action.

Currently there are ongoing discussions as regards a lease with a potential 3rd company who wish to trade under a similar name from the premises, who have until 15th December 2020 to sign a lease prepared for formal occupation.

Company 4

Request for write-off. £136,936.20

Details of the debt:

£131,337.68	Rent and Service Charges
£5,598.52	Business Rates

Recovery Action Taken:

Responsibility for invoicing and recovery of this debt rested with the property management company who were contracted to manage the lettings and tenancies of a council premises.

From 1 April 2020, the Council took responsibility for Property Management back in-house from the property management company, and along with that, responsibility for debt recovery.

The lease was in the name of a company who became insolvent 20th December 2018. Managing this issue had been the responsibility of the property management company. All procedures were enforced to formally end the lease and remove the occupier from the premises.

The status is recorded at Companies House as "Insolvency Proceedings". There is/was an executed lease in place with the company and the Council may forward its claim for the debt to the Administrator/Liquidator as an unsecured creditor, but the prospects of successful recovery is usually very low. Any legal action would inevitably incur costs which would not be viable.

Company 5

Request for write-off. £31,932.90

Details of the debt:

The debt relates to the recharge of costs incurred by BwD in respect of a service user whose care costs were to be funded by an external body.

The external body have refused liability for this and the Service area cannot support the debt with any evidence of an agreement.

Recovery Action Taken:

Recovery letters have been sent in line with the Council's standard debt recovery processes and the Service area has been engaged in pursuing the external body for the debt but unfortunately the debtor will not move on their position.

A 100% specific Bad Debt provision was made in the 2017/18 accounts for this debt and formal request is now sought from the Executive Board for write-off.

COUNCIL TAX BAD DEBT WRITE-OFF

Individual

Request for write-off. £60,522.72

Details of the debt.

The debt is in respect of one landlord and 16 properties that he owns within the borough, with liabilities across the period 5th March 2008 to 6th November 2019, varying from property to property, and ranging in value on each from £391.41 to £13,526.89.

Recovery Action Taken:

Following extensive recovery action, through which the debtor made many promises to pay which did not materialise, the Council entered into Bankruptcy proceedings against the debtor across all of the above properties and obtained a hearing date in Court on 16th March 2020.

At the hearing, the debtor produced a set of Individual Voluntary Arrangement (IVA) proposals which were due to be presented at a Creditors meeting on the 3rd April - this resulted in the Bankruptcy proceedings being adjourned.

On the 3rd April the IVA proposals were accepted by a number of the individual's Creditors, and specifically his mortgage company, and so the Bankruptcy proceedings have now been withdrawn.

Following proof of debt being submitted to the IVA Supervisor, it is our procedure for the debt to be written off pending any payment/dividend being received. The costs incurred by the Council in pursuing the debt of £6k are now classed as a preferential debt within the terms of the IVA, and therefore should be paid before anything else.

5. FINANCIAL IMPLICATIONS

In accordance with recommended accounting practice, the Council maintains an accounting provision for potential bad debt write-off in respect of general debts, Business Rates and Council Tax. The adequacy of this provision is reviewed each year and is subject to audit review.

The amount for write off detailed in this report is £399,581.27. Some of these debts are specifically provided for in the bad debt provision, the balance will be offset against the general provision already made.

6. LEGAL IMPLICATIONS

The Council has a duty to pursue debt and recover outstanding monies due, acting within the legal framework. However, when considering action the Council need to take into account the specific circumstances, the potential costs in pursuing the debt and the realistic prospects of a successful recovery. In particular, pursuing insolvent companies or bankrupt persons to recover outstanding monies is usually difficult and unviable.

With regard to commercial business tenancies and the Covid 19 pandemic, the Government has recognised the need to protect commercial tenants by imposing restrictions on landlords (i.e. the Council) in pursuing non-payment of any sums due under a commercial lease. In particular, section 82 Coronavirus Act 2020 prevents any forfeiture between 26 March and 31 December 2020. It is likely that this will be extended again by regulations. However, the outstanding amounts would remain due. In addition, [the Taking Control of Goods and Certification of Enforcement Agents \(Amendment\) \(Coronavirus\) Regulations 2020](#) prevented landlords from using Commercial Rent Arrears Recovery action unless an amount of at least 90 days' rent was due (it had previously been seven days or more). This has now been increased to at least 276 days' rent from 29 September, and will increase again to 366 days' rent from 25 December. This restriction also now applies until 31 December 2020 or such later date as may be specified in regulations. Other measures introduced include provisions in the [Corporate Insolvency and Governance Act](#) which prohibits the presentation of a winding-up petition based on an unsatisfied statutory demand served between 1 March and 31 December 2020.

7. RESOURCE IMPLICATIONS

The Resources of the Council's Growth and Development Team, financial Services Team and Legal Services Team have been utilised to try and achieve payment of these debts.

8. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

10. CONSULTATIONS

None.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

VERSION:	10.0
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CONTACT OFFICER:	Louise Mattinson, David Fairclough, Martin Kelly
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DATE:	12 th December 2020
BACKGROUND PAPER:	Various Debt Files