

EXECUTIVE

16 FEBRUARY 2010

REPORT OF THE CORPORATE DIRECTOR OF CUSTOMER SERVICES

Title: Council Debt Write Offs 2009/10 - October to December 2009 (3rd Quarter)	For Information
<p>Summary:</p> <p>Barking and Dagenham Direct is made up of a number of service areas. Two of these (Income & Collection and Rents & Benefits sections) are linked to the billing, collection and recovery of the vast majority of debts that fall due to be paid to the Council for chargeable services and statutory levies such as Council Tax and Business Rates (National Non Domestic Rates (NDR)).</p> <p>The value and type of debts written off as uncollectable within these two sections must be reported to the Executive on a quarterly basis in line with the Council's financial regulations. This report provides a summary of debts written off for quarter 3 (October to December 2009) as shown in table 6 of Appendix A. In total £745,878 of debts have been written off for the 2009/10 year for quarter 3.</p> <p>Wards Affected: None.</p>	
<p>Recommendation(s)</p> <p>The Executive is asked to note the debt write-offs for the 3rd quarter of 2009/10 as detailed in the report and that a number of these debts will be publicised in accordance with the policy agreed by Minute 69 (6 November 2007).</p>	
<p>Reason(s)</p> <p>As a matter of good financial practice and to accord with the Council's Financial Rules.</p>	
<p>Implications:</p> <p>Financial: All debts written off will have been provided for within the Council's Bad Debt Provision and as such there should be no specific financial implications. However, there is the possibility that unforeseen and unplanned additional write offs occur, which lead to the value of debts written off in any year, exceeding the agreed bad debt provision.</p> <p>Where this is likely to happen, this quarterly report will act as an early warning system and will enable additional control measure to be agreed and taken, to either bring the situation back under control, or to make appropriate adjustments to the bad debt provision.</p> <p>Legal: During the preparation of this report legal advice from the Legal Partners has been sought and this is as follows:</p> <p>The write of debts of the sums proposed in the report requires a decision of the Executive.</p>	

It was decided at the Executive's meeting of 6 November 2007 to publish the names of debtors whose debts have been written off subject to certain exceptions set out in the report. The publicising of the names of debtors constitutes processing of their personal data under Data Protection Act 1998 (DPA). In order to process i.e. publish this information lawfully the legislation sets out a number of requirements the most pertinent being that processing must be fair, lawful that any one of the permissible grounds listed in schedule 2 DPA be found.

The relevant ground in schedule 2 DPA to the publication of debtor names is that 'the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject'. This means that the Council may lawfully publish the data on the basis that it is thereby pursuing some legitimate interest. One possible interest through publication may be the identification of named debtors who the Council could then pursue to recover the debt. The Council must also be satisfied that no prejudice to the rights and freedoms of the data subjects (named debtors) would be occasioned by the publication. The Legal Partner has not seen any basis for suggesting such prejudice would be occasioned. If any individual had concern as to publication of their details they could raise objection with the Council who could then revisit the issue in the light of the legal considerations here outlined.

It is not suggested that the debtors named have committed any offence in which case the data would be 'sensitive' personal data requiring a further additional ground from schedule 3 to be also identified. This aspect can thus be discounted.

The sums being written-off in the report are quite substantial and Members will be concerned as to what efforts are being made to recover debts before they are written-off. Discussions have been held with relevant service managers who have confirmed the extensive efforts made by them to recover debt before write off. Members will note that going forward officers have confirmed at paragraph 2.1 that they will provide an overview of efforts made before recommending debt write off.

Contractual: No specific implications

Risk Management:

No specific implications, save that of this report acting as an early warning system to any problems in the area of write offs.

Staffing: No specific implications

Customer Impact: No specific implications

Safeguarding Children: No specific implications.

Crime and Disorder: No specific implications.

Property / Assets: No specific implications

Options Appraisal: Not applicable.

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1. Introduction and Background

- 1.1 The Income and Collection section and the Rents and Benefits Sections are responsible for the collection of the vast majority of debts falling due to the Council by way of statutory levies and chargeable services. Whilst measures are taken to collect all debts and levies due, it is invariably the case that some debts will remain unpaid, even after concerted efforts have been made to collect them.
- 1.2 In order that the Council can take proper account of debts that will actually be paid and also take account of debts that are unlikely to be paid, the writing off of uncollectible debts are carried out on a regular basis. This way the Council is able to take account of just those debts that it knows will be paid, whilst making some provision within its accounts for debts that are unlikely to be paid.

2. Policy for write off of irrecoverable debts and unclaimed credits

- 2.1 The processes and procedures in place for managing and recording debts written off are governed by the Council's write off policy. The purpose of the policy is to establish a framework to regulate the write off of irrecoverable debts and long standing unallocated and unclaimed credits. Extensive efforts are made in all cases to recover the debt before it is written off. Future reports will provide Members with more detail in broad terms on efforts made to recover debt before write off.
- 2.2 Adherence to this policy will ensure that there is always consistency and probity adopted in the procedures of debt and credit write offs and that best practice is followed in:
- Debt collection and recovery
 - Accountancy code of practice
 - Audit controls

3. Authorisation to write off debts

- 3.1 Authority to write off debts and credits is delegated to the Chief Financial Officer by the Council's Constitution. Further delegation is made via the constitution and is specified below:
- Up to £2,000 Group Managers
 - £2,000.001 to £10,000 Head of Barking and Dagenham Direct
 - Over £10,000 Corporate Director of Customer Services or the
Corporate Director of Finance and Commercial
Services

3.2 These authorisation levels are strictly adhered to for all write offs.

4. Current Position

4.1 The net value of debts written off for the first quarter (Q1) of 2009/10 (April - June 2009) was £ 279,212 as shown in table 4 of Appendix A.

4.2 The net value of debts written off for the second quarter (Q2) of 2009/10 (July - September 2009) was £ 1,089,602 as shown in table 5 of Appendix A.

4.3 The net value debts written off for the third quarter (Q3) of 2009/10 (October - December 2009) was £ 745,879 as shown in table 6 of Appendix A.

4.4 The total debt write off for 2009/10 now stands at £2,114,692.

5. Points to note from debt write off tables (Appendix A)

5.1 Council Tax and Business Rates are both statutory debts and for the most part, regular monthly write offs take place.

5.2 General Income debts relate to debts raised for chargeable services that the Council either provides as a statutory duty or as a service where no other providers are available to provide a similar service.

5.3 Home Care and Residential Care debts are also dealt with within the General Income section and are shown separately.

5.4 Housing Benefit overpayment debts written off relate to relevant adjustments in this area.

5.5 Former tenant arrears relate to previous occupation of rented Council housing.

6. Publication of individual details of debts written off

6.1 A number of councils publicise the details (names, addresses etc.) of residents who have had debts written off. In the vast majority of cases, these debts have been written off where the debtor has absconded.

6.2 By Minute 69, 6 November 2007 the Executive agreed that a list showing the details of debtors, who have had debts written off, should be attached to the quarterly report along with the overall write off summary. A list of the top ten debtors has been attached at **Appendix B** and will be publicised locally (e.g. within The News etc.).

6.3 The Executive also agreed to publicise individual debtor details where its right to demand the debt has been legally ratified via Court action or contractual agreement, with the exception of those types of debt write offs as listed at (a) to (e) below

- a) Debts that have been written off following a corporate complaint being upheld
- b) Debts that have been written off due to the debtor falling within one of the many vulnerable groups (e.g. elderly, disabled, infirm etc.)

- c) Where the original debt was raised in error
- d) Where debts have been written off, but no legal action has been taken to prove that the debt was legally and properly due
- e) Where the debt has been written off following bankruptcy or insolvency action (the majority of these cases will be individually publicised)

- 6.4 The exclusion of the category of debts listed above will eliminate the possibility of any unnecessary and potentially costly legal challenges from debtors, who take issue with their details being publicised. It is intended that where the details or whereabouts of debtors become known following publication, those debtors will be pursued as far as is possible, to secure full payment of the debt.
- 6.5 The list provided at Appendix B does not include any debts or debtors that fall within categories (a) to (e) above, so the list as it stands can be publicised. Members would note that there are a number of former PSL (Private Sector Licence) tenants on the list of top 10 debtors.
- 6.6 The Council has a duty to provide temporary accommodation to homeless persons in accordance with Part VII of the Housing Act 1996 (as amended by the Homelessness Act 2002). The vast majority of temporary accommodation is PSL; this is privately owned property, leased to a lettings agent which in turn is licensed to the Council to accommodate homeless households.
- 6.7 Arrears on temporary accommodation are an issue for all London Boroughs. A number of factors contribute to the risk of high level arrears in temporary accommodation. Working families who do not receive maximum benefit find affordability a significant problem. The Council has endeavoured to address this by introducing a 'Working Families Shortfall Policy', however the law precludes the Council from applying different charging arrangements for working families. Many homeless households often have multiple debts and complex social and welfare problems, all of which contribute to risk of arrears in their temporary accommodation.
- 6.8 Every effort is being made to support customers and minimise debt. A multi-disciplinary rent panel has been established to look at each individual case and take appropriate action. A business process re-engineering exercise has been carried out on temporary accommodation and income recovery procedures, to ensure the appropriate use of resources and efficient streamlined procedures are in place now that the new Housing system has been implemented. This system will provide robust data for better charging, quicker response time and improvement in customer experience.

7. Ongoing debt recovery and tracing work

- 7.1 It should be noted that debt recovery and tracing work is an ongoing activity within the Income & Collection and Rents & Benefits section. Some form of tracing work continues on debts even after the debt has been written off. A number of management tools are being used to find debtors, including national systems such as Experian. In many cases, tracing and follow-up work can continue for up to a year after the debt has been written off (e.g. in the case of higher debts) and debtors have been known to resurface up to five years after a debt has been written off.

7.2 Where debtors are located either by ourselves or other departments, for example often Tenancy audit find debtors, the section who owns the debt is advised and the recovery process can be resumed. The debt is often written back on so that legal action can commence or be restarted from where it was left.

8. Consultees

The following have been consulted in the preparation of this report.

- Councillor Carroll – Cabinet Member (Revenues and Benefits Portfolio)
- Tracie Evans - Corporate Director of Finance and Commercial Services
- Bola Odunsi - Head of Barking and Dagenham Direct
- Winston Brown – Legal Partner and Deputy Monitoring Officer
- Annette Cardy - Group Manager (Benefits and Service Development)
- Steve Whitelock – Finance Group Manager (Adult and Community Service)
- Lee Russell – Finance Group Manager (Resources)
- Shenis Hassan – Finance Group Manager (Children Services)
- Tony McNamara – Group Manager (Customer Services, Finance)
- Mary Olawale –Asst Group manager (Customer Services, Finance)

Background Papers Used in the Preparation of the Report:

- Executive report and Minute 69, 6 November 2007: “Council Debt Write Offs”.
- Policy for write off of irrecoverable debts and unclaimed credits
- Income and Collection tracing procedure
- Executive report 25 August 2009: “DEBT WRITE OFFS April 2009- June 2009 (First Quarter) & July 2009 to September 2009 (Second Quarter)