

## CABINET

10 MAY 2011

### REPORT OF THE CABINET MEMBER FOR FINANCE, REVENUES & BENEFITS

<b>Title:</b> Council Debt Write-Offs 2010/11 - 1 January 2011 to 31 March 2011(Quarter 4)	<b>For Information</b>
<p><b>Summary:</b> The Council's Financial Rules require that debts written off by the Revenues and Benefits Service are done so in accordance with the Cabinet approved write-off strategy for the service.</p> <p>Since the transfer of the Revenues and Benefits operations to Elevate in December 2010 the service has maintained LBBD's existing approval framework for write offs.</p> <p>This write-off strategy states that the write-off of debts under £2,000 will be approved by the head of business units within the service, debts over £2,000 but under £10,000 will be approved by the Head of Revenues and Benefits, and debts over £10,000 will be approved by the Council's Director of Customer Services.</p> <p>The strategy is currently under review by Elevate as part of a wider improvement in our Debt Management processes.</p> <p>This report summarises the delegated decisions that have been made on these debts for the fourth quarter of 2010/11, provides the totals written off for each of the first three quarters and details of the top ten debts that have been written off.</p> <p><b>Wards Affected:</b> None</p>	
<p><b>Recommendation(s)</b></p> <p>The Cabinet is asked to note the contents of this report as it relates to debt write-offs for quarter 4 of 2010/11 and that a number of these debts will be publicised in accordance with the policy agreed by Minute 69 (6 November 2007).</p>	
<p><b>Reason(s)</b></p> <p>As a matter of good financial practice and to accord with the Council's Financial Rules.</p>	
<p><b>Comments of the Chief Financial Officer</b></p> <p>This report is written in accordance with the Council's current debt write-off strategy. There is however a need to review the whole strategy and existing processes to ensure that the Council maximises its debt collection and minimises the occurrences of debt in the first instance</p>	
<p><b>Comments of the Solicitor to the Council</b></p> <p>The relevant legal issues are set out in section 7 of the report.</p>	

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## 1. Background

- 1.1 Responsibility for the operation of the Council's Revenues, Benefits, General Income and Rents Service transferred to Elevate East London LLP (Elevate) on 10 December 2010. The Service is responsible for the collection of the vast majority of debts falling due to the Council by way of statutory levies and chargeable services.
- 1.2 Where a debt is written off it is the case that measures have been taken to collect all debts and levies due; it is also the case that some debts will remain unpaid, even after concerted efforts have been made to collect them.
- 1.3 Debts are categorised and recommendations made to write-off amounts deemed to be irrecoverable. The write-off of debt allows the service to focus on debts that are more likely to be recovered. At the same time the Council makes provision within its accounts for debts that are likely to be written-off.

## 2. Write-off rules and process

- 2.1 Elevate ensures that write-offs are completed in accordance with the Council's Financial Rules. For the service this means authority to approve write-offs lies with the Head of Service for amounts up to £10,000 and with the Director of Customer Services for debts over £10,000.
- 2.2 The write-off policy dates from May 2008 and Elevate will be working with the Council in the coming months to update this and put in place a debt management policy.
- 2.3 In order to decide which debts to consider for write-off, the policy sets out the criteria or circumstances where the service is required to use as the basis for writing off debts:
  - The customer is deceased and has left no estate
  - The customer has absconded and cannot be traced
  - It is uneconomical to take action to enforce payment
  - The amount is a small balance
  - The customer is living outside the UK and is unlikely to return
  - The customer is living in another part of the UK and it is uneconomical to transfer proceedings to the appropriate court
  - It is in the Council's interests to agree a negotiated settlement of part of the debt
  - The debt has been remitted by the Court
  - The Court has refused to make an order in respect of the debt
  - The customer has served a prison sentence to discharge the debt

- It would cause the customer hardship, financial or otherwise, to enforce payments, or it is in the interests of the Council or the wider community to write off the debt
- The debt is an overpayment of HB or CTB which is deemed to be irrecoverable in accordance with the Housing benefit General Regulations 1987 as amended and the Department for Work and Pensions overpayment guidance
- The age of the debt precludes recovery or the debt is Statute Barred

### **3 Assurance**

- 3.1 In May 2010 the Service received an Internal Audit report concerning write-offs. The outcome of this audit was that the write-off of debt was given a Substantial Assurance rating, meaning that Audit are satisfied with the processes in place for dealing with the write-off of debt. These processes remain in place within Elevate.

### **4 Debt Write-off: Quarter 4 2010/11**

- 4.1 The value of debts written off for the fourth quarter of 2010/11, i.e. January to March 2011 total: £1,395,307.
- 4.2 Details of the amounts written off by service area for the fourth quarter of 2010/11 are provided at appendix A. Summaries of the debts written off in the first three quarters of 2010/11 and for the year's total are at appendix B. Appendix C lists the top 10 debts written off.

### **5. Publication of individual details of debts written off (Appendix C)**

- 5.1 A number of Authorities publicise the details (names, addresses etc.), of residents who have had debts written off. In the majority of cases, these debts have been written off where the debtor has absconded.
- 5.2 The Cabinet agreed in November 2007 (Minute 69, 6 November 2007) that a list showing the details of debtors, who have had debts written off, would be attached to this report. A list has been attached at Appendix B. The list has been limited to the top ten debts excluding those cases where debtors should not be named due to vulnerability or other factors outlines in 5.3 below.
- 5.3 As was previously outlined within the 6<sup>th</sup> November 2007 Cabinet report, It was recommended that the following types of debt write offs are excluded from this publicised list:
- 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)

- 5.4 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.
- 5.5 The list provided at appendix C does not include debts or debtors that fall within categories a-e above, so the list as it stands can be publicised after the removal of date of birth and national insurance number details.

## **6. Financial Issues**

- 6.1 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.
- 6.2 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.

## **7. Legal Issues**

- 7.1 It was decided at the meeting of 6 November 2007 of the Cabinet 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.
- 7.2 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.
- 7.3 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.
- 7.4 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 form schedule 3 to be also identified. This aspect can thus be discounted. It has been highlighted in previous reports that the sums being written-off in the report were quite substantial. This report is no different. Members will be concerned as to what efforts are being made to recover debts before they are written-off.

- 7.5 The Legal Partner for Corporate Law has advised that a summary of efforts to recover bad debt are addressed in these reports. The report author has indicated he is unable to do so for this report but can in relation to future reports. This will hopefully give Members confidence that debt is only being written off after the fullest efforts to recover have been made.

## **8. Other Implications**

### **8.1 Risk Management**

- 8.1.1 No specific implications save that of this report acting as an early warning system to any problems in the area of write off's.

## **9. Background Papers Used in the Preparation of the Report:**

- 9.1 Customer Services Department Revenues and Benefits Services: Policy for write-off of irrecoverable debts and treatment of accounts in credit. This is dated 6 May 2008.

## **10. List of appendices:**

- Appendix A – Debt Write Off Table for Quarter 4 2010/11
- Appendix B – Debt Write Off Summary Tables for Quarters 1 to 3 2010/11 and total write-offs for 2010/11.
- Appendix C – Top 10 Debts Written Off