

POLICY AND RESOURCES CABINET BOARD
27th AUGUST 2008

FINANCE & CORPORATE SERVICES

REPORT OF THE HEAD OF REVENUES & CUSTOMER SERVICES
- M. JONES

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Part 1 - Doc.Code: PRB-270809-REP-FS-MJ

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SECTION A

ITEM 1

WRITE OFFS - INSOLVENCIES

Purpose of Report

1. To recommend that the authority to write off debts over £1,000 in insolvency cases be delegated to the Director of Finance and Corporate Services.

Background

2. The authority to write off debts of £1,000 or less is delegated to the Director of Finance & Corporate Services, with write offs of over £1,000 requiring the approval of the Cabinet Board. These debts include accounts which become irrecoverable due to the insolvency of the debtor. This will apply to all forms of debt – Council Tax, Business Rates, Sundry Debtors and Housing Benefit Overpayments.
3. In these cases, the only option available is to submit a claim to the receiver administering the insolvency and to write off the amount of the claim. If, in due course, any dividend is paid by the receiver, the write off is reversed, but this is an infrequent occurrence.
4. The requirement to seek approval of this Cabinet Board for the write off of insolvent debts over £1,000 does not mean that there is a delay in actioning the write off, and this delay does result in unnecessary manual administration of the account pending the write off. For example, as far as Council Tax is concerned, until the insolvency debt is written off, it will remain against the account along with any non-insolvency debt (i.e. debt owing after the date of insolvency which is outside of those proceedings). The account has, therefore, to be managed manually until the write off is made.

Recommendation

5. That authority to write off Council Tax, Business Rates, Sundry Debtor and Housing Benefit Overpayment debts over £1,000 which are caused by insolvency be delegated to the Director of Finance & Corporate Services.

6. **Reason for Proposed Decision**

To improve the efficiency of the administration of insolvent debts over £1,000.

7. **List of Background Papers**

Neath Port Talbot C.B.C.'s Delegation Arrangements.

8. **Wards Affected**

All

9. **Officer Contact**

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WRITE OFFS - INSOLVENCIES

(a) **Implementation of Decision**

The decision is proposed for implementation after the 3 day call-in period.

(b) **Sustainability Appraisal**

Community Plan Impacts:

Economic Prosperity	No impact
Education and Lifelong Learning	No impact
Better Health and Well Being	No impact
Environment and Transport	No impact
Crime and Disorder	No impact

Other Impacts:

Welsh Language	No impact
Sustainable Development	No impact
Equalities	No impact
Social Inclusion	No impact

(c) **Consultation**

There has been no requirement under the Constitution for external consultation.

SECTION B

Not for publication by virtue of paragraph(s) 12 & 14

ITEM 1

COUNCIL TAX WRITE OFFS

Purpose of Report

1. To outline the recovery process for council tax and to explain the steps taken to recover unpaid council tax before write off is recommended.

Recovery Process - Overview

2. Action for recovery of council tax is by way of application to the Magistrates Court for a liability order, which then gives the authority certain powers of recovery - notably use of bailiffs to remove goods and attachment of earnings or benefits.
3. Before an application for a liability order is made, the following steps are taken:
 - Issue of annual bill payable in 10 monthly instalments.
 - If instalments are not paid, a reminder notice is issued, requesting payment of the missed instalments. (Up to 3 reminders can be issued in any one year).
 - If the account remains unpaid, a summons to attend the liability order hearing at the Magistrates Court is issued.
 - At any stage in the above process, payment arrangements will be made with council taxpayers).
4. Following the issue of a liability order:
 - A notice of the liability order, together with a request for information, are sent to the council taxpayer.
 - Ideally at this stage, a payment arrangements will be made, and no further action is necessary - however, this is not always possible and further action is required.
 - If a payment arrangement cannot be made, wherever possible the liability order will be enforced via an attachment of earnings or benefits.

- If none of the above options are possible, the liability order will be referred to a firm of bailiffs. (Formal contracts are in place with all bailiff firms used for the recovery of council tax and, as part of this contract, those firms have to comply with the Council’s Code of Practice for Bailiffs.)
5. Where necessary, in any individual case, more than one of the above will be used in an attempt to recover the amount due.
6. The annual statistics associated with the above process are:
- | | |
|---|--------|
| • annual bills issued | 63,000 |
| • reminders issued | 22,000 |
| • final notices issued | 8,900 |
| • summonses issued | 6,100 |
| • liability orders granted | 5,100 |
| • attachment of earnings issued | 1,900 |
| • attachment of benefits issued | 1,000 |
| • liability orders passed to bailiffs | 5,500 |
| • reminders issued in respect of payment arrangements | 4,800 |
7. The above statistics show that in just over half the cases where liability orders are granted, recovery is by way of attachment of earnings or benefits. Wherever possible, in cases where the council taxpayer has not entered in a payment arrangement with ourselves, this is the recovery option which we seek to use.
8. However, there are some problems associated with this option which limit its effectiveness:
- As far as attachment of benefit is concerned, the only benefits which can be attached are Income Support, Job Seeker’s Allowance, and Employment Support Allowance.
 - Council taxpayers’ circumstances change and they may cease employment or move onto a benefit which cannot be subject to an attachment, with the result that deductions under an attachment will cease.
 - It is also important to understand that the rate for weekly deductions from benefit is set at £3.25. As a result, there will be cases where deductions are made for relatively long periods and then cease, still leaving a significant balance of unpaid council tax.

9. There are also difficulties with the enforcement of liability order by bailiff companies:
 - The first difficulty is that bailiffs have to be let into the property, and frequently will find that the debtor does not answer the door. They will visit the property at different times of the day to maximise the chances of contacting the debtor, but ultimately are reliant on the debtor answering the door – which many debtors will not do.
 - Removal of goods is frequently not a realistic option, due to the low prices that would realise at auction, and also to the fact that many household items are protected from removal (either by law or under the Council’s Code of Practice for Bailiffs). Furthermore, items subject to hire purchase arrangements cannot be removed.
10. In appropriate cases, following unsuccessful attempts by bailiffs to recover the unpaid council tax, tracing agents will be used to try to establish possible employment details for the debtor to allow an attachment of earnings to be actioned.
11. There will also inevitably be cases where, at some point in the recovery process, it is found that the council taxpayer has left the property without providing a forwarding address.
12. In these cases all reasonable attempts to trace the council taxpayer will be made. This will include:
 - Checking information held by the authority – electoral register, business rates, housing benefits etc.
 - Enquiries with Members.
 - Use of tracing agents.
 - Use of LOCTA, which is a database of information for those authorities which subscribe to the service.
 - Following up leads and telephoning solicitors, landlords etc. and also using the internet.
13. In the last resort, if all of the above have failed to result in the recovery of the amount owed, there are the following options:
 - application to the Magistrates for committal to prison;
 - place a charging order on the property (owner-occupiers only);
 - commence insolvency proceedings.

14. However, the effectiveness of these options is limited. With regard to committal, there is a general reluctance to actually impose a custodial sentence and the end result is usually that the council taxpayer is ordered to pay a relatively small weekly payment due to their income level.
15. A charging order on a property is only applicable if the council taxpayer is an owner-occupier, and even in these cases, its effectiveness is dependant upon any other charges already made against the property. Outstanding debt in relation to a mortgage and other debts means that this option is only available in a small number of cases. Furthermore, this only secures the debt for a number of years, with payment only being made if and when the property is sold.
16. In reality, insolvency proceedings are only an option in the case of an owner-occupier where the assets will include a property. As with charging orders, however, other property charges can often make this option ineffective.
17. It is also important to understand that there is a relatively high cost to these 3 options due to the court fees involved, the need to have documents served personally on the debtor, and the cost of legal input, and generally the cost of officer time spent in pursuing the matter. This means that the use of these options is not always cost-effective in relation to the likelihood of recovering the debt.

Collection Rate

18. The end result of the recovery process outlined above is the successful collection of council tax as measured by:
 - in-year collection rates;
 - longer term collection rates.
19. As far as the in-year collection rate is concerned, the position over the last 3 years is:

	<u>2008/09</u>	<u>2007/08</u>	<u>2006/07</u>
N.P.T.	97.1%	97.0%	97.0%
Welsh Average	96.5%	96.6%	96.6%
N.P.T. Ranking	5 th	9 th	9 th

20. Turning to the longer term collection rate, the following table set out the position at 31st March 2009 for each financial year since 1996/97:

	<u>Collectable</u> <u>Debit</u> <u>000</u>	<u>Collected</u> <u>Amount</u> <u>£000</u>	<u>Collected</u> <u>%</u>	<u>Write</u> <u>Offs</u> <u>£000</u>	<u>Write</u> <u>Offs</u> <u>%</u>
1996/97	18,517	18,426	99.5	83	0.5
1997/98	21,247	21,126	99.4	104	0.5
1998/99	23,895	23,753	99.4	116	0.5
1999/00	26,104	25,919	99.3	147	0.6
2000/01	29,450	29,229	99.3	159	0.5
2001/02	31,599	31,324	99.1	176	0.6
2002/03	34,668	34,349	99.1	171	0.5
2003/04	37,275	36,945	99.1	151	0.4
2004/05	39,361	39,018	99.1	127	0.3
2005/06	40,754	40,326	99.0	110	0.3
2006/07	42,350	41,784	98.7	93	0.2
2007/08	44,329	43,573	98.3	66	0.2

21. It can be seen, therefore, that the authority is ultimately collecting around 99.5% of the amount due for each year.

Write Offs

22. There will inevitably be accounts where, despite the efforts of the Council Tax Section, recovery of the full amount due is impossible, and it will be necessary to write off the amount owed.
23. These cases can be categorised as follows:
- The council taxpayer is bankrupt and the amount owed is subject to a claim in the bankruptcy proceedings.
 - The council taxpayer is deceased and it has been established that there are no funds in the estate.
 - We are unable to locate the council taxpayer despite taking the steps set out in paragraph 12 above.
 - It is not in the public interest to pursue recovery of the amount owed. This may be because of the age or health of the council taxpayer, or it may be that further recovery action would not be cost-effective having regard to the cost of further action as compared to the likelihood of success in recovering the outstanding amount.

24. Looking at the all-Wales picture, the position over the last 5 years (2004/05 – 2008/09) is that the average amount of write offs as a percentage of the annual debit is:

Neath Port Talbot	0.43%
All Wales	0.71%

25. Only 5 authorities have written off lower percentages than Neath Port Talbot, while other authorities have written off up to 1.21% (almost 3 times as much as Neath Port Talbot.)

Case Studies

26. The following illustrate the actions taken and the difficulties faced in 2 individual cases which are typical of the cases handled.

Case Study 1

27. The position was as follows:

<u>Period</u>	<u>Amount Due</u>	<u>Paid</u>	<u>Balance</u>
1	£709.75	£170.00	£539.75
2	£450.15	£20.00	£430.15
3	£1,064.80	-	£1,064.80
4	£809.27	-	£809.27
5	£830.32	-	£830.32
6	£858.51	-	£858.51
	<u>£4,722.80</u>	<u>£190.00</u>	<u>£4,532.80</u>

28. Summons were issued for each period and liability orders granted by the Magistrates Court to cover the whole balance for the period.
29. Following the granting of each of the liability orders, information requests were issued to the debtor without any response.
30. Bailiff companies were instructed on 8 separate occasions to enforce the liability order, with 2 different companies being used. However, these companies were unsuccessful in obtaining payment.
31. In addition, the following actions have been taken:
- tracing agents were used to try to obtain employment details of the debtor which would have been used to attach his earnings;
 - attachment of the debtor's benefits were also attempted (the debtor was on benefit for part of the period);
 - payment arrangements were made with the debtor, but were defaulted on.

32. The debtor was also written to on 6 occasions advising that committal or bankruptcy action was being considered, and in this case, as the debtor owns the property and in the ongoing absence of any payment offer, a bankruptcy petition was issued.
33. This would not be an option in many other cases as the debtor frequently is a tenant (either the council or private) rather than an owner-occupier.

Case Study 2

34. The position was as follows:

<u>Period</u>	<u>Amount Due</u>	<u>Paid</u>	<u>Balance</u>
1	£553.11	£525.26	£27.85
2	£629.71	£121.56	£508.15
3	£537.87	£150.27	£387.70
4	<u>£504.10</u>	<u>£137.00</u>	<u>£367.10</u>
	<u>£2,224.89</u>	<u>£934.09</u>	<u>£1,290.80</u>

35. Summons were issued for each period and liability orders granted by the Magistrates Court to cover the whole balance for the period.
36. Following the granting of each of the liability orders, information requests were issued to the debtor without any response.
37. Bailiff companies were instructed to act on 11 separate occasions, with 3 different companies being used.
38. In addition, the following actions have been taken:
- enquiries were made with Members in an attempt to trace the debtor;
 - tracing agents were used to try to trace the debtor and also to try to obtain employment details in order to attach his earnings;
 - 3 payment arrangements were made, but were all defaulted on;
 - 4 attempts were made to attach the debtor's benefits.
39. The person concerned was eventually evicted from the property (a council house) with no forwarding address. As noted above, all attempts to trace him (which included enquiries with local members and use of tracing agents) have failed.
40. Without a forwarding address, committal action cannot be taken as there is no address for the service of documents.

41. A Charging Order is not an option as the property was not owned by the council taxpayer.
42. Insolvency proceedings are not a viable option, as not only is there no address for the service of papers, but the debtor does not have sufficient assets (normally the main asset will be the property, which in this case is not owned by the council taxpayer) to make this worthwhile.
43. In light of the actions already taken and the fact that further recovery options are not viable options, there is no real choice other than to write off the balance outstanding.

Conclusion

44. This report has tried to demonstrate:
 - the extensive actions taken by the Council Tax Section in attempting to recover unpaid council tax before an account is considered for write off;
 - the difficulties faced in that recovery process, including the limitations of some of the recovery options available;
 - the good performance of the Council Tax Section in collecting tax;
 - the relatively low level of write offs as compared to other Welsh authorities.
45. In light of the comments in the report, it is inevitable that it will be necessary to seek approval for write offs. However, this will only be done when all appropriate recovery options have been exhausted.

46. **Recommendation**

To note the report.

47. **Officer Contact**

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