



West Devon Borough Council

Council Tax, Non-Domestic Rate (Business Rates) and Housing Benefit Overpayments Write-Off Policy

1. Introduction

- 1.1 This document sets out the procedure to be followed when writing off irrecoverable amounts of Council Tax, Non-Domestic Rate (Business Rates) and Housing Benefit overpayments.
- 1.2 Under the Accounts and Audit Regulations 2003 (as amended by subsequent regulations) bad debts should not be written off without approval of the responsible financial officer or such member of staff who is nominated by them for this purpose. There is no equivalent requirement for credit balances, although it is prudent to write them off on a regular basis.
- 1.3 Both internal and external audit need to be satisfied any write off policy is both robust and transparent. At the same time, there needs to be a mechanism for reporting write offs through Members. A debt should only ever be written off in accordance with a policy agreed by Members.
- 1.4 Officers are required to take robust action to collect all debts, however in some cases this might not be possible and debts do become irrecoverable. Where a debt is deemed to be non-recoverable (or a credit non-refundable) it needs to be identified at the earliest possible opportunity and properly dealt with in accordance with the financial regulations.
- 1.5 Writing off irrecoverable items represents good financial management. It allows officers to concentrate on recoverable debts and ensures that the level of debtors/arrears within the accounts is accurate and represents a true and fair view of the Council's financial position.
- 1.6 Any debt written off can be reinstated at a later date if there is a fresh opportunity to recover all or part of the debt.

2. Policy objectives

The Council's debt write-off policy has the following objectives:

- To promote a fair and consistent approach to the writing off of debt across the Council.
- To enable debts to be written off in a timely and efficient manner.
- To provide a framework that sets the criteria for writing off debt.
- To ensure that action is appropriate to the level of debt and maximises the use of resources.

3. Reasons for write-off

3.1 Every effort will be made to recover a debt owed to the Council before it is considered for write off. This includes using tracing agents, visiting the property, contacting occupiers and owners and cross-referencing against internal databases. Only where all recovery action has failed is a debt regarded as irrecoverable.

3.2 This policy covers West Devon Borough Council's policy and approach in the following areas:

- Remission by the magistrates' court
- Imprisonment
- Insolvency
- Unenforceable debts
- Other write-off situations
- Credit balances
- Housing benefit overpayments

4. Remission by the magistrates' court

4.1 If the magistrates' court finds that the failure to pay council tax or Non-Domestic Rates is not due to either wilful refusal or culpable neglect, the debt can be remitted. Remission may in full or in part and the debt becomes irrecoverable. Even though a debt or debts may be remitted, liability for future years will continue. Following the decision of the magistrates the write-off will be processed on the debtors' account and we will store a copy of the Court Remission Sheet in our document management system.

5. Imprisonment

5.1 If a debtor is committed to prison for non-payment of council tax or non-domestic rates the debt has to be written off once the term of imprisonment has been served. No further recovery action can be taken with regard to the relevant amount as the enforcement process has come to an end. Liability for future years will continue.

6. Bankruptcy

- 6.1 Upon notification of a bankruptcy, a proof of debt will be completed for the outstanding debt that is due at the date of the bankruptcy order and submitted as a claim to the trustee in bankruptcy. In the event of payment being received in full or in part from the bankrupt's estate, this will be credited to the relevant account.

7. Individual Voluntary Arrangement

- 7.1 A voluntary arrangement is an alternative available to a debtor where they wish to avoid a bankruptcy order. The debtor makes an offer to all creditors, which is less than the outstanding debt, and agrees that it will be paid over a period of time in full and final settlement. If 75% (in value) of creditors agree to the offer, an insolvency practitioner will be appointed to administer the voluntary arrangement. If payment is received in full or part, the money will be credited to the account with the balance being written off.

8. Liquidation

- 8.1 Liquidation may either be compulsory or voluntary. Upon notification that a company has gone into liquidation, a proof of debt will be submitted for the outstanding debt due at the date of the winding up order and submitted as a claim to the liquidator. In event of payment being received in full or in part, this will be credited to the account with the remainder being written off.

9. Company has ceased trading

- 9.1 Limited companies may cease to trade on the grounds of having no assets to pay outstanding and/or on-going debts. There is no formal winding-up process which have both a cost and legal implications. The Council could take steps to put the company into compulsory liquidation which is costly and is unlikely to secure payment.
- 9.2 In these circumstances, and if an enforcement agent has failed to recover the monies due or identify assets on which to levy distress, it is recommended that the debt is written off.

10. Debt Relief Order

- 10.1 Debt Relief Orders are a way a person can deal with their debts if they can't afford to pay them. It means the debtor doesn't have to pay certain kinds of debt for a specified period (usually 12 months). At the end of the DRO period, the debts included in it will be written off ('discharged').

11. Statute barred debts

- 11.1 Certain debts will become uncollectable if a summons is not issued within 6 years of a demand notice being issued and therefore the debt must be written off.

12. Death of a debtor

- 12.1 In the majority of cases the debt remains collectable either from a joint liable person or the debtor's estate. In certain circumstances it is not possible to collect the debt and it will be written off. This is usually where there are no assets or where the debtor dies intestate.
- 12.2 If there are assets and the executors fail to make payment to clear the debt we can take separate action to recover the debt through civil enforcement proceedings.

13. Debtors who cannot be traced

- 13.1 There are occasions when debtors abscond from a property leaving debts. In all cases every effort is made to locate the debtor. This includes:
- A check of records using internal and external tracing tools;
 - A visit to the property if it is cost effective to do so; and
 - Passing the debt to an enforcement agency to see if they are able to trace the debtor
- 13.2 If the debtor cannot be traced there is no alternative but to write-off the debt, however debts will be reviewed every 6 to 12 months in case any further information has come to light which means they can be collected.

14. Debts which are uneconomical to collect

- 14.1 Enforcement action is taken in respect of debts of more than £77.50 (subject to annual review). Where debtors are no longer in the local area, it is considered uneconomic to pursue these small balances and the debts are written off on an annual basis. If the debtor returns to the borough, the write-off will be reversed and recovery action will continue.

15. Court, enforcement agent and other costs

- 15.1 When the debt is being written off for one of the reasons above, legal fees and costs incurred in recovering the debt need to be written off separately as their accounting treatment is different.
- 15.2 There are a small number of cases which may be taken to court and the debt passed to enforcement agents before it transpires that the liability is incorrect, but the Council was unaware at the time the action was taken. In correcting the liability it may be necessary to cancel costs and other fees depending on the individual circumstances of the case.

16. Miscellaneous

- 16.1 The Council has some debts which it is unable to pursue for other reasons, such as it not being in the public interest or due to local authority error. These will be exceptional in nature and approved by the Director of Strategic Finance with full details of the reason for the decision held on file.

17. Credit balances

- 17.1 There will be instances where an account is closed and a credit balance remains on the account. If it has not been possible to refund the credit (for example because a forwarding address is not known) the credit will be written off after a period of 9 months has elapsed.

18. Housing benefit overpayments

- 18.1 In certain circumstances it may not be practical or appropriate to recover an overpayment. In those cases, consideration will be given to the non-recovery or write-off of the debt.

18.2 Non-recoverable write offs – local authority error

As part of the claim assessment process, housing benefit overpayments caused by local authority error are identified.

The decision as to whether they are recoverable or not is made using guidance contained in the housing benefit regulations. This considers whether the claimant could not, at the time of the payment or notification of payment reasonably be expected to realise they had been overpaid. If they could not, the overpayment is not legally recoverable and will be classed as non-recoverable.

18.3 Non-recoverable write offs – DWP error

Overpayments will be classified as DWP error as part of the claim assessment process if the DWP have confirmed that they are responsible for the overpayment. In these circumstances the debt will be written off.

19. Bad debt provision

- 19.1 The Director of Strategic Finance (Section 151 Officer) must ensure there is adequate provision for bad debts, in accordance with the relevant CIPFA Code of Practice.
- 19.2 Debts should be reviewed on a timely basis with effective recovery methods applied. Where debts are irrecoverable, suitable evidence should be provided and retained to justify the write-off of the debt.

20. Processing a write off request

- 20.1 This is covered by separate staff procedure notes and by using appropriate computer system transaction codes so that the reason for write-off can be identified and monitored.

21. Management checks

- 21.1 Management controls are in place to ensure that debt is only written off in accordance with the Council's Financial Procedure Rules.

21.2 Debts up to the value of £5,000 can be written off by the Section 151 officer, under delegated authority. Permission needs to be obtained from the Hub Committee to write-off individual debts over £5,000.

22. Policy Review

22.1 The implementation and effectiveness of this policy and its supporting procedures will be checked and monitored by the Head of Revenues and Benefits and associated management team.

22.2 The policy will be reviewed on an annual basis to ensure it remains valid, effective and relevant.