

Bury Council write off policy and procedure

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Introduction

The purpose of this document is to provide details of the policy for when debts will be considered for write off and procedures that will be followed in these circumstances.

It relates to officers within Bury Council and Six Town Housing when they are considering if it is inappropriate to continue to collect and enforce the recovery of Council Tax, Non-Domestic Rates (business rates), Sundry Debts, Housing Benefit Overpayments and Current and Former Tenant Arrears (Housing Rents).

This document was last reviewed in June 2023

Following the Policy being reviewed by Audit Committee on 31st July 2023, the Committee requested amendments to the Policy regarding Voluntary Arrangements & Administration Orders as well as timescales for tracing debtors.

The Policy was subsequently reviewed, and amendments were included in the Policy and approved by the Chair of Audit Committee on 4th September 2023.

Authority to make decisions

In accordance with Financial Regulations and delegated powers, at Executive on 22 September 2004 (min EX 380), it was resolved to recommend to Council, that the role of writing off irrecoverable debts is delegated to specified officers within Bury Council and Six Town Housing.

This recommendation was ratified by Council (Min C 573) on 3 November 2004.

This decision was reviewed in March 2021 and the authorised officers and write off threshold levels were updated.

Authorised officers

In respect of an individual debtor the following officers will be authorised to write off the following amounts of debt.

Value	Approval required	Reported to
Up to £1,000	Responsible Budget Holder	Director
In excess of £1,000 but not more than £10,000	Responsible Director in consultation with the Chief Accountant	Section 151 Officer
In excess of £10,000 but not more than £50,000	Section 151 Officer in consultation with the Monitoring Officer	Relevant Cabinet Member
In excess of £50,000	Cabinet	

Debts relating to individual debtors in excess of £50,000 will be reported to the Executive at regular intervals stating the name of the debtor, the period of debt, the amount of debt and the reason the debt is irrecoverable.

A Corporate Bad debt provision will be made and reviewed each year, with bad debts determined in accordance with audit guidance (detailed in policy under Bad Debt Provision) and write offs made against the appropriate provision. In the case of Sundry Debts, all debts to be submitted for write off will be advised to the relevant department to ensure that there is adequate bad debt provision to enable the write off.

In line with good accounting practice, write-off schedules should be prepared and submitted regularly. Schedules should be submitted for authorisation as a minimum quarterly but ideally monthly, and in good time to enable the accounts to be written off by the 31st March in any year.

General collection policy

It is Council policy to pursue the collection of all debts owed to the Council as vigorously as possible. Where it is appropriate that a debt is written off, a record will still be retained on file and should further information come to light that will enable recovery processes to be resumed, debts will be re-introduced, and recovery action taken.

It will also be appropriate for the Council to retain discretion in the pursuance of debts and working with the resident and/or debtor to link into any anti-poverty work being carried out directly or involving other agencies.

General write off policy – all debt types

It may necessary to write off irrecoverable debts in a variety of circumstances.

Policies specific to the individual departments are presented in the appendices.

Mandatory write offs

Although the amount of the debt would normally dictate the amount of time and resource allocated in trying to collect the various debts, in some of the circumstances the debt must be written off irrespective of the amounts involved.

Bankruptcy

Upon notification, a proof of debt will be completed covering all charges covered within the bankruptcy period and submitted to the trustee in bankruptcy. Once a claim has been issued the total debt will be submitted for write off.

The debt types as listed, rank as unsecured debts and in the very unlikely event of payment being received in full or part from the bankrupts' estate, this money will be credited back to the relevant account and the appropriate payment written back on.

If no Trustee in bankruptcy has been appointed a proof of debt should be sent to the official receiver

Voluntary Arrangements/Administration Orders

This is an alternative course of action for an individual wishing to avoid the restrictions placed by a bankruptcy order being made. It involves the debtor making an offer to all creditors, which is less than the full amount of the debt outstanding to be repaid over a period of time in full and final settlement. If 75% of creditors agree to the offer, an insolvency practitioner administers the Voluntary Arrangements with Administration Orders administered by the County Court.

These cases will be monitored periodically for payment, with regular communication with the administrators carried out where payment is not forthcoming in an attempt to instigate repayment. After a 12 month period and in the absence of any payments and all communication attempts having been exhausted, in line with good accounting practice the debt will be written off and written back on if any payments or communications are subsequently received.

Liquidation

This applies to Limited companies or PLC's (Public Limited Companies) and LLP'S (Limited Liability Partnerships)

Upon notification, a proof of debt will be completed covering all charges covered within the liquidation period and submitted to the liquidator. Once the final payment has been issued, the remaining debt will be submitted for write off.

Company Voluntary Arrangements

This course of action is an alternative course of action available to a company wishing to avoid the making of a winding up order. It involves the directors making an offer to all creditors, which is less than the full amount of the debt outstanding to be repaid over a period of time in full and final settlement. If 75% of creditors agree to the offer as an alternative to winding up proceedings, an insolvency practitioner administers the Voluntary Arrangements.

Whilst these cases will be monitored periodically for payment, it is accepted as good accounting practice that after a period of 12 months if no payments have been received then the debt should be written off and written back on if any payments are later received. If payments are received in the initial 12 months then keep under review for 5 years or until payments end and then if no further payments are received write off any remaining balance at the end of the 5 year period.

Administrative Receivership

This involves an individual being appointed by a lender, usually a bank, which holds a debenture as security over a floating charge over assets of the company, and usually takes effect where the company is in default of agreed lending terms.

It involves an insolvency practitioner taking control of the company in an attempt to sell it as a going concern. Although remaining in occupation, no

action can be taken against the receivers appointed to enforce payment of previous or on going rate charges.

In Administrative Receivership cases the debt is only submitted for write off when the Council receives confirmation either that there is no dividend payable, or no prospect of a dividend to non- preferential debtors.

Debts where the debtor is deceased, and the estate is insolvent

Where a debtor has died and the estate is insolvent (has no assets or value), the debt will be recommended for write off provided either:

1. the Executor has produced letter/evidence confirming that there are no assets in the estate from which to discharge any outstanding liability; or
2. The Council is satisfied that there is unlikely to be any estate.

It is recommended that a probate search is carried out based on the size of the debt before a deceased account is submitted for write off.

Write off should not automatically be considered where there may be an estate of value, but no probate has been granted. Such cases should be referred to Legal for advice as action may be available to recover or secure the balance due.

Discretionary write offs

There will be instances where recovery cannot be enforced because:

- the debtor cannot be traced
- it is deemed inappropriate to recover the monies on the grounds that it is uneconomical to collect based on the value of the debt or on the grounds of an individual's personal circumstances.

Finalised accounts where no forwarding address is known

For any finalised account with a balance under £100, basic checks will be made of Council systems and known third parties such as solicitors or letting agents. But we will not undertake additional ad-hoc checks or issue further documentation. If after a 3-month period, a new address is not advised, the debt will be submitted for write off.

For any finalised account with a balance of £100 or over more comprehensive tracing measures will be undertaken – see 'Tracing debtors' section later in this document. If after all enquires have been completed and a forwarding address has not been established, the amount will be recommended for write off.

Finalised accounts where a forwarding address is known

Prior to billing, every debt of less than £1 will be written off automatically to prevent bills being issued for small debts.

For any finalised account with a balance between £1 and £25, a final bill will be issued requesting immediate payment. If after the bill has been issued the account remains unpaid, no further notices will be sent and the debt will be submitted for write off.

For any finalised account with a balance between £25 and £100, the recovery process will continue in an attempt to recover the debt. If after the reminder notice or final notice the debt still remains outstanding, then the monies will be considered for write off. However, consideration will be given to further recovery action if a person has multiple small debts which consolidate to an amount above £100

Inappropriate to continue recovery action

Each potential write off on the grounds of reasonableness will be considered by the appropriate authorising officer on its individual merits taking into account the person's age, health and financial position.

On rare occasions, it may be considered inappropriate to proceed with high profile enforcement action, such as enforcement agents or committal to prison. This could be because to do so would cause considerable hardship or because the personal circumstances of the individuals concerned may result in unnecessary media attention. By enforcing recovery on those whose circumstances render them already vulnerable, such actions may cause unacceptable hardship and this raises moral as well as cost questions.

It is important to remember that the term hardship does not purely relate to an individual's financial position, and it can also refer to their age, state of health, emotional or mental condition. As the circumstances of individuals vary greatly so there is no definitive list.

In these circumstances, if it is considered that all reasonable recovery attempts have failed, then irrespective of the amounts involved, the debt will be considered for write off.

Examples may be where a person:

- is now permanently exempt from payment of the Council Tax for example because they are severely mentally impaired, but a liability accrued prior to this exemption
- is now receiving care in a nursing home, previously having lived in rented accommodation, and has no assets to pay any outstanding Council Tax.

Debts where a company has ceased to trade

On occasions, registered companies will cease to trade, but they will not go through the formal process of winding up due to both legal and cost implications.

After a period of inactivity, the Company will be dissolved by Companies House at which point it will no longer exist.

Where this occurs but the Company has assets, the account should be referred to Legal to consider steps to officially put the company into compulsory liquidation or secure the debt (if it has simply ceased to trade) or consider restoration of the Company or application to the Crown Solicitor (Bona Vacantia Division) in the event of dissolution.

In circumstances where the Council has failed to recover monies due and there are no known assets or low value assets on which an enforcement agent (bailiff) may levy distress or against which the debt can be secured, the debt should be considered for write off as further action is unlikely to recover the debt.

Debts which cannot be legally enforced

Certain debts will fall outside of legal jurisdiction either because the debtor has left the country, or 6 years may have passed before recovery action has been instigated against an individual since the debt was acknowledged.

Where contact in writing has failed to result in payment or an arrangement to pay, the debt will be considered for write off.

Write off working practices

Tracing debtors

Where the service is notified or identifies that a debtor is no longer resident within the property, internal checks will be undertaken within 10 working days of the notification in an attempt to establish the debtor's new residence and reinstate recovery.

Should these internal checks prove unsuccessful, the account will be sent to an external enforcement agency within 1 month of the checks being completed, in order for Trace or Trace and Collect work to be undertaken by the agency – the pathway being dependant on whether the service has previously obtained a court order for non-payment.

In the event that tracing is still unsuccessful, the account will then be subject to two further rounds of internal checks at 3 month intervals.

Where tracing has not been possible following the above measures, in line with good accounting practice the debt will be written off and written back on should the debtor's residence be subsequently re-established.

The following internal checks may be undertaken depending on the type of debt and the circumstances of the debtor:

- check Council Tax database to identify if the person has re-registered at another address within the borough.
- check with Six Town Housing if council owned housing.
- check with the Department for Work and Pensions if the account holder is receiving a state benefit.
- contact landlord or letting/estate agent

- if the property has been repossessed, check with the Land Registry or the mortgagor
- if a limited company, check at Companies House
- check directory enquiries/telephone book – may have taken their phone number with them, or new occupier may have a forwarding address if retained the same number
- Check websites of businesses for contact information or alternative addresses
- contact neighbouring local authorities
- check using Experian/LoCTA system or any systems available to us
- if a single occupier or member of a household, check for previous addresses/family home.
- check electoral register.
- undertake visits to property where considered appropriate.

In some cases, the forwarding address will not be the debtor's permanent home address. It may be their solicitors, parents, relatives or employers address. Further enquiries should be made to try to identify a permanent home address for the debtor.

In the case of bankruptcy or liquidation there is no further action which may be taken against the debtor. Therefore, a claim form will be submitted to the receiver/liquidator. In the event of there being no dividend, as the debt is unsecured and non-preferential, or only a small dividend of so many pence in the pound, any remaining balance should be submitted for write off using the appropriate form.

Recording written off debts

Once all appropriate trace activities have been carried out, then the debt may be considered for write off. The write off document should show the year, account number, name, address, type of debt, the amount and the reason for write off such as deceased, no estate, no trace, or emigrated to.

Bad debt provision

The Council's external auditors have recommended that the Authority should ensure a methodology for calculating the bad debt provision is adopted for all categories of debt and that the calculation is supported by working papers for audit.

The Statements of Recommended Practice (SORP) guidance notes for practitioners regards the procedure for provision for bad debts as identifying a proportion of the authority's debtors that should have their value adjusted to the probable recoverable amount of zero. All debts should be reviewed and a judgment made on the probability of collection for each, but it should be possible to broadly establish a percentage for each type of debt that will eventually be recovered. Working papers should be prepared and retained setting out the reasoning used, and if any material differences occur, then the procedure should be reviewed, having regard to past experience and current knowledge.

In practice, departments raise debtor accounts for a number of the services they provide. Debtor balances are maintained for the different types of debt and an annual review of the likely level of bad debt is undertaken for each type of debt. The review will consider:

- value of debt raised
- age of debt outstanding at year end
- past experience of collection of the specific type of debt (normally by reference to % collection rates)

Where there are any known circumstances which are likely to affect the probability of collection of specific debts of material value then separate provision is made for the potential bad debt, separately from the general calculations.

Working papers for the calculation of bad debt provisions are retained on the final account files for the relevant service.

Post write off procedure

Following write off, a record of each debt will be held for a period of 6 years along with all supporting papers. Should a debtor be traced or new information come to light material to the original decision, the debt will be written back and recovery action commenced as appropriate.

Appendix 1 - Write off policy specific to Council Tax and business rates

Committal proceedings where the debtor has served a custodial sentence

If a case is subject to Committal Proceedings and a debtor has been imprisoned for non-payment of Council Tax or business rates, whilst monies outstanding are not legally remitted on imprisonment, the authority cannot enforce the debt again through the court system in the event of continued non-payment.

It is, therefore, accepted as good practice to write off the monies as irrecoverable.

Debts remitted by the Courts due to hardship

Where there is an application to request the committal of a debtor to prison, one option available to the Magistrates is to remit monies on the grounds of hardship. In order to determine this, the Magistrates must be satisfied that there is an inability to pay.

These debts will be written off in the normal way, but they do not fall under financial regulations, as the Council has no discretion to overrule the decision.

Debts which cannot be legally enforced (The "Encon" case)

There may be occasions where an account may be submitted for write off because of a substantial delay in billing. In *Encon Insulation Ltd v Nottingham*

City Council (1999) (Queen's Bench Division) Rating Appeal 382, it was confirmed that a council has to ensure that a bill is issued "as soon as is reasonably practicable", otherwise the charge may be irrecoverable.

Appendix 2 - Write off policy specific to Housing Former Tenant's Arrears

The recovery of housing rent arrears that are outstanding following the termination of a tenancy are known as Former Tenant's Arrears (FTA).

The general write off policy applies to FTA accounts, however special consideration needs to be given where cases are returned from collection agencies as uncollectible (above £50 where a forwarding address is known). This is because the collection of FTAs is recognised as a very difficult debt to collect, often, the threat of eviction has failed to recover outstanding rent, whilst the tenancy was ongoing and now that it has ended the only recourse available is by pursuing action in the County Court.

Often, former tenants are homeless or in temporary accommodation with either no or very little assets to distrain upon. So even if the Council were to obtain a County Court Judgement distress would unlikely to be successful. Equally people who rely upon social housing are often in the most vulnerable of groups, dependant upon state benefits or in low paid employment making the prospects of enforcing a County Court Judgement by direct deductions even more remote.

If the agency is, therefore, unable to collect, they will return the case as uncollectible. Where a case has been returned as uncollectible, it should be reviewed and consideration given to referring to an alternative debt collection agency, referral to Legal Services for County Court action or recommended for write off. Unless there is a good prospect of recovery via the County Court, for instance if it is suspected that the former tenant has sufficient income to pay the arrears but is refusing to do so, then given the costs incurred, the poor collection rate historically and all previous efforts to collect, it is unlikely that large numbers of cases would be passed for legal action and cases would be considered for write off.

Any debts/credits under £50 and irrecoverable will be considered for write off. This measure will enable low value debts to be debited in line with financial regulations, at an appropriate level.

Appendix 3 - Write off policy specific to Customer Accounts (Sundry Debts)

The general write off policy applies to Customer Accounts invoices, however, special consideration needs to be given to the treatment of low value debts (below £100). This is because many departments' invoices raised are for regular, small amounts, which if they are written off automatically under the general policy, will have a detrimental effect upon the budgets of individual departments. Consideration should therefore be given on an individual basis towards referral of low value debts to collection agencies where other methods of collection have already failed.

Invoices under £300 are usually referred to an outside agency for collection. If the agency is unable to collect, they will return the case as uncollectible. Where a case has been returned as uncollectible (whatever the value), it will be reviewed individually. For debts under £100, consideration may be given to referring them to an alternative debt collection agency, or for write off, depending on the facts of each case. Any debts over £100 are usually referred to Legal Services for County Court action. Each case should be considered on its own merits and in consultation with the relevant department responsible for raising the invoice.

In the case of "Housing Rechargeable Works", reference should also be made to Six Town Housing's Recharge Policy, especially in terms of action to be taken when the debtor is deceased.