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| Report of: | <i>Director of Finance – Ian Wright Executive Member for Finance and Governance – Cllr Barrie Cooper</i> |
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| Submitted to: | Full Council – 26 January 2022 |
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| Subject: | <i>Corporate Debt Write Off Policy</i> |
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Summary

| Proposed decision(s) |
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| <p>That Full Council:</p> <ul style="list-style-type: none"> a) Approve the Corporate Debt Write Off Policy b) Amends the Budget Policy Framework and the officer scheme of delegation c) Provides delegated authority to the Section 151 Officer to approve any future modifications to the policy. |

| Report for: | Key decision: | Confidential: | Is the report urgent?¹ |
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| <i>Approval</i> | <i>Yes</i> | <i>No</i> | <i>No</i> |

| Contribution to delivery of the 2020-23 Strategic Plan | | |
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| People | Place | Business |
| <i>Provide a corporate approach to the writing off of bad and irrecoverable debts whilst seeking to maximise the opportunity for collection thereby minimising the need for write off. The policy also establishes a disciplined approach across the Authority for the writing off of those debts that are not recoverable</i> | <i>NA</i> | <i>To improve the financial performance of the Council with regards to writing debt off, the efficient collecting of income and debt, and its bad debt provision.</i> |

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| Ward(s) affected |
| <i>All wards are affected by the decision to introduce a corporate debt policy.</i> |

What is the purpose of this report?

1. The purpose of this new policy is to provide a corporate approach to the writing off of bad and irrecoverable debts in a fair and timely manner, whilst seeking to maximise the opportunity for collection thereby minimising the need for write off.
2. All service areas must follow this policy to allow the Council to operate a consistent approach to debt write off, whilst having due regard to the customer's ability to pay.
3. Whilst some parts of debt write off are governed by particular legislative requirements such as Council Tax, Business Rates, Adult Social Care Debt, etc, wherever possible the overall principle of debt write off should be efficient and effective, always giving consideration to the financial impact on the Council when debt is written off.
4. This policy will underpin any specific recovery strategies and will be applied across all directorates.
5. This new policy will also support cross directorate communication where a shared customer base exists. It is envisaged that the approach will work within Data Protection legislation, and should be considered at a corporate level to reduce multiple officer engagements across directorates with the same resident and or business base.

Why does this report require a Member decision?

6. The introduction of a Corporate Debt Write Off policy is part of the Council's strategic direction, and as such requires executive consideration followed by Full Council approval.

Report Background

7. The Council has a statutory duty to collect outstanding debt and does so in accordance with the Local Government Finance Act 1992 and the Council's Financial Procedure rules. The introduction of this policy is to support this duty but also to provide that our debt write off approach / methods are consistent, fair and efficient across all of its services.
8. This policy is the 3rd of 4 policies being developed which bring together a significant number of supporting arrangements which will not only compliment but enhance the Council's social regeneration plans.
 - Vulnerability Policy (Executive Approval on 16.6.2020)
 - Corporate Debt Management Policy – (Single Executive Approval on 10.08.21)
 - Corporate Welfare Policy – (In Design)
9. This policy sets out a framework for a consistent approach to write off by delegating debt levels to various managers / heads of service where the aim is to enable cases which fit specific criteria (contained within the policy) to be written off, which will in turn enable the more efficient collection of outstanding debt.

10. This policy also seeks to address other matters such as credit balance write offs and the reinstatement of previously written off debt.

Debt Write Off Policy

11. This policy applies to all debts owed / due to the Council.

12. The general principles adopted in this policy are as follows:

- To ensure a professional, consistent and timely approach to debt write off across all of the Council's functions,
- Where Data Protection legislation permits, promote a coordinated approach towards sharing debtor information internally and managing multiple debts owed to the Council,
- To ensure that debts are managed in accordance with legislative provisions and best practice,
- Ensure that any steps taken to recover debt / income are in line with the Council's corporate policies on surveillance and data protection, and to ensure compliance with RIPA and GDPR legislation.

13. This policy links into the Council's Vulnerability Policy and the Stop the Knock approach and looks to ensure that supporting arrangements are in place for debtors where their vulnerability affects their ability to pay a debt owed to the Council. Those considered to be vulnerable with an 'unrecoverable' debt will be linked into the Social Inclusion arrangements contained in the recently adopted Debt Management Policy.

14. The policy applies to debts and income due to the Council for the following, however this list is not exhaustive:

- Council Tax,
- Business Rates,
- Overpaid Housing Benefit,
- Rents, service charges and insurance,
- Sundry Debts (incl. licensing, fees, statutory notices, subscriptions, etc.),
- Recovery of enforcement costs,
- Adult Social Care,
- Charging for discretionary services or any money due to the Council under terms of an agreement to pay for goods, services or property.
- Fines (includes car parking, public space protection order, environmental, etc.).

15. This policy provides a comprehensive approach that allows for the automatic write off of debt by Heads of Service through a "pre-request for write off" process, where the debt meets pre-determined criteria which makes the debt unrecoverable. This criteria (whilst not exhaustive) covers debt which is uneconomical to recover, unenforceable, and those debtors that have been untraceable for a period of over 6 months, amongst others.

16. Specific delegations of authority are contained within the policy, within the pre-request process (see above), and the amounts that can be written off following submission for suitability which varies depending on the type of debt.

17. The policy also ensures that where specific legislation requires that a debt should be written off (i.e. Housing Benefit regulations for official error cases where the claimant could not have known they were being overpaid), these debts can be processed without delay by the manager responsible for the service

18. This policy also extends to the reinstatement of previously written off debt and credit balances at a corporate level.
19. Consideration to the use of third party collection services (which should not be confused with bailiff / enforcement services), where debts are considered uneconomical to recover should be given to maximise cash opportunities to the Council.

What decision(s) are being asked for?

20. That Full Council:

- Approve the Corporate Debt Write Off Policy
- Amends the Budget Policy Framework and the officer scheme of delegation
- Provides delegated authority to the Section 151 Officer to approve any future modifications to the policy.

Why is this being recommended?

21. This policy will allow Middlesbrough Council to provide a comprehensive framework for debt write off which is consistent across service areas / various types of debt.
22. It also establishes a disciplined approach across the Council for the writing off of those debts that are recoverable

Other potential decisions and why these have not been recommended

Impact(s) of recommended decision(s)

23. An impact assessment has been completed and is attached at Appendix B which demonstrates that there were no concerns that the policy could have a disproportionate impact on individuals or groups because they hold one or more protected characteristics. The policy sets out how it will be adjusted for those identified as being vulnerable and reinforces links to social inclusion and ability to pay as set out in the Council's Corporate Debt Management Policy.

Legal

24. The Financial Procedure Rules at paragraph 21.5 sets out the following:

The authority to approve the write off of debts raised from the 1 April 2016 is delegated to Directors. Write off of debts raised prior to the 1 April 2016 requires the approval of the Chief Finance Officer. The Chief Finance Officer is authorised to approve the write off of debts in respect of the following:

- Council Tax;
- National Non Domestic Rates;
- Community Charge; and

- Sundry Debt (Commercial Rents, Payroll, Housing Advances, Overs and Shorts of Cash, Returned Payments, Small Balances and Unclaimed Credit Accounts).

At Paragraph 15 of this report it is intended to delegate this to Heads of Services in some instances, as such the Financial Procedure Rules will require an amendment or an appropriate scheme of delegation revised to incorporate the required amendments to delegate to Heads of Service. The Financial Procedure Rules, in light of the Limitations Act 1980, will require amendment in any event in respect of the **“Write off of debts raised prior to the 1 April 2016”** as these types of debts would be Statute Barred from 1 April 2022.

25. Furthermore, consideration of the Limitations Act 1980 must accord with the Policy and the most relevant parts of the Limitation Act are as follows:

s.5

Time limit for actions founded on simple contract.

An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

s.9

Time limit for actions for sums recoverable by statute.

(1)An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued.

(Subject to some exceptions)

s.19

Time limit for actions to recover rent.

No action shall be brought, and the power conferred by section 72(1) of the Tribunals, Courts and Enforcement Act 2007 shall not be exercisable, to recover arrears of rent, or damages in respect of arrears of rent, after the expiration of six years from the date on which the arrears became due.

s.24

Time limit for actions to enforce judgments.

(1)An action shall not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable.

(2)No arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

The above parts of the Limitation Act are the most commonly used, however it is worthy of note that limitations in other actions vary, including but not limited to: s.20 recovering monies secured by mortgage or charge, s.21 trust property and claims against a personal estate of a deceased person.

Financial

26. The proposal is cost neutral; however it is hoped that this will lead to an increase in cash collection across the organisation. By writing off debt in a timely and consistent manner, resources can be focussed upon those debts that are collectable and outside of the scope of this write off policy

Policy Framework

27. The proposed policy will not vary the current policy framework.

Equality and Diversity

28. The corporate debt management policy should be read in conjunction with any equality and diversity policies.

Risk

29. This policy will impact positively on the following risks.

- 08-059 Incorrect assumptions in the MTFP;
- 08-075 Reduction in Council Tax Collection;

Actions to be taken to implement the decision(s)

30. The Council will publish the policy on its website by 01 February 2022,

31. As part of the Council's combined approach to Debt Collection, briefing will be given to the managers of all teams affected by this policy (who will subsequently brief their staff) to ensure a consistent and coordinated approach to the collection of debt and income.

32. Amend the Budget Policy Framework once the policy has been to full council.

Appendices

- Corporate Debt Write Off Policy - Appendix A
- Impact Assessment - Appendix B

Background papers

33. There are no background papers associated with this report

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