

Corporate Debt Write Off Policy

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Summary

This policy is the 3rd of 4 policies (Vulnerability Policy, Debt Management Policy and the Welfare Policy) which combine the Council's approach to debt write off, and is aligned with the requirements of the Local Government Finance Act 1992 (as amended).

It sets out how the Council will consider writing off debt, the process for doing so, and facilitates a fair and consistent approach across all Council services.

NB: This policy does not extend to any elements that relate to the pension fund.

Context

This policy is designed to complement and enhance the Council's social regeneration plans.

Purpose

The purpose of this new policy is to 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 Council for the writing off of those debts that are not recoverable. It establishes clear guidance for all Council Officers on the recording, reporting, recovery and monitoring of the Council's debt and income.

Section 151 of the Local Government Act 1972 requires that local authorities make arrangements for the proper administration of their financial affairs. Part of these arrangements includes establishing a Policy for the writing off of irrecoverable debts. These arrangements are underpinned by Part 7 of the Council's constitution.

This policy also supports the Corporate Debt Policy.

Every effort will be made to recover the debt as per the Corporate Debt Policy before write off is considered. Service Areas will work together, where appropriate to do so share data, to make informed decisions about debt recovery and write off.

This policy supports the decision process for debts that may have become uneconomical to pursue or are unrecoverable.

It must be noted that a debt may be written off but can be reinstated if deemed recoverable at a future date and is appropriate to do so.

The policy will be reviewed as required to ensure processes remain fair and in line with legislation and best practice.

The policy may be extended to include other forms of revenue and income collected by the Council.

Objective

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

- to promote a consistent and fair approach to the writing off of debt across the Council, encouraging working together and the sharing of information,
- Enable debts to be written off in a timely and efficient manner,
- Provide a framework that sets the criteria for writing off debt.

Outcome

The outcomes expected from this policy are:

- To minimise the level of write off necessary (as part of the corporate debt strategy),
- To ensure cases recommended for write off are done so within 2 months of the recommendation,
- Minimise the level of resources provided for bad and doubtful debts,
- Standardise the write off process across all income and debt areas,
- Avoid the use of subjective judgement and criteria when considering cases for write off, by providing clear objective criteria and procedures
- Introduce effective performance management arrangements,
- Help focus resources on potentially recoverable debts (by disciplined writing off of irrecoverable debts),
- Deliver a clear message that it expects people to pay the amounts properly due by treating write offs as an exception (not the rule).

Definitions

Debts are defined as a sum of money that is owed to the Council by a resident, business, customer or service user. For the purpose of this document, the use of the term debt extends to include charges and fees.

Debtor is defined as a person, organisation or entity that owes a debt to the Council.

Demand notices are defined in Part V of The Council Tax (Administration and Enforcement) Regulations 1992, as the notice required to be served each financial year by the local authority 14 days prior, in order to collect Council Tax.

Income is defined as any monies payable to the Council excluding monies payable to the pension fund. For the purpose of this document, the use of the term income extends to include charges and fees.

Insolvency means the debtor cannot afford to pay back their debts. There are several insolvency solutions available - Bankruptcy, Individual voluntary arrangement, Liquidation, Company Voluntary Arrangement etc. These insolvency solutions are legally binding, and the Council must adhere to the rules and guidance around these. Once the Council have been made aware of an insolvency, any Council debts included in the insolvency should be written off.

Invoices are a request for payment for goods, services, property and associated fees / charges, or amounts due to the Council for payment within a specified period.

Timely is defined as prompt, or carried out within any pre-defined set parameters or key performance indicators. For the purpose of this policy, timely in regards to write offs means within 2 months.

Uneconomical to pursue / collect is defined as the amount owed is too small to pursue, giving consideration to the cost of collection. In many cases the cost of collection is greater than the value of the debt.

Scope

This policy applies to all employees (both permanent and temporary), contractors and consultants of the Council who are given the authority to manage and collect debt and income which is owed to the Council, or will be due to be owed to the Council at a later date.

For the avoidance of doubt this policy document applies to all debts and income of the Council.

Legislative and regulatory framework

Key elements of the legislative and regulatory framework for debt management are set out below.

Local Government Acts 1992 (as amended)	Establishes requirements to manage the Council's financial affairs and the appointment of a section 151 officer.
Council Tax (Administration and Enforcement) Regulations 1992	Make provision for the administration and enforcement of Council Tax.
Non-Domestic Rating (Collection and Enforcement)(Local Lists) Regulations 1989	Make provision for the collection and enforcement of non-domestic rates.
Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) Regulations 2020	Establishes a debt respite scheme and establishes a breathing space moratorium and a mental health crisis moratorium.

Traffic Management Act 2004	Provide for the enforcement of parking, loading and waiting restrictions and processing of penalty charge notices.
Transport Act 2000	Provide for the enforcement of bus lane contraventions.
Data Protection Act 2018	Controls the lawful passing of personal data from one part of the Council to another.
The Housing Benefit General Regulations 1987 and 1992	Sets out the legislation that governs the payment of Housing Benefit, including Housing Benefit overpayments and their associated recovery
Social Security Contributions and Benefits Act 1992	The primary legislation for most benefits in the UK
Social Security Administration Act 1992	The primary legislation for most benefits in the UK
Taking Control of Goods Regulations 2013	Provides the legislation for the taking control of goods in the UK, including the use of enforcement agents
County Courts Act 1984,	Establishes a single county court and its jurisdiction
Civil Procedure Rules 1998	Establishes the rules of Civil Procedure used by various courts in the UK
Charging Orders Act 1979	An Act to make provision for imposing charges to secure payment of money due, or to become due, under judgments or orders of court; to provide for restraining and prohibiting dealings with, and the making of payments in respect of, certain securities; and for connected purposes.
Insolvency Act 1986	Consolidates enactments relating to company insolvency and winding up, and bankruptcy of individuals
Equality Act 2010.	Is an amalgamation of previous anti-discrimination laws. It is a law which protects from discrimination of unfair treatment on the basis of certain personal characteristics such as age
General Data Protection Regulation 2016 (GDPR) and Data Protection Act 2018 (DPA2018)	The GDPR/DPA2018 place a duty on the Council to comply with the data protection principles relating to processing of personal data: (1)(a) Lawfulness, fairness and transparency; (1)(b) Purpose limitation; (1)(c) Data minimisation; (1)(d) Accuracy; (1)(e) Storage limitation;

	(1)(f) Integrity and confidentiality (security); (2) Accountability (including the rights of data subjects).
Freedom of Information Act (FOIA) 2000	Under the FOIA, the Council has a duty to make information available to the public upon request, unless specific exemption(s) apply. It is also obliged to proactively and routinely publish information that has been frequently requested in the past in its Publication Scheme. Information requests frequently include requests for information held in emails.
Local Government Acts 1972, 1985, 1988 and 1992, Lord Chancellor's Code of Practice on Records Management (S46 Freedom of Information Act)	Establishes requirements to manage records and information, and gives implied authority to share certain kinds of information with partners.
Care Act 2014 and Statutory Guidance Annex D	The Act by which the local authority is able to charge for social care support and the rules imposed on the local authority with regard to recovery of such debt.
Family Law Act 1996	An Act of Parliament governing divorce and marriage.
Safeguarding Vulnerable Groups Act 2006	An Act to make provision in connection with the protection of children and vulnerable adults.
Modern Slavery Act 2015	An Act designed to combat modern slavery in the UK.
Tribunal Courts and Enforcement Act 2007	An act which makes provision for tribunals and inquiries, particularly relating to the enforcement of judgments and debts.
Taking Control of Goods Regulations 2014	Make provision for recovery of fees and disbursements from debtors to enforcement agents in relation to the procedure for taking control of goods.
Landlord and Tenant Act 1954	Contractual obligations under lease agreements for the payment of rent and other property charges.
Land and Property Act 1925	
Miscellaneous Provisions Act 1986	
Regulation of Investigatory Powers Act 2000 (RIPA)	Governs the use of covert surveillance by public bodies.

Roles and responsibilities

Director of Finance / Chief Financial Officer	<p>Under Part 7 of the Council's Constitution, the Chief Financial Officer (Section 151 Officer) is responsible for regulating and controlling the finances of the Council and hence that person will be responsible for the proper administration of the Council's financial affairs.</p> <p>Income relating to all types of debt should be handled in accordance with the Council's Financial Procedure Rules (contained within Section 21 – Debt Collection relating to the responsibilities for Directors, Director of Finance (Section 151 Officer), and Heads of Service.</p>
Head of Service – Residents and Business Services	Overall responsibility for the delivery of the Revenues and Benefits Service and the Policy Owner.
Other Heads of Service	Where appropriate, Heads of Service have responsibility for the raising and recording of debts and income in relation to Services they manage.
Service Delivery Manager / Strategic Business Managers / Support Services Manager.	Where appropriate, responsibility for overseeing day-to-day compliance with this policy and the standards set out within it by their staff and other personnel they manage or commission.
All staff, contractors, consultants, interns and any other interim or third parties	Responsible for compliance with this policy.
Data Protection Officer	Responsible for provision of advice and guidance to the Council on its obligations in relation to data protection.
Valuation and Estates Team	Responsible for the day to day management / compliance / requirements of all leasehold properties in relation to rent and service charges.

Supporting policies, procedures and standards

The following policies, procedures and standards will be implemented across the Council to ensure that the Council's debts are managed effectively and securely.

Corporate Debt Management Policy	This provides a framework for the consistent management of all debt and income across the Council
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Welfare Support	This provides a framework (e.g. a number of policies – S13a, Crisis Support, Food poverty, etc.) for a joined up approach to a holistic welfare advice and support service for all relevant residents who owe a debt.
Data Protection Policy	This summarises the Data Protection Policy position of Middlesbrough Council and how it will comply with legislation, and associated codes of practice and official guidance in relation to the processing of personal data.
Records Retention Schedule	This defines how long different records should be retained to comply with legal, regulatory or other requirements and the proper arrangements for archiving and destruction.
Records Management Policy and supporting procedures	This provides a framework for ensuring that the Council's records are well kept and that the systems used to hold them are fit-for-purpose.
Information Security and Infrastructure Security Technical Policies	These set out policies and standards for the management and maintenance of the security of Council infrastructure and applications.
Vital Records Standards	This sets out how vital records will be identified and the steps to be taken to ensure their protection and preservation.
Vulnerability Policy	Intended for use by Middlesbrough Council employees when engaging with residents/customers where payment of a collectable debt is being considered.
Stop the Knock approach	A solution designed as a 'helping hand' to support customers who are experiencing difficulties in meeting payment obligations.

Debts to which this policy applies

For the avoidance of doubt this policy document applies to all debts and income due to the Council including but not limited to the list below, and include any other debts across the Council:

- Council Tax,
- Business Rates,
- Overpaid Housing Benefit,

- Subscription Debt (Commercial 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.).

General principles

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 allows, 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.

Delivering the policy

Writing off of debt should be undertaken in accordance with the Council's Financial Procedure Rules (contained within Section 21.5 – Debt Collection).

Adult Social Care debt write offs must be carried out in accordance with Annex D of the Statutory Guidance to the Care Act 2014.

Delivering the policy involves a number of processes which are explained in more detail below:

- Ensuring a consistent approach,
- Pre-request for write off,
- Request for write off,
- Writing debts off,

- Reinstating written off debt,
- Evasion and fraud,
- Credit balance write offs,
- Bad debt provision,
- Dealing with historical debts.

Ensuring a consistent approach

In line with this policy, the Council will have a consistent approach across all directorates in responding to debt write offs. Proposal for write offs should be considered at every appropriate stage in line with the framework.

Pre-request for write off

All debts of the Council will be acted on in accordance with its Financial Rules. If the debt remains unpaid, after exhausting all appropriate recovery methods, the debt should be considered for write off. All requests to write off debts must be approved by either those identified as delegated officers and / or the Director of Finance (Section 151 Officer).

The Service Area will take reasonable steps to contact the debtor to discuss the matter before making any final decisions on recovery actions, of which, write off may be considered as an option based on the circumstances of the debtor. As a result of these discussions, or in the view of the service area, if the debt is considered uneconomical to pursue or considered unrecoverable then the service area may propose the debt for write off.

Unrecoverable debts may be where (this list is illustrative and not exhaustive):

1. The debt arose from a local authority error that the debtor could not reasonably have been aware of,
2. Debtor is deceased and there are insufficient funds in the Estate to discharge the outstanding debt,
3. Cumulative debts under £50, where no payment has been received within six months of sending the final demand,
4. The debt is unenforceable as the debtor is serving a custodial sentence of 12 months or more, and the likelihood of securing payment is minimal,
5. The debtor has been untraceable for 6 months or more, however should the debtor be traced the Council reserves the right to reinstate the debt,
6. The debtor is believed to be living overseas and legislation does not permit debt pursuance,
7. The debt is statute barred in line with the appropriate legislation,

8. All debts where a Debt Collection Agent advises they are unable to recover the outstanding debt and all options are exhausted,
9. Any debt where Legal Services have advised that the debt is not recoverable or that legal action is unlikely to be cost effective,
10. The debt is uneconomical to collect where the cost of collection outweighs the value of the debt recovered,
11. Bankruptcy or liquidation,
12. Company Voluntary arrangement / administration order,
13. The debtor is likely to suffer serious financial difficulty as a result of recovery action, or the debtor is believed to be vulnerable or is suffering hardship. In this case, the debt should be considered in line with the Social Inclusion section of the Corporate Debt Management Policy
<https://middlesbrough-council-middlesbrough.opendata.arcgis.com/documents/corporate-debt-management-policy-2021/>
14. Where the debtor has multiple debts with the Council, and following a financial review it is determined based on the priority of debt as outlined in the Corporate Debt Management Policy <https://middlesbrough-council-middlesbrough.opendata.arcgis.com/documents/corporate-debt-management-policy-2021/> that the debtor has insufficient means to discharge all the debts owed to the Council, appropriate consideration should be given to writing off all or part of the 'other' debts if this would support the debtor meeting future payment obligations and avoid a worsening debt position. This of course is subject to the debtor entering into and maintaining a payment arrangement for debts still due. Nb. Evidence is required to demonstrate that the debtor is unable to settle their liability. Should the debtor fail to meet the agreed payment arrangement, consideration should be given to reversing the write off.
15. No likelihood of settlement with written confirmation of Insolvency** from the Official Receiver or Administrator,
16. All appropriate recovery action has been exhausted with no other remedy available for collection,
17. The debt is remitted by court.

Write off is a formal process and when authorised, ceases all debt recovery action for that specific debt, albeit recovery action may continue for other debts connected to the debtor.

Where authorised, a request for write off does not mean the debt cannot be reinstated in future, where appropriate. The write off will be removed and action will continue giving weight to the statute of limitations, and the corporate debt management policy.

** - Any debts which form part of the proof of debt sent by the Council to the to the insolvency practitioner are written off if they meet all the terms of the

insolvency agreement. The insolvency practitioner may make payments in the form of dividends to Middlesbrough Council which will be offset against the debt and the amount written off will be reduced accordingly.

Request for write off

As per the Accounts and Audit Regulations 2003 (as amended), debts should only be written off with approval of the responsible finance officer (Section 151), or such members of staff, where this function has been delegated in line with the current Financial Regulations and Financial Delegations.

Write off proposals and subsequent decision papers will be retained for the current year plus six years as per the Council's Record Retention Policy.

Once appropriate authorisation has been received and final authorisation for the write off obtained from the Director of Finance (Section 151 Officer) or delegated officers, the debt will be removed from the relevant accounting system and charged against the appropriate cost centre/fund.

Write offs of Housing Benefit caused by an Official Error where the debt has been determined as unrecoverable can only be made in conjunction with the relevant Housing Benefit legislation and guidance. See link - [Benefit overpayment recovery guide - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/benefit-overpayment-recovery-guide)

Any write off relating to Adult Social Care debt is governed by the Care and Support Statutory Guidance Annex D, in addition to the above process. Guidance relating to this can be found at [Care and support statutory guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/care-and-support-statutory-guidance).

Writing debts off (framework)

The writing off of debt should be administered in accordance with the Council's Financial Procedure Rules (contained within Section 21.5).

All write offs should be done in conjunction with the Finance Business Partner to consider the full financial effects of this action.

Irrespective of the amount to be written off, the following list of exceptions is delegated to Heads of Service to authorise write offs. Note: additional evidence is required under the following categories (outlined below).

The Scheme of Delegation is as follows:

Notwithstanding the list of exceptions below, all appropriate remedies for collection of debt must be completely exhausted before progressing to write off.

List of exceptions

- Debtor is deceased and there are insufficient or no funds in the Estate to clear the amount outstanding. A letter from a solicitor or executor is required confirming this,
- The debtor is serving a custodial sentence of 12 months or more. A letter is required from an official body such as court, solicitor, probation, prison, etc.). The debt to be written off is only for the period that the debtor is in prison.
- The debtor is believed to be living overseas and the legislation does not permit debt pursuance. Evidence to confirm this position is required,
- Bankruptcy or liquidation of the debtor. Appropriate bankruptcy or liquidation number and documents should be provided,
- Company Voluntary arrangement / administration order. Appropriate documents should be provided,
- Written confirmation of Insolvency has been provided from the Official Receiver or Administrator,
- The debt is remitted by court. A statement to confirm the decision of the court is needed.

Council Tax

Authorisation to write off (noting the exceptions) is delegated to the following:

- Debts that are 3 years or over irrespective of the write off reason, and where 100% of the debt has been provided for through the bad debt provision, write off approval will be delegated to either of the following Heads of Service (and including the Director of Finance):
 - Head of Resident & Business Support,
 - Head of Finance & Investment,
 - Head of Financial Planning & Support.
- For debts less than 3 years:
 - Heads of Service are authorised to write off the equivalent of up to 1 year's charge up to a maximum of £4,500,
 - Chief Finance Officer £4,500.01 to £10,000,
 - Executive £10,000.01 and above.

Business Rates

Authorisation to write off (noting the exceptions) is delegated to the following:

- Debts that are 3 years or over irrespective of the write off reason, and where 100% of the debt has been provided for through the bad debt provision, write off approval will be delegated to either of the following Heads of Service (and including the Director of Finance).
 - Head of Residents & Business Support,
 - Head of Finance & Investment,
 - Head of Financial Planning & Support.

- For debts less than 3 years:
 - Heads of service are authorised to write off the equivalent of up to 1 year's charge (up to a cap of £100,000),
 - Chief Finance Officer £100,000.01 to £149,999.99,
 - Executive £150,000.00 and above.

The write off amounts for Council Tax and Business Rates (above) will increase in line with the yearly increases with these charges.

Subscription Debt

Authorisation to write off (noting the exceptions) is delegated to the following:

- Heads of service up to and including £50,000,
- Chief Finance Officer £50,000.01 to £149,999.
- Executive £150,000.00 and above.

Sundry Debts (including Housing Benefit Overpayments) and others

Irrespective of the amount, any Housing Benefit overpayments which are classed as unrecoverable due to Local Authority Error where 100% subsidy is provided for this overpayment (as per the Housing Benefit regulations), delegation to write off is extended to the Strategic Business Manager.

Authorisation to write off (noting the exceptions) is delegated to the following:

- Heads of service up to and including £50,000,
- Chief Finance Officer £ 50,000.01 to £149,999.
- Executive £150,000.00 and above.

Once appropriate authorisation has been provided for the debt to be written off the debt will be removed from the relevant accounting system and charged against the appropriate bad debt provision.

An approved write off form has been designed. The e-form is aligned to the policy and must be used when submitted debts for write off. A link will be made available to officers who undertaken this process.

Reinstating written off debt

Service Areas must be aware of an individual's circumstances during all financial related dealings and this includes being aware of any current and written off debt(s) that the debtor may have.

Giving weight to the write off reason, should the debtor's circumstances change and the write off is no longer considered appropriate, then the debt write off can be reversed and the debt will be pursued through the Corporate Debt Recovery process.

Evasion and fraud

Likewise, if evasion or fraud is detected, any write off can be reversed and the debt will be pursued through the Corporate Debt Recovery process, noting further legal action may be taken if there is suspected Fraud.

Credit balance write offs

Where accounts are closed and there is a credit balance on an account the amount must be checked against other debts owed to the Council, and where appropriate to do so will be offset against them. Where the credits can be repaid, they will be repaid by BACS / cheque where the address is known.

Where forwarding addresses are not known to the Council, attempts should be made to identify the address of where the credit can be forwarded. If no such address can be found, the credit balance will be removed from the account. Should an address be found at a later date, the credit can be reinstated, offset against another debt or if not debt exists, refunded.

Dealing with historical debts

Historical debts will be dealt with outside of this policy. A separate procedure will be designed for this which will be subject to separate approval.

Insufficient evidence to enforce debts

Where there is insufficient evidence to create a debt then these amounts should not be raised at the outset by either the service or finance staff. It is always important to consider this at the inception of raising a debt and whether the funds can or cannot be successfully recovered.

If a debt is raised and then subsequently with the passage of time, the debt becomes not credible either on the challenge of the debtor or because there is insufficient evidence to support the debt, then this debt should be removed from the finance system by way of a credit note. This will effectively remove the debt from the Council's aged debt portfolio and reduce it to nil.

It is important that where any debts fall into this area that they follow the credit note process, and not the debt write off route. Debts that should not have been raised or cannot be supported should not be written off.

Nb... Any debts raised which fall into the recovery process which later require a credit note will be subject to the completion of a lesson learned form, outlining why the debt was raised, why it is not being pursued and the steps which have been put in place to avoid a reoccurrence.

Use of third party collection services

Where appropriate to do so, and prior to the submission for write off, debts of £150 or more should be considered for referral to the Council's appointed collection agent who will undertake further checks to determine if the debt can be traced and / or collected. Debts of between £50 and £150 which would normally be considered uneconomical to collect, will be forwarded for third party collection, reducing the internal cost of collecting smaller debt.

- Trace and collect – where a forwarding address cannot be determined, further checks will be made with third parties to determine if address information can be found. This is a further check, prior to write off, to support the write off recommendation,
- Collection of debts where all internal remedies to collect have been exhausted. The debt will be passed to a third party collection agent, who will attempt to secure payment in line with the contractual arrangements in place. This would not be an enforcement agent / bailiff.

Suspended Collection – Debts of £10,000 or more

Debts should be raised accurately and timely, and as such where non-payment occurs collection methods can be progressed quickly. Where debts have been suspended from recovery action for greater than 6 months, cases will be presented to the Section 151 officer where the debt exceeds £10,000 with a summary of why action is not progressing. This action should conclude with an outcome of either progressing the debt for collection, or a provision should be made within the bad debt as collection is unlikely outlining the rationale as to why the debt will not be pursued.

Bad debt provision

The Director of Finance (Section 151 Officer) in conjunction with Heads of Service must ensure there is adequate provision for bad debts, in accordance with 'CIPFA Code of Practice on Local Authority Accounting in United Kingdom – A Statement of Recommended Practice'.

Debts where a bad debt provision has been assigned should be appropriately reviewed on a timely basis with effective recovery methods applied. Where debts are not recoverable, suitable evidence should be provided to progress the case / debt to write off.

A separate bad debt provision is held for each service area so that any increase required in the provision will be charged to the service area concerned. Conversely, if the debt for which a bad debt provision is paid then the provision for that debt will be credited back to the relevant service area.

Monitoring and review arrangements

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

The policy for the first 12 months will be subject to quarterly review, followed by a full review every 3 years.