

# **Brentwood Borough Council**

## **Corporate Sundry Debt Management, Recovery & Write-Off Policy**

November 2017

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## 1.0 Corporate Sundry Debt Management

### 1.1 Introduction

- 1.1.1 The Council has a duty to recover outstanding debts and in doing so ensures that its processes are fair to everyone, particularly in the current economic climate.
- 1.1.2 It is essential that all monies due are collected effectively by the Council, and that debt owed to the Council is kept to a minimum. This is because the Council has both a legal duty and a responsibility to its residents to ensure that income due is paid promptly. Effective income management is critical to the delivery of overall Council service objectives.
- 1.1.3 With this in mind, the introduction of a corporate sundry debt management policy will ensure we minimise debt and maximise rates of collection, are consistent in our approach and ensures that we assist customers who experience financial difficulty.
- 1.1.4 This policy applies to all sums raised by invoice using the Council's Sundry Debtors system. The main service areas where debt is raised on the Sundry Debtor's system are:
- Building Control
  - Community Alarms
  - Licencing
  - Commercial Rent (Asset Management)
  - Waste management
- 1.1.5 Debts will remain the responsibility of the Service in which they were raised, and recovery action will be taken by the Corporate Debt Team. It is the responsibility of the Services to assist the Corporate Debt Team in collecting debts.

### 1.2 Aims of the Policy

- 1.2.1 The key aims of this policy are as follows:
- To maximise the level of income collected by the Council by;
    - implementation of a transparent charging policy
    - accurate and timely invoicing
    - reducing the level of debt arising
    - effective and timely recovery processes
    - utilising the appropriate recovery method by debt type
  - To recognise that causes of debt vary and recovery methods should be focused accordingly.
  - To circumscribe the income cycle from charging policy through to collection and enforcement.
  - To ensure that debts are managed in line with legislative provisions and best practice.
  - To foster good financial management and control across the Council
  - To ensure income relating to all types of debt is to be handled in accordance with the Council's Constitution, the Financial Regulations and this policy.
  - To ensure performance in relation to debt recovery is reported through the relevant management structures of the Council.

### 1.3 Policy Review Period

- 1.3.1 This policy should be reviewed as a minimum every 2 years from the date of adoption.

## **1.4 Responsibilities**

1.4.1 Heads of Service/ Service leads must ensure that:

- The Corporate Debt Recovery Policy is adhered to
- The key principles of fees and charges are adhered to
- The parts of this policy that apply to their Service areas are correctly followed
- Specific attention is paid to prohibit the poor practise of raising large value invoices at the financial year end
- They proactively support the achievement of corporate targets for debt collection
- Budget Managers are fully aware of their responsibilities
- Relevant systems and procedures are in place
- Officers involved in the debt collection process are appropriately trained and are aware of their responsibility

1.4.2 The Service responsible for raising the invoice must ensure that the evidence of the service provided is fully validated and that the invoice is accurate and contains sufficient detail for both billing and recovery purposes.

1.4.3 It is the responsibility of the originating Service to ensure that the correct billing details are collected.

1.4.4 Internal Audit will provide assurance that this Policy is adhered to and is effective.

## **1.5 Good Practice**

1.5.1 There are a variety of reasons why debt is created. Putting effective processes in place; charging and invoicing accurately and speedily, ensures that debts raised are correct and do not discourage timely payment.

1.5.2 Customers fail to make payments for a variety of reasons. Where people genuinely have difficulty maintaining their payments; the Council will make every effort to help. Others may deliberately set out to delay or not make payments at all. In these situations, the Council will take action to secure and recover payments.

1.5.3 The Council will follow the principles of good practice set out below:

- Fair charging policies that are reviewed regularly
- Payment in advance where possible
- Promotion of Direct Debit as the default method of payment where appropriate, with a range of other payment options
- Prompt and accurate invoicing
- Provide information on where customers can find advice on ways to reduce bills and maximise income
- Consider payment arrangements for those customers experiencing financial difficulties
- Keep customers informed
- Take appropriate recovery action
- Multiple debt management - where the Council is aware of more than one debt owing
- Review and write off debt where appropriate

## **1.6 Charging Policies**

- 1.6.1 The Council will charge for all services where allowable.
- 1.6.2 The Council will design charging policies which are coherent and cost effective. Policies will be designed to be fair and easy to understand and administer. Charges should cover the full cost of the service unless there is an explicitly agreed subsidy or an alternative means of funding.
- 1.6.3 Individual services and departments will regularly review charging policies and fee levels to check that charges are adequate and are applied to all chargeable services.
- 1.6.4 Reporting methodologies are to be reviewed and improved to ensure that there is a corporate view of the effectiveness of charging and collection policy and delivery.

## **1.7 Payment Options**

- 1.7.1 Where payment can be taken before a service is provided these cases are to be identified and payment taken in advance, ensuring that no debt is raised in these cases. The Council should continue to review service provision where payments are not currently taken in advance to explore ways of moving them to taking payment advance where possible/ appropriate. When it is not possible to take payment in advance, the easier it is for the customer to pay a debt the more likely it is that payment will be made.
- 1.7.2 Where appropriate, Direct Debit should be promoted to spread the cost of repayments for customers. Where a customer is unable to pay by Direct Debit or it's not appropriate (e.g. for a 'one off' invoice), the Council will encourage a range of payment options which should be convenient for the customer and cost effective for the Council, with an emphasis on payment by automated channels to reduce administration.

## **1.8 Prompt and Accurate Invoicing**

- 1.8.1 The Council will:
- produce accurate and clear invoices promptly
  - respond quickly to customer queries regarding their invoices
  - produce clear invoices in plain English and show:
    - what the invoice is for
    - the amount due and, if applicable, instalment amounts and payment due dates
    - how to make a payment
    - contact details for enquiries - including e-mail and website details
    - details of the Council's fair usage and data protection policy
- 1.8.2 All invoices must be raised to a correctly named legal entity. In the event of non-payment, legal action cannot be taken against a non-legal entity. Legal entities are:
- Individuals
  - Sole Traders
  - Partnerships
  - Limited companies
  - Charities limited by guarantee
  - Clubs run by a committee
  - Trustees
  - Executors or Personal Representatives
- 1.8.3 Where services are used over a period of time, the Council will consider periodic invoicing.

## **1.9 Where an invoice should not be raised**

1.9.1 Where possible, an invoice should not be raised:

- For less than £50.00. For fees and charges less than £50.00 payment should be made prior to the goods or services being provided. However, this excludes legal charges (e.g. ground rent) and arrangements already in place.
- Where the charge is not known in advance
- If a purchase order or written agreement has not been received
- When it cannot be proven that the goods and/or services have been supplied
- When the amount due has previously been paid

## **1.10 Credit Limits**

1.10.1 For goods and/or services to be supplied and costing over £5,000 and where a payment up front cannot be obtained, a credit check must be run on all customers except those in the public sector. The Service must contact the Corporate Debt Team to carry this out. Where possible, systems should be checked prior to the provision of a service.

1.10.2 Credit/Service provision must not be given to customers who previously have been consistently late payers or have not paid at all. Only the respective Head of Service can approve credit facilities where a customer has previous history of non/ late payment.

1.10.3 Preferential credit limits must not be agreed for any customer.

## **1.11 Payment Terms**

1.11.1 The Council will collect monies owing to it fully and promptly.

1.11.2 Payment terms will only be granted where the customer is not able to settle the debt in full in one payment. On receipt of an invoice a customer can make arrangements to clear the amount outstanding by way of instalments. Payment should be made by direct debit wherever possible.

1.11.3 All requests from customers to enter into arrangements for payment must be referred to the Corporate Debt Team regardless of the amount. The Corporate Debt Team will set up and monitor all payment arrangements.

1.11.4 The Corporate Debt Team will withdraw payment terms if a debtor fails to honour the agreement entered into. Where invoices are raised payment becomes due after 30 days (or less where agreed).

## **1.12 Accounting Arrangements**

1.12.1 Services will receive the credit when an invoice is raised.

1.12.2 Any third-party fees or charges associated with recovering a debt will be charged to the Service.

1.13.3 Where debts cannot be recovered, the original credit will be debited from the Service budget by way of a write off; all write offs to be signed off in accordance with the Financial Regulations.

1.13.4 Refunds of any overpayments will be processed by the Corporate Debt Team via a Debit Memo only where there are no other debts outstanding for that customer. Should a customer have an outstanding debt then any overpayment will be off set after the customer has been informed. Credits less than £5.00 will not be refunded.

## 2.0 Recovery Processes

### 2.1 Introduction

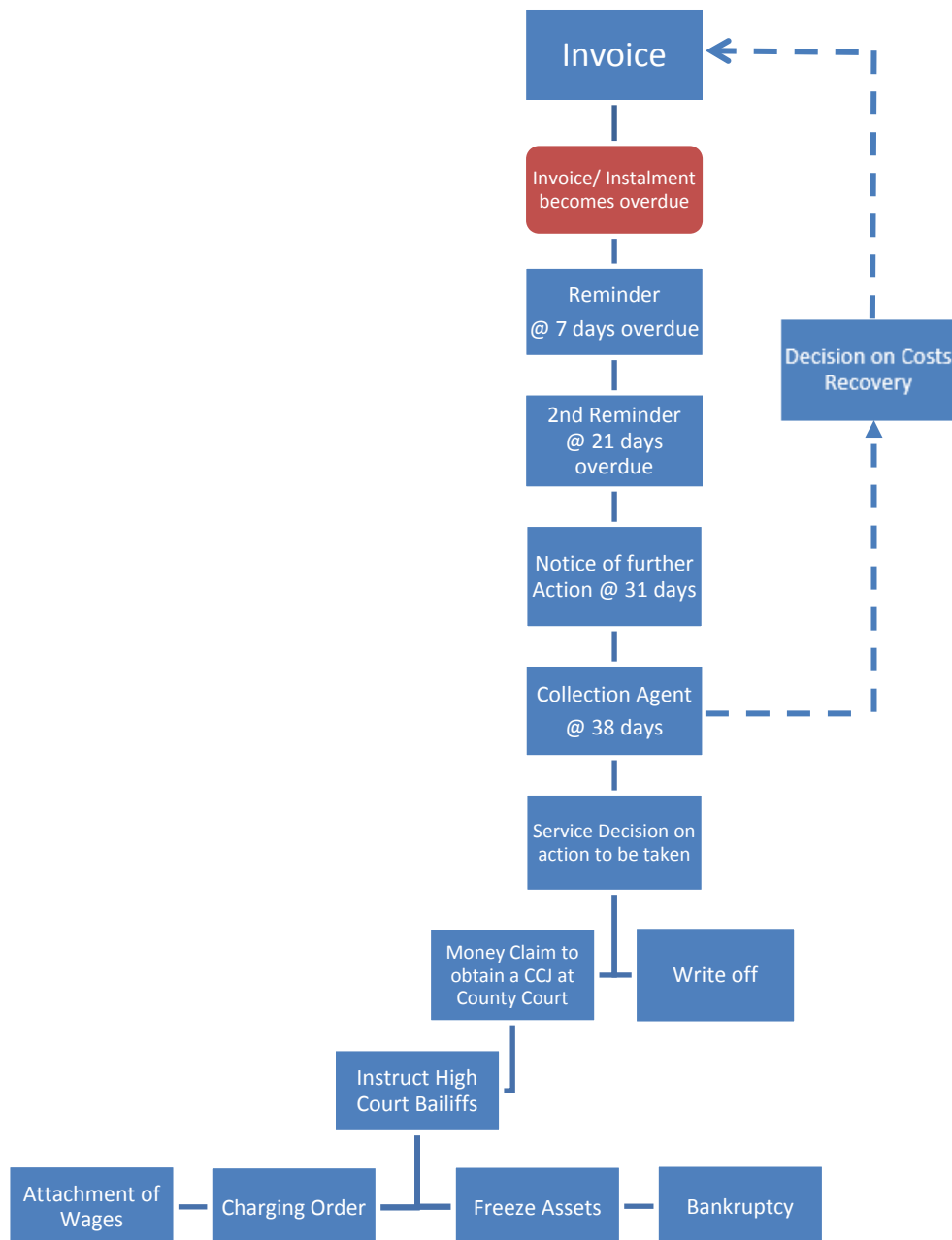
- 2.1.1 The Council's approach to recovering debt raised via its Sundry Debt system will be consistent, transparent, firm, fair and courteous.
- 2.1.2 Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency in the advice it gives, the use of powers, and the recovery procedures used.
- 2.1.3 The Council recognises that consistency does not mean simple uniformity and will take account of many variables such as the individual's needs, circumstances, and ability to pay and the need to secure the debt on behalf of the Council.
- 2.1.4 Transparency is important in maintaining public confidence; helping people to understand what is expected of them and what they should expect from the Council and clearly explaining the reasons for taking recovery and enforcement action.
- 2.1.5 Recovery action will be taken in a timely manner and wherever possible technology will be utilised to automate and expedite processes.
- 2.1.6 A written explanation of any rights of appeal against formal enforcement action will be given before or at the time the action is taken.

### 2.2 Recovery methods

- 2.2.1 The Council will differentiate wherever possible between those who can't pay, those who won't pay and those who have gone away. The purpose of this differentiation is to target the most effective recovery methods to recover the debt.
- 2.2.2 A range of recovery options will be used where arrangements to pay have broken down. The choice of recovery method will depend on a number of factors including the method available for a particular type of debt, but options can include:
- Adding interest and/ or costs to the balance outstanding
  - Referral to a Civil Collection Agent to pursue the debt
  - County Court Judgement, which could allow any of the following:
    - Warrant of Execution (County/ High Court Enforcement Agents)
    - Charging Orders
    - Attachment of Wages
    - Freeze assets or money in an account
    - Bankruptcy/ Liquidation
  - If applicable, the forfeiture or the lease/ tenancy
- 2.2.3 The Council will always take recovery action where a customer does not pay and does not say they are having difficulty paying. If the customer tells us soon enough that they are having problems and we agree a payment arrangement, we will not take any further recovery action. However, if we have started recovery action (e.g. we have sent the case to a collection agency) the customer will need to make an arrangement with the agency.
- 2.2.4 The Council will provide customers with information on where to find debt and money advice.

## 2.3 Stages of Recovery Action

2.3.1 The flowchart below shows a high-level process map for recovery.



2.3.2 In addition to the above, every effort will be made to contact to customer via telephone/ email prior to each recovery stage to increase the likelihood of the invoice/ instalment being paid, including prior to the invoice/ instalment becoming overdue where the customer is not paying by direct debit.

## 2.4 County Court Judgements

2.4.1 The Council can commence the County Court Judgement (CCJ) process via the County Court using an online money claim. Customers are contacted in regard to any debt by The County Court and given the option to pay in full, set up an arrangement for payment or dispute the debt.

2.4.2 If the judgement is for more than £600 the Council may be able to ask a High Court Enforcement Officer to try to collect the money or remove goods to sell at auction. A warrant is required for this action



## **2.5 Interest, Compensation and Reasonable Costs Recovery**

2.5.1 The council will seek to recover interest and/ or compensation, as well as reasonable recovery costs, on all overdue debts where it is deemed appropriate.

## **2.6 Recovery Considerations**

2.6.1 If a customer is vulnerable (e.g. elderly, seriously ill, mental health issues) and this makes it difficult for them to pay, we will try to avoid recovery action and provide the assistance they need to make payment. We can only do this if we know the customer's circumstances.

2.6.2 Where it has been identified that a customer is suffering from financial difficulties or other extenuating circumstances the Council is committed to providing advice and support as well as a variety of payment options including:

- Holding enforcement action once a customer makes contact to inform of a difficulty in making payment
- Voluntary payment solutions considered in preference to statutory or civil remedies
- Past history of payments should be considered when making a decision to proceed with enforcement action
- Where a payment solution is agreed this should be confirmed in writing by the Council including any action that will be taken should the agreed payments not be made
- Payment solutions should be made with an agreed up-front payment from the debtor whenever possible
- Where a payment solution cannot be agreed, the debtor will be advised of the reasons why and that the recovery process will continue

2.6.3 We will always ensure that the recovery method is appropriate for the amount of debt. Collection Agents will not be engaged for any debt less than £100.00.

2.6.4 Where the debt is for an ongoing service provided by the Council which the Council does not have to provide (for example Trade Waste) we will stop providing the service until the debt is paid or an acceptable special payment arrangement is made.

## **2.7 Principles of Enforcement**

2.6.1 We will follow the principles of enforcement outlined below:

- Our approach will be consistent – with the aim of achieving consistency in the advice we give, the use of our powers and in the recovery methods we use
- Our actions will be transparent – to help customers to understand what is expected of them and to explain the reasons for taking any recovery action.
- Our actions will be proportional – we will only use the most severe sanctions for the most difficult/ high value cases

## **2.8 Complaints and errors**

2.8.1 If an error or mistake is made in the process of recovering debt the account will reviewed and appropriate action taken.

2.8.2 If a customer is unhappy with the service provided or disagrees with the decisions made they are able to complain through the Councils standard complaints procedure.

2.8.3 During the process of enforcing payment of outstanding debts it is possible that evidence or facts emerge after enforcement proceedings have been taken or have been completed. In these cases the Council will take appropriate action to remedy the situation as far as possible.

## 3.0 Write Offs

### 3.1 Introduction

- 3.1.1 This document sets out the procedure to be followed when writing off irrecoverable amounts (including credit balances) of corporate sundry debts, with effect from November 2017.
- 3.1.2 Under the Accounts and Audit Regulations 2003 (as amended by the 2006 and 2009 Regulations), bad debts should not be written off without approval of the responsible financial officer, or such member of staff as is nominated by him or her for this purpose. There are no equivalent rules for credit balances although it is prudent to have these written off on a regular basis.
- 3.1.3 Both internal and external audit need to be satisfied any write off policy is both robust and transparent. A debt should only ever be written off in accordance with the policy agreed by members.
- 3.1.4 Where a debt is deemed to be non-recoverable (or a credit non-refundable), it needs to be identified and dealt with promptly in accordance with financial regulations.
- 3.1.5 Writing off irrecoverable items represents good financial management. It allows staff to concentrate on recoverable debts and ensures that the level of debtors / arrears within the accounts is accurate and represents a true and fair reflection of the Council's financial position.

### 3.2 Reasons for Write-Off

- 3.2.1 Every effort will be made to recover a debt owing to the Council before it is considered for write off. This includes sending reminder letters, contacting customers/ businesses by phone and email, performing tracing activities, cross-referencing other internal databases (e.g. housing, parking control, register of electors, etc.).
- 3.2.2 Debt may be passed to a collection agency where all attempts to recover the outstanding debt within the authority have been unsuccessful, or a county court judgement sought.
- 3.2.3 Only where all recovery action has failed, is a debt regarded as irrecoverable.

Reason	Description
Insolvency	Debtor is the subject of bankruptcy, individual voluntary arrangement, liquidation, company voluntary arrangement & administration order or administrative receivership proceedings or has ceased to trade or is subject to a Debt Relief Order.
Unenforceable	Debtor is overseas or the debt is over 6 years old
Absconded	Tracing action has failed to find the debtor
Uneconomical to Collect	Balance is too small for further action
Uncollectable	Custodial sentences / remitted debts / vulnerable people / hardship / local authority error
Deceased	No funds in an estate

- 3.2.4 Should a debtor be subsequently traced, a debt will be re-instated if considered economically viable to recover and it is within the statute of limitations.
- 3.2.5 In cases where the debtor is jointly and severally liable for the debt with another party, recovery action will continue against all liable individuals and only if this action fails, will monies be recommended for write off.
- 3.2.6 There will be instances where the council will need to write off a credit that remains on a closed account. Not knowing the whereabouts of the creditor (or not having sufficient information to determine how or when a credit is to be refunded) will be the reasons for writing off a credit.

### **3.3 Procedures to be undertaken prior to obtaining write-off approval**

3.3.1 The procedures to be followed prior to writing off a debt / credit are analysed below. Once the actions have been undertaken, only then will a debt / credit be included on a list of cases submitted for write off.

#### **3.3.2 Insolvency**

##### *Bankruptcy*

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 part from the bankrupt's estate, this money will be credited back to the relevant account.

##### *Individual voluntary arrangement*

A voluntary arrangement is an alternative route available to an individual wishing to avoid the restrictions placed upon them by a bankruptcy order. It involves the debtor making an offer to all creditors, which is less than the full amount of the debt outstanding, and agreeing that it be repaid over a period of time in full and final settlement. If 75% (in value) of creditors agree to the offer as an alternative to proceedings for bankruptcy, an insolvency practitioner will be appointed to administer the voluntary arrangement. In the event of payment being received in full or part, this money will be credited back to the relevant account.

##### *Liquidation*

Liquidation may either be compulsory (sometimes referred to as a creditors' liquidation) or voluntary (sometimes referred to as a shareholders' liquidation, although some voluntary liquidations are controlled by the creditors). Upon notification of liquidation, a proof of debt will be completed for the outstanding debt that is due at the date of the winding-up order and submitted as a claim to the liquidator. In the event of payment being received in full or part, this money will be credited back to the relevant account.

##### *Company voluntary arrangement / administration order*

A company voluntary arrangement is an alternative route 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, and agreeing that it be repaid over a period of time in full and final settlement. If 75% (in value) of creditors agree to the offer as an alternative to liquidation, an insolvency practitioner will be appointed to administer the voluntary arrangement. In the event of payment being received in full or part, this money will be credited back to the relevant account

### *Administrative receivership*

This involves an individual being appointed by a lender, usually a bank, which holds a debenture as security over a floating charge on assets of the company, and usually takes effect where the company is in default of agreed lending terms. An insolvency practitioner will assume immediate control of the company in an attempt to sell it as a going concern. However, although remaining in occupation, no action can be taken against the receivers appointed to enforce payment of previous or on-going rate charges. In the event of payment being received in full or part, this money will be credited back to the relevant account.

### *Company has ceased to trade leaving no assets*

On occasions, limited companies will cease to trade on the grounds of having no assets to pay an outstanding and / or on-going debts. They do not go through the formal process of winding-up proceedings, which carry a cost and have legal implications. Where this occurs, the authority could take steps to put the company into compulsory liquidation although this action is costly and is highly unlikely to secure payment.

In these circumstances, if it is proven that an enforcement agent has failed to recover monies due, or identify assets on which to levy distress, a recommendation for write-off will be made.

### *Debt Relief Order*

Debt Relief Orders are aimed at those that have £15K or less of debts, assets of less than £300, disposable income of less than £50 per month and really cannot afford to go bankrupt, but need relief from their debts and creditors. The debt will be written off the system but will be monitored periodically, as the debtors circumstances must remain the same for a period of 12 months in order for the DRO to remain in place.

### 3.3.3 Unenforceable

Certain debts will fall outside of legal jurisdiction either because the debtor is overseas or six years may have passed since recovery action had been instigated against a debtor and the debt was last acknowledged.

If a debtor is overseas and contact in writing has failed to result in payment or an arrangement to pay, a recommendation for write off will be made. Evidence supplied from external sources would be used to determine this.

In cases where six years may have passed since recovery action had been instigated against a debtor and the debt was last acknowledged, the whole debt will be submitted for write off. Evidence on what action, if any, has been taken will be used to determine this.

### 3.3.4 Abscond

*Closed accounts where no forwarding address is known and the debt is under £100.*

For any finalised account with a balance of under £100, staff will make basic checks of the authority systems and known third parties, (i.e. solicitors and letting agents). If, after a three month period, a new address is not established, the debt will be submitted for write off.

### Debts where no forwarding address is known and the debt is £100 or more

Before the debt can be recommended for write off, the following enquiries will be undertaken by staff:-

- Check CTax or NDR database to identify if the person has re-registered at another address within the authority area.
- Check with housing department, parking control etc.
- Check electoral register.
- Contact landlord or letting / estate agent.
- Contact other local authorities.

Conduct third party searches (i.e. through 'Experian' or similar companies).

If, after all enquiries have been completed, a forwarding address has not been established, the amount will be submitted for write-off.

#### 3.3.5 Uneconomical to Collect

Balances of £5 or less will not normally be sent reminder letters. Where the outstanding balance is £25.00 or less, the Corporate Debt Team will check the status of these cases and, where appropriate, put the balance to the Corporate Debt Manager for write off.

#### 3.3.6 Uncollectible

##### Debts written off due to the debtors known personal or financial circumstances

Where sufficient evidence has been gathered regarding the debtors current personal or financial circumstances that would inhibit recovery of the debt, the debt can be written off at the discretion of the relevant authority depending on the balance outstanding.

##### Debts that have arisen because of local authority error

If a debt has arisen as a result of a local authority error, the possibility of recovering the debt would be considered in the first instance. If that proves impossible (i.e. legislation prevents recovery or the fault is not of a debtors doing) the debt will be written off. Details of the events that gave rise to the debt being incurred will be taken to evidence this.

#### 3.3.7 Deceased

Where a debtor has died and the estate is insolvent, the debt will need to be written-off. A letter from the executor confirming there are no assets from which to discharge any outstanding liability will be taken to determine this.

### **3.4 Credits**

- 3.4.1 There will be instances where an account is closed and a credit balance remains on an account. If it has not been possible to refund the money, for whatever reason (i.e. forwarding address unknown), the credit will be written off after a period of one year. The steps taken before writing off any debt less than £100 on a closed account will be used to determine whether any credit is to be written off.

### **3.5 Retention periods**

- 3.5.1 To comply with the requirements of the authority's standing orders, all documentation supporting write-offs of debts shall be retained in respect of the current year plus the previous 2 years.

### **3.6 Authority for Write off**

3.6.1 All decisions for write offs need to be made by the individuals who have the authority to write off the corresponding level of debt.

3.6.2 There are 3 levels of write off:-

- Debts up to but not exceeding £100 (including aggregated debts for one debtor)
- Debts greater than £100 but not exceeding £10,000 (including aggregated debts for one debtor) (and for all credit balances)
- Debts greater than £10,000 (including aggregated debts for one debtor)

3.6.3 The procedures to be followed for each level of write off are set out below:-

#### Debts not exceeding £100 (including aggregated debts for one debtor)

Where the debt is not greater than £100 and normal recovery procedures have failed to secure payment and the debt is deemed to be uncollectable or uneconomic to pursue further, the delegated authority to approve write offs lies with the Corporate Debt Manager.

#### Debts greater than £100 but not exceeding £10,000 (including aggregated debts for one debtor) (and for all credit balances)

Where the debt is greater than £100 but no greater than £10,000, and normal recovery procedures have failed to secure payment and the debt is deemed to be uncollectable, the delegated authority to approve write offs lies with the Section 151 Officer or their Deputy.

The above procedures will also apply to how credit balances are treated; irrespective of the amount involved.

#### Debts of £10,000 and over (including aggregated debts for one debtor)

For the write off of debts £10,000 and over, it will require a full report to be submitted by the relevant council Committee for approval. Once authority has been given by the Committee, the Corporate Debt Manager will be notified that the debt can be written off

### **3.7 Write Off Reporting**

3.7.1 All debts will be batched as follows:-

- Listed on a spread sheet showing the reference number, amount and year the debt was raised and supported by documentary evidence for each case which demonstrate the steps that have been taken to recover the debt and, if appropriate, the steps that have been made to trace the debtor.
- Sorted into the debt type and reason for the write off, (e.g. 'insolvency' etc.).
- Summarised on a front sheet detailing the number of cases and amount of debt.
- If there are exceptional debts within the write off batch (i.e. an extremely high debt or a very old debt), then a brief report will be given. This is so that the authorising person or executive can make a decision based on all the facts.

3.7.2 When debts are written off, they are to be recorded against the bad debt provision, which is reviewed annually. An aged debt analysis is to be maintained and managers kept informed so that there is an awareness and understanding of how much debt there is that might be irrecoverable. This will assist with the calculation of the bad debt provision and to identify trends in recoverability.

3.7.4 Quarterly reports, in accordance with the above delegations, will be presented to a Council's executive in relation to irrecoverable amounts.