

# DECISION ITEM



REPORT OF		MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE		FINANCE AND DEMOCRACY COMMITTEE	20 MARCH 2017	5
WRITE-OFF OF UNCOLLECTABLE DEBTS 2016/17				

## PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

This report details the proposed write-off of debts in relation to Business Rates, Council Tax, and the recovery of Housing Benefit overpayments.

Under this Council's Constitution the two joint heads of the Shared Service (The Head of Revenues and Exchequer Services; and the Head of Benefits and Customer Services) each have delegated authority to write-off uncollectable Business Rate debts up to £10,000 and uncollectable Council Tax debts of up to £5,000.

Additionally, the Council's Constitution provides delegated authority to the Chief Financial Officer (Section 151 Officer) to write-off uncollectable debts in excess of those levels up to £25,000 per individual debt, such write-offs to be subsequently reported to the Finance and Democracy Committee for information purposes.

The Chief Financial Officer has recently exercised this delegated power by writing-off three uncollectable Business Rate debts. To meet the requirement that these written-off sums are reported to the Finance and Democracy Committee details of each is provided at Appendix A.

The writing-off of debts in excess of £25,000 requires the prior approval by the Finance and Democracy Committee.

There are two uncollectable Business Rates debt in excess of the £25,000 limit for which write-off is now requested. Details of these are also provided at Appendix A. There are no uncollectable debts in excess of the £25,000 limit in respect of any other category of debt.

All of the uncollectable debts for which write-off is requested (or is being reported) relate to the period to 31st March 2017.

The cost of writing off these debts will be met from the appropriate bad debt provision. In respect of Business Rates and Council Tax the provision is funded by contributions by all the recipients of Business Rate or Council Tax income (those being Lancashire County Council, the Lancashire Combined Fire Authority and the Police and Crime Commissioner for Lancashire, together with Fylde Council).

### RECOMMENDATION

The Committee is recommended to:

1. Approve the write-off of the two uncollectable Business Rates debts in excess of £25,000 details of which are provided at Appendix A this report; and
2. Note the write-off by the Chief Financial Officer under delegated powers of the three uncollectable Business Rates debts below £25,000, details of which are also set out in Appendix A to this report.

## SUMMARY OF PREVIOUS DECISIONS

No previous decisions have been made in respect of these specific debts.

## CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	√
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	
Working with all partners ( <b>Vibrant Economy</b> )	
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	

## REPORT

### Background

1. The Council is responsible for collecting substantial amounts of income each year in respect of Business Rates (NNDR), Council Tax and Sundry Debtors. In addition the Council seeks to recover any overpayment of Housing Benefit.
2. Historically, the Council's overall collection rate of income for Business Rates and Council Tax is high with approximately 98% of all income due to the Council eventually collected. Similarly, non-collection of sundry debts are at a low level.
3. Good recovery procedures are in place and the recovery teams within the Revenues and Benefits Shared Service and the Fylde Council Finance Administration team pursue all monies due with vigour, and continue to explore new avenues of debt recovery in pursuit of challenging performance targets. Debt write-off is only considered in exceptional circumstances when other recovery options have been exhausted.
4. Where an amount outstanding has not been collected due to the debtor absconding, officers make enquiries of various agencies with a view to obtaining a forwarding address. Unfortunately, there are usually a small number of cases in each year for which it is not possible to trace the debtor and where the action taken has been unsuccessful in recovering the debt.
5. In respect of the debts in relation to Business Rates, Council Tax and the recovery of Housing Benefit overpayments The joint heads of the Shared Service (The Head of Revenues and Exchequer Services and the Head of Benefits and Customer Services) have presented these debts for write-off and is satisfied that every effort has been made to recover the money owed to the Council. However, for absconders, should the Shared Service become aware of the debtor's location, the amount written-off will be re-instated and action taken to recover the amount outstanding.
6. In some cases where a debtor has been made bankrupt, or a company has gone into liquidation, the Council has little control. However, the debt, or part of it, may be re-instated at a later date upon payment of a dividend. Further information in relation to bankruptcy and liquidation terminology is provided at Appendix B.

## Implications

7. The collection of revenue is of vital importance to the financial management of the Council. Failure to collect debts, and in a timely manner, has adverse implications to the Council's finances and cash flow.
8. All of the debts for which write-off is requested (or is being reported) within this report relate to the period prior to 31<sup>st</sup> March 2017.
9. Although this report seeks approval to write-off a number of uncollectable debts, any debt that is written-off can be re-instated at a later date should there be a further opportunity to recover part or all of the debt.
10. The names of individual debtors have not been published because to do so may infringe the Data Protection Act 1998.

IMPLICATIONS	
Finance	The financial implications are detailed within the body of this report.
Legal	The Council's Constitution determines that the writing-off of debts in excess of £25,000 requires the prior approval by the Finance and Democracy Committee. Additionally amounts above a specified level that have been written-off by the Chief Financial Officer under delegated powers are required to subsequently be reported to the Finance and Democracy Committee for information purposes. This report fulfils those requirements.
Community Safety	No direct implications
Human Rights and Equalities	No direct implications
Sustainability and Environmental Impact	No direct implications
Health & Safety and Risk Management	No direct implications

LEAD AUTHOR	TEL	DATE	DOC ID
Paul O'Donoghue Chief Financial Officer	01253 658566	March 2017	

## Attached documents

Appendix A – Information on debts written-off and for which write-off is requested

Appendix B – Glossary of Terms

## APPENDIX A

### Section 1: Debts in excess of £25,000: (Authority sought to write off debt)

National Non Domestic Rates			
Name	Account Ref	Amount (£)	Reason
<b>Carsnphones Limited</b>	<b>51764944</b>	<b>£33,938.10</b>	<b>No Prospect of Recovery</b>
Property type - Offices. The business rates liability was from April 2012 to August 2014. Numerous payment arrangements were made, and the account was passed to Enforcement Agents for collection. After vacating the premises, the Council were informed that the Company had ceased trading in December 2015, and was dissolved in June 2016. The company had no assets and therefore no further action to recover the outstanding Business Rates is possible.			

National Non Domestic Rates			
Name	Account Ref	Amount (£)	Reason
<b>Individual Ratepayers</b>	<b>50086702</b>	<b>£27,951.09</b>	<b>Bankruptcy / Insolvency</b>
Property type - Hotel. A couple running an established hotel business found that it began to struggle. Over a period of 12 years they had paid over £600,000 in business rates, however due to difficult trading conditions they eventually had to enter into IVAs early in the 2016/17 financial year. Although payment in full of the amount outstanding is unlikely, there remains a possibility of partial payment under the terms of the IVA.			

### Section 2: Debts under £25,000: (For information only)

National Non Domestic Rates			
Name	Account Ref	Amount (£)	Reason
<b>Horizon Pub Management Ltd</b>	<b>51789776</b>	<b>£13,861.63</b>	<b>Bankruptcy / Insolvency</b>
Property Type - Public House. The period of liability was from April 2015 to April 2016. This Company appeared to struggle from the start of its liability for Business Rates, and no payments were received. Enforcement Agents were instructed, however they were unsuccessful and the Company went into liquidation. As with many Public Houses, the lease agreement for the property means that the rate-payer has no assets and therefore no further action to obtain payment is possible.			

National Non Domestic Rates			
Name	Account Ref	Amount (£)	Reason
<b>Fylde Leisure Service Ltd</b>	<b>51782713</b>	<b>£13,021.57</b>	<b>No Prospect of Recovery</b>
Property Type - Public House. Liability from April 2015 to April 2016. The business appeared to have problems from its inception, and the property was vacated without the Council being informed. The Company was dissolved 15th March 2016. The company had no assets and therefore no further action to recover the outstanding Business Rates is possible.			

National Non Domestic Rates			
Name	Account Ref	Amount (£)	Reason
Capricci Bar and Grill Ltd	51792833	£12,130.56	No Prospect of Recovery
Property Type - Public House. This liability is for a short period from December 2015 to May 2016. The property remained vacant during this period, and the Company dissolved prior to enforcement action. After the dissolution of the company it ceases to be a legal entity and as a consequence further recovery action against it is not possible.			

**TERMINOLOGY**

**Bankruptcy**

Bankruptcy is a legal proceeding involving an individual, sole proprietor or partnership that is unable to repay outstanding debts when they become due. It is a legal procedure petitioned either by the debtor (voluntary), or by creditors (involuntary), when the debtor is unable to make his or her payments.

A trustee is appointed by the court to measure, evaluate and dispose of the debtor's assets and distribute any proceeds to the creditors.

The debtor is relieved of the debt obligations incurred, prior to filing for bankruptcy.

**Liquidation**

Where a Limited Company cannot meet its debts and calls a creditors meeting to have the company voluntarily wound up, or where a creditor has petitioned the court for a compulsory winding-up order.

A Liquidator is appointed to dispose of any assets and distribute any proceeds to the creditors.

**Receivership & Administration**

Voluntary administration is where a business is in danger of becoming insolvent and has an administrator appointed in order to try to improve the financial viability of the business and to come to an agreement with creditors.

Receivership is where a Limited Company cannot meet its debts and a creditor(s), usually a debenture holder or a mortgagee, has applied to the court for the appointment of a receiver or administrator. Unlike liquidation, the business may not necessarily be wound up.

The task of the receiver or administrator is to protect the interest of the appointer, not the creditors as a whole. He will attempt to sell the business as a going concern, whether as a whole or in part. Any remaining proceeds from the sale will be distributed to the creditors after the debenture or mortgage has been paid.

In administrative procedures for all the above cases, Proof of Debt forms are submitted to the Insolvency Practitioner before the debt is submitted for write-off.

**Proposal to strike off - Dissolution**

A company may apply to the registrar to be struck off the register and dissolved. The company can do this if it is no longer needed. For example, the directors may wish to retire and there is no one to take over from them; or it is a subsidiary whose name is no longer needed; or it was set up to exploit an idea that turned out not to be feasible. Some companies who are dormant or non-trading choose to apply for strike off.

A company cannot apply to be struck off if it is the subject of:

- any insolvency proceedings such as liquidation, including where a petition has been presented but has not yet been dealt with); or
- a section 895 scheme (that is a compromise or arrangement between a company and its creditors or members).

Or, within the last three months, it has traded, changed its name, or engaged in other activity, unless necessary for the purposes of concluding the affairs of the company.

However, a company can apply for strike off if it has settled trading or business debts in the previous three months.

There are safeguards for those who are likely to be affected by a company's dissolution. If the company has creditors, they should be warned of the proposal before application, as any of them may object to the company being struck off.

This procedure is not an alternative to formal insolvency proceedings where these are appropriate. Even if the company is struck off and dissolved, creditors and others can apply for the company to be restored to the register.

The registrar can strike a company off the register if he views that it is neither carrying on business nor in operation, for example:

- he has not received relevant documents (eg. accounts) from a company that should have sent them to him; or
- mail that the registrar has sent to a company's registered office is returned undelivered; or
- the company has no directors.

The registrar publishes a notice in the relevant Gazette stating his intention to strike the company off the register unless he is shown reason not to do so. Company house records will show "action - proposal to Strike off" and this indicates there is dissolution pending.

If the registrar sees no reason to do otherwise, he will strike off the company not less than three months after the date of the notice. The company will be dissolved on publication of a further notice in the relevant Gazette.

In administering these cases, the outstanding debt is written off on systems but records at Companies House are continually checked to confirm that the dissolution of the company has been completed.

### **Individual Voluntary Arrangement (IVA)**

An IVA involves a formal proposal to creditors to pay part or all of the debt. An insolvency practitioner will act for the debtor and application is through the court for an "Interim Order" which prevents creditors from presenting, or proceeding, with a bankruptcy petition against the debtor while the interim order is in force. It also prevents them from taking other action against the debtor during the same period, without the permission of the court.

The Insolvency Practitioner tells the court the details of the proposal and whether in his opinion a meeting of creditors should be called to consider it. At the meeting, the creditors vote on whether to accept the proposals. If enough creditors (over 75% in value of the creditors present in person or by proxy, and voting on the resolution) vote in favour, the proposals are accepted. They are then binding on all creditors who had notice of, and were entitled to vote at, the meeting.

The insolvency practitioner supervises the arrangement and pays the creditors in accordance with the accepted proposal.

The IVA avoids the restrictions that apply to bankruptcy and gives the debtor more say in how his assets are dealt with and how payments are made to creditors. He may be able to persuade creditors to allow him to retain certain assets (such as the home). The debtor will obviously have to act responsibly and flexibly in order to reach agreement with the creditors.

### **Debt Relief Order (DRO)**

The DRO is a cheaper, quicker and easier alternative to bankruptcy for individuals who have less than £300 in assets, aren't homeowners and have less than £50 in disposable income per month.

To qualify for a DRO individuals must have less than £15,000 in qualifying debts, have no vehicle or a vehicle worth less than £1,000, and haven't had an existing Bankruptcy Order, Individual Voluntary Arrangement or a Debt Relief Order in the last six years.

A DRO usually lasts for 12 months, and listed Creditors are not able to take action to recover the amounts owed, however normal expenses that fall due during the period, such as utility bills, council tax and rent, must be paid.

Arrangements to repay creditors must be made if the financial circumstances of the individual improve during the 12 month period.

The courts are not involved in the process and individuals contact an approved debt adviser like the Citizen's Advice Bureau who can check if the relevant conditions are met and assist in completing the relevant application.