

<b>Committee(s):</b>	<b>Date:</b>
Finance Committee – For decision	13 November 2018
<b>Subject:</b> Business Rate Uncollectable Debt & Write-Off Review	<b>Public</b>
<b>Report of:</b> Chamberlain	<b>For Decision</b>
<b>Report author:</b> Phil Black – Head of Revenues	

## Summary

The National Non-Domestic Rates (NNDR) is a statutory debt collected in accordance with legislation. The primary legislation is the Local Government Finance Act 1988 and its associated regulations. This report provides an outline of the process and the various recovery options currently employed by the City.

The City Corporation's collection rate is the 2<sup>nd</sup> highest in London, so our collection procedures are highly effective. All reasonable recovery action is taken before debts are passed for write off. Although there is no 'problem to fix', enhancements could be considered to maximise collection rates and this report recommends that the City instructs a specialist third-party company to review debts deemed uncollectable.

The review discovered a slight delay in the creation of new accounts which has now been addressed through a change in procedures and it also highlighted the significant delays that are inherent in the company liquidation process. The report requests approval for writing off insolvency debt 24 months after a company is put into liquidation/administration rather than at the end of what is often a lengthy process.

The report also requests an increase in the Write-Off authorisation level for all debt types from £5,000 to £20,000.

## Recommendations

Members are asked to:

- note the contents of the report.
- approve increased write-off authorisation limits for all debt types from £5,000 to £20,000
- agree to a change in process to allow cases in liquidation to be written off 24 months after the commencement of the process
- agree to the use of a third-party company to review debt before write off.

## **Main Report**

### **Background**

1. National Non-Domestic Rates is a statutory debt enacted by the Local Government Finance Act 1988 and its subsequent amendments. The primary legislation is supported by various regulations, primarily the NNDR (Collection and Enforcement) (Local Lists) Regulations SI 1058/1989. A demand notice is issued once the Billing Authority is advised of a new liability. The regulations provide that the rates are paid in instalments. Failure to pay the instalment by the due date results in a reminder notice being issued; any sums not paid within seven days of issue are then required to pay the full rate for the financial year within a further seven days. At this stage the right to pay by instalments is lost. If the business rates are not paid in full a complaint is made to the Magistrate's Court and the debtor (ratepayer) is summonsed to court on a date (not less than 14 days from the date of the notice) to explain why the debt and any reasonable costs incurred in obtaining the summons have not been paid.
2. A Liability Order is issued if the ratepayer has no satisfactory defence against its issue. Once a Liability Order is obtained a debtor can pay the debt in full, failing which the Billing Authority recovers the debt by engaging the services of Enforcement Agents (EA). If the EA cannot enforce the debt they can take control of the debtors' goods. If the EA is unsuccessful in collecting the debt, then the City can initiate bankruptcy or winding up proceedings against the individual or company respectively. Warrants of Committal may also be issued where the debtor is an individual.
3. There is the option in respect of National Non-Domestic Rates to pursue unpaid rates through a court of competent jurisdiction without applying for a Liability Order. This is a high court process and incurs much higher costs than the £0.50 court costs in the Magistrate's Court using the Liability Order process.

### **Provision for Uncollectible Debts**

4. All amounts submitted to Finance Committee for write off have previously been provided for as uncollectable in accordance with guidelines agreed with the City Corporation's external auditors and instructions issued by central government for the accounting of the non-domestic rate. The amounts submitted are included in a previous year's provision for bad debts in the annual outturn contribution form (NNDR3).
5. The elements attributable to additional amounts levied by the City of London as a premium and under the Crossrail business rate supplement are borne wholly from the proceeds of the premium and supplement and are detailed on the relevant write-off reports.

### **Current Position**

6. The debts reviewed in this report are for the years 2016-17 and 2017-18. In these years the cumulative net collectible debit was £2,044,345,000 of which

£2,032,358,000 was collected in those years giving an average collection rate of 99.4%. In 2017/18 the City had the 2<sup>nd</sup> highest collection rate in London. The uncollected debts are the subject of this review.

7. Liability Orders were obtained in the period under review for 1380 cases totalling £29,939,962.39. Of this debt £7,383,812 (430 cases) was passed to the Enforcement Agents. The Enforcement Agents succeeded in collecting £4,335,116 amounting to a success rate of 59%, Cases spend an average of 98 days with the Enforcement Agents before being returned whether collected in whole, in part or not at all.
8. There is a statutory provision for the use of Enforcement Agents in recovering unpaid NNDR. The agents make direct contact with the debtors with a view to collecting the debt on behalf of the City as soon as possible. The Tribunals Court and Enforcement Act 2007 and its associated regulations govern the activities including any fees and charges of the Enforcement Agents. The City Revenues Team has real-time access to the performance data of the agents with the ability to monitor and approve activity and performance.
9. Following the return of unsuccessful cases by the Enforcement Agents, they are considered for winding up or bankruptcy proceedings. Case files are prepared, including case history and a file is provided to the Comptroller & City Solicitor (C &CS) to commence proceedings by issuing a statutory demand. During the period under review the City Corporation initiated six winding - up petitions of which two were wound up by the City. The other four were wound up by other creditors.
10. Cases where insolvency proceedings have been started by external parties are also investigated and Proof of Debt prepared prior to submitting claims in any insolvency proceedings. In these cases, companies had either ceased to trade and subsequently been struck off the Register of Companies and dissolved (67 cases), or the ratepayers concerned are bankrupt (3 cases) or absconded (6 cases). There were also 38 liquidations and seven administrations advised to the City by other organisations. The debts are submitted to Committee for write-off authorisation where they exceed £5,000 or the Head of Revenues where the debt is less than £5,000. All the write offs took account of dividend payments received after the realisation of any assets by the insolvent organisations.
11. The amounts submitted and approved for write off over the period under review amounts to £2,555,118 and comprises debts that have arisen over several financial years. All available recovery procedures had been taken to recover these sums, without success.

## **Options**

12. As stated above, the debts written off have proved to be irrecoverable after exhaustive checks have been made. The companies are dissolved or in liquidation, the ratepayer is bankrupt or absconded.
13. As an additional step the City could instruct a specialist third-party company to review debts deemed uncollectable. This involves appraising assets, Director

profiling and assessing the chances of successful recovery. As a result of this review a trial will be carried out and evaluated to see if this process results in additional business rates being recovered. Initial enquiries suggest that this process could be carried out at no cost to the City, with the private sector organisation recovering their costs from any cases they decide to pursue. The use of this type of third-party specialist prior to writing off a debt is now a common step with many London boroughs.

14. The City could also consider utilising a third party to provide data on the relative financial health of organisations operating in the City. This could provide the City with an early warning system should the organisation or company appear to be heading into difficulties. It is not proposed to utilise this option at present as it is felt that the statutory recovery process outlined in section 1 limits the actions that the City can take and dictates the timescale. This is an option that will be kept under review and could be considered again in the future.

## **Lessons Learned**

15. The review has highlighted that in some cases there was a slight time lag between when a new liability is notified to the City and when it is created on the system. This was due to details being agreed with all interested parties before a liability was created. This can lead to a delay in a bill being sent and whilst there was no evidence that this has impacted on collection, new processes have been implemented to create the account and issue a bill based on information received from one party.
16. The review also highlighted that there was often a significant delay between a company being placed into liquidation and the liquidation being completed. The City has approximately £1million of debt dating back to 2007 which is all still subject to the liquidation process. This report proposes that debt is written off 24 months after the City is notified of the liquidation and providing the business rate liability has ended. This will give a more accurate view of the collectable debit and avoid the lengthy delay that is often inherent in the liquidation process. These cases will continue to be passed to Committee under the current write off process. Any dividends eventually received once the liquidation process is concluded can be written back onto the system when they are received.
17. There was no indication from the review that where a company was placed into liquidation or was subject to bankruptcy that the City had failed to properly pursue payment. In all cases where a liquidation or bankruptcy had occurred there was no additional action that could have been taken which would have resulted in full payment. The City had lodged the appropriate claim as a creditor and these cases continued to be monitored to ensure the City's interests were represented.

## **Write Off Authorisation Levels**

18. It is recommended that the current write off procedures are updated to authorise the Head of Revenues on behalf of the Chamberlain to write off any debts below £20,000. The current limit is £5,000.

19. The increase in write off level will reduce the number of cases that Committee Members are currently required to review and allow greater focus on higher value debts.

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