

CABINET

16 JUNE 2015

IRRECOVERABLE DEBT

Portfolio Holders: Councillor David Brake, Adult Services
Councillor Alan Jarrett, Leader

Report from: Ian Sutherland, Deputy Director, Children and Adults Services
Phil Watts, Chief Finance Officer

Summary

This report provides details of the debt that has been written off by officers for the past 4 years. The report also seeks approval for the write-off of a debt, which is deemed irrecoverable and exceeds delegated authority.

1. Budget and Policy Framework

- 1.1 Provision is made each year for doubtful debts and known uncollectable debts. As the proposed write off exceeds £25,000, this is a matter for Cabinet.

2. Background

- 2.1 Medway Council is responsible for raising charges to service users for Adult Social Care.

Table 1 Annual Summary

Below is a summary showing the total net value of debt raised, the total value of write-offs under delegation and the % of write-off to debt raised for the past 4 years. The debt write-off provision for 2014/2015 was £919,621.51 and for 2015/2016 is £870,684.05

YEAR	Net Debt Raised	Total Write –Off	% of write-off to debt raised
2011/2012	£10,912,501.00	£118,471.17	1.085%
2012/2013	£12,159,895.00	£63,823.36	0.515%
2013/2014	£11,981,914.00	£93,692.26	0.78%
2014/2015	£10,776,925.00	£66,465.28	0.617%

2.2 Every endeavour is undertaken to recover all debts but it is inevitable that there will be some debt that the council is unable to recover. This is the first debt over £25,000 requiring Cabinet authority for more than 5 years.

3. Irrecoverable Debt

3.1 The case of Service User A goes back to 2004 and the family were in dispute with Medway Council as they believed that Service User A's care should have been funded through Continuing Health Care. The case went to several appeal hearings including the Ombudsman and the Strategic Health Authority over several years, who all found in Medway Council's favour. Apart for the last few weeks of Service User A's life, which was charged to Continuing Health Care, the remainder was deemed to be a chargeable service provided by Medway Council, Adult Social Care. Unfortunately, when this case was finally pursued and settlement requested from the estate the council were informed the case was outside of the limitation deadlines and that the debt was irrecoverable.

3.2 A limitation period is the period of time within which action must be commenced. The law on limitation periods is set out in the Limitation Act 1980. Assuming that a contract could be established, the usual limitation period for a claim in contract of six years would apply. If a claim is brought out of time, the defendant is able to plead the defence of limitation. The provision of section 32 of the Limitation Act 1980 (postponement of limitation period in case of fraud, etc.) could postpone the limitation period, however the Council (as the claimant) must prove that the defendant had deceived or concealed relevant information. All avenues have been explored to see if the Council could continue to pursue the debt but the limitation laws take precedence.

3.3 This debt of £32,335.49 exceeds officer delegated authority and therefore requires Member approval to formally write-off.

4. Risk Management, Legal and Financial Implications

4.1 There is a provision for bad debt set aside in the balance sheet that is reviewed annually to ensure that there is the facility to write-off bad debt when all avenues of collection have been exhausted or it is not economical to pursue.

4.2 There were several old cases with legal services that were awaiting action that have now been cleared and on all new cases court action is sought at the earliest possible time to ensure compliance with statutory limitation legislation.

4.3 The proposed write-off of debt is covered by the existing bad debt provision already set aside and therefore has no effect on the revenue position.

4.4 There are no legal implications arising from this report.

5. Recommendation

- 5.1 It is recommended that Cabinet approve the £32,335.49 write-off as detailed in section 3 of the report.

6. Suggested Reasons for Decision

- 6.1 It is considered that all practical steps have been taken to recover the debt and pursuing the debt is deemed impractical. Writing off this debt is important in ensuring the Council's accounts are maintained.

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Background Papers: Exempt