

<b>Item No.</b> 16.	<b>Classification:</b> Open	<b>Date:</b> 7 March 2023	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Client contributions debt write-off (over £50k)	
<b>Ward(s) or groups affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Evelyn Akoto, Health and Wellbeing	

## **FOREWORD – COUNCILLOR EVELYN AKOTO, CABINET MEMBER FOR HEALTH AND WELLBEING**

Adult social care contributions are collected from service users who have been financially assessed to pay towards the cost of their residential or non-residential care.

The council is responsible for collecting adult social care contributions and takes appropriate recovery action and intervention to ensure good collection.

However, there will be cases where service users pass away and there is not enough money in the estate to pay the debt and in a small number of cases the amount of contributions not paid can be considerable.

The council cannot withdraw essential care that is required by a service user. However legal action will be taken in order to recover debts.

The council will only consider writing off debt where it is deemed irrecoverable to collect.

This report requests a write-off for one debt that is over £50,000 which has to be determined by the cabinet as set out in the council's constitution.

## **RECOMMENDATION**

1. That the Cabinet approve the write-off of an Adult Social Care service user's client contribution debt of £73,178.17. The service user is deceased and there is not enough monies in the estate to pay the outstanding contribution, making the debt unrecoverable in accordance with Southwark Council's Corporate Debt Write-Off Policy.

## **BACKGROUND INFORMATION**

2. Under Southwark Council's constitution, the write-off of debts above £5,000 but below £50,000 is delegated to individual Cabinet Members within their own portfolio area. Debt write-offs under £5,000 can be authorised by directors. Write-offs of any debt over £50,000 must be

referred to Cabinet for authorisation.

3. There are a number of key reasons why the Council may wish to write-off a debt. These are:
  - i. The debt cannot be substantiated i.e. there is no documentary evidence that the debtor accepted the goods or services with the knowledge that a charge would be made.
  - ii. The debt is uneconomic to collect i.e. the cost of collection, including substantiation, is greater than the value of the debt.
  - iii. The debt is time barred, where the statute of limitation applies. Generally this means that if a period of six years has elapsed since the debt was last demanded, the debt cannot be enforced by legal action.
  - iv. The debtor cannot be found or communicated with despite all reasonable attempts to trace the debtor.
  - v. The debtor is deceased and there is no likely settlement from the estate or next of kin.
  - vi. Hardship, where permitted, (not hardship relief) on the grounds that recovery of the debt is likely to cause the debtor serious financial difficulty.
  - vii. Insolvency where the organisation or person has gone into bankruptcy and there are no assets to claim against.

## **KEY ISSUES FOR CONSIDERATION**

4. In accordance with the Council's agreed write-off policies and procedures, a write-off is recommended for a former adult social care service user whose personal details are included in the closed report. The reason for the recommended write-off is because the service user passed away and there was not enough money in the estate to pay the full amount owing. Before the service user passed away they were deemed to have capacity to manage their own financial affairs, several attempts to set up Direct Debits to pay off their balance were unsuccessful, they would go through the set up process and then stop payments as soon as they were due. Full recovery action took place including sending Reminders, Final Notices and intervention to try to set up a payment arrangement to reduce the arrears.
5. Payments prior to death were paid direct from a private pension in accordance to a Court Order granted in 2017 because of non-payment. The Council's Client Affairs Team took over appointeeship and at the time of death held a balance of £9,000. The solicitor acting for the service user agreed that this could be paid over to the council to reduce the outstanding debt. After their death, the case was passed to external specialist solicitors to help realise any assets in the estate which resulted in a payment of

£11,000. The size of the estate was not sufficient to pay off the full arrears.

6. This report consists of one write-off for Adult Social Care client contributions. The write-off has been recommended by the Adult Social Care Division's Personal Budget and Client Finance Service (PB&CF).
7. The PB&CF Service has taken every step to try to recover the debt through the deceased estate as follows:
  - Interrogation of the Mosaic database, including checking for Next of Kin details and checking that the contributions raised are correct.
  - Interrogation of the SAP account relating to the debtor, checking that invoices have been raised in accordance to the contributions due.
  - Letters issued to the executor and solicitors, soft letter issued to encourage contact, followed by reminders, final notice and a letter before action.
  - Case passed to a specialist external legal firm to investigate if there is any monies in the estate to pay the debt.
  - Checks made with other council departments, including housing, Council Tax and Housing Benefit.

### **Policy framework implications**

8. This write-off has been considered in accordance with the Council's Corporate Write-off Policy.

### **Community, equalities (including socio-economic) and health impacts**

#### **Community impact statement**

9. All write-offs are considered with due regard to any potential community impact and on their own merits. This decision has been judged to have no or a very small impact on local people and communities.

#### **Equalities (including socio-economic) impact statement**

10. Section 149 of the Equality Act, lays out the Public Sector Equality Duty (PSED) which requires public bodies to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees. It requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities. The council's [Approach to Equality](#) ("the approach") commits the council to ensuring that equality is an integral part of our day-to-day business. The Equality Framework for Local Government ([link](#)) exists to help organisations, review and improve their performance for people with characteristics protected by the Equality Act 2010.
11. Southwark Council treats all individuals consistently and fairly and ensures that individuals rights under UK General Data Protection Regulation (UKGDPR) and human rights legislation is protected. Adult Social Care

write-offs are managed through a write-off policy. The write-off contained in this report has been considered on an individual basis through a standard consistent and transparent approach and there are no obvious adverse equality impacts arising from the circumstances of this decision. Health impact statement

12. The health implications have been considered and there are none relevant to this report.

### **Climate change implications**

13. There are no climate change implications for consideration.

### **Resource implications**

14. These debts are contained within the bad debt reserve provision set within the Adult Social Care Division. The bad debt provision is reviewed annually and will take account of the proposed debt write-off set out in this report.
15. This report recommends the write-off of one debt which falls within the range reserved for member decision, where the debtor is deceased and there is no likely settlement from the estate or next of kin
16. The debt is recommended for write-off, as it is considered irrecoverable.

### **Legal Implications**

17. In the case of this debt there are no further legal implications. The debtor is deceased and all further debt recovery action will cease.

### **Financial Implications**

18. The total Adult Social Care contribution debt recommended for write-off is £73,178.17 for one debt where the service user has died and there is insufficient monies in the estate to pay. The write-off will have no impact on the net budget position of Adult Social Care in 22-23 as the division maintains a sufficient level of bad debt provision. The written off debt will be funded from this provision

### **Consultation**

19. The [Public Sector Equality Duty](#) has been considered and no additional consultation is required

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Head of Procurement**

20. There are no procurement implications.

## **Assistant Chief Executive – Governance and Assurance**

21. The report recommends that the debt of £73,178.17 is written off in accordance with the council's policy on debt write-off dated July 2015.
22. The approval of debt write-offs for sums over £50,000 is an executive decision of the council and is reserved to the cabinet for collective decision making in accordance with Part 3C of the Council's Constitution. This particular debt has arisen from non-payment of Adult Social Care contributions where the service user has died and there is not enough monies in the estate to pay the debt.
23. The report sets out the circumstances whereby debts can lawfully be written off by the council and this includes cases where Adult Social Care contributions have not been paid because the debtor is deceased and there is no likely settlement from the estate or next of kin.
24. A decision to write-off a debt is an executive decision that the council is able to make and which is reserved to the cabinet for the amount of this debt.
25. The report indicates that specialist external legal support and advice has been obtained in this case which engaged with the solicitors for the deceased's estate and assisted in securing the monies identified. The net value of the estate was significantly less than the outstanding amount of the debt.
26. The cabinet will need to ensure that the public sector equality duty in section 149 Equality Act 2010 is considered i.e. to have due regard to the need to eliminate discrimination, advance equality of opportunity, and to foster good relations between people with protected characteristics and others. Reference is made to this in the "Community, equalities (including socio-economic) and health impacts" section above and no obvious adverse impact on anyone with a protected characteristic has been identified.

## **Strategic Director of Finance and Governance REF: [45RV2223]**

27. The Strategic Director of Finance and Governance notes the contents of this report and the comments in financial implications section that the service maintains a prudent provision for bad debt. The recommendation for write-off of £73,178.17 will be contained within the existing bad debt provisions.
28. The write-off has been compiled in accordance with the council's agreed policy and procedure.

## **Other officers**

29. No other officers were required to be consulted

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Council Assembly, 25 November 2020, Item 6.1 Southwark's Borough Plan 2018-2022 (refresh)	Adult Social Care Directorate, Personal Budgets and Client Finance, Children's and Adults' Services 4th Floor, 160 Tooley Street, London SE1 2QH	Deborah Greenwood 020 7525 0815 020 7525 3672
<b>Link:</b> <a href="https://moderngov.southwark.gov.uk/documents/s92006/Appendix%20A%20Southwarks%20Borough%20Plan%202020.pdf">https://moderngov.southwark.gov.uk/documents/s92006/Appendix%20A%20Southwarks%20Borough%20Plan%202020.pdf</a>		
Council's Constitution	Adult Social Care Directorate, Personal Budgets and Client Finance, Children's and Adults' Services 4th Floor, 160 Tooley Street, London SE1 2QH	Deborah Greenwood 020 7525 0815 020 7525 3672
<b>Link:</b> <a href="https://moderngov.southwark.gov.uk/ieListMeetings.aspx?Committeed=425&amp;Info=1&amp;bcr=1">https://moderngov.southwark.gov.uk/ieListMeetings.aspx?Committeed=425&amp;Info=1&amp;bcr=1</a>		
Equalities Act 2010	Adult Social Care Directorate, Personal Budgets and Client Finance, Children's and Adults' Services 4th Floor, 160 Tooley Street, London SE1 2QH	Deborah Greenwood 020 7525 0815 020 7525 3672
<b>Link:</b> <a href="https://www.legislation.gov.uk/ukpga/2010/15/contents">https://www.legislation.gov.uk/ukpga/2010/15/contents</a>		

Public Sector Equalities Duty	Adult Social Care Directorate, Personal Budgets and Client Finance, Children's and Adults' Services 4th Floor, 160 Tooley Street, London SE1 2QH	Deborah Greenwood 020 7525 0815 020 7525 3672
<b>Link:</b> <a href="https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty">https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty</a>		

## APPENDICES

No.	Title
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Evelyn Akoto, Health and Wellbeing	
<b>Lead Officer</b>	David Quirke-Thornton Strategic Director Children's and Adults' Services	
<b>Report Author</b>	Deborah Greenwood, Client Finance Team Manager Personal Budgets and Client Finance	
<b>Version</b>	Final	
<b>Dated</b>	28 February 2023	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	28 February 2023	