

The Highland Council
Resources Committee - 25th February 2015

Agenda Item	14
Report No	RES/ 16/15

Consideration of Debts to be Written Off

Report by Director of Finance and Head of Corporate Governance

Summary

At the Resources Committee meeting in August, Members asked that a report be brought to the next meeting upon consideration of debts presented to be written off and, in particular, if such consideration should be undertaken in public.

This report advises Members of the Council's current practice and invites Members to continue to determine such matters in private.

1. Background

- 1.1 The Resources Committee in August were asked to agree to the write off of a small number of debts including the non-domestic rates liability of a local business that had moved into administration. Members asked that a Report be prepared for a future meeting setting out the basis for consideration of such matters in private.

2. Scheme of Delegation

- 2.1 The Scheme of Delegation to officers allows for all individual debts considered to be irrecoverable of up to the value of £1,000 to be authorised for write off by the Exchequer Manager. Individual debts of less than £5,000 and accounts where there has been sequestration, liquidation, administration or receivership following notification by Trustee/Accountant in Bankruptcy may be authorised for write off by the Head of Revenues and Business Support. All remaining debt is reported to Resources Committee for write off.
- 2.2 Separately the Head of Revenues and Business Support has delegated authority to write on debt that has previously has been written off.

3. Consideration by Resources Committee

- 3.1 Section 50A of the Local Government (Scotland) Act 1973 provides that the Council may by resolution exclude the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of 'exempt information'.

- 3.2 Exempt information is defined by reference to Section 50J and in turn Schedule 7A to the 1973 Act. The Schedule sets out a list of matters that fall to be considered as exempt information.
- 3.3 Paragraph 6 of the Schedule provides that information relating to the financial or business affairs of any particular person (other than the authority) would be considered to be exempt information.
- 3.4 The Council's long standing practice, in common with other local authorities, when considering reports in respect of the financial affairs of individuals and companies is to ask that members of the Committee resolve to agree that the matter is taken in private. The report offers Members details of the debtor, the total sum outstanding and a brief description of the nature of the debt. Members do not receive details of, for example, payments made to account and would rely on officer's advice to gain an understanding of the debtor's level of co-operation with the authority. The consideration of such matters in private does allow officers to furnish members with such further information.
- 3.5 As noted above the debtor may take any one of a number of legal forms. The 1973 Act envisages that the Council will not routinely deal with the financial interests of individuals in public. Since the 1973 Act data protection legislation has been enacted and the Council may face legal challenge if it were to process data so as to publicise details of individuals. Accordingly it is recommended that Members continue to be invited to agree that reports containing information relating to the financial or business affairs of any particular person be considered in private.
- 3.6 The position in respect of other forms of debtor such as companies is less clear. Such bodies cannot seek to rely on the protections afforded by the data protection legislation. It could be considered to be inconsistent to adopt a practice which sees debtors such as companies considered in public whilst individuals are afforded privacy. It must be acknowledged that individuals may be readily associated with small companies and could effectively be made the subject of publicity.
- 3.7 The Information Commissioner recently considered an appeal in terms of the Freedom of Information legislation following a refusal by an English authority for information about a decision to write off a bad debt. The Commissioner determined that the authority concerned had correctly applied the exemption for commercial interests. The Commissioner decided that the name of the company whose debt was written off related to that company's ability to participate competitively in a commercial activity.
- 3.8 The Scheme of Delegation does allow for debts of less than £5,000 and those where there has been the involvement of the Accountant in Bankruptcy to be authorised for write off by officers. The continued consideration of future reports seeking authority for write off in private is entirely consistent with this approach. It is also important to note that debts may be written on again if circumstances change and there appears to be a prospect of recovery.

3.9 It is recommended that Members continue to be invited to agree that reports containing information relating to proposed write off of debts be considered in private.

4. Implications

4.1 There are no resource, legal, equalities, climate change/Carbon Clever, risk, Gaelic or rural implications to be highlighted.

Recommendation

Members are asked to agree to consider reports containing information relating to the financial or business affairs of any particular person in private.

Designation: Director of Finance and Head of Corporate Governance

Date: 11th February 2015

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Attachments: None