

To: Cabinet
Date: 12 June 2024
Report of: Head of Corporate Property
Title of Report: Write-off of Commercial Tenant Rent Arrears

Summary and recommendations	
Purpose of report:	To approve the write-off of commercial rent arrears above the limit which officers can approve under the Scheme of Delegation.
Key decision:	No
Cabinet Member:	Councillor Ed Turner, Deputy Leader (Statutory) - Finance and Asset Management
Corporate Priority:	Enabling an Inclusive Economy
Policy Framework:	Asset Management Strategy

Recommendations: That Cabinet resolves to:
1. Approve the write-off of arrears relating to the properties identified in the Exempt Appendix 1.

Appendices	
Appendix 1	Exempt Appendix 1 – not for publication.
Appendix 2	Risk Assessment

Introduction and background

1. The Council has a historic commercial property portfolio, which brings in much needed income to fund core services. As a major landlord in the City, the portfolio allows the Council to provide a level of custodianship.
2. The COVID-19 pandemic had a significant impact on the Council's retail and food and beverage commercial tenants, particularly the tenants located within the City centre. The majority of the retail tenants were unable to trade from their premises during the Government imposed lockdowns over the periods 2020-21 and 2021-22. Some tenants are still experiencing the impact of reduced income as a result of the pandemic period.

3. The income from the property portfolio is important in terms of helping fund the delivery of core services. Whilst the Council works hard to support its tenants where it can, the Council needs to take a commercial approach to secure funds to support the public purse.
4. The Council has engaged with its tenants and provided, where appropriate, some rent assistance. This support was particularly aimed towards supporting local, independent businesses who remained committed to the recovery of the City centre.
5. However, as a result of the COVID-19 pandemic, a number of tenants built-up significant rent arrears. The Council was not able to take the normal actions Landlords can take to recover the rent arrears, such as the use of recovery agents, due to a Government moratorium preventing such action.
6. Council officers took various actions to reach agreements in respect of the rent arrears which included negotiating agreements informally; issuing forfeiture proceedings which resulted in agreements being reached with some tenants; forfeiting by peaceable re-entry and then negotiating terms for a new lease; and reaching agreements where an application for the appointment of an arbitrator had been made by a tenant. This was to avoid the uncertainty of the outcome of resolving via the Government arbitration scheme. The Council has also, where appropriate, drawn down on rent deposits, and agreed monthly rather than quarterly payments.
7. A number of tenants went into administration or liquidation leaving substantial arrears. It was not therefore possible to negotiate agreements with these tenants.
8. Following the Cabinet approval in March 2023 approval was given to write-off a number of arrears. We have been unable to reach an agreement with two further tenants.
9. It is important to note that each arrears case has been looked at individually with an assessment of the particular circumstances of each tenant. Corporate Property has fully engaged with the Finance Team to ensure that the suggested outcome is optimal for the Council.
10. In accordance with the Constitution all write-offs up to and including £100,000 can be written off by the Head of Finance but a write-off above £100,000 requires Cabinet approval.

Financial implications

11. There are no capital cost implications. On an overall basis the bad debt figures referred to in this report are catered for fully in the bad debt provisions for the year ending 31 March 2024. There are therefore no revenue implications.

Legal issues

12. The Commercial Rent (Coronavirus) Act 2022 provided a six month window in which a referral to the statutory arbitration scheme could be made, this ended on 23 September 2022. During this period Landlords were prevented from using certain remedies in relation to protected rent debts, for example starting a debt claim, exercising rights of re-entry or presenting a winding-up petition.
13. Rent due under a tenancy is “protected rent” if both of the following applied: (i) the tenancy was adversely affected by coronavirus; and (ii) the rent is attributable to a

period of occupation by the tenant for, or for a period within, the “protected period” applying to the tenancy. “Protected Period” means the period beginning on 21 March 2020 and in the case of non-essential retail, ending on 12 April 2021. In the case of hotels, restaurants, bars, nightclubs, gyms, theatres, cinemas and large event venues, it ended on 19 July 2021.

Level of risk

14. Risk Register is attached as Appendix 2.

Equalities impact

15. This decision does not have an impact on anyone with protected characteristics, on this basis an Equalities Impact Assessment is not required.

Carbon and Environmental Considerations

16. There are no Carbon and Environmental considerations in respect of the recommendations made in this report.

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Background Papers: None

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