

# Commercial Ventures Executive Sub- Committee Agenda

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18 February 2020

## To the Members of the COMMERCIAL VENTURES EXECUTIVE SUB-COMMITTEE

<b>Councillors:</b>	T. Archer	Portfolio Holder for Investment and Companies
	T. Schofield	Deputy Leader and Portfolio Holder for Finance
	M. A. Brunt	Leader of the Council
	V. H. Lewanski	Portfolio Holder for Corporate Direction and Governance

For a meeting of the **COMMERCIAL VENTURES EXECUTIVE SUB-COMMITTEE** to be held on **THURSDAY, 27 FEBRUARY 2020** at **6.30 pm** or on the rising of the Commercial Ventures Executive Sub-Committee, if later, in the Executive Meeting Room - Town Hall.

John Jory  
Chief Executive

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Notice is given of the Executive's intention to hold part of its meeting on Thursday, 27 February 2020 in private for consideration of reports containing "exempt" information

1. **MINUTES OF THE PREVIOUS MEETING**

(Pages 5 - 10)

To approve the minutes of the previous meeting as a correct record.

2. **APOLOGIES FOR ABSENCE**

To receive any apologies for absence.

3. **DECLARATIONS OF INTEREST**

To receive any declarations of interest.

4. **RBBC LIMITED DISSOLUTION**

(Pages 11 - 24)

**Executive Member: Portfolio Holder for Investment and Companies**

To consider the dissolution of RBBC Limited and expenses write off.

5. **ANY OTHER BUSINESS**

To consider any other urgent business.

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# Agenda Item 1

Commercial Ventures Executive Sub-Committee  
30 January 2020

Minutes

## BOROUGH OF REIGATE AND BANSTEAD

### COMMERCIAL VENTURES EXECUTIVE SUB-COMMITTEE

Minutes of a meeting of the Commercial Ventures Executive Sub-Committee held at the Executive Meeting Room - Town Hall on 30 January 2020 at 6.30 pm.

Present: Councillors T. Archer (Chairman), T. Schofield (Vice-Chair), M. A. Brunt (Leader) and V. H. Lewanski.

Also present: Councillors M. S. Blacker, J. C. S. Essex, N. D. Harrison and S. McKenna.

#### 65. MINUTES OF THE PREVIOUS MEETING

**RESOLVED** to approve the minutes of the meeting held on 5 December 2019 as a correct record.

#### 66. APOLOGIES FOR ABSENCE

There were no apologies for absence.

#### 67. DECLARATIONS OF INTEREST

There were no declarations of interest.

#### 68. JOINT VENTURE - RAVEN HOUSING TRUST AND REIGATE AND BANSTEAD BOROUGH COUNCIL

Councillor T Archer, Portfolio Holder for Investment and Companies, presented the 'Joint Venture - Raven Housing Trust and Reigate and Banstead Borough Council' report.

The CVESC discussed how the joint venture would be structured and it was noted that further advice would be sought to fully establish the tax implications. It was also noted that, once established, the joint venture would consider each prospect separately to establish the social/affordable/market housing opportunities at each site and would seek the necessary approval for each project using the commercial venture checklist where appropriate as not all projects would be commercial.

Councillor M Brunt confirmed his support for the Council to work with Raven.

**RESOLVED** that the Head of Legal and Governance, in consultation with the Director of People and the members of the Commercial Ventures Executive Sub-Committee and Executive Member(s) with responsibility for Housing, be authorised to finalise terms for and establish a Joint Venture Limited Liability Partnership between Reigate and Banstead Borough Council and Raven Housing Trust, in line with the objectives set out in the report.

**Reason for decision:** The recommended action would facilitate effective future joint working between Reigate and Banstead Borough Council and Raven Housing

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Trust to deliver housing, particularly affordable housing, in the borough, thereby supporting the objectives of the Council's Corporate Plan and Housing Delivery Strategy.

**Alternative options:** To authorise the Head of Legal and Governance to negotiate with RHT to establish a different delivery model, or not authorise the Head of Legal and Governance to finalise terms for and establish a Joint Venture Limited Liability Partnership between the Council and RHT.

## 69. ACQUISITION OF PROPERTY IN EARLSWOOD AND WHITEBUSHES

Councillor T Archer, Portfolio Holder for Investment and Companies, presented the report on the Acquisition of Property in Earlswood and Whitebushes and explained that financial details of the acquisition were set out in the exempt report in the Part 2 section of the agenda.

The CVESC discussed the scope of the acquisition and in response to a question from a visiting Member about the possibility of flooding, it was noted that appropriate due diligence would be carried out which would include a flood risk assessment.

**RESOLVED** that:

- i) subject to satisfactory due diligence, the Head of Legal and Governance, in consultation with the Head of Finance and Assets and members of the Commercial Ventures Executive Sub-Committee, be authorised to:
  - (a) Acquire the freehold/leasehold of the properties in Earlswood and Whitebushes as detailed in the exempt Part 2 of the report; and
  - (b) Fund the acquisition and supporting costs from the funding allocated within the approved capital programme for investment in capital schemes to support delivery of the Corporate Plan, Housing delivery Strategy and Investment Strategy.

**Reason for decision:** To assist in the achievement of the Council's place-shaping and commercial objectives as set out in the Council's five year Corporate Plan.

**Alternative options:** To not authorise the acquisition and not deliver against a number of people and place priorities and not generate income for the Council.

## 70. INVESTMENT AND COMPANY GOVERNANCE AND RESOURCING

Councillor T Archer, Portfolio Holder for Investment and Companies, presented the Investment and Company Governance and Resourcing report and in response to a query from a visiting Member it was explained that the commercial structure would evolve to meet the needs of the Council's developing commercial investment.

**RESOLVED** that:

- (i) the Head of Legal & Governance, in consultation with the members of the Commercial Ventures Executive Sub-Committee, be authorised to establish a company, and undertake all necessary supporting actions, for the purposes

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of acting as a holding company to consider and commission commercial activities on behalf of the Council, including acquiring and establishing additional companies, consideration of business plans, and oversight of commercial governance arrangements.

- (ii) shareholder consent be granted for the acquisition of the Council's existing stake in Greensand Holdings Limited and RBBC Limited by the new holding company to be established under recommendation (i) on behalf of Greensand Holdings Limited, RBBC Limited, and the new holding company once established, subject to approval of the terms of acquisition by the Head of Legal and Governance, in consultation with the members of the Commercial Ventures Executive Sub-Committee.
- (iii) the Head of Legal and Governance be authorised to undertake necessary steps to recruit suitably qualified directors from the elected membership of the Council to serve on the Boards of the proposed holding company that she be authorised to recruit for suitably qualified directors for all existing and future subsidiaries as set out in this report, such appointments to include non-executive directors.
- (iv) the Commercial Ventures Executive Sub-Committee's support for additional staffing resources being provided for the Council's investment and commercial activities be noted.
- (v) the Employment Committee be asked to agree the creation of and recruitment to a new post of Commercial Director.

**Reason for decision:** It is essential this change to our organisation structure is made to ensure it remains fit for purpose and is capable of delivering the Council's vision and priorities. The recommendations are the logical next step on that journey now the Council has examined best practice at other authorities. These proposals ensure that the revised commercial governance structure will be transparent but also able to move at pace to take advantage of commercial opportunities that arise.

**Alternative options:** If, after reviewing the Recommendations and supporting report, adjustments are required, the Commercial Ventures Executive Sub-Committee should request the necessary adjustments be made and approve the actions subject to those adjustments, or do not approve the Recommendations.

## 71. SHAREHOLDER ACTIONS - 30 JAN 2020

There were no items to be considered.

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## **72. INVESTMENT OPPORTUNITIES - 30 JAN 2020**

There were no items to be considered.

## **73. PROPERTY ACQUISITIONS AND DISPOSALS - 30 JAN 2020**

There were no items to be considered.

## **74. LOANS, GRANTS AND DRAW DOWN AGREEMENTS - 30 JAN 2020**

There were no items to be considered.

## **75. ANY OTHER BUSINESS**

None.

## **76. EXEMPT BUSINESS**

**RESOLVED** that members of the Press and public be excluded from the meeting for the following item of business under Section 100A(4) of the Local Government Act 1972 on the grounds that:

- i. it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act; and
- ii. the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

## **77. JOINT VENTURE - RAVEN HOUSING TRUST AND REIGATE AND BANSTEAD BOROUGH COUNCIL - EXEMPT**

**RESOLVED** that the exempt information in relation to the Joint Venture – Raven Housing Trust and Reigate and Banstead Borough Council be noted.

## **78. ACQUISITION OF PROPERTY IN EARLSWOOD AND WHITEBUSHES - EXEMPT**

**RESOLVED** that the exempt information in relation to the Acquisition of property in Earlswood and Whitebushes be noted.

## **79. SHAREHOLDER ACTIONS - 30 JAN 2020 (EXEMPT)**

There was no exempt business to be considered under this agenda item.

## **80. INVESTMENT OPPORTUNITIES - 30 JAN 2020 (EXEMPT)**

There was no exempt business to be considered under this agenda item.

## **81. PROPERTY ACQUISITIONS AND DISPOSALS - 30 JAN 2020 (EXEMPT)**

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There was no exempt business to be considered under this agenda item.

## **82. LOANS, GRANTS AND DRAW DOWN AGREEMENTS - 30 JAN 2020 (EXEMPT)**

There was no exempt business to be considered under this agenda item.

The Meeting closed at 7.04 pm

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# Agenda Item 4



<b>SIGNED OFF BY</b>	Head of Legal and Governance
<b>AUTHOR</b>	Kirsty Jane Hill, Democratic Services Officer
<b>TELEPHONE</b>	Tel: 01737 276749
<b>EMAIL</b>	Kirsty.J.Hill@reigate-banstead.gov.uk
<b>TO</b>	Commercial Ventures Executive Sub-Committee
<b>DATE</b>	Thursday, 27 February 2020
<b>EXECUTIVE MEMBER</b>	Councillor Tim Archer

<b>KEY DECISION REQUIRED</b>	N
<b>WARDS AFFECTED</b>	(All Wards);

<b>SUBJECT</b>	RBBC Limited Dissolution
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## RECOMMENDATIONS

**That Commercial Ventures Executive Sub-Committee:**

- (i) **Authorise the Chief Finance Officer to seek approval to not recover the £29,434.98 that is due to the Council from RBBC Limited, and confirm in writing to the Director of RBBC Limited that the Council will not seek to recover any liabilities;**
- (ii) **Authorise the Director of RBBC Limited to arrange for RBBC Limited to be dissolved; and**
- (iii) **In its capacity as the Council's shareholder representative for RBBC Limited, note the dissolution of RBBC Limited.**

## REASONS FOR RECOMMENDATIONS

RBBC Limited was incorporated for the purpose of temporarily acquiring a digital monitoring business whilst securing an investor for this business. It was never the Council's intention to diversify and operate this type of business, rather it was a vehicle to secure a buyer for this element of the Council's previous investment in Pathway for Care.

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An investor was not secured and in November 2018 Executive received a report that included an update on plans to close the company. The actions necessary to implement Executive's decision are now complete and it is therefore recommended to CVESC that RBBC Limited is dissolved and its remaining liabilities, being sums paid on its behalf by the Council, are written off. This will avoid an insolvent liquidation and the appointment of an Official Liquidator by the Courts.

The Commercial Ventures Executive Sub-Committee has authority to approve the above recommendations.

## **STATUTORY POWERS**

1. The powers to waive the collection of properly determined and levied debts are set out within the Council's Constitution in the Financial Procedures Rules; all debts to be written off valued over £5,000 will usually require Executive approval.
2. In this case the authority to not recover RBBC Limited's debts to the Council can be exercised through this sub-committee, because the terms of reference for the Commercial Ventures Executive Sub-Committee authorised on 30 May 2019 include authority to write-off debts owed by companies established by the Council to the Council, in consultation with all Executive Members. The decision to not recover RBBC Limited's remaining debts are covered in a separate report on this agenda.

## **BACKGROUND**

3. RBBC Limited (the Company) was incorporated by the Council on 4 April 2018 for the purpose of acquiring Pathway for Care Limited's digital monitoring business, in order that Pathway for Care could continue its diversification into supported living services with its new investor, Fairhome Group plc.
4. At the time of incorporation, the Executive agreed to exchange the Council's investment of a £1.1m loan to Pathway for Care for £1.1m of redeemable preference shares in RBBC limited. Interest of £70,923 that had accrued on the Pathway for Care loan up to 4 April 2018 was included in the sums reported in the Business Transfer Agreement at that date (details below).

## **KEY INFORMATION**

5. The Business Transfer Agreement (BTA) between Pathway for Care and the Council in April 2018 covered the transfer of:
  - Assets in relation to digital monitoring (stock, licence)
  - Contracts for digital monitoring services.
6. The BTA also set out the outstanding liabilities owed to the Council by Pathway for Care at that date, totalling £255,928.54 that were transferred to RBBC Limited. These comprised:
  - Interest accrued on the Council's previous loan to Pathway for Care - £70,923.00.

## Agenda Item 4

- Pathway for Care running expenses that were in the process of being paid by the Council on behalf of the company - £93,682.60.
  - The value of Council staff time spent providing support services to Pathway for Care that had not yet been recharged to that company - £91,322.94.
7. Subsequently the Council has incurred additional expenses relating to RBBC Limited during 2019/20:
- Residual adjustments to Pathway for Care expenses in the BTA - £6,899.98
  - Legal and tax advice fees relating to RBBC dissolution - £3,684.00
  - Corporation tax of £18,851.00 will also be payable.
8. In total therefore £285,363.52 is owed to the Council by RBBC Limited, comprising:
- £70,923.00 loan interest
  - £104,266.58 expenses paid by the Council relating to Pathway for Care / RBBC Limited
  - £91,322.94 staff time
  - £18,851.00 Corporation Tax.
9. At the time of the business transfer, the Council had intended to secure external investment for the digital monitoring business for a nominal fee of £1 in return for the purchaser taking on all liabilities of the digital monitoring business. However, the Council was subsequently unsuccessful in finding a new investor and in November 2018, Executive decided that it had no appetite to invest further in RBBC Limited and the company should be closed.
10. As explained above, at financial year-end 2018/19, in acknowledgement of the Executive's decision to close RBBC Limited, the following expenses were charged to the Council's revenue budget:
- Pathway for Care running expenses that had been paid by the Council - £93,682.60
  - The value of Council staff time spent providing support services to Pathway for Care that had not yet been recharged to the company - £91,322.94
- These costs have therefore already been written out of the Council's accounts and no further action is necessary.
11. At the same time the decision was made not to establish a debtor for the loan interest of £70,923.00 in the 2018/19 statement of accounts on the basis that this would not be recoverable considering the Executive's decision to close RBBC Limited. Therefore, no further action is required regarding the interest charge.
12. At the time of preparing this report, the remaining sums due to the Council from RBBC Limited total £29,434.98 and comprise:
- Residual adjustments to Pathway for Care expenses in the BTA - £6,899.98
  - Legal and tax advice fees relating to RBBC dissolution - £3,684.00
  - Plus £18,851.00 Corporation Tax.

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Subject to approval of the recommendations in this report, approval is being sought in a separate report on this agenda to charge the remaining sums to the Headroom Contingency budget during financial year-end closedown for 2019/20. This will conclude the financial elements of RBBC Limited's dissolution.

13. If the decision is not to authorise the Chief Finance Officer to seek approval to not recover the remaining liabilities that are due to the Council from RBBC Limited and instead liquidate RBBC Limited as insolvent, this would require the appointment of an Official Liquidator to go through the Courts, incurring further costs to be funded by the Council. On liquidation a report on the Company's conduct may be required to be sent to the Secretary of State for Business, Energy & Industrial Strategy and investigations into the Director's conduct may be carried out by the Insolvency Service, Companies House or the Courts. This report sets out the actions required to dissolve the Company and avoid liquidation.
14. In order to dissolve RBBC Limited, the Commercial Ventures Executive Sub-Committee needs to formally agree to release the Company from repaying the remaining sums funded on its behalf by the Council and charge them instead to the Council's 2019/20 revenue budget, leaving the company free to be voluntarily dissolved by its Director.

### OPTIONS

The options available to the Commercial Ventures Executive Sub-Committee are set out below:

Option 1: Authorise the Chief Finance Officer to seek approval to not recover the £29,434.98 that is due to the Council from RBBC Limited which includes the £18,851 Corporation Tax owed to HMRC and, when authorised, the Chief Finance Officer to confirm in writing to the Director of RBBC Limited that the Council will not seek to recover any liabilities; and authorise the Director of RBBC Limited to arrange for the company to be dissolved; and, in its capacity as the Council's shareholder representative for RBBC Limited, note the dissolution of RBBC Limited.

This is the recommended option.

Option 2: To not authorise the Chief Finance Officer to seek approval to not recover the £29,434.98 due to the Council from RBBC Limited including the £18,851 Corporation Tax owed to HMRC and instead, liquidate RBBC Limited as insolvent.

This is not recommended as this would require the appointment of an Official Liquidator to go through the Courts, with still no prospect of the Council recovering the expenses that have already been incurred. On liquidation, a report on the company's conduct may be required to be sent to the Secretary of State for Business, Energy & Industrial Strategy, and investigations into the Director's conduct can be carried out by the Insolvency Service; Companies House; or the Courts and the Council's liabilities will increase and continue to be outstanding.

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Option 3: Do nothing.

This is not recommended as RBBC Limited would remain a dormant company with no ability to repay the Council for expenses incurred. The company's statutory obligations to lodge documents with HMRC and Companies House would remain, and the associated running costs would continue to be incurred by the Council.

## LEGAL IMPLICATIONS

In addition to the Statutory Power section of this report, Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the 'general power of competence'. A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duty it owes to its rate and local taxpayers and to the public law requirements to exercise the general power of competence for a proper purpose).

Companies and the rights of shareholders are governed by the Companies Act 2006.

The recommended actions are within the requirements of the relevant legislation and there are therefore no direct legal implications of this report.

## FINANCIAL IMPLICATIONS

1. As explained above, at financial year-end 2018/19, in acknowledgement of the Executive's decision to dissolve RBBC Limited, the following expenses were charged to the Council's revenue budget:

- Pathway for Care running expenses that had been paid by the Council- £93,682.60
- The value of Council staff time spent providing support services to Pathway for Care that had not yet been recharged to the company - £91,322.94.

This means that these costs have already been written out of the Council's accounts and no further action is necessary.

2. At the same time the decision was made not to establish a debtor for the loan interest of £70,923.00 in the 2018/19 statement of accounts on the basis that this would not be recoverable in light of the Executive's decision to dissolve RBBC Limited. Therefore, no further action is required with regard to the interest charge.

3. At the time of preparing his report, the remaining sums due to the Council from RBBC Limited total £29,434.98 and comprise:

- Residual adjustments to Pathway for Care expenses in the BTA - £6,899.98
- Legal and tax advice fees relating to RBBC dissolution - £3,684.00
- Plus £18,851.00 Corporation Tax payable to HMRC.

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4. While no specific advice on potential tax liabilities was taken at the time when the Business Transfer Agreement was drawn up, RBBC Limited has now taken advice from external legal and tax advisors on appropriate accounting and tax treatment to ensure tax efficiency on dissolution and to avoid a company liquidation situation. On balance, the legal advice has been that it is not possible under the circumstances to avoid the £18,851.00 tax charge which the Council is now required to fund on behalf of the company.
5. Subject to approval of the recommendations in this report, approval is being sought in a separate report on this agenda to charge the remaining sums to the Headroom Contingency budget during financial year-end closedown for 2019/20. This will conclude the financial elements of RBBC Limited's dissolution.

## **EQUALITIES IMPLICATIONS**

1. There are no direct equalities implications of this report.
2. Where decisions are made which effect the Council's companies, the equalities implications of these decisions will be considered as part of the decision-making process in each case.
3. The Commercial Ventures Executive Sub-Committee shall generally have regard to the obligations of the Equality Act (2010) in conducting its role as the representative of the Council as a shareholder or partner in companies owned or part-owned by the Council.

## **COMMUNICATION IMPLICATIONS**

1. There are no direct communication implications as a result of this report. However, as identified in the Commercial Governance Framework, the Commercial Ventures Executive Sub-Committee shall have regard for the Local Authorities (Companies) Order 1995, which sets out the rights for authorities and individual Members to receive company specific information.
2. It should be noted that the application to dissolve the company will appear in the Gazette (Official Public Record) for a two-month period and once this period has expired, a notice of dissolution will appear, confirming the company has been dissolved.

## **RISK MANAGEMENT CONSIDERATIONS**

1. All commercial ventures and investment activities contain an element of risk, and the Commercial Ventures Executive Sub-Committee shall consider these as part of the decision-making process for any future decisions relating to companies owned or part-owned by the Council.

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2. In monitoring the performance of companies owned or part-owned by the Council, the Commercial Ventures Executive Sub-Committee has regard to the fiduciary duty the Council owes to its rate and local tax payers, to the public law requirements to exercise the general power of competence for a proper purpose, and the requirements of the Commercial Governance Framework which forms part of the terms of reference of the sub-committee.

### **CONSULTATION**

The Executive Members with responsibility for Investment & Companies and for Finance have been consulted with regard to the recommendations of this report.

### **POLICY FRAMEWORK**

The recommendations of this report are not in conflict with the Council's Policy Framework. All actions undertaken by the Council shall have regard to the objectives of the Council's Corporate Plan and supporting policy framework, unless otherwise specified by statute.

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<b>SIGNED OFF BY</b>	Head of Legal and Governance
<b>AUTHOR</b>	Pat Main, Interim Head of Finance and Assets
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<b>EMAIL</b>	pat.main@reigate-banstead.gov.uk
<b>TO</b>	Commercial Ventures Executive Sub-Committee
<b>DATE</b>	Thursday, 27 February 2020
<b>EXECUTIVE MEMBER</b>	Councillor Tim Archer

<b>KEY DECISION REQUIRED</b>	Y
<b>WARDS AFFECTED</b>	(All Wards);

<b>SUBJECT</b>	RBBC Limited Dissolution – Expenses Write-Off
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**RECOMMENDATIONS**

**That Commercial Ventures Executive Sub-Committee authorise the Chief Finance Officer to not recover the £29,434.98 expenses that have been incurred on behalf of RBBC Limited and instead treat them as a charge to the Council’s revenue budget in 2019/20.**

**REASONS FOR RECOMMENDATIONS**

Following a review of the trading position and prospects of RBBC Limited, Commercial Ventures Executive Sub Committee approved, in a separate report on this agenda, the dissolution of RBBC Limited.

The Commercial Ventures Executive Sub Committee is now requested, under its delegated authority, to approve the write off of £29,434.98 representing expenses incurred by the Council on behalf of RBBC Limited including the company’s closing corporation tax debt of £18,851.00. These costs will be charged to the Headroom Contingency budget in 2019/20.

**EXECUTIVE SUMMARY**

RBBC Limited was incorporated for the purpose of temporarily acquiring a digital monitoring business whilst securing an investor for this business. It was never the Council’s intention to diversify and operate this type of business, rather it was a vehicle to secure a buyer for this element of the Council’s previous investment in Pathway for Care.

An investor was not secured and in November 2018 Executive received a report that included an update on plans to close the company. The actions necessary to implement Executive's decision are now complete and it is therefore recommended to CVESC that RBBC Limited is dissolved and its remaining liabilities, being sums paid on its behalf by the Council, are written off. This will avoid an insolvent liquidation and the appointment of an Official Liquidator by the Courts.

**Commercial Ventures Executive Sub-Committee has authority to approve the above recommendation.**

## **STATUTORY POWERS**

1. The powers to waive the collection of properly determined and levied debts are set out within the Council's Constitution in the Financial Procedures Rules; all debts to be written off valued over £5,000 will usually require Executive approval.

## **BACKGROUND**

2. At the time of incorporation, the Executive agreed to exchange the Council's investment of a £1.1m loan to Pathway for Care for £1.1m of redeemable preference shares in RBBC limited. Interest of £70,923 that had accrued on the Pathway for Care loan up to 4 April 2018 was included in the sums reported in the Business Transfer Agreement at that date (details below).

## **KEY INFORMATION**

3. The Business Transfer Agreement (BTA) between Pathway for Care and the Council in April 2018 covered the transfer of:
  - Assets in relation to digital monitoring (stock, licence)
  - Contracts for digital monitoring services.
4. The BTA also set out the outstanding liabilities owed to the Council by Pathway for Care at that date, totalling £255,928.54 that were transferred to RBBC Limited. These comprised:
  - Interest accrued on the Council's previous loan to Pathway for Care - £70,923.00
  - Pathway for Care running expenses that were in the process of being paid by the Council on behalf of the company - £93,682.60
  - The value of Council staff time spent providing support services to Pathway for Care that had not yet been recharged to that company - £91,322.94
5. Subsequently the Council has incurred additional expenses relating to RBBC Limited during 2019/20:
  - Residual adjustments to Pathway for Care expenses in the BTA - £6,899.98
  - Legal and tax advice fees relating to RBBC dissolution - £3,684.00Corporation tax of £18,851.00 will also be payable.
6. In total therefore £285,363.52 is owed to the Council by RBBC Limited, comprising:

- £70,923.00 loan interest
- £123,117.58 expenses paid by the Council relating to Pathway for Care / RBBC Limited
- £91,322.94 staff time
- £18,851.00 closing Corporation Tax

7. As explained above, at financial year-end 2018/19, in acknowledgement of the Executive's decision to close RBBC Limited, the following expenses were charged to the Council's revenue budget:

- Pathway for Care running expenses that had been paid by the Council- £93,682.60
- The value of Council staff time spent providing support services to Pathway for Care that had not yet been recharged to the company - £91,322.94

This means that these costs have already been written out of the Council's accounts and no further action is necessary.

8. At the same time the decision was made not to establish a debtor for the loan interest of £70,923.00 in the 2018/19 statement of accounts on the basis that this would not be recoverable considering the Executive's decision to close RBBC Limited. Therefore, no further action is required regarding the interest charge.

9. At the time of preparing this report, the remaining sums due to the Council from RBBC Limited total £29,434.98 and comprise:

- Residual adjustments to Pathway for Care expenses in the BTA - £6,899.98
- Legal and tax advice fees relating to RBBC dissolution - £3,684.00
- Plus £18,851.00 Corporation Tax payable to HMRC.

10. While no specific advice on potential tax liabilities was taken at the time when the Business Transfer Agreement was drawn up, RBBC Limited has now taken advice from external legal and tax advisors on appropriate accounting and tax treatment to ensure tax efficiency on dissolution and to avoid a company liquidation situation. On balance, the legal advice has been that it is not possible under the circumstances to avoid the £18,851.00 tax charge which the Council is now required to fund on behalf of the company.

11. Approval is being sought to charge the remaining sums to the Headroom Contingency budget during financial year-end closedown for 2019/20. This will conclude the financial elements of RBBC Limited's dissolution.

## **OPTIONS**

1. The options available to the Executive are set out below:

**OPTION 1** To approve the recommendation to not recover the £29,434.98 expenses that have been incurred on behalf of RBBC Limited during 2019/20 including the £18,851.00 Corporation Tax that is payable to HMRC in order to allow the Directors of RBBC Limited to arrange for the Company to be dissolved.

This is the recommended option.

**OPTION 2 To do nothing.**

This is not recommended as this would require the appointment of an Official Liquidator to close the Company through the Courts, with still no prospect of the Council recovering the expenses that have already been incurred.

**LEGAL IMPLICATIONS**

2. In addition to the Statutory Power section of this report, Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the 'general power of competence'. A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duty it owes to its rate and local taxpayers and to the public law requirements to exercise the general power of competence for a proper purpose).
3. Companies and the rights of shareholders are governed by the Companies Act 2006.
4. The recommended actions are within the requirements of the relevant legislation and there are therefore no direct legal implications of this report.

**FINANCIAL IMPLICATIONS**

5. These are set out in the body of the report.

**EQUALITIES IMPLICATIONS**

6. There are no specific equalities implications arising from this report.

**COMMUNICATION IMPLICATIONS**

7. There are no further communications implications arising from this report. The budget outturn and statement of accounts for 2019/20 will be published on the Council's website and open to public inspection.

**RISK MANAGEMENT CONSIDERATIONS**

8. There are no further risk management implications arising from this report.

**CONSULTATION**

9. All Executive Members have been consulted on the proposals in this report, as required by the delegation of authority to this Sub-Committee when writing off company loans.

**POLICY FRAMEWORK**

10. The recommendations of this report are not in conflict with the Council's Policy Framework. All actions undertaken by the Council shall have regard to the objectives of the Council's Corporate Plan and supporting policy framework, unless otherwise specified by statute

**BACKGROUND PAPERS**



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