



SIGNED OFF BY	Head of Legal and Governance
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TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 27 February 2020
EXECUTIVE MEMBER	Councillor Tim Archer

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	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.

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.

- 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.

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.

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.

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.

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.