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TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 27 February 2020
EXECUTIVE MEMBER	Councillor Tim Archer

KEY DECISION REQUIRED	Y
WARDS AFFECTED	(All Wards);

SUBJECT	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

Report to CVESC, 27 February 2020, *RBBC Limited Dissolution*