

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **CABINET**

DATE: **TUESDAY, 13 MAY 2014**

REPORT BY: **HEAD OF FINANCE**

SUBJECT: **BUSINESS RATE DEBT - WRITE OFFS**

1.00 PURPOSE OF REPORT

1.01 To request authorisation to write off multiple business rate debts for two Charitable organisations that have gone into liquidation, namely :

- Public Safety Charitable Trust – debt equating to £336,923.11
- Life Foundation Trust – debt equating to £60,732.50

2.00 BACKGROUND

2.01 Financial Procedure Rules (section 9.5c) requires that debts in excess of £25,000 being considered for write off are referred to cabinet for consideration and approval.

2.02 Since 2008 and particularly during the recent economic downturn, owners have also been seeking to mitigate and minimise their business rates liabilities in respect of empty properties and a number of rate avoidance schemes have operated across the UK. Many of the schemes have sought to exploit Charitable Rate Relief rules, in partnership with a small number of registered charities, to avoid payment of empty rates by landlords/owners.

2.03 In recent High Court rulings brought about by ongoing disputes between a small number local authorities, supported by separate court action by Flintshire County Council, the Courts have now adjudicated on the complex legal issues surrounding ‘wholly and mainly’ occupation and found in favour of the local authorities in cases associated with Public Safety Charitable Trust (PSCT) and Life Foundation Trust (LFT).

3.00 CONSIDERATIONS – PUBLIC SAFETY CHARITABLE TRUST (PSCT)

3.01 The multiple write offs in respect of PSCT, equating to £336,923 relate to the alleged occupation of 66 premises across the Flintshire area.

- 3.02 PSCT functioned by leasing a large number of premises within the UK. It is reported that PSCT leased over 2,000 properties across 240 local authority areas. The premises were always previously unoccupied and the Trust installed 'Wi-Fi' transmitters, similar in size to a domestic broadband box, to send out public safety messages to Bluetooth devices.
- 3.03 Other than the installation of a 'Wi-Fi' transmitter, the premises were otherwise completely empty. PSCT made a number of applications to the Council for Charitable Rate Relief claiming that the Trust was not liable for rates on the basis that it was a charity in occupation of various premises in Flintshire.
- 3.04 Senior officers in the Finance Division declined to award Charitable Rate Relief and contested that PSCT were not in occupation and putting the premises to use 'wholly and mainly' for charitable purposes.
- 3.05 Matters were referred to the Courts as part of the Councils application for Liability Orders but were subsequently put on hold by the Courts in the light of other similar cases being referred to the Higher Courts of Justice but in May 2013, judgement in favour of the local authorities which ruled that PSCT was not entitled to Charitable Rate Relief and needed to pay the full amount of rates due on all properties.
- 3.06 Following the judgement by the Higher Courts, action was quickly taken by several local authorities to recover the unpaid business rates which resulted in a winding-up order for PSCT in July 2013. Wilkin Chapman Solicitors were appointed liquidators at a meeting of creditors in September 2013.
- 3.07 The Council has lodged a claim with the Liquidators, but with claims amounting to at least £17.7m, there is no prospect of the Council recovering the debt of £336,923
- 3.08 In the light of the winding-up of PSCT all ongoing attempts by the Council through the courts to secure full payment must be suspended as no legal action can be taken once an organisation is the subject of winding up proceedings.
- 3.09 The Charity Commission has now begun an investigation into the charity following formal concerns being raised by many local authorities, including Flintshire, and following the court ruling the Commission has now escalated this to a statutory inquiry.
- 3.10 Council officers will continue to monitor the outcomes of the statutory inquiry by the Charity Commission and the work of the liquidators to establish whether claims can be pursued for the benefit of creditors against persons connected with PSCT, especially as the loss to the public purse in relation to business rates is many millions of pounds.

3.11 The rate avoidance scheme has at the very least been brought to a close following the early intervention of a small number of local authorities, including the actions taken by Flintshire County Council.

4.00 CONSIDERATIONS - LIFE FOUNDATION TRUST (LFT)

4.01 Life Foundation Trust (LFT), a registered Charity that was incorporated in February 2012 operating in the same way as PSCT, by entering into short term leases on otherwise empty commercial property and installing a small 'Wi-Fi' box at the premises.

4.02 A decision was then taken to refuse relief that having full regard to the circumstances in which the eight properties were occupied.

4.03 Payment was not received and the accounts became subject to usual recovery of unpaid balances.

4.04 At the request of the Council a Liability Order hearing was listed at the Magistrates Court in the autumn of 2013 for two of the properties occupied by LFT but prior to the hearing payment was made on the basis that LFT considered it was not economically viable to prepare for a trial.

4.05 The Council continued to seek full payment of rates for other properties occupied by LFT and further court hearings were arranged for December 2013. Around this time, successful prosecutions were being secured by a small number of Councils, but despite the court rulings, LFT declined to make payments.

4.06 The Trustees of LFT then decided to convene a meeting of members and creditors to place LFT into Voluntary Liquidation. BDO LLP from Manchester has now been appointed as Liquidators.

4.07 The initial report from BDO indicates that LFT assets total £65,100 and with initial claims amounting to £3,390,735, there is an estimated deficit for credits of £3,325,635. As an unsecured creditor, although the Council has lodged a claim with the Liquidators there is little prospect of recovering the balances or receiving any dividend from the liquidation.

4.08 Again, the rate avoidance scheme has at the very least been brought to a close following the early intervention of a small number of local authorities, including the early actions taken by Flintshire County Council.

5.00 RECOMMENDATIONS

5.01 That Cabinet approves the write off of debts relating to £336,923.11 for PSCT and £60,732.50 for LFT.

6.00 FINANCIAL IMPLICATIONS

- 6.01 There is no direct loss of income to the Council as the Business rates which local authorities collect are all distributed via the Business Rates Collection Pool which is, at the moment, supported by HM Treasury under the current funding arrangements. As the Pool is supported by the UK Government, Business Rates avoidance does mean though that there is a wider loss to the UK taxpayer.
- 6.02 Flintshire will continue to take a robust approach through the courts to tackle aggressive rate avoidance schemes where it is in the public interest to do so.

7.00 ANTI POVERTY IMPACT

- 7.01 None.

8.00 ENVIRONMENTAL IMPACT

- 8.01 None.

9.00 EQUALITIES IMPACT

- 9.01 None.

10.00 PERSONNEL IMPLICATIONS

- 10.01 None.

11.00 CONSULTATION REQUIRED

- 11.01 None.

12.00 CONSULTATION UNDERTAKEN

- 12.01 None.

13.00 APPENDICES

- 13.01 None.

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985 BACKGROUND DOCUMENTS

Financial Procedure Rules (section 9.5c)
Local Government Finance Act 1988 (as amended)

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