

WRITE OFF OF BUSINESS RATES DEBT

Report of the Corporate Director – Corporate and Support Services

1. INTRODUCTION AND PURPOSE OF REPORT

- 1.1 There is one Business Rate debt which is considered irrecoverable as no further recovery action can be taken.
- 1.2 Writing off the debt does not extinguish the debt, if circumstances change and it becomes possible to pursue the debt once more it can be “written back” and recovery resumed. Any accounts where debts are written off are marked to ensure this happens.
- 1.3 Each year the Council analyses the amounts due and a provision for bad or doubtful debts is created or adjusted to reflect the risk of the debt not being paid. Any bad debts that are written off are charged to the revenue account or a specific bad debt provision account.
- 1.4 The background of the case is detailed below, and additional information supplied in appendices A and B . Please note that as a result of court proceedings the terms of the settlement agreement in respect of the debt must remain confidential.

2. CASE 1 BACKGROUND

- 2.1 To consider a proposal to write off the Non Domestic Rate debt in respect of Company ‘A’, amounting to £ 106,244.98 for office premises in Cheadle.
- 2.2 The debt in question is in respect of Business Rates for office premises in Cheadle. This debt remains after an exceptional and extensive attempts to obtain recovery involving other Greater Manchester (GM) councils .
- 2.3 The liability for this assessment was reviewed following local knowledge and investigations with other GM councils which identified that there appeared to be a deliberate strategy being adopted by some owners of empty Business Rate properties to avoid liability for empty rates. As these liabilities were for large assessments that were potentially difficult to re let, the incentive for this is clear.
- 2.4 However, allowing this to happen would have had an adverse impact on income from the collection of Business Rates.
- 2.5 The course of action that was being followed and identified as a contrived approach was as follows: the owner of the empty property informed the Council that the property was now let to company ‘B’. The Council would then make ‘company B’ liable for the rates, but that company never took occupation and within 6 weeks of the lease being set up went into Members Voluntary Liquidation (MVL).
- 2.6 Once a company is in liquidation, they are exempt from paying rates. The Council and other GM councils felt this was a deliberate contrivance as it seemed unusual that certain property owners who had liabilities throughout the GM area were

letting empty properties to another company who very quickly chose to make themselves insolvent. Furthermore, this method of voluntary insolvency meant there was no urgency in liquidating the company as there would if it had been sought by creditors.

- 2.7 Following consideration of this situation with other GM councils it was decided that the scale of the accounts involved merited an escalation of recovery and as a result the services of a solicitor from a private legal firm were obtained. On their investigations they felt it was appropriate to attempt to tackle this problem by starting action to take the recovery of the debts through the High Court, especially as they considered there was evidence that indicated there were links between the company owners and the companies that were said to have taken the lease and then went into MVL.
- 2.8 To do this GM councils had to follow a consistent approach to ensure that accounts could be correctly pursued by the solicitor. The first step meant ending the liability for the company 'B' which currently had no liability as an exemption had been allowed and then creating a new liability for the owners with a full charge for empty rates. Clearly this was necessary to pursue recovery but also involved a risk by creating a debit when if the situation had not been challenged the account balance would have remained at nil.

3. RECOVERY

- 3.1 In conjunction with other GM councils these demand notices were issued with an agreed consistent approach to any disputes. The accounts were not paid so the recovery stage was moved to the Final Notice stage. The liable company still did not make payment.
- 3.2 The next stage of recovery was to refer all these unpaid accounts with detailed records to the solicitor. They then started the process of pursuing legal action through the High Court by issuing a letter before action.
- 3.3 This strategy had the advantages of showing the widespread nature of the scheme to the courts; putting pressure on the companies by showing the determination of GM councils to challenge their actions; and requiring disclosure of documents that the companies may not have wanted open to scrutiny if the case reached the court stage.
- 3.4 In this case the company engaged in negotiations with the GM appointed solicitor. This led to them proposing a settlement agreement which if an agreed sum of money was paid the Council would undertake to cease legal proceedings and not seek recovery on any further outstanding balances and that this agreement would be strictly confidential between the two parties.
- 3.5 Following consultation with Stockport Council on this agreement, this offer was approved and signed. Payment of £64,000.00 was received in December 2017.

4. CONCLUSIONS AND RECOMMENDATIONS

- 4.1 This is an exceptional case. The Council has taken steps well beyond those taken in the normal recovery process.

- 4.2 This account is part of wider list that were included in a GM initiative. As this approach was new and untried there was a level of risk incurred at the outset.
- 4.3 However, this action has been a success as even though all the debt was not paid, payment of a large sum has been received by the Council which would not have happened if this initiative had not been followed.
- 4.4 A pre court agreement has been agreed and signed that led to the payment being made .This is a legally binding document that obliges the agreement and the case to be kept confidential. It accepted that the Council would not seek further recovery.
- 4.5 It is therefore recommended to the Cabinet that the Business Rates debt of £106,244.98 is written off as irrecoverable. All available methods have been considered and it is clear from the action taken that there is no recourse to obtain further payment.

BACKGROUND PAPERS

There are none

Anyone wishing to inspect the above background papers or requiring further information should contact Alison Blount on Tel: 0161 474 5107 or by email on alison.blount@stockport.gov.uk