

Ward: all

Key Decision: Yes / No

## **Non-Domestic Rates Liability – The Public Safety Charitable Trust**

### **Report by the Executive Head of Financial Services and the Executive Head of Customer Services**

#### **1.0 SUMMARY**

- 1.1 The report provides details about nineteen National Non-Domestic Rates (NNDR) accounts with a value of just over £346,000 in the name of the Public Safety Charitable Trust and asks the Cabinet Member for Resources to consider whether these debts should be written-off.

#### **2.0 BACKGROUND**

- 2.1 NNDR accounts are administered by local authorities based upon a rateable value determined by the Valuation Office Agency.
- 2.2 Where a hereditament is unoccupied, the rate payer (which will typically be the freeholder or the leaseholder) is statutorily entitled to a three month “empty rate” period during which no rates are payable; thereafter, the full liability becomes due, payable by monthly instalments. Consequently, particularly during the recent economic downturn, freeholders have been seeking to minimise their NNDR liabilities in respect of unoccupied hereditaments.
- 2.3 The legislative framework within which accounts are administered includes provision for relief to be granted to charitable and non-profit making organisations. The relief consists of
- 80% mandatory relief where the hereditament is either
    - Occupied and wholly or mainly used for charitable purposes; or
    - Unoccupied but when next occupied will be occupied by a charity or non-profit making organisation
  - 20% discretionary relief determined by each authority’s own criteria
- 2.4 One approach employed by freeholders has been to lease their properties to charities or non-profit making organisations at peppercorn (or reduced) rents in the knowledge that local authorities are likely to be required to award 80% mandatory relief and possibly up to 20% discretionary relief.
- 2.5 Central Government is aware of this situation, but to date there has been no indication that the relevant legislation will be amended.

### **3.0 THE PUBLIC SAFETY CHARITABLE TRUST**

- 3.1 The Public Safety Charitable Trust (PSCT) was a registered charity operating from an address in Chester.
- 3.2 It entered into short-term leases with peppercorn rents in respect of commercial hereditaments (typically warehouses sited within industrial estates); the leases were terminable at very short notice, usually five days.
- 3.3 PSCT installed small Blue Tooth wi-fi boxes within each hereditament either on a windowsill or a table in one corner of the warehouse and then submitted applications for both mandatory and discretionary rate relief. The purpose of the wi-fi boxes was to transmit public safety messages (e.g. about Crime Stoppers) to Blue Tooth devices within a range of approximately 150 metres.
- 3.4 In accordance with the standard procedure adopted by Worthing Borough Council in relation to all charitable rate relief applications, on receipt of each application the property was inspected to establish the nature and extent of the rate payer's occupation.
- 3.5 In most (but not all) instances the Inspector was able to receive the safety transmission on his smart phone. He was able to gain access to some of the hereditaments either because
- The inspection coincided with repair work being undertaken by tradesmen; or
  - Arrangements were made with the managing agent of the property for the inspection to be made at a mutually convenient time
- During each inspection photographs were taken (where possible of the inside of the hereditament) to record the extent of the occupation. Typical example photographs are shown in appendix 1.
- 3.6 Each rate relief application was considered and refused by the Revenues & Benefits Manager on the basis that the installation of a small wi-fi unit in a warehouse did not constitute occupation of the hereditament such that it was "wholly or mainly used for charitable purposes".
- 3.7 PSCT was advised of the decisions and that the rates liability should be paid in accordance with demand notices that had previously been issued. Payments were not received and the accounts became subject to usual recovery proceedings.
- 3.8 Upon receipt of summonses for non-payment, PSCT advised the Revenues & Recovery Team that it intended to be present at the Magistrates' Court hearing to dispute the liabilities. The Revenues & Benefits Manager therefore took an operational decision to adjourn the hearings because
- If the Court ruled in favour of PSCT it was highly likely that Worthing Borough Council could become liable for significant costs (in another not dissimilar case, Arun District Council was unsuccessful in its application for a Liability Order and became liable for £40,000 of costs); and
  - Based on the financial accounts submitted with the rate relief applications (and confirmed by the accounts available on the Charity Commission

website), it appeared unlikely that recovery action would be unsuccessful since PSCT did not have any assets or reserves. For example, bailiffs would be extremely unlikely to successfully distrain goods to the value of the outstanding debts.

- The professional press was reporting instances where Liability Orders had been granted against PSCT and others where Magistrates had refused applications. It was further reported that local authorities that had not been granted Liability Orders were intending to seek a definitive decision from a higher Court to confirm whether PSCT should be treated as being in occupation of hereditaments

#### **4.0 CURRENT SITUATION**

- 4.1 Adur District Council does not have any NNDR accounts in the name of PSCT. It is believed that the only other local authority in West Sussex with NNDR accounts in the name of PSCT is Crawley Borough Council.
- 4.2 On 14 May 2013 the High Court considered cases brought by South Cambridgeshire District Council, Milton Keynes Council and Cheshire West & Chester Borough Council concluding that PSCT should not be treated as being in occupation of the hereditaments for which it had entered into leases and that consequently it was not entitled to mandatory and/or charitable rate relief. This decision is highly persuasive from a legal perspective and consistent with the approach adopted by Worthing Borough Council.
- 4.3 On 21 May 2013 the Charity Commission opened a statutory inquiry to examine regulatory concerns including whether the charity's trustees had properly discharged their duties.
- 4.4 On 8 July 2013 PSCT went into liquidation and the outstanding NNDR liabilities due to Worthing Borough Council were immediately registered with the Official Receiver. Details of these debts are shown in appendix 2.
- 4.5 On 5 September 2013 the Official Receiver convened a creditor's meeting at which Wilkin Chapman were appointed as specialist insolvency practitioners. The Revenues & Benefits Manager has received indications that
- Unusually in relation to liquidations, due to alleged misconduct on the part of the trustees of PSCT, liquidation enforcement activities may include action against the trustees' personal assets
  - It is likely to take up to twenty-four months before a dividend payment (if any) is made
  - Nationally, PSCT appears to have outstanding NNDR liabilities of more than £15M
- 4.6 The debts owed to Worthing Borough Council are now due to be authorised for write-off; those under £2,500 would be considered by the Executive Head of Financial Services and those above this level would be considered by the Cabinet Member for Resources.
- 4.7 However, given the value of these debts and the unusual circumstances that caused them to arise, it was felt appropriate for this report to be produced in order that the Cabinet Member is fully aware of the situation.

## **5.0 LEGAL**

- 5.1 The legislation relating to the administration of National Non-Domestic Rates is the Local Government Finance Act 1988, as amended.
- 5.2 Section 151 Local Government Act 1972 requires the Council to arrange for the proper administration of their financial affairs. Writing off irrecoverable debt is a proper and recognised accounting practice.
- 5.3 The Council's Financial Regulations provide irrevocable debts of £2,500 or more shall be submitted to the Cabinet Member for Resources for approval for write off.

## **6.0 FINANCIAL IMPLICATIONS**

- 6.1 The total bad debt provision in relation to NNDR accounts for 2013/14 is £328,916.30 and the debt owed by PSCT is in excess of £346,000.
- 6.2 When a rate payer becomes insolvent (or in the case of sole traders, becomes bankrupt) outstanding NNDR liabilities are put forward for write-off. If the write-off is authorised and a dividend is subsequently paid, a debit is re-raised to the value of the write-off. This approach is commonly adopted by most local authorities.
- 6.3 Worthing Borough Council has been placed in a position whereby
- It would appear that the actions of PSCT amount to NNDR avoidance, against which there is no legal remedy
  - Prior to the outcome of the High Court decision on 14 May 2013 PSCT repeatedly declined to make any payments and disagreed with the decision not to award rate relief
  - Any dividend payments that are received are entirely dependent on the outcome of the liquidation activities
- 6.4 The Business Rates Retention Scheme (introduced from 1<sup>st</sup> April 2013) means that any cost associated with irrecoverable National Non-Domestic Rates is shared between the Government (50%), the council (40%) and West Sussex County Council (10%). The current budget for the write-off of debt and any increase at the year-end in the set aside for future bad debts is £328,916 (1% of total expected income). However, the Council has also provided for losses, on appeal to the valuation office against the rating valuation of properties, of 6% (£1.8m) and the true value of appeals is likely to be in the region of £1.2m and consequently a write-off totalling £346,000 is affordable within the overall non-domestic rates budget.

## **7.0 RECOMMENDATION**

- 7.1 The Cabinet Member for Resources is asked to approve the write off of the debt owed by PSCT of £346,098.09.

**SARAH GOBEY**

**Executive Head of Financial Services**

**KEVIN MASTERS**

**Executive Head of Customer Services**

**Local Government Act 1972**  
**Background Papers:**

None.

**Contact Officer:**

Sarah Gobey  
Executive Head of Financial Services  
Town Hall, Chapel Road, Worthing  
Telephone number: 01903 221221  
E-mail address: [sarah.gobey@adur-worthing.gov.uk](mailto:sarah.gobey@adur-worthing.gov.uk)

## **SCHEDULE OF OTHER MATTERS**

### **1.0 COUNCIL PRIORITY**

- 1.1 To maximise income in order that Council Tax increases are minimised and services maintained.

### **2.0 SPECIFIC ACTION PLANS**

- 2.1 Matter considered and no issues identified.

### **3.0 SUSTAINABILITY ISSUES**

- 3.1 Matter considered and no issues identified.

### **4.0 EQUALITY ISSUES**

- 4.1 Matter considered and no issues identified.

### **5.0 COMMUNITY SAFETY ISSUES (SECTION 17)**

- 5.1 Matter considered and no issues identified.

### **6.0 HUMAN RIGHTS ISSUES**

- 6.1 Matter considered and no issues identified.

### **7.0 REPUTATION**

- 7.1 Matter considered and no issues identified.

### **8.0 CONSULTATIONS**

- 8.1 Matter considered and no issues identified.

### **9.0 RISK ASSESSMENT**

- 9.1 Matter considered and no issues identified.

### **10.0 HEALTH & SAFETY ISSUES**

- 10.1 Matter considered and no issues identified.

### **11.0 PROCUREMENT STRATEGY**

- 11.1 Matter considered and no issues identified.

### **12.0 PARTNERSHIP WORKING**

- 12.1 Matter considered and no issues identified.

## APPENDIX 1 – EXAMPLE PHOTOGRAPHS OF HEREDITAMENTS



