
TRANSEUROPA DEBT REVIEW OVERVIEW & SCRUTINY PANEL RECOMMENDATIONS

To: **Cabinet – 3 April 2014**

Main Portfolio Area: **Operational Services/Financial Services**

By: **Corporate & Regulatory Service Manager**

Classification: **Unrestricted**

Ward: **Thanet Wide**

Summary: The Overview and Scrutiny Panel set up a task & finish group to conduct in-depth investigation into the Transeuropa debt. The sub-group reported back their findings and this report considers the recommendations adopted by the Panel.

For Decision

1.0 Introduction and Background

1.1 During debate at Full Council on 11 July 2013, it was agreed that the Overview & Scrutiny Panel should examine all circumstances relating to the Transeuropa debt, including the robustness of recording and decision-making processes. As a result members of the Overview & Scrutiny Panel met on 29 July 2013 for an extraordinary meeting and agreed to establish the Transeuropa Debt Review Task & Finish Group (TFG) to consider the issues detailed in the terms of reference below:

1. To review the circumstances leading to the Transeuropa debt;
2. To consider options available to Council to recover the debt;
3. To identify any lessons learned from the Transeuropa debt and how this impacts on the Council's debt management processes;
4. To produce a final report with recommendations for submission to the Overview and Scrutiny Panel.

2.0 The Current Situation

- 2.1 The TFG met five times and gathered evidence from a number of key players. They took witness statements from senior officers, previous and current leaders of Council; and previous and current Cabinet Members of Financial Services.
- 2.3 Members of the sub-group also submitted written questions to the Chief Executive and inspected Council documents that were considered relevant to this investigation. The CEx responded in writing to these Member questions.
- 2.4 They submitted their findings and recommendations to the Overview & Scrutiny Panel on 11 March 2014 and the Panel adopted the summary of findings, lessons learnt and recommendations with minor amendments and agreed to forward these to Cabinet. These are detailed in sections 3.0; 4.0;

3.0 SUMMARY OF FINDINGS

The key findings were as follow that:

1. Members generally agreed that Thanet District Council (TDC) officers and Members acted in good faith in the understanding that there was no other supplier waiting to provide this type of service to Thanet;
2. Members of all political parties and officers acted in good faith at all times in dealing with this matter.
3. Members observed that one of vessels, the Spirit of Ostend was left to sail away from the Ramsgate Port when it could have been temporarily detained to ascertain the possibility for Council to recover the £380,005.08 owing to Council. An opportunity was therefore missed by Council.
4. "We the sub-committee believe that the permission to let the Spirit of Ostend leave Ramsgate Harbour was an error."

4.0 LESSONS LEARNT BY MEMBERS OF THE OVERVIEW & SCRUTINY PANEL

On the advice from the TFG, Members of the Panel acknowledged the following as lessons learnt by Council as a result of the Transeuropa debt issue:

1. Members acknowledged that some lessons had been learnt from this incident; particularly the need for efficient record keeping of engagement with third parties and within Council when transacting important Council business (including commercial transactions).
2. There was a need to conduct comprehensive analysis of all financial risks that could occur and determine what mitigatory measures Council would need to put in place in order to minimise such risks.

3. There was a need to provide evidence that Cabinet was making appropriate calculated risk management for any debts even before such debts accrue to £150,000 are reported to Cabinet and Full Council;
4. After the local government elections in May 2015; appropriate in-depth Member training should be provided to all elected Members;
5. Specific training should be provided to Cabinet Members;
6. When faced with a situation where there is a lack of information for Members to make informed decisions in future; Members should challenge officers and demand to be given adequate information;
7. If then Members still do not get the requested information; corrective action should be taken against officers;
8. In future, if TDC sought an agreement for the re-arranging of debt; Audit should check if such an arrangement is effective and efficient;

4.1 LESSONS LEARNT BY THE PAST & CURRENT CABINET

Members of the past and current Cabinet expressed the view that there were some lessons to learn from this incident. These include:

1. All officers and Members involved in the decision making process made their best efforts in making the best decisions. They thought through issues that were extremely complicated and involved complicated permutations;
2. That if Cabinet had known that the debt was never going to be made right, Members would have stopped the arrangement made with the ferry company;
3. The importance of having robust corporate processes was highlighted in this incident; including the need to have robust audit trail and recording of officer meetings in relation to this subject;
4. The need for more clarity for the Leader of Council, other Cabinet Members and officers when handling such matters in the future.
5. The role of Section 151 Officer should be separate from that of the Chief Executive.
6. Council could consider a different form of governance arrangements for the Ramsgate Port. Council could consider setting up the Ramsgate Port as a separate business entity that is run outside the other Council business activities and then getting a dividend from the operations of that business

4.2 LESSONS LEARNT BY TDC OFFICERS

The following are the lessons learnt as reflected by senior Council officers:

1. The need for formal noting of significant decisions. This included the need for recording sensitive confidential commercial information;
2. The need to ensure the recording of Member and officer decisions;
3. The need for setting up formal timelines in the process of recording these important corporate decisions;
4. The need to acquire evidence regarding the due diligence that would have been carried out on any new investor(s) to ascertain their viability on a proportional basis;
5. The need to have a criteria for processing key decisions: - The structure of decision making should be timed so that Members and officers know when to make tough choices by setting 'trigger-points' in the decision making process;
6. There was need to include the legal steps to be taken in order to recover debts that relate to port customers. This included the need to look at such issues as 'securing Council debts.'

5.0 SUMMARY OF RECOMMENDATIONS

As a result of these findings the following recommendations were adopted by the Panel, incorporating minor changes agreed at the meeting:

1. In future commercial agreements relating to debt and similarly significant matters should be kept on record; supported by adequate (fulsome and complete) records of the following:
 - a. All meetings held by officers, Members and other relevant parties;
 - b. All relevant telephone conversations by officers, Members and other relevant parties;
 - c. All emails and other correspondences between officers, Members and other relevant parties;
 - d. Members generally agreed that all this information should kept in chronological order and in sufficient detail. Such information should be supplied to Members when required.
2. Council should conduct detailed risk analysis on any major projects and such information should be disclosed to Members;
3. Make available relevant commercial information (e.g. rules governing the lien issues); could be made available to senior Members of Council across political parties;

4. Council should adopt a reporting procedure to Cabinet to make Members aware of the build-up of the debt before such debts are report to Full Council when they reach the £150,000 limit;
5. In carrying out a financial risk assessment, due diligence should also be conducted and the outcome reports should be made fully available to Cabinet Members;
6. Council should provide appropriate in-depth training to all elected Members;
7. Council should provide specific training to Cabinet Members;
8. In future, if TDC sought an agreement for the re-arranging of debt; Audit should check if such an arrangement is effective and efficient;
9. Where there is a lack of information for Members to make informed decisions in future; Members should challenge officers and demand to be given adequate information;
10. If then Members still do not get the requested information; corrective action should be taken against officers;
11. Council should not waste any more of the tax payers' money to recover the debt unless new information emerges.

6.0 Discussion and Options

- 6.1 In the consideration of these recommendations it would be appropriate to view these in the context of the District Auditors report, especially in relation to its reflection on the specific issue of confidentiality faced by the council. In addition, recommendations covering similar areas have been consolidated.
- 6.2 Accordingly, the following amended recommendations are proposed:
 1. Commercial agreements relating to debt and similarly significant matters should be managed in accordance with the following principles:
 - a. Recording of significant meetings held by officers, Members and other relevant parties;
 - b. Recording of significant and relevant telephone conversations by officers, Members and other relevant parties;
 - c. Retention of significant notes, emails and correspondence between officers, Members and other relevant parties – subject to the council's information retention policy;
 - d. Information should be retained in chronological order and in sufficient detail to support subsequent scrutiny;
 - e. Information would be supplied to members in accordance with the council's constitution. As agreed at the Extraordinary Governance and Audit Committee on 26th February the method and scope of sharing key commercially sensitive material will be judged on a case by case basis. Whilst the regular release of this confidential material

to third parties is still occurring, decisions on the sharing of material will favour the restriction of information, unless its confidentiality can be guaranteed by other means;

2. The Cabinet Member for Financial Services should be informed of the build-up of the potentially significant debts with a detailed risk analysis and due diligence reports before such debts are reported to Full Council when they reach the £150,000 limit;
3. Council should provide appropriate training to all elected Members on debt issues, with specific in-depth training for Cabinet Members;
4. Agreements for the re-arranging of debt payments should be considered by the Audit Service to ensure that these are effective, efficient and risk managed;
5. Members need relevant and appropriate information to make decisions and such information should be disclosed to Members by Officers in accordance with the principles in 1e above;
6. Council puts on hold steps to recover the TEF debt unless new information emerges to support action.

6.3 Cabinet may choose to adopt recommendations as set out above in 6.2 or in Section 5, with or without further amendments.

6.4 Additionally, Cabinet may consider referring any of the adopted recommendations that require incorporating practices into corporate governance procedures to the Governance and Audit Committee for action.

7.0 Corporate Implications

7.1 Financial

7.1.1 The outstanding debt in respect of Transeuropa has been written off within the 2012/13 accounts, as already approved by Members. It has been assumed, for the purpose of the write-off, that none of the outstanding debt will be repaid as part of the winding up of Transeuropa.

7.2 Legal

7.2.1 The Council has been advised by its external lawyers that it has no reasonable prospects of recovering the debts attributable to the collapse of Transeuropa Ferries NV and its associated companies.

7.3 Corporate

7.3.1 Effective governance arrangements require that the Overview & Scrutiny Panel plays an effective critical friend role to executive decisions.

7.4 Equity and Equalities

7.4.1 There are no equity and equalities issue arising directly from this report.

8.0 Recommendations

8.1 Adopt the consolidated and amended recommendations as set out in 6.2 above;

8.2 Refer the adopted recommendations to Governance and Audit Committee to incorporate these in corporate governance procedure where appropriate.

9.0 Decision Making Process

9.1 This is a review project that was assigned to a sub-group by the Overview & Scrutiny Panel at the request of Full Council. The final recommendations were being referred to Cabinet for consideration as the executive make the final decision on such matters.

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Annex List

None	N/A
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Background Papers

Title	Details of where to access copy
None	N/A

Corporate Consultation Undertaken

Finance	Sarah Martin, Financial Services Manager
Legal	Harvey Patterson, Corporate & Regulatory Services Manager