

Notice of:	EXECUTIVE
Decision Number:	EX24/2018
Relevant Officer:	Steve Thompson, Director of Resources
Relevant Cabinet Member:	Councillor Simon Blackburn, Leader of the Council
Date of Meeting:	21 May 2018

PROVISION OF A BUSINESS LOAN TO BLACKPOOL TEACHING HOSPITALS NHS FOUNDATION TRUST

1.0 Purpose of the report:

1.1 To support the Council’s local public sector partner, Blackpool Teaching Hospitals NHS Foundation Trust (“the Foundation Trust”), with its investment in front-line services by facilitating a debt restructure via the Council’s Business Loans Fund.

2.0 Recommendation:

2.1 To authorise the provision of a £27,100,000 plus fees loan over a 25-year repayment period to the Foundation Trust, on the terms outlined in Paragraph 5.4.

2.2 To delegate to the Director of Resources the approval of any further detailed terms for the provision of the loan.

2.3 Subject to the approval of 2.1, to authorise the Council’s Deputy Head of Legal Services to draw up and enter into a suitable legal agreement with the Foundation Trust.

3.0 Reason for recommendation:

3.1 To provide the funding that the Foundation Trust is seeking to allow it to restructure some debt, releasing resources for the investment in its front-line services.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council’s approved budget? Yes

3.3 Other alternative options to be considered:

The only alternative option for the Council is not to progress this loan which would prevent both the Foundation Trust and the Council from making savings to their respective budgets.

4.0 Council Priority:

4.1 The relevant Council priorities are: “The economy: Maximising growth and opportunity across Blackpool” and “Communities: Creating stronger communities and increasing resilience”.

5.0 Background Information

5.1 The Council meeting on 23 February 2017 approved as part of the General Fund Revenue Budget 2017/2018 an increase to the Council’s Business Loans Fund from £10.0m to £100.0m and with immediate effect.

5.2 The very first loan issued from this increased facility was one of £9,230,000 to the Foundation Trust itself for the purpose of investing further in its transformation programme and bolstering its working capital. This loan was secured against the Foundation Trust’s income-generating multi-storey car park and was sourced from the Public Works Loan Board. Loan repayments have since been made in accordance with the pre-agreed schedule.

5.3 In the New Year the Council was once again approached by the Foundation Trust about a further loan for the purposes of restructuring an existing loan that had been taken out with the Foundation Trust Finance Facility back in 2009. Unlike the previous loan this one would be unsecured as there are insufficient non-operational assets to secure against and the Foundation Trust is not legally allowed to secure against operational assets, but it would be issued on the basis of creditor assurance as laid out in Department of Health guidance (see paragraph 10.1).

5.4 The Council’s Business Loans Fund Panel has recommended approval of a loan to the Foundation Trust on the following terms:

- a loan of up to £27,100,000 plus fees
- a repayment term of 25 years
- an interest rate to be set at the mid-point of the Foundation Trust’s current loan rate and the standard Public Works Loan Board Equal Instalments of Principal (EIP) rate on the day the 25-year loan is raised
- unsecured on the basis that all liabilities of a Foundation Trust are protected by the Department of Health
- a one-off arrangement fee of 0.5% be applied (lower than the standard 0.75% in view of the lighter touch due diligence and monitoring regime required), which

will include legal fees and can be rolled into the overall loan value

- to delegate to the Director of Resources any further detailed terms not stated above.

5.5 This application is different from normal business loans in terms of the nature of the applicant as a strategic public sector agency. A detailed assessment of the financial position of the Foundation Trust has not been undertaken. The key issue is whether the Foundation Trust is in a position to repay a loan of this scale and what recourse the Council would have should in the worst case scenario the Foundation Trust were to default on its loan or be placed in special measures. This is detailed further in the Risk Management Considerations section (paragraph 10.1).

5.6 Does the information submitted include any exempt information? No

5.7 **List of Appendices**

None.

6.0 **Legal considerations:**

6.1 As the loan will not be used to invest in services offered by the Foundation Trust of a commercial nature then it is not considered that state aid can apply. The Council has the powers to make such a loan under the general powers of competence under the Localism Act 2011 Section 1.

6.2 Subject to the approval of the loan, a legal agreement will be drawn up by the Council's Deputy Head of Legal Services.

7.0 **Human Resources considerations:**

7.1 None.

8.0 **Equalities considerations:**

8.1 None.

9.0 **Financial considerations:**

9.1 As outlined above in the Background Information section.

10.0 Risk management considerations:

- 10.1 Guidance has been produced by the Department of Health with regards to unsecured creditors entitled *NHS Trust and foundation trust special administration – a guide for unsecured creditors*, Department of Health, November 2015. The 2015 version replaced the 2013 guidance, taking into account recent Acts which have strengthened the Trust Special Administrator's regime. However, the fundamental principles in relation to creditors' rights remain unchanged. The key sections worth noting in terms of a Trust getting into financial difficulty are sections 6/7 and 8:

6. Is the Secretary of State liable for all the liabilities of a dissolved NHS trust?

The Secretary of State has an obligation to deal with all of the liabilities of an NHS trust that is dissolved at the conclusion of the TSA Regime¹. Section 70 of the 2006 Act places a duty on the Secretary of State to transfer all of a dissolved NHS trust's liabilities to another NHS body, to the Secretary of State, or to Welsh Ministers. This means that all creditors of an NHS trust are protected and all liabilities of all NHS trusts are safeguarded.

7. Is the Secretary of State liable for all the liabilities of a dissolved foundation trust?

In the event that a decision is made at the conclusion of the TSA Regime to dissolve an FT, Monitor must make an order under Section 65LA of the 2006 Act to dissolve that FT. The order must provide for the transfer of all of the FT's liabilities to another NHS body, to the Secretary of State, between more than one NHS body or between one or more NHS bodies and the Secretary of State. This means that all creditors of an FT are protected and all liabilities of all FTs are safeguarded.

8. Does the TSA Regime mean that in all cases 100% of any due debt/liability will be met according to current terms of business with suppliers and there are no circumstances in which creditors might be offered anything less than this?

The appointment of the TSA does not affect any contractual obligations that the NHS trust or FT owes to third parties. If an NHS trust or FT is under a contractual obligation prior to the appointment of the TSA, it will continue to be after that appointment. As stated under question 6, section 70 of the 2006 Act places a duty on the Secretary of State to deal with all the liabilities of any NHS trust that is dissolved, and an order made by Monitor under section 65LA of the 2006 Act will transfer all liabilities of an FT that is dissolved as set out under question 7.

NHS legislation does not impose a duty on a TSA to meet debts according to current terms of business with suppliers. Our expectation is that a TSA will strive to deal with debts in accordance with current terms of business. Suppliers will need to decide for themselves the terms on which to do new business with an NHS trust or FT under trust special administration. However, an NHS trust or FT to which a TSA has been appointed

remains covered by the section 70 obligations (in relation to NHS trusts) or section 65LA obligations (in relation to FTs), which have the effect of safeguarding all liabilities.

The guidance therefore provides reassurance that any loan agreement between the Council and an NHS Trust is secure in that any temporary or replacement body will become responsible for all liabilities.

11.0 Ethical considerations:

11.1 The Council is able to support its residents indirectly by providing better value financing to another public sector third party.

12.0 Internal/ External Consultation undertaken:

12.1 Consultation has been undertaken internally with the Council's Treasury Management Panel and Business Loans Fund Panel and externally with the Foundation Trust's Finance Committee.

13.0 Background Papers

13.1 NHS trust and foundation trust special administration – a guide for unsecured creditors, Department of Health, November 2015.

Confidential Treasury Management Panel working papers and Business Loans Fund Panel minutes that by their commercially sensitive nature are not available for public inspection.

14.0 Key decision information:

14.1 Is this a key decision? Yes

14.2 If so, Forward Plan reference number: 2/2018

14.3 If a key decision, is the decision required in less than five days? No

14.4 If **yes**, please describe the reason for urgency: N/A

15.0 Call-in information:

15.1 Are there any grounds for urgency, which would cause this decision to be exempt from the call-in process? No

15.2 If **yes**, please give reason:

16.0 Scrutiny Committee Chairman (where appropriate):

Date informed: 11 May 2018 Date approved: N/A

17.0 Declarations of interest (if applicable):

17.1 Councillor Benson declared a Disclosable Pecuniary Interest, the nature of the interest being that Blackpool Teaching Hospitals NHS Foundation Trust the proposed loan recipient was her employer. Councillor Benson left the room during consideration of the item and took no part in the discussion or voting thereon.

18.0 Executive decision:

18.1 The Executive agreed the recommendations as outlined above namely:

1. To authorise the provision of a £27,100,000 plus fees loan over a 25-year repayment period to the Foundation Trust, on the terms outlined in Paragraph 5.4.
2. To delegate to the Director of Resources the approval of any further detailed terms for the provision of the loan.
3. To authorise the Council's Deputy Head of Legal Services to draw up and enter into a suitable legal agreement with the Foundation Trust.

18.2 Date of Decision:

21 May 2018

19.0 Reason(s) for decision:

To provide the funding that the Foundation Trust is seeking to allow it to restructure some debt, releasing resources for the investment in its front-line services.

19.1 Date Decision published:

22 May 2018

20.0 Executive Members in attendance:

20.1 Councillor Blackburn, in the Chair

Councillors Cain, Campbell, Cross, Jackson, Smith, I Taylor and Mrs Wright

Note: Councillor Benson having declared a Disclosable Pecuniary Interest left the room during consideration of the item and took no part in the discussion or voting thereon.

21.0 Call-in:

22.0 Notes: