

Subject:	Cash Collection - Company Administration Update		
Date of Meeting:	24 July 2018		
Report of:	Executive Director, Finance & Resources		
Contact Officer:	Name:	Nigel Manvell	Tel: 29-3104
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1 SUMMARY AND POLICY CONTEXT:**

- 1.1 Previous reports regarding the insolvency of the council's former security carrier provider, CoinCo International Ltd (CCI), advised that updates would be given to the Audit & Standards Committee regarding the progress of the company administration process as appropriate. This report provides a further update following publication of the Joint Administrators' latest progress report regarding the CCI administration on 25 April 2018. The report provides the strongest evidence to date that CCI appeared to be wrongfully trading while insolvent.

2 RECOMMENDATIONS:

- 2.1 That the Committee note the report.

3 CONTEXT/BACKGROUND INFORMATION

- 3.1 In 2014, the council's contractor for providing cash collection services, Coin Co International Plc ('CCI'), entered into administration owing the council £3.243 million. The company, locally based in Burgess Hill, had been in operation for over 30 years and had been the council's security carrier provider for over 5 years from 2008. CCI's contract required payment of cash and coin collected from many council establishments and parking machines within 10 banking days.
- 3.2 A number of delays in payments over to the council were experienced in 2012/13 and CCI were accordingly requested to improve performance. CCI notified the council that they had changed banks and were experiencing processing difficulties with a new system. However delays lengthened to an unacceptable level in early 2014, and the council again took steps with the contractor to improve performance.
- 3.3 These improvements included clearing payment backlogs quickly and demanding payment over of all sums owing to the council within an agreed period. Backlog payments were made and received on arrangement for a period of months but then performance and payment delays again became unacceptable and, following formal legal exchanges, CCI were given notice with the contract terminating in August 2014.

- 3.4 The council continued to seek recovery of all sums owing at the point of termination but CCI subsequently went into administration in November 2014 owing the council £3.243m within a total debt of over £10m. It is now clear that during 2014 other creditors had also given notice, presumably due to similar performance concerns, and this ultimately resulted in the company's insolvency.
- 3.5 During the period of performance concerns there was constant communication from officers to the company and its directors, including site visits. Following termination of the contract, the council (and other major creditors) instructed CCI to provide them with independent reports concerning its financial health and its processing operations and seeking assurances over the recovery of sums owing. The report provided to the council was negative and very shortly afterward, CCI went into administration.
- 3.6 The provider was collecting between £200,000 and £300,000 per week and therefore sums collected built up quickly and the security carrier would therefore legitimately be holding between £400,000 and £600,000, under the terms of the contract, before payment over to the council. Security Carrier contractors operate in this way because they are handling cash for many organisations and can negotiate very favourable banking terms as well as providing trained and accredited security staff, appropriately modified vehicles and secure bullion facilities and premises. The terms of the contract with CCI were therefore in common with most security carrier contracts for large public or private sector clients.
- 3.7 Following insolvency, insolvency practitioners from Baker Tilley Restructuring & Recovery LLP were appointed Joint Administrators (now renamed RSM Restructuring Advisory LLP) and their initial report into the CCI insolvency (June 2015) did not provide any assurance that significant sums would be realisable on behalf of unsecured creditors. The implications of CCI's insolvency were therefore reported to Policy & Resources Committee in June 2015 (TBM Provisional Outturn 2014/15, Agenda Item 8) and the committee were advised that under the council's approved accounting policies, full provision for the potential loss would need to be made in the 2014/15 accounts. This was a one-off provision of £3.243m which the council was able to meet through prudential financial management without any direct impact on council services.

Company Administration – Latest Position:

- 3.8 RSM Restructuring Advisory LLP posted their latest progress report on 25 April 2018, and it is available to secured and unsecured creditors of CCI. It informs creditors that the administration process is ongoing and that the Joint Administrators continue to attempt to recover assets, including recovery of VAT. The main points of the report are:
- i) The period of the administration has been extended a number of times by the Court, with the latest extension being to 26 November 2018 at which point the company will be wound up;
 - ii) The latest extension is to enable the Joint Administrators to attempt to recover all realisable assets, including amounts held in foreign countries (particularly Tunisia), where this is of economic benefit. In particular, the

- realisation of assets relating to the secured creditor will be a primary aim of the Company Administration process;
- iii) The Joint Administrators state, as they have throughout, that it is uncertain that there will be sufficient asset realisations (after the costs of the administration) to enable a distribution to unsecured creditors of which the council is one of many;
 - iv) The Joint Administrators have made a number of recoveries to date, mainly through the sale of CCI's premises, however, this is not sufficient to meet the amount owed to the secured creditor, particularly after the Joint Administrators costs are taken into account. Further recoveries being attempted are not likely to meet the secured creditor's liability in full and are therefore highly unlikely to enable a 'dividend' to be paid to the unsecured creditors, which includes the council.

3.9 The above dividend outlook is in keeping with previous updates to the committee; however, it does include more information about CCI's directors and the Company's activities than previously communicated following conclusion of a number of investigations and confirmation of CCI's processing and accounting activities. The key points of note are as follows:

- i) In accordance with their statutory obligations, the Joint Administrators filed the appropriate documentation with the Department for Business, Energy and Industrial Strategy ("the Department") in relation to the conduct of the directors. The Joint Administrators have advised that the Secretary of State has now accepted disqualification undertakings from John Francis Baker, Doreen May Baker, Sean Douglas Baker and Joanne Samantha Baker for periods of 8 years each. This disqualifies them from being directors of companies as of 3 May 2018.
- ii) The Company's contract terms with its cash in transit customers varied but had a common theme. Example terms stated as follows:

"All monies collected and transported by CCI on behalf of the customer remain the property of the customer at all times until the full value of the monies collected have been paid into the nominated bank account of the customer and recognised as cleared funds";

"Within 48 hours CCI will action payment to the customer's nominated bank account for the full amount collected as listed on the cash management report. Once payment has been made all cash processed will become the property of CCI and they may dispose of them as they see fit."

However, investigation has shown that customers' monies were not in fact separated into specific nominated customer bank accounts and the directors were utilising the monies paid into a pooled bank account called UKCS1 to cover the Company's overheads before paying over collected monies to the customers.

In breach of customer contracts, the directors treated the monies in the UKCS1 account as available to the Company to use as it thought fit before accounting to customers. The UKCS1 bank account was depleted by regular transfers from this account into other bank accounts to fund the Company's trading activities. As a consequence, the Company did not retain a balance in the UKCS1 bank account equal to the amounts collected

from customers but not yet paid over to them. It is apparent that some £5m was transferred out of the UKCS1 bank account into the other Company trading bank accounts with major depletions being made in 2012, 2013 and 2014.

- iii) The Joint Administrators have fully reviewed all accounts, in particular, the last audited accounts at 31 December 2012 which appeared to show that the company was solvent with net assets of approximately £1m. However, their review has now confirmed that the Company's creditors were understated by a minimum of £2,182,973 and that the Company was insolvent at that date by in excess of £570,000. However, it is also apparent that the list provided by the directors to the Company's auditors failed to include any amounts owing to Brighton & Hove City Council and therefore the level of insolvency was in fact considerably greater.

- 3.10 The above provides the strongest evidence to date that the Company was operating fraudulently, in breach of customer contracts, and was wrongfully trading while insolvent. As such, customers of CCI would not have been able to easily detect wrongful activity that was clearly being hidden from view, including from the Company's auditors.
- 3.11 The Administrators have given notice that once the Administration process has been concluded they propose to place the Company into creditors voluntary liquidation. The Administrators will automatically become liquidators but have given notice of their intention to convene a meeting of creditors so that the creditors can consider a replacement liquidator.
- 3.12 The Joint Administrators are legally precluded from pursuing a claim for wrongful trading. However, based on their investigative work into the Company's historical accounting processes, they have advised that when the Company Administration period ends and the Company enters into liquidation, a liquidator may wish to consider a claim against the directors for wrongful trading. If Coin Co goes into liquidation, the liquidators will have the power to bring a wrongful trading claim. The 6 year limitation period starts to run on the day the company goes into liquidation (because the cause of action only accrues on this date).
- 3.13 This will need careful consideration of the legal and financial risks but a possible option could be for the liquidator to pursue a claim on a 'no win, no fee' basis or to sell the claim both of which are common practice in cases where the likelihood of success is uncertain and the potential assets that may be realised are unknown.

4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Company Administration is a legal process covered by the Insolvency Act 1986 and governed by the courts. The principal aim of Company Administration is to stop creditors taking individual legal action against a company and to enable appointed administrators to manage the process on behalf of all stakeholders. With regard to the council's activities in relation to the CCI administration process, it is therefore only able to maintain a watching brief until the Company is wound up and potentially enters into liquidation.

- 4.2 When the Company is finally wound up, there will potentially be options for the liquidators to consider, if desired, in terms of pursuing claims against the directors and/or attempting other potential recoveries as part of company liquidation. A further report will be brought before any course of action is determined, however, as the exact timing of the winding up and the outcome of the administration process are unknown, urgency powers may need to be utilised if urgent action is required to maximise the council's chance of making successful claims.

5 COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 No specific consultation has been undertaken in relation to this report.

6 CONCLUSION

- 6.1 Latest information from the appointed administrators confirms, as previously, that it remains uncertain that there will be sufficient realisations (after the costs of administration) to enable a distribution to unsecured creditors including the council. This position is not different to the Joint Administrators' previous progress reports and is the position assumed by the council (in 2014/15) for accounting purposes.
- 6.2 The latest report from the Joint Administrators does however provide strong evidence that the Company appeared to have been trading while insolvent and that the liquidators could therefore consider pursuing claims against the directors for wrongful trading when the company is wound up.

7 FINANCIAL AND OTHER IMPLICATIONS

Financial Implications:

- 7.1 This is an update report only and there are no direct financial implications relating to the report. The financial impact of the CCI insolvency has been previously reported elsewhere and is summarised in paragraph 3.7 above.

Finance Officer Consulted: Peter Francis

Date: 12/06/18

Legal Implications:

- 7.2 The bulk of the law is dealt with above. Further advice can be sought when more information becomes available in particular in reference to the financial position of the directors. This will influence whether it would be practical or cost effective to pursue them personally given that it seems the company itself has insufficient funds to meet its liabilities.

Lawyer Consulted: Simon Court

Date: 14.06.2018

Equalities Implications:

- 7.3 There are no direct equalities implications arising from this report.

Sustainability Implications:

7.4 There are no direct equalities implications arising from this report.

SUPPORTING DOCUMENTATION

Appendices:

None.

Documents in Members' Rooms:

None.

Background Documents

Reports of the Joint Administrators, RSM Restructuring Advisory LLP