

CABINET MEMBER DECISION

Date of decision - 13 JUNE 2024

SEVERN ARTS LOAN CONFIGURATION

Relevant Cabinet Member

Councillor Karen May

Relevant Chief Officer

Strategic Director for People

Local Member(s)

N/A

Recommendation

1. **The Cabinet Member with Responsibility for Communities is recommended:**
 - (a) **To consider and approve the proposal not to seek repayment of the balance of the Council loan to Severn Arts Limited;**
 - (b) **To approve the proposal that the outstanding financial loan is replaced by a legal agreement with Severn Arts limited and that the value written off is provided by cash-in-kind or equivalent by the company to support the Council's priorities; and**
 - (c) **Authorises the Strategic Director for People, in consultation with the Section 151 and Monitoring Officers, to take the actions necessary to conclude and implement the agreement.**

Background

2. In June 2017 the CMR for Communities approved the creation of Severn Arts as a separate legal entity, Company Limited by Guarantee with charitable status on or after 1 January 2018, entirely independent of the Council. The County Council has a position on the Board of the Company (currently filled by the AD for Communities).
3. The Council has a statutory duty to ensure the music components of the National Curriculum are delivered to all publicly funded schools and, more generally, to contribute to the spiritual, moral, mental and physical education of the community by securing efficient education at primary and secondary level. These are the County Council's responsibilities under the Education Act 2002. Severn Arts compliments the fulfilment of this function by the Council to fulfil these duties because it offers music education to all schools in Worcestershire, including the music components of the National Curriculum.
4. As part of the 2017 agreement the County Council approved a cash-flow loan of up to £470,000 over a period of seven years with interest repayments at a

commercial rate of 4.78%pa. The total loan provided was £400,000, and to date £276,000 is outstanding.

5. Post COVID and in the current economic climate the Company has worked hard to maintain a strong business plan and viable business, however it has become increasingly difficult for Severn Arts to operate flexibly, efficiently and responsively within an envelope that also includes the repayment of the current debt. In response and to enable the Company's financial sustainability the Council granted a deferral of the loan repayments over the last two years.

6. The Council has continued to work with officers from Severn Arts to support and test the robustness of the business plan and financial projections that have been developed by the Company. As such we are aware of the difficulties the Company is facing in this current environment and have entered discussions with Severn Arts officers around the potential restructure of the Council's loan that will enable a cash equivalent social value repayment of the outstanding amount rather than the cash repayment. It is noted that the Council's bad debt provision already provides for the full write off of this debt.

7. Looking at the financial plan and the risks associated with the Company's sources of funding there is a risk that the loan may not be capable of being repaid for significantly greater than the seven-year period originally agreed. There is a risk that repayment via the Company's reserves would lead to funds dropping below the level required by the Charities Commission.

8. The loan was secured against the Company's musical instrument assets; whilst the life of these assets is managed through the business to maintain use there is a risk of the value decreasing less than the loan outstanding value; and using these assets would also mean the Company would not be able to fulfil its purpose that it delivers for the Council's statutory duty.

9. It is proposed that the loan is substituted by a legal agreement with Severn Arts that the value written off is provided by cash-in-kind or equivalent to support the Council's priorities. For example, work has been explored with the Council's Public Health team whereby Severn Arts would focus work with deprived communities to increase music take up as this is proven to help with mental health. Another example is that Severn Arts would provide advertising and promotion of the Council's priorities, such as fostering or physical health at all their events. This can also be applied to the elderly community with events planned to connect and support the vulnerable adults.

10. A high-level plan for the next few years is being developed to identify the asks but set in detail for the coming 12 months and agreed between the Company and the Strategic Director for People, with consultation with the Director of Public Health, s151 Officer and Monitoring Officer. This process began in 2023/24 and is viewed as a valid, evidence based and real option.

11. This proposal brings a level of innovation to support the Council's preventative role in public health and raise awareness of the Council's key priorities, especially around safeguarding children, poverty, mental health, community connectivity and well-being.

Legal, Financial and HR Implications

12. The Council has explored a number of options:

- Option 1 – no change: this is not supported due to the risk to the Company's financial viability as noted above.
- Option 2 – to restructure the loan period, including a period of 'non-repayment and / or not applying the interest rate: whilst this option exists there remains a risk that the period / interest changes would both impact on state aid as well as still affecting the Company's viability. The longer the period the greater the financial sustainability of the company but the greater the risk of challenge under state aid.
- Option 3 –to write off the loan: this would result in a cost to the Council for nil return and is not supported.
- Option 4 – writing off the debt but structuring a new social value form of agreement with the Company: that ensures the Council receives the equivalent value of the outstanding loan in cash-in-kind, or social value. This option is the preferred option.
- Option 5 – bring the service back in house: this option has been discounted due to the reasons flagged in the original CMR decision that flags up the cost and ability of the council to attract grants and deliver the service.

13. Paragraph 45 of the Councils' financial regulations state that no amount due to the Council, once established, shall be discharged otherwise than by payment in full, or by writing-off the whole amount due, or an unpaid portion thereof. No amount due shall be written off except with the approval of the Chief Financial Officer (or officer appropriately delegated by him) after consultation with the appropriate Chief Officer. Any such approval shall be shown in the accounting records of the Council. The Chief Finance Officer has been consulted and agrees to the loan being replaced with a legal agreement with Severn Arts. The Council can rely on its powers under s1 Localism Act 2011 to be able to enter into a social value contract with Severn Arts. The legal team will provide advice on the terms of the contract.

Joint Equality, Public Health, Data Protection and Sustainability Impact Assessments

14. Full Equality and Public Health, Data Protection, Sustainability Impact Assessments have been carried out in respect of the recommendations.

No negative impact for protected groups were identified.

Full impact assessments are available in Appendix 1

Supporting Information

Appendix 1 – Joint Equality, Public Health, Data Protection and Sustainability Impact Assessments and project screening

Contact Points

Specific Contact Points for this report

Mark Fitton, Strategic Director for People

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Background Papers

In the opinion of the proper officer (in this case the Strategic Director for People) the following are the background papers relating to the subject matter of this report:

Decision to create Severn Arts as a separate entity:

[decision_notice_severn_arts_worcestershire_youth_music_-_potential_establishment_as_a_charitable_company_limited_by_guarantee.pdf](#)

Record of Officer Executive Decision 1 July 2020 to defer repayment of the loan: [Record \(worcestershire.gov.uk\)](#)