

Cabinet

19 October 2016

Durham County Cricket Club – Financial Support



Report of Corporate Management Team

Ian Thompson, Corporate Director Regeneration and Local Services

John Hewitt, Corporate Director Resources

Councillor Neil Foster, Cabinet Portfolio Holder for Economic Regeneration

Councillor Alan Napier, Cabinet Portfolio Holder for Resources

Purpose of the Report

- 1 To inform Cabinet of developments in relation to securing the future of first class county cricket in the county. The report will also provide an update on the finances of Durham County Cricket Club (DCCC), a change in their articles of association and subsequent restructure of the Club in response to a financial rescue package agreed with the England and Wales Cricket Board (ECB).
- 2 To also seek agreement to the Council converting its outstanding loan balance into equity in the form of redeemable preference shares in the new Community Interest Company (CIC) that will run the Club going forward as part of the rescue package to secure the future of DCCC.
- 3 The proposals set out in this report are part of an 'all creditor' agreement rescue package put forward by the ECB which they consider would ensure the retention of a financially stable first class county cricket Club in County Durham, with an ongoing commitment to limited overs international cricket being brought to the county each year and the Emirates Durham International Cricket Ground in Chester-le-Street being a Cricket World Cup venue in 2019.

Background

- 4 DCCC is an important economic and cultural asset for the county and the region more widely.
- 5 The Emirates Durham International Cricket Ground in Chester-le-Street is a world class multi-purpose events and entertainment venue that has hosted a number of prestigious, high-profile cricket matches, including an Ashes Test Match in 2013, many one day and limited overs T20 internationals plus a range of concerts, conferences, meetings and events which provide significant tourism and promotional benefits to the county.

- 6 Over the summer, DCCC made the Council and the ECB aware of the extent of the significant financial difficulties that the Club was facing and raised grave concerns over the future viability of the Club unless there was a significant restructuring of its debt position or new additional cash investment into the business. DCCC had hoped that commercial and residential developments on the site could have provided much needed financial security but it was unlikely that these benefits could be realised quickly enough.
- 7 The Council has previously provided two tranches of loan finance to DCCC, detailed as follows:
- (i) 2009-2011 - £1.5million of loans with an interest rate of 4.7% - approved by Cabinet 16 September 2009. These loans run until 2024.
 - (ii) 2013-2014 - £2.8million of loans with an interest rate of 7% - Approved by Cabinet 13 March 2013. These loans run until 2035.

Current Situation

- 8 To date all repayments of debt have been made by the cricket Club. The loans advanced were on an annuity basis, therefore in the earlier years the majority of the repayments relate to interest. The current outstanding loan balance is £3.740million. Since 2009, the Club has paid circa £680,000 in interest payments to the county Council. Had the Council had been able to invest the £4.3million advanced across this period we would have only earned around £140,000 in interest. The required debt repayment for 2016/17 is as follows:

- 9 The Club's position in relation to outstanding debts to other creditors is as follows:

- 10 Current annual revenue costs of servicing these debts is circa £1.0million and this, together with the funding model that exists within county cricket, inhibits DCCC's ability to continue to trade as a going concern at this current time without either a significant reduction in debt management costs or significant new investment in the Club. The ECB is presently reviewing the funding model of first class cricket to ensure this is sustainable in the future.
- 11 In approving the loans previously made to DCCC the Council expected the Club to deliver against its business plan and manage within the funding and resources available to the Club.

- 12 Over the last three years the Council has worked with DCCC to significantly reduce their costs with circa £1million in costs taken out of the business - mainly from a significant reduction on player costs. Similarly, the Council has worked closely with the Club to drive forward commercial development of the site including a hotel and conference centre which would help derive additional income for the Club.
- 13 Although these matters were progressing, they were fundamental to the Club's strategy of bringing further additional income to the Club and had not progressed sufficiently to avert a cash crisis across the summer of 2016.
- 14 The Club has recognised that the developments will not be finalised quickly enough to avoid difficulties caused by inadequate revenue to service debts and was involved in lengthy negotiations with the ECB for further financial support.
- 15 The ECB commissioned a review by Deloitte's of DCCC's business plan and governance arrangements to inform its position for supporting the Club going forward.
- 16 This culminated in the ECB advising DCCC that they would require a restructure of the Club's governance and overall indebtedness, through an all creditor agreement and that sanctions would apply to the Club as part of any financial rescue package they would seek to put in place.
- 17 Without additional financial support from the ECB via an 'all creditor' agreement and a restructuring of loans or a significant injection of capital from an alternate source, the Club could not continue to run on a solvent basis and across the summer appointed an insolvency practitioner to advise the Board on options available to it. The appointed insolvency practitioner (RSM UK) undertook soft market testing to gauge interest in purchasing the Club across the summer, although they were unable to find suitable buyers for the Club.
- 18 In negotiation with creditors, it was established that CR Financial Solutions (CRFS), who bought out the outstanding bank debt and the North East Local Enterprise Partnership (NELEP) had no intention of writing off their loans.
- 19 The ECB has also been negotiating with the NELEP in relation to their outstanding debt whilst the Directors of DCCC were asked to agree to write off loans or convert their loans into equity in the newly formed CIC to run the Club going forward.
- 20 The ECB is in turn willing to take on and hold the bank debt which would effectively increase the ECB debt levels to circa £3.8million, in line with the loan outstanding to the Council.

Way Forward

- 21 In anticipation of preserving county cricket and with ECB support, DCCC has resolved (via an Extraordinary General Meeting of the Club on 7 September, 2016) to form a CIC, which will involve a New Chairman, a new Board of Directors and a new management structure in due course.

- 22 The ECB wrote to the Council on 6 October 2016 to request that the Council agree to its loan being converted into redeemable preference shares of the same value in the new CIC to enable the Club to continue as an international cricket venue and to provide county cricket going forward, overseen by a financially stable CIC. A copy of the letter from the ECB is attached at Appendix 2.
- 23 This is a proposal put to the Council as part of a rescue package to retain first class county cricket in County Durham. The ECB has advised that it would have no problem with the Council having redeemable preference shareholding in the CIC, with a view to the Council having the possibility of recovering its full loan value through dividend payments over time. A CIC is able to distribute up to 35% of any distributable profits annually to shareholders.
- 24 The ECB have also committed to the Council receiving an equally proportionate amount of any special fee payments due to the DCCC over the coming years, which will be retained by the ECB to pay down the circa £1.8million of its loans that will remain due going forward. The ECB have proposed to write off £2million of its loans as part of a compensation arrangement for withdrawing the ability for DCCC to bid to hold test matches in the foreseeable future.
- 25 The replacement of the entire board and a new management structure to run the Club is a key requirement underpinning the ECB's proposals.
- 26 Following a request from DCCC, the Council has consented to put a stay on the loan repayments that were due in October while the proposals are fully considered. A similar request made to the ECB and to the NELEP has also been supported.

Financial and Legal Implications

- 27 Having been made aware of the potential insolvency of the Club, officers have been investigating the options available to the Council.
- 28 Notwithstanding the economic impacts of losing DCCC as a sporting and cultural events venue, finance and legal officers have concluded that the sale of the Club's assets would not realistically enable the Council to recover the amount due from the Club. This is also confirmed by the soft market testing of the Club by RSM (insolvency practitioner acting on behalf of the Club).
- 29 The Council owns the land on which the Club resides. This is leased to DCCC and the lease contains a restriction on assignment without the Council's consent and therefore the Council is fully protected from any possible sale of the asset under an administration event.
- 30 If the ECB's negotiation with creditors is successful and the Club transferred to a CIC, the lease will transfer to the CIC and the Council will not lose its interest as landlord.
- 31 The ECB cannot justify extending a significant rescue package to the Club without consequences, as such a step would set a precedent in relation to other county cricket clubs. Durham has therefore been removed from the list of test match venues and will be prevented from staging tests for the foreseeable future. The Club has also been relegated into the second division

in the County Championship and will start the next season with penalty points. The ECB is however guaranteeing that international cricket will continue to be brought to the county each year - one day and limited overs T20 internationals only, including the Emirates Durham International Cricket Ground in Chester-le-Street being a Cricket World Cup venue in 2019.

- 32 The ECB has also advised that the new Chairman of the Club will have a significant national profile to extend DCCC's reputation and the Club will be required to develop its fan base and involvement with local schools and amateur cricket clubs by a much more robust outreach programme into local communities.

Options for the Council

- 33 On 13 March 2013, Cabinet considered a report advising of a request for further financial support for the Club. That report highlighted the importance of DCCC to the North East economy, albeit in the context of first class cricket with the prospect of an Ashes test.
- 34 In 2014, Global Tourism Solutions (UK) (leading industry analysts) was commissioned by DCCC to study the economic impact of visitors attending the Riverside ground. This estimated that by 2016, around 213,000 people would visit the Chester-le-Street stadium each year.
- 35 The report also suggests that by 2016, total expenditure by visitors to the stadium would have risen to £16.34million a year, including more than £5million spent in County Durham's pubs and restaurants, as well as £500,000 in local shops and on hotel accommodation.
- 36 That level of spending would be enough to support the equivalent of 240 full-time jobs in the wider economy.
- 37 In addition, in 2013 the Ashes attracted 70,000 visitors, bringing £20million into the region's economy.
- 38 In the wake of the current difficulties and the continuing climate of austerity, officers had during the summer recess advised the Club that they could not recommend the advancing of any further public money to the Club. The ECB has accepted that but has urged the Council to consider agreeing to its proposal for conversion of the loan into redeemable preference shares, details as set out in its letter dated 6 October 2016 (Appendix 2).
- 39 If the Council was to reject this proposal, there is a significant risk that the Club will need to enter into administration and the Council would be unlikely to see any sums recovered. The Council would retain ownership of the land, but county cricket in Durham could be lost for the foreseeable future as the Club went through a compulsory administration / winding down.
- 40 The current proposal secures continuation of the cricket club although in the second division initially. It is a proposal however which the ECB commends to Cabinet as one which will provide the Club with more assurance for the future in that it will be under new management without any debts to service and with a high profile, influential Chairman. If the Club does dissolve, because of the size of debt and the position of the Council in the priority list of creditors, the Council is likely to lose most if not all of the money advanced to DCCC.

Conclusion

- 41 The financial situation DCCC faces is untenable and the Club is effectively insolvent and not viable in its current state. It has been taking advice from an Insolvency Practitioner and without a restructuring and rescue package being put in place the Club will enter into administration. There is a real threat that first class cricket could be lost and a significant risk that the Council would be unable to recover the outstanding debt.
- 42 The ECB have intervened and the Club will face sporting sanctions as a consequence of their financial position. The rescue package proposed by the ECB would see the ECB write off £2million of outstanding debts. It is recognised that the sanctions will lower the profile of the Club in the short term, however, the ECB have committed to limited overs international cricket being brought to the County each year and the Emirates Durham International Cricket Ground in Chester-le-Street being a Cricket World Cup venue in 2019.
- 43 The proposed package is contingent on the Council's participation in an 'all creditor' agreement through transferring its debt to redeemable preference shares in the new CIC. This would allow a solvent Club under new management to continue and over time grow. The ECB have also committed to the Council receiving an equally proportionate amount of any special fee payments due to DCCC over the coming years.
- 44 The Council's role and participation in the new Board is still to be determined.
- 45 The proposals put forward by the ECB carry the prospect of the Council ultimately recovering its investment by way of dividend and / or special fee payments and does not involve the Council paying any further monies to the Club. The alternative of not agreeing to this proposal is the likely loss of most, if not all, of the Council's advanced capital outstanding and the potential loss of Durham as a first class county cricket club and international cricket being played in the County going forward.
- 46 On balance, the recommendation is therefore to accept the proposal made by the ECB.

Recommendations

- 47 Cabinet is asked to:
- (i) Agree to convert the outstanding balances on the loans advanced by the Council to DCCC in 2009, 2011 and 2013 – currently £3.740million - to equity in the form of redeemable preference shares in the newly formed CIC to run DCCC going forward;
 - (ii) Note that the new CIC will be overseen by a new Chair, a new Board of Directors and a new management team going forward;
 - (iii) Delegate to the Corporate Directors of Resources and Regeneration and Local Services, in consultation with the Cabinet Portfolio Holders

for Finance and Regeneration and Economic Development, authority to finalise the terms of the conversion and shareholding in the new CIC.

Background Papers:

Report to Cabinet 13 March 2013 - Durham County Cricket Club - Financial Support.

Contact: Ian Thompson

Tel: 03000 267331

Appendix 1: Implications

Finance – The county Council has previously provided two tranches of loan finance to the cricket Club totalling £4.3million. To date all repayments of debt have been made by the cricket Club. The loans advanced were on an annuity basis, therefore in the earlier years the majority of the repayments relate to interest. The current outstanding loan balance is £3.740million. Since 2009, the Club has paid circa £680,000 in interest payments to the county Council. Had the Council been able to invest the £4.3m advanced across this period we would have only earned around £140,000 in interest.

Over the last three years, the Council has worked with the cricket club to significantly reduce their costs with circa £1million in costs taken out of the business - mainly from a significant reduction on player costs. Similarly, the Council has worked with the Club to drive forward the commercial development of the site including a hotel and conference centre which would help derive additional income for the Club.

Although these matters were progressing, they were fundamental to the Club's strategy of bringing further additional income to the Club and had not progressed sufficiently to avert a cash crisis across the summer of 2016.

The Club has recognised that the developments will not be finalised quickly enough to avoid difficulties caused by inadequate revenue to service debts and was involved in lengthy negotiations with the ECB for further financial support.

Without additional financial support from the ECB: an all creditor agreement and restructuring of loans or a significant injection of capital from an alternative source, the Club cannot continue to run on a solvent basis and is currently working with insolvency practitioners. The Insolvency Practitioners have been unable to find suitable buyers for the Club.

The Council has been asked by the ECB to agree to its loan being converted to equity in the form of redeemable preference shares of the same value in the new CIC to enable the Club to continue as an international cricket venue and to provide county cricket going forward, overseen by a financially stable CIC.

This is a proposal put to the Council as part of an all creditor agreement rescue package to avoid the need to force its dissolution by pressing for immediate payment of some or all of the debt.

The rescue package proposed by the ECB would see them take on and write off the Clubs bank debt. This would take their financial commitment / support to £3.8million. The ECB have given a commitment to writing off £2.0million owed to it by the Club. This would be treated as compensation for DCCC being removed as a test venue. This will lower the profile of the Club in the immediate term, however, ECB have committed to limited overs international cricket being brought to the County each year and the Emirates Durham International Cricket Ground in Chester-le-Street being a Cricket World Cup venue in 2019.

Staffing – None specific in this report.

Risk – The rescue package put forward by the ECB is contingent on the Council transferring its debt to equity in the form of redeemable preference shares in the

newly established CIC. If the Council was to reject this proposal, there is a significant risk that the Club will be insolvent with the Council unlikely to see any sums recovered and county cricket in Durham could be lost for the foreseeable future as the Club went through a compulsory administration / wind down.

If the Council does not participate in the rescue package put forward by the ECB. Cabinet should note the real likelihood of the Council not recovering its loan under an administration event / winding up of the Club. Although there is not a 100% guarantee of recovering all outstanding sums via the option put forward by the ECB it is hoped the Council would be able at least to recover a high proportion of the sums outstanding.

In this regard the prospects of any future dividend payments being forthcoming is a risk, though the business plan would indicate that once the debt liability is removed and with the future forecasts of ECB funding that DCCC should be able to generate annual profits. In considering this Cabinet should note that there is no guarantee of the outstanding sums being recovered in the short-term and that the investment would be a long term investment in the Club.

Equality and Diversity / Public Sector Equality Duty – None specific in this report

Accommodation – None specific in this report

Crime and Disorder – None specific in this report

Human Rights – None specific in this report

Consultation – None specific in this report

Procurement – None specific in this report

Legal Implications – In anticipation of preserving Club cricket and with ECB support, the Club has resolved (via an Extraordinary General Meeting of the Club on 7 September, 2016)) to form a CIC, which will involve a New Chairman, a new Board of Directors and a new management structure in due course. The Club will need to formally incorporate the new CIC, though this is seen as a formality.

The Council has been asked by the ECB to agree to its loan being converted to equity in the form of redeemable preference shares in the new CIC to enable the Club to continue as an international cricket venue and to provide county cricket going forward, overseen by a financially stable CIC.

This is a proposal put to the Council as part of a rescue package to avoid the need to force its insolvency by pressing for immediate payment of some or all of the debt. The replacement of the entire board and a new management structure to run the Club is a key requirement underpinning the ECB's proposals.

Under s 1 of the Localism Act 2011 and other legislative provisions relating to Council functions, the Council has the power to agree to this arrangement.

It should however consider its duty to care for the public purse and ensure that its decision is rational and lawful. The report contains the details of the Council's position in the event of insolvency and also balances the pros and cons of not agreeing to the arrangement proposed. In terms of state aid factors the Council is

faced with the possibility of losing its investment. Agreeing to this proposal provides the Council with the opportunity of recovering moneys through dividends.



Mr Terry Collins
Chief Executive
Durham County Council
County Hall
Durham
County Durham
DH1 5UQ

STRICTLY PRIVATE AND CONFIDENTIAL By email and first class post

6 October 2016

Dear Mr Collins,

Durham Cricket Limited (“Durham”)

I write further to the latest developments regarding Durham.

Specifically I want to confirm the details of the latest financial rescue package which the ECB offered to Durham last Friday and to seek the further ongoing support of Durham County Council in putting in place an ‘all-creditors’ solution which enables Durham, under a new Chairman and new board management, to build a business which is financially viable in the medium to long-term.

Separately, the ECB is engaging in discussions with the LEP in order to seek their support for such a solution.

Whilst the ECB has welcomed Durham’s adoption of a new constitution to enable it to apply to become a ‘Community Interest Company’, as you are aware we have again been requested to offer further substantial financial support to Durham, including to cover its short-term operational costs and to pay for an assignment of the significant six-figure CRFS debt in order to avoid CRFS calling in its loan and forcing Durham into insolvency.

After careful consideration, the ECB Board decided to offer Durham this and further financial support, subject to a suitable all-creditor solution being agreed and a number of cricketing sanctions and other conditions being accepted by Durham, as detailed in our 30 September letter to DCCC.

I can confirm that the Durham Board formally accepted this offer on Monday 3 October. The further financial rescue package offered by the ECB takes Durham's total debt to the ECB up to £3.8 million, an entirely unprecedented level of debt for the ECB to bear.

The ECB is not seeking Durham's cash repayment of this debt, but has instead offered to write down £2 million of the debt in consideration of Durham's waiver of its right to stage 'Test Match' cricket (although Durham will remain eligible to host other forms of International cricket), with the balance being set off against 'special' fee payments which the ECB hopes to make to all First Class County Cricket Clubs in the future.

The ECB Board's decision to make its latest financial offer took into account, among other things, the fact that the insolvency specialists appointed by Durham this summer to advise it on insolvency options and to test the market for potential purchasers of Durham's business and assets have found no viable third party interest. Indeed the only third party which has expressed any provisional interest is backed by an individual who would not pass the ECB's fit and proper person test.

It is also clear that Durham's acceptance of the ECB's offer is only a short-term and part solution to Durham's financial predicament. We have calculated that Durham will still also need considerable assistance from Durham County Council (as well as the LEP) to enable it to get properly back onto its own financial feet and thereby protect and secure the future of first class and international cricket in County Durham and the North East of England as a whole.

As you know, there are many benefits of retaining a First Class County Cricket Club at Durham, especially given its focus on recreational cricket and wider community integration as a CIC. The ECB will be working with Durham to ensure that those running the professional and recreational game in Durham work together in a fully aligned and integrated manner, so as to best deliver benefits for the local communities at all levels. Durham's long term survival will also enable it to play its part as a venue which stages not only international and top-level domestic cricket, but also matches during the ICC Cricket World Cup 2019 which will be the biggest cricket event ever staged in this country.

In terms of the specific Durham County Council assistance which we see as being vital to achieving the medium and long-term survival of Durham as a solvent and financially stable entity, we believe that it is necessary for Durham County Council to agree:

- (i) to convert its debt into redeemable preference shares in the new Durham CIC entity on terms that those preference shares would be redeemed on a preferential basis out of Durham's distributable profits to repay the converted debt; and
- (ii) to enter into an immediate standstill agreement with Durham on terms that no interest or capital repayments would fall due on Durham County Council's loan to Durham pending the above debt to equity conversion.

The ECB in return is prepared to agree with Durham County Council that it will not receive any greater repayment of its outstanding Durham debt than Durham County Council receives via its redeemed preference shares when the ECB decides the extent to which it will withhold payment to Durham of any part or all of the 'special' fee payments which it makes to First Class County Cricket Clubs in the future. Further details of those ECB 'special' fee payments are detailed in our 30 September 2016 letter to the cricket club. Whilst the ECB recognises the pressure on all Local Authorities in the current climate, without such support and a robust all-creditor solution, the future looks bleak for Durham and it is our view that Durham will be left servicing an unsustainable amount of debt and become insolvent, with the result that Durham County Council and other creditors would be left very significantly out of pocket.

I am confident however that, if we work closely with Durham County Council, the LEP and the new Durham leadership, to build a sustainable restructuring plan for Durham along the above lines, that ongoing co-operation will materially increase the likelihood of Durham County Council, the LEP and the ECB ultimately recovering their debts in full.

On a more positive note, I am pleased to advise you that the ECB is currently discussing Durham's position with Sir Ian Botham, who played for Durham shortly after they achieved First Class status in 1992. Sir Ian is interested in playing a leadership role at Durham, but in order for him to do so, he will need assurances in relation to the financial status of the business. I will keep you informed of developments on this.

The ECB Chairman, myself and other senior ECB management colleagues would also be more than happy to come to Durham to present to you and your fellow Cabinet members on how, with the above all-creditors solution, we see the new Durham benefitting all the local communities, building a sustainable business and in time repaying its debts.

I look forward to hearing from you at the earliest opportunity.

Yours sincerely



Scott Smith

Enc