



SHAREHOLDER BOARD

Friday 25 March 2022

REPORT TITLE:	WIRRAL EVOLUTIONS LIMITED - CONTRACT TERMINATION
REPORT OF:	DIRECTOR OF DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

Wirral Council has conducted a Value for Money Review of the services provided by Wirral Evolutions Limited (the 'Company') and the review was presented to the Council's Adult Social Care and Public Health Committee on 3 March 2022.

The Adult Social Care and Public Health Committee approved the transition of the services currently supplied by the Company to the Council by 31 September 2022 and recommended to the Shareholder Board that the Director of Law and Governance be authorised to progress the necessary steps to transfer the Company's undertaking to the Council, including the cancellation of the current contract with the Company and to consider all appropriate options for the future deployment or disposal of the Company .

The Wirral Plan 2021 - 2026 sets out the Council's vision to secure the best possible future for the Council's residents and covers the following five themes:

- A thriving and inclusive economy, creating jobs and opportunities for all;
- A clean-energy, sustainable, borough, leading the way in tackling the environment crisis;
- Brighter futures for all regardless of their background;
- Safe and pleasant communities that our residents are proud of; and
- Healthy and active lives for all, with the right care, at the right time.

This report aligns with the themes of brighter futures for all regardless of their background; safe and pleasant communities that our residents are proud of and healthy and active lives for all, with the right care, at the right time.

This affects all wards.

This is not a key decision.

RECOMMENDATIONS

The Shareholder Board is recommended to:

- (1) note the decision of the Adult Social Care and Health Committee in relation to the matter of the Wirral Evolutions Limited Value Review Report as summarised at paragraph 3.2 of this report; and
- (2) authorise the Director of Law and Governance to progress the necessary steps to transfer the Company's undertaking to the Council, including the cancellation of the current contract with the Company and to consider all appropriate options for the future deployment or disposal of the Company.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Shareholder Board discharges the shareholder function of the Council in accordance with the Council's Constitution should formally note the decision of the Adult Social Care and Public Health Committee to terminate the contract for day services for people with learning disabilities currently being delivered by the Company to the Council.
- 1.2 To facilitate the transfer of the Company's undertaking and ensure continuity of service to service users it is important that all necessary actions to effectively transfer the undertaking of the Company to the Council including such matters as contract and lease terminations, the transfer to the Council of all relevant supply and service contracts entered into by the Company, to effect the transfer of all Company Employees to the Council in accordance with the Transfer or Undertakings (Protection of Employment) Regulations 2006, transfer of software licences and all other intellectual properties (including the trading style 'Wirral Evolutions') are effectively discharged within the projected timescale of six months from 1 April 2022.
- 1.3 So as to update Shareholder Board on the progress of the transfer of the Company's undertaking a detailed project and actions time plan is being developed by officers and this will be the subject of a progress report to be delivered to Shareholder Board at a future date.
- 1.4 As it is imperative to engage with all relevant parties a consultative board will be established to ensure that service users, cares and parents are engaged in the transformation process.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 As this report requests Shareholder Board to give effect to a decision of the Adult Social Care and Public Health Committee, no other options have been considered.

3.0 BACKGROUND INFORMATION

- 3.1 The contract to provide services to support adults with a learning disability was first awarded to the Company in 2015 and has been renewed continuously with minor variations since then.
- 3.2 The Company is generally well regarded by people that use its services, carers and staff, however, the rationale for delivering services via the current delivery model and the added value of such a model to the Council and service users is no longer clear. This is in no way a criticism of the quality of services delivered by the Company, the dedication of its staff and management team nor the commitment of the Board of Directors to service users. The focus of the decision made by the Adult Social Care and Public Health committee at its meeting on 3 March 2022 related to a change to the delivery model which will sustain and improve services for the Council's service users and safeguard staff, whilst seizing opportunities as they emerge in connection with the health and care transformation agenda. An extract from the Minutes of Adult

Social Care and Public Health committee meeting is attached at Appendix 1. The second recommendation within this report is from the Adult Social Care and Public Health Committee and is relevant to the Council's status as shareholder to the Company.

- 3.3 Bringing the service currently delivered by the Company in-house will enable a closer correlation between strategy development and operational delivery which will bring additional value to the current delivery arrangements and is identified as the best means of delivering day care services for adults.
- 3.4 The Council, as shareholder, has entered into a Shareholder Agreement with the Company. This Shareholder Agreement gives the Council effective and complete control over the Company.
- 3.5 The Director of Law and Governance will provide a further report to a future Shareholder Board meeting to update on the transfer of the Company's undertaking to the Council with recommendations for the future deployment of the Company, its dissolution or mothballing.
- 3.6 The Company has, in accordance with its obligations under the shareholder agreement, produced a draft annual business plan for review. The transfer of the Company's undertaking to the Council renders further consideration of this plan unnecessary.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications directly arising from the subject matter of this report.

5.0 LEGAL IMPLICATIONS

- 5.1 The activities of the Company as a trading vehicle of the Council are governed by various legislative provisions including the Local Authorities (Goods and Services) Act 1970, the Local Government Act 1999, the Local Government Act 2003 and the Localism Act 2011.
- 5.2 The transfer of the Company's existing employees to the in-house service to be delivered by the Council is governed by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') which regulate the transfer of personnel from the outgoing provider to the incoming provider. TUPE stipulates that all terms and conditions of employment (apart from existing pension rights) in force immediately prior to the transfer, are protected as is continuity of employment for the transferring employees.
- 5.3 Compliance will be required with the provisions of the Companies Act 2006 in terms of the closure of the Company as a trading entity, its dissolution and/or re-classification of as a dormant company.
- 5.4 The Council as shareholder has entered into a Shareholder Agreement with the Company. The Company has ongoing supply contracts with miscellaneous providers of goods and services. The provisions of the Shareholder Agreement and of the

Companies Act 2006 and the Council's status as owner of all the issued shares in the Company give the Council effective and complete control over the Company including all steps necessary to effectively transfer the undertaking of the Company to the Council.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no direct implications to staffing, ICT or Assets arising from the subject matter of this report.

7.0 RELEVANT RISKS

7.1 There is no risk that the Council will fail in its statutory duty to meet needs of people requiring services due to the contents and recommendations in this report

7.2 There is the potential for reputational risk to the Council if stakeholders are not adequately consulted on the proposed changes. The establishment of a Consultative Board will effectively mitigate this risk.

8.0 ENGAGEMENT/CONSULTATION

8.1 The directors and senior employees of the Company have had an opportunity to comment on the content of this report prior to publication.

8.2 Consultation with the Trades Union will be required as part of the TUPE transfer process.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

9.2 There are no direct equality implications arising from the subject matter of this report.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no direct environment and climate implications arising from the subject matter of this report.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 It is anticipated that the content and/or recommendations contained within this report will not have any negative impact on Community Wealth.

REPORT AUTHOR: Steven Krempel, Senior Solicitor
email: stevenkrempel@wirral.gov.uk

APPENDICES

Appendix 1 - Extract from Minutes of Adult Social Care and Public Health Committee meeting on Thursday, 3 March 2022

BACKGROUND PAPERS

Shareholder Agreement

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Adult Social Care and Public Health Committee: Wirral Evolutions Limited Value for Money Review Report	3 March 2022