



ADULT SOCIAL CARE AND PUBLIC HEALTH COMMITTEE

Thursday, 23 September 2021

REPORT TITLE:	REVIEW OF DAY SERVICES CONTRACT FOR PEOPLE WITH A LEARNING DISABILITY DELIVERED BY WIRRAL EVOLUTIONS LIMITED
REPORT OF:	GRAHAM HODKINSON, DIRECTOR OF CARE AND HEALTH

REPORT SUMMARY

Wirral Evolutions was created with the aim of having a Local Authority Company that could develop a more sustainable day support model, to potentially increase its income opportunities expand business and to expand its customer base outside of the Wirral Council Day Services Contract.

In February 2020, the Adult Care and Health Overview and Scrutiny Committee requested that a review should be conducted to explore all available options for future provision of Day Services for people with a learning disability, including the potential for bringing services back 'in-house' to address the financial challenges currently facing the service.

This report affects all wards but is not a key decision.

RECOMMENDATIONS

The Adult Social Care and Public Health Committee is recommended to:

1. Support the decision of the Shareholder Board to hold a workshop with Wirral Evolutions to address governance issues;
2. Agree to extend the value of the contract with Wirral Evolutions in the sum of up to £500,000 for the year 2021/22 in order to enable further time to consider and assess the company's proposals to modernise the current operating model and reduce the operating costs to ensure delivery of the service within the existing budget/contract value;
3. Agree to the request made by Wirral Evolutions to defer payment of the pension strain costs and the costs of support services bought from the Council relating to 2020/21 to support the cashflow of Wirral Evolutions Limited such deferment to continue until the end of the current financial year or such longer period as may be determined by the Director of Resources in consultation with the Director of Care and Health;
4. Request that at this stage the proposals submitted by Wirral Evolutions should not be further implemented pending the Governance Workshop between the

Shareholder Board and the company and a further report being brought back to this Committee; and

5. Request that the Director of Care and Health bring a further report back to this Committee following the Director undertaking of a value for money review as to whether Wirral Evolutions offers sufficient added value to the Council in the delivery of the contract for day services for people with learning disabilities to justify the additional costs of running an arms-length company.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATIONS

- 1.1 The Council continues to spend a comparatively higher amount of its social care resource for people with learning disabilities than other Councils and continues to have a comprehensive Day Service offer alongside other services. Day care offers a valued service to people with disabilities and their Carers which improves their quality of life.
- 1.2 In relation to the governance of Wirral Evolutions and its relationship with the Council, concerns had been raised historically regarding the transparency of Wirral Evolutions and Member and officer oversight of the Company.
- 1.3 On 1 September 2021, the Shareholder Board approved that a workshop should take place to review the governance of the company. That was in response to concerns raised in relation to a number of significant issues which are detailed within the report to that meeting of the Shareholder Board.
- 1.4 Members heard concerns in the form of an independent report (Report completed by John Campbell, Director ARCC-HR Ltd to evaluate Wirral Evolutions' Plan for Service Modernisation – August 2021) presented at the workshop on the 8th September 2021, that the proposals did not have sufficient planning and detail, particularly in relation to the potential impact upon individuals of the changes as proposed or potential loss of key skills following a comprehensive redundancy exercise as proposed.
- 1.5 It was clear from the independent report that more time would be required to consider what changes would be required and for the Council to work much more closely with the company to help it develop appropriate and sustainable plans. The Company would not be able to deliver within the contract price for 2021 whilst the Council considered the issues relating to the Company including governance, deliverability and sustainability of its plans.
- 1.6 Wirral Evolutions has not been able to expand and develop new areas of business and the social care contract remains as the core work delivered by Wirral Evolutions. This calls into question the value added by running Wirral Evolutions as an arm's length company.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 As to recommendation 1 – The Committee could decide not to support the recommendations of the Shareholder Board however it is considered that manifest governance issues exist, and it is convenient and practicable to address these in a workshop.
- 2.2 As to recommendations 2 and 3 – The company could theoretically seek financial support elsewhere, but it is considered unlikely because of the subsidiary status of the company that this could be secured from commercial external sources on acceptable terms without a formal guarantee from the Council.
- 2.3 As to recommendation 4 - The Committee could support the Company progressing with the submitted proposals however this is not considered to be an appropriate step at the current time pending the completion of a value for money report to be considered by this Committee.
- 2.4 As to recommendation 5 –The Committee could proceed without the benefit of a best value review but that would not enable the Committee to make a fully informed decision and would be contrary to best practice.

3.0 BACKGROUND INFORMATION

- 3.1 In March 2020, the Council commenced a review of the Contract for Day Services for people with a learning disability held by Wirral Evolutions. This review was paused due to the COVID-19 pandemic and resumed in October 2020.
- 3.2 Wirral Evolutions Ltd was incorporated in 2015 as a private company. The Council owns 100% of the shares in Wirral Evolutions and is the commissioner of its only significant contract, awarded in 2015, to deliver to Day Services for people with a learning disability. The Council is also the provider of traded support services and the landlord of all the premises that the company occupies. Traded services and premises are provided to the company at arm's length values and prices so as to ensure that no inappropriate subsidy (formerly called State Aid) is made to the company and funding to meet the traded services and premises costs is provided by the Council in the commissioned contract price.
- 3.3 The company has not yet succeeded in securing alternative contracts or additional growth opportunities, there is no clear evidence that the additional costs of running a company are delivering better value to the Council than the Council delivering the service itself. The current Day Service offer for people with a learning disability remains as primarily building based and follows a largely traditional “day centre” model that provides services for adults. There have however been quality improvements in recent years and the current operational management team of Wirral Evolutions is well regarded by Carers of people that attend the services on offer. There are no concerns about the quality of Wirral Evolutions’ service, and the Council does not want to cause unnecessary upset to people who access services or their family members however it is clear that the current operating model is not financially sustainable to the Council.
- 3.4 As part of its own budget proposals the Council reduced the contract overspend for Day Services for people with a learning disability provided by Wirral Evolutions by £0.5m to an annual budget of £5.015m for 2021 to 2022 and in January 2021, the

Adult Social Care and Public Health Committee supported recommendations to continue to contract with Wirral Evolutions for the 2021 to 2022 financial year. The company was invited to present proposals to modernise the current operating model and reduce the operating costs to ensure delivery of the service within the budget/contract value, which the company presented to the Adult Social Care and Public Health Committee in January 2021.

- 3.5 Adult Social Care and Public Health Committee invited Wirral Evolutions to present quarterly reports to update the Committee on its progress and has now reached the six-month formal review point to assess progress against allocated spend under the contract.
- 3.6 In order to deliver services within contract value Wirral Evolutions submitted a proposal to the Council to reduce the number of buildings from which Day Services are delivered, develop new ways of working, and the restructuring its workforce to make financial savings. These changes were proposed to both bring the service back in line with the contract for Day Services and to focus on developing a more financially sustainable service model.
- 3.7 Wirral Evolutions is planning an organisational staffing restructure, and estate rationalisation. Following the July 2021 meeting of the Adult Social Care and Public Health Committee, concerns were raised in relation to the cohesion and deliverability of the transformation plans put in place by Wirral Evolutions.
- 3.8 From July to August 2021, the Council commissioned an independent expert to meet with Wirral Evolutions to conduct a detailed assessment and review of the cohesiveness and deliverability of Wirral Evolutions' modernisation plans. The outcome of this external review was that there is an absence of detail in Wirral Evolutions documentation to fully assess the deliverability of the proposed service redesign. The report detailed that whilst the overarching proposals to move to an integrated community model and a rationalisation of estates appears financially beneficial, and keeping with both the company's vision, national policy and best practice, in reality the execution of this vision poses concern for the Council as there is an absence of fully formed plans for the service transformation.
- 3.9 The shareholder position and the proposed workshop was considered against the independent report on savings and Carer views were heard at a workshop of the Adult Social Care Committee on Wednesday 8th September 2021.
- 3.10 Members heard positive views of the progress of the company in improving provision by Carers and a positive view of the current management team. There was, however, no specific support expressed for the Company's current proposals to reduce staffing and operating venues.
- 3.11 The Council previously delivered Day Services to people with a learning disability in house until Wirral Evolutions was created. The Company delivers day services across nine venues which are owned by the Council, which is higher in comparison to neighbouring councils who utilise fewer council assets and has a reduced building-based day services offer.

- 3.12 The Council continues to face significant financial pressures, resulting from a combination of reduced national funding, the COVID-19 pandemic and the continually increasing demand on services.
- 3.13 Wirral Evolutions had a saving proposal in 2020 to 2021 that was delayed by COVID-19 and has therefore been presented for public consultation alongside the 2021 to 2022 proposals. As part of the Budget Proposals the Council reduced the contract overspend for Day Services for people with a learning disability by £0.5m to an annual budget of £5.015m for 2021 to 2022.
- 3.14 Wirral Evolutions submitted a proposal to the Adult Social Care and Public Health Committee in January 2021 to bring the operating costs back in line with the contract/budget value. There are no concerns about the quality of Wirral Evolutions service, however it is clear that the current operating model is not financially sustainable to the Council.
- 3.15 Wirral Evolutions presented a progress report in June 2021 to Adult Social Care and Public Health Committee and attended a workshop in July 2021. A further workshop was held by the Council to discuss Wirral Evolutions in September 2021, in which concerns were shared that the company's plan lacked detail regarding the timetable for completing all aspects of the modernisation plan, and issues were highlighted relating to the governance of the organisation.
- 3.16 Wirral Evolutions has a history of failing to deliver agreed services within the agreed contract price and has required financial assistance year on year.
- 3.17 The extent and cost of traded services supplied to Wirral Evolutions is undergoing review and a raft of detailed Service Level Agreements are in the process of finalisation. Historically, payment for these services has often been delayed by up to several months to alleviate cash flow difficulties experienced by the company.

4.0 FINANCIAL IMPLICATIONS

- 4.1 Wirral Evolutions submitted a savings proposal incorporating a proposal to modernise the Company's operating model in November 2020 in response to the financial challenge set by the Adult Social Care and Public Health Committee to ensure the delivery of service is within a contract value of £5.015M for 2021-2022. The Adult Social Care and Public Health Committee accepted the proposal from Wirral Evolutions in January 2021 and requested regular progress updates from the company to provide reassurance.
- 4.2 The £0.5M savings agreed by Wirral Evolutions formed part of the Council's public budget consultation, in relation to the contract for Day Services for people with a learning disability. This was approved in March 2021 by the annual Council's Budget Committee, enabling the Company to progress with providing detail of its proposal.
- 4.3 In June 2021, Wirral Evolutions was required to provide an update to the Adult Social Care and Public Health Committee, detailing its progress towards making the £0.5M savings for 2020-2021. Wirral Evolutions reported that it would not achieve the £0.5M savings and faced budget pressures due to the transition into the new staffing/organisational structure within the agreed timeframe of six months from April

to September 2021. Wirral Evolutions therefore requested financial support from the Council's Shareholder Board to find ways to alleviate the budget pressure and cash flow matters. (Shareholder Board – 1st September 2021)

- 4.4 At the September 2021 Shareholder Board meeting Wirral Evolutions requested a range of support measures from the Council. The delay in the implementation of the restructure has resulted in slippage against the current contract price for 2021/22 leading to a budget pressure. Wirral Evolutions informed the Shareholder Board in September 2021 that it required £230,707 transitional funding. The Shareholder Board noted the request, confirmed the request for a variation to the current contract price and increase to the spend is a decision of this Committee. A detailed justification for this request can be found in the report to Shareholder Board for the 1st September 2021 and the paper attached to it from Wirral Evolutions.
- 4.5 Wirral Evolutions further requested to defer payment of £875,780 which is for pension costs and support traded services costs bought from the Council relating to 2020/21. A detailed justification for this request can be found in the report to Shareholder Board for 1st September 2021 and the paper attached to it from Wirral Evolutions. The deferred payment to the Council will support the cashflow for Wirral Evolutions. The Shareholder Board noted this request and has confirmed the request for a variation to the current contract price and increase to the spend is a decision of this Committee.
- 4.6 The proposed reduction in staff at Wirral Evolutions is estimated to result in redundancy/severance costs of approximately £1M. The Council had provisionally confirmed funding of early voluntary redundancy / voluntary severance (EVR/VS) for Wirral Evolutions staff, with a two-year payback. However, in July 2021 the Council requested that further reassurance be provided about the staffing restructure before approval is given in relation to staff voluntary redundancy costs.
- 4.7 Rent charges paid by Wirral Evolutions for the nine Council owned buildings have been frozen with no uplift for many years to support the company's operating costs, however the Council's Asset Team has flagged that it is not applying commercial rents and is not charging appropriate service charges for the buildings and therefore has requested that a full review of rent and service charges takes place by December 2023.
- 4.8 Wirral Evolutions will be seen to make savings of approximately £70,000 for the two leases that it is intending to terminate with the Council as the landlord for the two buildings that it plans to no longer utilise, but these savings are illusory in that the Company will not require funding from the Council to cover these rents and there is no overall benefit to the Council or disadvantage to the Company. In the event that one or more buildings become vacant there is potential for a capital receipt to be made by the Council from the proceeds of sale of the building/s.
- 4.9 Wirral Evolutions has highlighted that COVID-19 has impacted its business development plans. The Council has allocated £75,600 Covid-19 grant funding to Wirral Evolutions over the past twelve months from October 2020 to September 2021, from the Infection Control Grant issued by the Department of Health and Social Care to the Council. This grant funding is to support the company's operating costs and to help reduce the spread of COVID-19 by ensuring the appropriate health

and safety measures are in place. Other Day Services within the Borough have received similar grant funding.

- 4.10 Wirral Internal Audit Service completed an audit on Wirral Evolutions between April 2021 to August 2021. The purpose of the audit was to review the governance and financial management arrangements in place at the Company and to provide assurances that the procedures in place are adequate and being adhered to. There were no major concerns identified by the audit. The audit resulted in 16 recommendations: 8 recommendations for Wirral Evolutions, 5 recommendations for the Council, and 3 joint recommendations. (Internal Audit Report completed by Wirral Council Internal Audit Service - August 2021)
- 4.11 Wirral Evolutions faces a budget pressure due to the transition into a new proposed structure. Any shortfall in the achievement of the £0.5m savings target in this financial year, will be met from the Social Care Grant. This will be made available to Adult Social Care and Public Health Committee through an increase in the budget to meet the additional pressure during 2021.
- 4.12 It should be noted by the Committee that another local council is reported to be bringing forward plans for approval to move the services back in house from its delivery company to simplify delivery and enable fluid exploitation of other commercial and delivery options. This is because the structure was originally established on the basis that the company would, over time, compete effectively in a wider social care market. In practice, the council in question has remained the main source of funding for its delivery company.

5.0 LEGAL IMPLICATIONS

- 5.1 The following legislation will be relevant to the review of Day Services:
- Local Authorities (Goods and Services) Act 1970
 - Local Government Act 1999
 - Local Government Act 2003
 - Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)
 - Localism Act 2011
 - Care Act 2014
- 5.2 The Council does not have a legal duty to provide day services but does have a legal duty to meet the assessed needs of adults requiring care and support.
- 5.3 Wirral Evolutions must comply appropriately with employment legislation in relation to the staffing restructure.
- 5.4 Wirral Evolutions was incorporated in 2015 as a private company limited by shares and trading as a Local Authority Trading Company and awarded a contract on 1st December 2015 to deliver personalised day services and opportunities for adults with a wide range of learning and physical disabilities and was challenged to seek out cost savings and beneficial external contracts to generally reduce the financial burden imposed on the Council in providing services. Council staff who formerly delivered the services now provided by Wirral Evolutions were transferred to Wirral Evolutions when it was awarded the contract.

- 5.5 Wirral Evolutions is a Teckal Company which means that at least 80% of its activities must be for its local authority owner and that no more than 20% of its activity is for third parties. The Council is not required to conduct a procurement process with its own Teckal company but the company is required to comply with the Public Contracts Regulations 2015, the Council's and any other national and international procurement regulations in conducting procurement activity. The 7 Principles of Public Life (commonly known as the Nolan Principles) established by the Committee on Standards in Public Life will apply to a Teckal company.
- 5.6 The Council and Wirral Evolutions must ensure that the appropriate consultation takes place with both the workforce and people who access its services, and their advocates before any changes are implemented.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 Wirral Evolutions operates from nine venues and its modernisation proposal will reduce their asset base to seven buildings and release two buildings back to the Council. Whilst the movement of rent is cost neutral as it is supplied by and received by the Council, vacating one or more properties may enable the Council to generate a capital receipt.
- 6.2 Wirral Evolutions new organisation structure proposes 141 staff (118 Full Time Equivalent (FTE)) reduced from the current 165 staff (130.16 FTE). However, the company's outline proposals indicate that should the Early Voluntary Redundancy Voluntary Severance (EVR/VS) proposals be accepted, they would create the need to recruit to 16.37 FTE staff to implement the new structure. The reduction in FTE staffing count is estimated to result in redundancy/severance costs of approximately £1M. It is Council policy that Early Voluntary Redundancy can only be offered if the substantive post being vacated is deleted. Pursuit of this proposal may cause equality issues with the Council's own staff.
- 6.3 The traded service / buy back review is still ongoing with Wirral Evolutions, reviewing the level of support services provided by the Council and the costs involved. It is not anticipated that this will have a material impact on the finances of the company as the cost of the traded services supplied is paid by the Council in the contract price. If the cost of traded services bought is reduced there will be a matching reduction in the contract price so any change will be cost neutral to both organisations.

7.0 RELEVANT RISKS

- 7.1 Risks predominately relate to the financial sustainability of the organisation, and its ability to implement modernisation plans successfully and to the satisfaction of all stakeholders. The implementation of Recommendation 5 will mitigate against this in that the Committee will be making an informed decision against a detailed options paper.
- 7.2 There is a risk of financial uncertainty for the Council in that Wirral Evolutions may not achieve the required budgetary savings. The company has historically failed to operate within an agreed contract price, relying upon additional financial support from the Council. The implementation of Recommendation 5 will mitigate against this

in that the Committee will be making an informed decision against a detailed options paper.

- 7.3 There is a risk that the Company's plans for modernisation have a negative impact upon people who access the service and their family members or Wirral Evolutions' workforce. This has been addressed by carrying out a detailed engagement and consultation process. Again, the implementation of Recommendation 5 will mitigate against this risk in that the Committee will be making an informed decision against a detailed options paper.
- 7.4 Lack of detailed modernisation plans may lead to the failure of the current outline proposals being implemented appropriately. There is a risk in relation to the transition between Wirral Evolutions current and new organisational staffing structures, with no detailed recruitment plan or strategy. The implementation of Recommendation 5 will mitigate against this in that the Committee will be making an informed decision against a detailed options paper.
- 7.5 There is a risk in relation to the Council failing to recover the outstanding debt owed by Wirral Evolutions. Wirral Evolutions has an unpaid debt of £875,780 which is made up of £325,700 pension strain, £458,400 buyback traded support service and £91,680 for VAT.
- 7.6 There is a risk to the Council investing £1M into Wirral Evolutions' staff redundancy costs.
- 7.7 If the EVR/VS proposal goes ahead and there is significant rehiring at Wirral Evolutions there is a risk of internal staff discontent for the Council. This risk could be mitigated by a robust implementation of the Council's policy on EVR/VS.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Formal consultation occurred with residents in relation to the £0.5M budget savings through the Council's corporate budget consultation process from December 2021 to January 2021.
- 8.2 Wirral Evolutions set up a range of engagement activities/approaches to seek the views of those individuals who access Day Services as part of the consultation process. Formal consultation took place with people with a learning disability and their Carers.
- 8.3 The Council's Human Resources Department worked in partnership with Wirral Evolutions senior management team to ensure formal staff consultation took place appropriately.
- 8.4 Trade Union Officials have been engaged and consulted with as part of the service review.

9.0 EQUALITY IMPLICATIONS

- 9.1 The Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone.

9.2 Wirral Evolutions has an equality, diversity and inclusion policy in place and promotes the rights of people living with a disability.

9.3 The Council and Wirral Evolutions have completed an Equality Impact Assessment.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no environmental or climate implications as a direct result of this report.

10.2 The Council is committed to carrying out its work in an environmentally responsible manner.

10.30 Wirral Evolutions will consider environment and climate implications associated with delivering Day Services.

REPORT AUTHOR: Graham Hodgkinson

Telephone: **0151 666 3650**

Email: **grahamhodkinson@wirral.gov.uk**

APPENDICES

None

BACKGROUND PAPERS

- Adult Care and Health Overview and Scrutiny Committee - February 2020
- Wirral Evolution's Plan for Service Modernisation – November 2021
- Wirral Evolutions Business Strategy 2025
- Wirral Evolutions Annual Report 2020-2021
- Report completed by John Campbell, Director ARCC-HR Ltd to evaluate Wirral Evolution's Plan for Service Modernisation – August 2021.
- Internal Audit Report completed by Wirral Council Internal Audit Service - August 2021
7 Principles of Public Life (commonly known as the Nolan Principles) established by the Committee on Standards in Public Life
- Shareholder Agreement dated 1 December 2015

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
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Standards and Constitutional Oversight Committee	26th November 2019
Adult Care and Health Overview and Scrutiny Committee	February 2020
Adult Social Care and Public Health Committee	19 th November 2020
Policy and Resources Committee	18 th December 2020
Adult Social Care and Public Health Committee	18th January 2021
Adult Social Care and Public Health Committee	7 th June 2021
Shareholder Board	1 st September 2021