



SHAREHOLDER BOARD

21 MARCH 2024

REPORT TITLE:	EDSENTIAL BOARD COMPOSITION AND NON-EXECUTIVE DIRECTOR SUCCESSION PLANNING
REPORT OF:	DIRECTOR OF LAW AND CORPORATE SERVICES

REPORT SUMMARY

This report sets out the proposals made by Edsential CIC (“Edsential”) for the alignment of the composition of its board with the provisions of the Shareholder Agreement, the rotation of non-executive directors of the company and the future strengthening of its board to more accurately reflect the sectors served by it.

This supports the,

- Early Help for Children and Families;
- Promoting Independence and Healthier Lives;
- Protect our Environment; and
- Safe, Resilient and Engaged Communities

Themes set out in Wirral Working Together – a Council Plan for 2023 - 2027.

This matter affects all wards within the Borough.

This matter is not a Key Decision.

RECOMMENDATION/S

Shareholder Board is recommended to authorise: -

- (1) the board of the Edsential to
 - (a) implement the changes to the composition of its board set out in paragraph 3.9 of this report; and
 - (b) adopt, so far as is practicable, the proposals to rotate, replace and appoint its directors of the company as summarised at paragraph 3.10 of this report;

(2) the Director of Law and Corporate Services to progress all necessary steps to settle and perfect a document reflecting the agreed changes so as to amend the terms of the relevant Shareholder Agreement made between the Council, Cheshire West and Chester Council and Edsential

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The minor variations to the terms of the Shareholder Agreement sought by the Edsential as set out in this report will establish conformity between the current composition of the board and the composition as set out in the Shareholder Agreement and a clear and accepted path to the cyclical refreshing of the board.
- 1.2 The proposals set out in in the attached report have already been accepted by Cheshire West and Chester Council (“CWAC”).
- 1.3 The requirement for any appointment of a director to the board of the company for whatever reason to be unanimously approved by both shareholders of the company remains unchanged and any future appointment will require formal approval of both CWAC and the council as a reserved matter under the Shareholder Agreement.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The proposals set out in the report attached are considered to be reasonable, appropriate, relevant and practical. The option of rejecting some or all of the proposals has been disregarded as doing so would merely perpetuate the anomalies that have arisen and would be contrary to the interests of good governance.

3.0 BACKGROUND INFORMATION

- 3.1 The Council and CWAC established Edsential in April 2015 as a private company limited by shares with Wirral Council and CWAC as joint equal shareholders. Revised Articles, appropriate for a Community Interest Company, were adopted in October 2015.
- 3.2 The company delivers a range of services including catering, cleaning, and residential education opportunities, to support educational establishments locally and to a limited extent more broadly.
- 3.3 A shareholder agreement was agreed when the company was established which sets out how the parties have agreed to manage the affairs of the Company.
- 3.4 The Council and CWAC each own half of the shares in this company. Both shareholders entered into a shareholder agreement (Shareholder Agreement) with the company when the company was first established.

- 3.5 The Shareholder Agreement sets out a number of provisions to regulate the internal and external governance arrangement of the company, including, the composition of its board of directors.
- 3.6 The Shareholder Board discharges the shareholder function of the Council in accordance with the Council’s Constitution.
- 3.7 When the company was originally set up, its board was not established as set out in the Shareholder Agreement. Whilst the shareholders have both accepted and sanctioned this position, to date, it is good practice to ensure that the composition of the board is the same in practice as it is set in the Shareholder Agreement.
- 3.8 As a consequence of the operational difficulties engendered by the COVID-19 and the challenges faced by the company as a consequence of the cost of living crisis it was considered that the continuity of the Board with non-executive directors with their skills, experience and understanding of the needs of the company alongside the needs of customers, justified the suspension of the arrangements, set out in the Shareholder Agreement, for the periodic rotation of the non-executive directors of the company.
- 3.9 Edsential has prepared a report to its shareholders set out as Appendix 1 headed “Edsential Board Composition and Non-Executive Director Succession Planning”. Within the report it sets out proposals for the revision of the Shareholders Agreements so that
- (1) the Board shall consist of the following Directors, each of whom shall be agreed jointly by the Shareholders (acting by a majority):

Executive Directors	between 1 and 3	who shall not be employed by, or an elected member of, any Shareholder;
Non-Executive Directors	2 (in total)	one such Non-Executive Director being employed by CWAC and one being employed by the Council
Non-Executive Directors	4	who shall be head or deputy head teachers, drawn from primary, secondary and special schools and employed as such in the administrative area of each of the Shareholders

Non-Executive Director	1	who shall be the CEO, Chair or equivalent of an Academy Trust and employed as such in the administrative area of each of the Shareholders
Non-Executive Director	1	who shall be drawn from the Independent School Sector with recent and relevant skills and experience as a head teacher, deputy head teacher or business/finance manager
Non-Executive Director	1	who shall be a governor of a school located in the administrative area of each of the Shareholders and not be employed by, or an elected member of, a Shareholder, or a head or deputy head teacher
Chair of the Board	1	Who shall be a Non-Executive Director with recent and relevant skills and experience within the administrative area of each of the Shareholders. They should not be a currently serving head or deputy head teacher, or employed by, or an elected member of, any Shareholder

(2) the Non-Executive Directors shall have suitable experience and skills to provide independent challenge and input into the Board decisions.

3.10 Edsential within the above report has also proposed that its Articles of Association be amended so that

- One-third of the Non-Executive Directors appointed from time to time, or if their number is not three or a multiple of three, the number nearest to one-third,

shall retire from office at each annual general meeting. These provisions shall apply with effect from the second annual general meeting; and

- The Non-Executive Directors required to retire by rotation shall be those Non-Executive Directors who have been the longest in office since their last appointment. If any two or more Non-Executive Directors became or were appointed Non-Executive Directors on the same day, those required to retire by rotation shall (unless they otherwise agree among themselves) be determined by random selection in such manner as is determined by the shareholders acting by a majority.

3.11 The proposals do not require any modification to the provisions regulating the appointment of directors. The current arrangements are that, in the event of a vacancy, the company will undertake a recruitment process and present a preferred candidate to the shareholders for approval. Only when such approval has been received may a new director be appointed by the company.

3.12 It is recommended that the above proposals be endorsed by the Shareholder Board in the interests of transparency, good management and governance of Edsential.

4.0 FINANCIAL IMPLICATIONS

4.1 The positions of non-executive director are not remunerated, and the matters set out in this report impose no financial burden on the Council.

5.0 LEGAL IMPLICATIONS

5.1 Edsential CIC was established with the appropriate Certificate of Incorporation for a Private Limited Company with associated articles in April 2015.

5.2 The shareholder agreement was agreed and entered into on the 1st December 2015.

5.3 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.

5.4 The company, CWAC and the Council are parties to the Shareholder Agreement which requires, as a 'reserved matter' and as far as lawfully possible, that the company does not appoint or remove directors without consent of the shareholder.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no direct implications to staffing, ICT or Assets.

7.0 RELEVANT RISKS

7.1 The Council as one of the shareholders has an obligation to ensure that the company is run in an appropriate fashion. Making the adjustments recommended in this report will mitigate against this risk.

7.2 There is a risk that any officer appointed to serve as a director of the company may be challenged for an act or omission causing loss to a third party or the shareholder. This risk is effectively mitigated by the dormant status of the company and by the indemnity offered by the Council to cover actions taken honestly and in good faith by council officers under the Local Authorities (Indemnities for Members and Officers) Order 2004

8.0 ENGAGEMENT/CONSULTATION

8.1 The proposals set out in this report has been discussed with the company and the other shareholder in the company. It does not concern any third parties.

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.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no direct environment and climate implications.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 There are no community wealth implications.

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APPENDIX

Appendix 1- Edsential Board Composition and Non-Executive Director Succession Planning

BACKGROUND PAPERS

Edsential Shareholder Agreement

Local Authorities (Indemnities for Members and Officers) Order 2004

Companies Act 2006

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
None	