
Report to: Council

Date of Meeting: 17 May 2011

Subject: Sefton New Direction – Shareholders Permissions

Report of: Head of Corporate Legal Services **Wards Affected:** All

Is this a Key Decision? No.

Is it included in the Forward Plan? No

Exempt/Confidential

No

Purpose/Summary

The report seeks the necessary permissions from the Council in its capacity as shareholder of Sefton New Directions (SND).

Recommendation(s)

- a) To note the proposals made by Fresh Care Consulting with respect to future viability of Sefton New Directions (SND), contained in the attached Appendices A and B;
- b) To note the efforts in respect of settling the Employment Tribunal claims;
- c) In accordance with SND's Articles of Association, the Council, as shareholder, resolves and consents in relation to the actions outlined in Appendices A & B to:
 - allow the Board to dismiss and re-engage all of SND's employees as necessary and/or;
 - allow employees to leave SND's employment through voluntary redundancy/voluntary retirement arrangements and/or; should the Board consider that the above steps have been insufficient to secure the finances and future viability of the Company to;
 - allow the Board to take necessary steps for the Company to be dissolved within the meaning as detailed in the body of the report and appendices
- d) To authorise the Council's Head of Corporate Legal Services to sign the Council's resolution in accordance with company law requirements;
- e) To request SND to provide a progress report in relation to action taken as outlined in Appendices A & B to the Council's Cabinet meeting in August 2011; and
- f) To authorise the Head of Corporate Legal Services to review the Council's current arrangements with respect to its oversight of the shareholding in SND and to make recommendations to Cabinet in due course.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Jobs and Prosperity		√	
3	Environmental Sustainability		√	
4	Health and Well-Being		√	
5	Children and Young People		√	

6	Creating Safe Communities		√	
7	Creating Inclusive Communities		√	
8	Improving the Quality of Council Services and Strengthening Local Democracy		√	

Reasons for the Recommendation: The Council as the sole shareholder in Sefton New Directions is required to give permissions for certain actions as specified in the Company's Articles of Association and in company law. This report outlines the actions of the Board of SND regarding the future viability of the Company and the relevant response of trade unions.

What will it cost and how will it be financed?

(A) Revenue Costs

There are no specific revenue costs associated with this recommendation.

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal	
The legal implications are contained and discussed within the contents of the report. The Council is acting under its powers as a shareholder and exercising those in accordance with the Companies Act 2006 (as amended).	
Human Resources;	
There are no implications for the Council arising from its decision as shareholder.	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact on Service Delivery:

Officers will work closely with SND in light of the circumstances outlined in the report to manage any impacts on service delivery and service users.

In the event of a dissolution of the company a carefully managed process would take place to ensure continuity of service.

What consultations have taken place on the proposals and when?

SND has outlined its consultations in the Appendix A and B. It is understood that SND will conduct appropriate consultations with employees and service users as necessary.

The Head of Corporate Finance (FD776) has been consulted and any comments have been incorporated into the report.

Are there any other options available for consideration?

Viable options have been included in the report and indeed the resolutions sought of the Council give SND great flexibility to be able to make the most appropriate decisions.

Implementation Date for the Decision

No later than 31 December 2011

Contact Officer: Jill Coule, Head of Corporate Legal Services

Tel: 0151 934 2032

Email: jill.coule@sefton.gov.uk

Background Papers:

Nil

1. Introduction and Background

Sefton New Directions (SND) was incorporated in 2007 as a local authority trading company. Sefton Council is the sole shareholder. The Company is an independent legal entity and operates under the governance of a Board. The Board is responsible for the Governance of the Company but certain actions require the permission of the Shareholder (the Council). The company is registered with the Care Quality Commission and conducts a range of care services. These services include residential homes, intermediate care, respite services, day services, supported living and meals on wheels. The services are provided to learning and physically disabled adults, older people and residents suffering from mental health and dementia. The client groups are primarily Sefton residents with some services being provided to Sefton NHS and other PCT's. There are circa 4000 service users. The company operates from 25 bases in the borough, which mostly belong to the Council. The company employs 500 staff, most of whom were Sefton staff immediately before the company formation and transferred under the TUPE provisions.

The Board consists of the following Directors; Councillors Parry, Rimmer, Brennan and the Council's Chief Executive. The Board is advised on HR matters by the Head of Corporate Personnel.

The Board of SND has since 2008 been attempting to secure the future viability of the Company. The main risk to this viability is the potential liability arising from a large number of Employment claims lodged by employees and Trade Unions. Numerous attempts (including meetings through ACAS) have been made to reach an agreed settlement. The value of these claims exceeds the assets of the company. In addition to this risk, the Council as the commissioner of adult social care has given notice in 2010 to the company that it is reducing its fee by £3 million with effect from April 2011 in order to bring its costs in line with other providers.

Following the contract reduction the Company prepared the report at Appendix A. This Appendix indicates the implications for the Company and its proposals to secure its future viability

Redactions have been made to the Appendices due to commercial sensitivities including the negotiating position of both the Trade Unions and SND. In addition, the appendices to Appendix B are not included in the Council report for the same reasons.

2. Latest Position

The Company has continued the negotiations with Trade Unions over the last few months. However as yet no agreement has been reached which would ensure that the Company can meet the reduced contract sum and manage the risk associated with the Employment Claims. The Company has taken specialist advice throughout the period. The Trade Unions are not able to agree to the package of terms and conditions. However, they are understanding of the Company's position. The Trade Unions want a Company to provide sustainable employment for individuals in the Borough.

At its meeting on 11 May 2011 the Board considered the report attached at Appendix B, which summarises the latest position. The Board also received representation from the Trade Unions

The Board wishes to dismiss and re-engage employees and to put in place new terms and conditions and continue attempts (with no admission of liability) to resolve Employment Tribunal claims.

However given the financial position of the Company, should efforts of the Board prove to be unsuccessful, permissions and consents are sought to allow the Company to be put through a process of administration, which could ultimately lead to the Company being wound up. This could occur if the imposition of terms and conditions does not prove successful or negotiations in respect of the Employment Tribunals claims do not reach a satisfactory conclusion.

Given this position the Board resolved to seek the following shareholders permission under the Articles of the Company and in accordance with Company Law.

In accordance with Article 18.16 the Board seeks permission from the Council a resolution to allow the dismissal and re-engagement of all of SND's employees and as necessary to allow employees to leave SND;s employment through voluntary redundancy/voluntary retirement arrangements.

In accordance with Article 18.8, the Board seeks permission from the Council a resolution to allow the Board to take necessary steps for the Company to be dissolved.

Members will note Appendices A and B outline options to modernise the company further in an effort to secure its future viability.

3. Legal Considerations

As the sole shareholder, the Council owns SND outright. In order to protect that interest both the law and the Articles of Association gives shareholders rights to make certain decisions. A company's Articles of Association set out the parameters of what a company can and cannot do. Decisions which are to be taken by a shareholder need to be made by way of written resolution. Such a resolution needs to be signed by the shareholder.

The current circumstances of the company have been outlined in detail in the attached appendices prepared by Fresh Care Consulting. It is therefore vitally important that the shareholder gives the company relevant permissions and flexibility to make apposite and commercially expedient decisions.

To that end, it is recommended that Councillors (acting as shareholder), make the following decisions as sought by the Board and set out in paragraph 2 above.

In addition it is apposite for the Council to review its oversight and governance of its shareholding in this Company and it is therefore suggested that officers will closely monitor developments within SND. It is anticipated that a governance review will be presented to members of Cabinet in due course.

Members should be aware that the Council is cited as a part to the Employment Tribunal claims. At this time, there is no conflict of interest between the Council and SND and the parties are therefore jointly represented. Should a conflict occur in any respect, the Council will secure its own representation. Given the background to the formation of SND and the arguments pursued by the TU's in the litigation, the inclusion of the Council in the Employment Tribunal proceedings is not surprising. The Board as carefully considered the risks of litigation and of the process of modernisation which is described in Appendices A and B. The Board of SND have where possible taken steps to mitigate risk and will continue to do so.

The Council acts as guarantor with respect to the pension fund. Claims of this nature are typical and at this point time pose no additional significant risk to the pension fund. Should the company enter into administration, the pension fund would seek SND's deficit by virtue of an increase in the Council's pension contributions.