

Report to: Cabinet

Date of Meeting: 10 November 2011

Subject: Update report on Sefton New Directions

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

To provide an update on Sefton New Directions as part of the Council's shareholding interests. In particular the report updates on the current viability and future development.

Recommendation(s)

That the Board of Sefton New Directions be asked to consider and come forward with proposals on the future strategic direction and structure of the company and to provide a progress report to the Cabinet meeting in December 2011 to include any relevant issues for consideration by the shareholder.

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:

To fulfil a requirement from Council in May 2011 and Cabinet in August 2011, to review the Council's governance of its shareholding in Sefton New Directions.

To recommend actions to manage the risks relating to Sefton New Directions as the Council is the sole shareholder

What will it cost and how will it be financed?

(A) Revenue Costs

There are no financial implications resulting directly from the report. The Medium Term Financial Plan is based on the ability of the Council to commission care services that are at competitive market rates. This report assists the Council in ensuring that one of its key providers is able to deliver within an agreed financial framework.

(B) Capital Costs

Implications:

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

Legal - LD 441/2011	
The legal implications are contained and discussed within the contents of the report. The Council holds the shareholding in this company in accordance with its well being powers contained in Section 2 of the Local Government Act 2000. The Council is acting under its powers as a shareholder and exercising those in accordance with the Companies Act 2006 (as amended).	
Human Resources	
Equality	
1. No Equality Implication	<input 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:

No impact on service users is anticipated as a direct result of the contents of this report.

What consultations have taken place on the proposals and when?

The Head of Corporate Finance and ICT (FD 1091) has been consulted on 24 October 2011 and contributed to the analysis of risk for the Council and supports the recommendation. The Head of Legal Services is the report author there is therefore no consultation and consequent LD reference.

Are there any other options available for consideration?

Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet/Cabinet Member Meeting

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Background Papers:

There are no background papers available for inspection.

1. Introduction/Background

1.1 Members will recall that a report was presented to full Council on 17 May 2011, in respect of the above named company and the Council's shareholding. A number of important decisions were made which are précised below as a reminder. The effect of the Council resolutions is valid until 31 December 2011.

- To note the proposals made by Fresh Care Consulting with respect to future viability of Sefton New Directions (SND);
- To note the efforts in respect of settling the Employment Tribunal claims;
- In accordance with SND's Articles of Association, the Council, as shareholder, resolves and consents in relation to the actions outlined in the relevant Appendices to allow the Board to carry out certain actions such as:
 - dismiss and re-engage employees as necessary,
 - to allow staff to take voluntary redundancy and/or voluntary early retirement as appropriate
 - if necessary to allow the Board to dissolve the Company
- To authorise the Council's Head of Corporate Legal Services to sign the Council's resolution in accordance with company law requirements:
- 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.

1.2 A short update report was presented to members at the Cabinet meeting on 18 August 2011. In particular reference was made to the discussions that had been on-going between the Company and the Council relating to the outstanding employment claims and the review of staff terms and conditions; and indicated that the negotiations had been productive and positive. It was subsequently resolved that the progress report on Sefton New Directions be noted; and for the Head of Corporate Legal Services be requested to provide quarterly updates to the Cabinet on the Council's shareholding and any other relevant information.

Original Purpose of the Company

1.3 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. The Company is registered with the Commission for Social Care Inspection 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 1685 service users. The company operates from 23 bases in the borough, which mostly belong to the Council. The company employs 470 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 personnel matters by the Council's Head of Corporate Personnel under a Service Level Agreement.

Shareholding

- 1.4 The Council is the sole shareholder, in accordance with the Companies Act 2006. The shareholder can ultimately take most decisions in relation to the future of the Company, so long as this is in accordance with the Company's Articles of Association and the requirements of that Act.

Members will recall that through the report to Council on 1 September 2011, that Part 3 of the Constitution which sets out the Responsibility for Functions was amended. In particular Part 4B deals with the matters delegated to Full Cabinet. The amendment clarified the Cabinet's responsibilities for dealing with the Council's shareholding in a company. By providing delegated authority to Cabinet this means that any necessary permissions, consents and decisions as to the future of the shareholding can be taken by Cabinet.

SND Latest Position

- 1.5 Employment Issues

Following extensive consultation with employee representatives, a draft Collective Agreement was put to the combined membership of UNISON and GMB in ballots in October. The overwhelming majority of members of both Trade Unions voted in favour of accepting the proposed changes in employment Terms and Conditions.

The collective agreement includes major changes to Terms and Conditions including pay reductions, voluntary redundancies, changes in working practices and approaches to future recruitment.

It is anticipated that the revised Terms and Conditions of employment that will be introduced, subject to acceptance of settlement offers in respect of employment claims (see below), will provide a significant overall reduction in payroll costs in line with business objectives.

Equal Pay Claims

In tandem with the Terms and Conditions revisions, significant progress has been made on resolving the Equal Pay claims. Following detailed negotiations it is anticipated that a successful outcome and agreement can be reached. The latest position is that subject to the resolution of a one or two individual equal pay queries Offer Letters will be issued to claimants by 1st November and the formal signing of the Collective Agreements will take place at that time.

Service Transformation

The Company continues to identify opportunities to improve performance and quality. Some services are to be merged. The Company is also planning to expand its re-enablement service and is in discussion with other commissioners regarding new work.

SND is currently reviewing opportunities for the development of the workforce to meet anticipated future demands including an Apprenticeship programme, recruitment to a pool of relief staff and engaging with local educational institutions

with a view to introducing a programme that will help meet the need for practical training for student nursing and social work staff,

Risks

- 1.6 The future sustainability of the Company is cited in the Council's Corporate Risk Register and formed part of the Annual Governance Statement, reported to the Audit and Governance Committee on 28 September 2011.

The Corporate Risk Register identifies the following information:

Cessation of company will lead to:

- i) Council pension liability
- ii) Discontinuity of service for clients
- iii) Budget implications

The actions identified to remedy these issues are:

- i) Renegotiated contracts with SND to ensure longer term commercial viability
- ii) Board directors to agree a new business plan
- iii) Company business plans to be monitored

- 1.7 The Annual Governance Statement re-iterates the risks associated with the governance of the Company.

Way Forward

- 1.8 There has been significant progress on resolving outstanding employment issues in SND. As a result it is now possible to determine the future strategic direction of the company and also to review the shareholding relationships to manage the risks outlined above.

To this end the Cabinet is recommended to request the SND Board to consider and come forward with proposals on the future strategic direction and structure of SND. This may include a review of its Memorandum and Articles, how the Board could be structured, how governance and decision making could be improved and what business areas the company might look to participate in together with ways in which the business could be enhanced and commercialisation increased to generate improved revenues and other tangible benefits for the Council.

- 1.9 Given the issues outlined above, it is important that the Council retains an oversight of its shareholding in the Company. The SND Board should report to the next meeting of Cabinet outlining the scope and timescales for the review. As a minimum it is proposed that quarterly reports be brought to Cabinet reporting on the above issues and any other issues relevant at that time.