

CHESHIRE EAST COUNCIL

Advisory Panel – People

Date: 27th October, 2008
Report of: John Weeks, Strategic Director (People)
Title **CONNEXIONS CHESHIRE AND WARRINGTON LTD AND THE INTEGRATED YOUTH SUPPORT SERVICE CONTRACT**
Report No:

This paper, which is in the format of a Cabinet report, is presented to the Advisory Panel (People) to enable Panel Members to be aware of a forthcoming Cabinet issue and to contribute views to inform the decision making of the Cabinet.

1.0 Purpose of Report

- 1.1 To brief the Shadow Authorities for Cheshire East and Cheshire West and Chester of the legal and contractual context of their future relationship with Connexions Cheshire and Warrington Ltd;
- 1.2 To inform the Shadow Authorities of the actions being taken by Cheshire County Council, in discussion with Warrington BC and the Connexions Company, to transfer the County Council's interests in Connexions to CCC's 'successor authorities' under the terms of the legally binding Members' Agreement between CCC and WBC;
- 1.3 To inform the Shadow Authorities of the options and constraints in relation to a number of key issues that need to be resolved prior to Vesting Day and to seek approval to a number actions that need to take place.
- 1.5 To inform the Shadow Authorities of the issues that will fall to them to resolve over Year 1 in discussion with each other as well as with Warrington BC and the Connexions Company.

2.0 Decision Required

- 2.1 That both Cheshire West and Chester Executive and Cheshire East Cabinet:
- 2.2 Note the provisions of the Members' Agreement between CCC and WBC in relation to the dissolution of CCC and the subsequent required changes to Company Membership and Directorships for the 'Secured Period' that will be made at an Extraordinary General Meeting of the Members in order for CCC's interests in CC&W Ltd to be transferred to Cheshire East Council and Cheshire West and Chester Council:
 - i) Membership rights will be divided approx 33% each to CW&C, CE and WBC as of 1 April 2009 for a period of 12-18 months;

- ii) Each Company Member will be entitled to appoint 3 Directors each to the Connexions Board from 1 April 2009;
- 2.3 Note the duration of the 'Secured Period' (1 April 2009 to 1 April 2010) and that in any event no Company Member shall withdraw from the Company without giving at least 12 months notice in writing to the others, and that all three Company Members will need to work together to review and agree a variation of the Members' Agreement and membership rights to take effect after 1 April 2010;
- 2.4 Action the requirement for CE and CW&C to nominate Directors¹ for the Connexions Company Board so that these can be registered by the Company for Vesting day.
- 2.5 Action the requirement for CW&C and CE each to identify and inform the Company and the Company Members of a Nominated Member who will exercise their respective membership and voting rights at meetings of the Company Members (as opposed to the Company Board).
- 2.6 Adopt one of the following options in relation to the IYSS Contract, noting the practical constraints upon each LA's capacity to substantially change the current Contract and Specification arrangements in time for 1 April 2009:

Option 1: Continuation of the current pan-Cheshire contract for one year with both LAs agreeing similar funding levels that will be compatible with delivering a pan-Cheshire contract and service specification to 1 April 2010, incorporating a refresh of outcome and output targets so they accord with each Authority's LAA and other area specific requirements;

Option 2: Terminate the current pan-Cheshire contract and set up separate (but substantially similar to present) contracts for 1 April 2009. *(in order to establish the principle of each LA having a separate contract)* Retain a largely single (pan-Cheshire) Schedule B (Specification) for Year 1 incorporating a refresh of outcome and output targets so they accord with each Authority's LAA and other area specific requirements *(subject to the need for each LA to input compatible funding levels in order for a single Specification to be deliverable on a pan-Cheshire basis)*;

Option 3: Terminate the current pan-Cheshire contract and set up separate contracts for 1 April 2009, with separate funding levels and service specifications, but noting that

¹ Refer to **Appendix 2** for summary of the role of a Director of Connexions. Any Member considering standing as a Director of the Company is strongly advised to read this guidance and in particular section 4.

there is not the capacity within CCC's existing resources to negotiate and develop two different contracts and specifications in time for 1 April 2009. This option would require either LA that wishes to adopt it to put in the extra resources that would be needed to deliver it.

- 2.7 Subject to decisions on the preferred option for each LA, approve that CWAC and CE are content for CCC to take forward the annual Service Specification review which should start on 1 November 2008 inline with the Contract terms.
- 2.8 Note the timing of the Annual Review Meeting and the contractual requirement to bring to the **immediate attention** of Connexions any significant developments during the LAs' budget setting processes which may impact on the 2009-10 Contract Price. CCC officers will need to be advised accordingly should any immediate (Day 1/Year 1) changes to the Contract Price be envisaged by either or both Shadow Councils.
- 2.9 Approve that CW&C will act as a guarantor for its share of the pensions liabilities of the Company for its members of the Cheshire Pension Fund. Please see paragraph 3.4 for further discussion of this matter and options open to Members.
- 2.10 Note the need to put in place effective contract management arrangements within the Children's Services / People Directorate to performance manage the contract with Connexions – possibly in a joint arrangement between CW&C and CE Councils.

3.0 Financial Implications for Transition Costs

- 3.1 There are two financial issues in relation to Connexions in the lead up to 1 April, (though neither are strictly transition costs):
- the need to establish the funding (contract price) that each LA will put into its connexions and youth services; and
 - the need to agree future guarantor arrangements in relation to the Company's pension liabilities.
- 3.2 Excerpts from the Contract as set out below. Both LA's have the flexibility to review their contract price and IYSS funding levels, but they need to inform the Company of their intentions in line with clauses 9.4 and 19.3.

9.4 Following the annual Review Meeting (1 November each year) the County Council will use its best endeavours to bring to the immediate attention of the Service Provider any further significant developments during its budget setting process which may impact on the future year's Contract Price and will in any event confirm the Contract Price for the following year in accordance with Clause 19.3.

19.3 The Contract Price shall be reviewed by the County Council by the 28th February each year and save where there is a change in the Contract Price by the operation of Clause 19.4, the Contract Price shall be adjusted by the County Council taking into account the Index for the period ending the preceding November and the projected Index for the forthcoming financial year, the resources provided by the County Council's annual budget settlement and the funding received from Central Government for the Service. The County Council shall then revise Schedule C and the adjustment shall be implemented in the first service return period following the 1st April each year.

- 3.3 On being advised of the Contract Price the Company will consider any impacts on the affordability of the required service specification. Should the specification not be affordable then the specification will need to be reduced accordingly, or the price increased. In the event of significant reductions in the Contract price this may necessitate reductions in frontline services and possibly redundancies.
- 3.4 In relation to the pensions bond, due to the scale of change in the company when the IYSS was created, a bond or guarantor was required by the Cheshire Pension Fund to enable continued inclusion. In May 2007 the County Council agreed to act as guarantor on the basis that the Authority would be required to step in and take over service delivery should the company become unviable and, given this, that a bond secured at significant cost to Connexions did not represent good use of public funds. Given the revised ownership (equal thirds) and therefore control of the company during the Secured Period, it may be appropriate for all three authorities to act as equal joint guarantors to the Pension Fund. This would be subject to review once the Secured Period ended and subsequently if any authority divested their interests in the company. There is no pre-agreement with WBC on this matter and their views would have to be sought if Members wished to pursue this option.

4.0 Financial Implications 2009/10 and beyond

- 4.1 The Contract price will need to be reviewed again starting from 1 November 2009 as part of the 2010-11 Annual Review.

5.0 Legal Implications

- 5.1 The legal position of Connexions C & W Ltd is set out at Appendix 1, and in the (confidential) Members' Agreement at Appendix 2.

6.0 Risk Assessment

- 6.1 The main risks in relation to this issue are that delays in informing the Company of the Contract Price may restrict the ability to vary the price for February 2009, and that significant reductions in the Contract Price may lead to significant reductions in Connexions or Youth services.
- 6.2 In addition, if each LA were to opt for significantly different Contract Prices then it would become impossible to deliver a single Contract and Specification for 1

April 2009, while at the same time not having the capacity or time to negotiate separate contracts and specifications.

7.0 Background and Options

- 7.1 Attached at Appendix 1 is a briefing note on the background of Connexions Cheshire and Warrington Ltd.

8.0 Overview of Day One, Year One and Term One Issues

8.1 Day 1:

There is an immediate need to establish the funding levels that each LA wishes to put into its IYSS Contract and to inform the Company of this in line with contractual obligations. Final decisions on Contract Price are needed in February 2009.

CW&C and CE need to discuss and agree their preferred Option in relation to the type of contract arrangement (pan-Cheshire or split).

Directors and a Nominated Member need to be nominated by CW&C and CE for 1 April and the Company informed. Registering of Directors is a matter for the Company.

CW&C and CE need to act as guarantors for Connexions membership of the Cheshire Pension Funds following the dissolution of CCC.

8.2 Year 1:

Both LAs to note the membership rights and responsibilities and the need to work together with Warrington Borough Council at the end of the first 12 months to agree arrangements for the end of that period.

Both LAs need to review their Children's Plan and to align their Specification for IYS services accordingly as part of the 2010-2011 Annual Review.

8.3 Term 1:

Both LA's need to consider their longer term approach to the commissioning of their Integrated Youth Support Service (incl Connexions)

9.0 Reasons for Recommendations

- 9.1 To comply with legal obligations upon CCC, WBC, CW&C and CE in relation to the transfer of ownership of Connexions Cheshire and Warrington Ltd from CCC to CW&C and CE.
- 9.2 To ensure that both LAs have an IYSS contract in place for 1 April 2009 that will deliver Connexions and Youth Services within their administrative area.

For further information:

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CONNEXIONS CHESHIRE AND WARRINGTON LTD

CREATION OF CONNEXIONS (CCWL)

Connexions Cheshire and Warrington Ltd (CCWL) is a Company Limited by Guarantee without share capital. It was incorporated in England on 2 March 2001. It is wholly owned by Cheshire County Council and Warrington BC. The owners of the Company are referred to legally as the '**Company Members**' (not to be confused in any way with elected members). The rights and obligations of the Members are set out in the Company's Articles of Association and CCC and WBC also have a Member's Agreement which sets out how their interests in the Company are to be exercised.

CREATION OF AN INTEGRATED YOUTH SUPPORT SERVICE (IYSS)

Following Cheshire County Council's decision of 17 May 2007 to create an Integrated Youth Support Service (IYSS) outside the County Council, CCC and WBC made a number of amendments to the governance arrangements of their existing company in order to be able to exercise greater control over some matters as its owners ('Members'). These are '**Protected Matters**' and decisions in relation to these are currently taken by CCC's nominated 'Member' (David Rowlands as Lead Member for Children's Services) and the respective nominated 'member for WBC. The voting rights in the Company were also amended to give CCC 3 votes to WBC's 1 vote. This gives CCC a 75% share of member's rights and majority control over all company resolutions, albeit within the Members' Agreement CCC has agreed to only exercise this control in all matters apart from a change to the Articles of Association with the express consent of Warrington Borough Council .

Prior to these governance changes CCC had two Directors on the Connexions Board. Following the IYSS related changes CCC now has 5 Directors. Warrington BC has 3 Directors. The Lead Member cannot be a Director of the Company as his role as Lead Member for Children is judged as being incompatible with a directorial role that would place a fiduciary duty on him to act in the best interests of the Company.

As part of the IYSS creation CCC transferred its Youth Service and its assets into to Connexions to provide an Integrated Youth Support Service across Cheshire. The transfer took place on 5th October 2007. and Connexions Cheshire and Warrington Ltd (CCWL) signed a contract with CCC in October 2007 to deliver an IYSS service for Cheshire. That contract runs to 2011, but includes a Service Specification that is subject to annual review to be completed by April each year. Under the terms of the Contract the Authority has the power to vary the Service Specification and the Contract price each year, after consultation with the Company.

The specification was drawn up by Officers of the Children's Services Department (as commissioner of the service) in discussion with the Connexions Company (as principal service provider) and as such is fully

endorsed by the Children's Services Department. A process of consultation with the Company took place prior to the specification being formally approved by the Executive of CCC. It is the job of the Company to respond to the specification to set out how it will deliver against the specification that the County Council sets.

Monitoring and management of CCWL performance by CCC (and its successor LAs) should be primarily against the Contract and Specification by the relevant officers of CCC. A copy of the latest Specification (Schedule B) can be provided.

The Company has separate arrangements with Warrington BC regarding the delivery of its IYSS. It should be noted that Warrington BC did not transfer its Youth Service into Connexions but instead operates it under joint management arrangements.

IMPACT OF LGR

The Company's Articles provides for CCC's Membership rights in the Company to be assigned to its Successor Authorities upon the dissolution of CCC. However the Member's Agreement also sets out additional requirements in the event of CCC's dissolution. These requirements were written into the Member's Agreement last October at the specific request of WBC in order to secure continuity of service delivery in the event of LGR resulting in Cheshire being split.

On Vesting Day (1 April 2009), the requirements contained in the above mentioned Members' Agreement will come into effect. The effect of this Agreement is that for 12 months from 1 April 2009 the company will be held equally between Cheshire East (33.3%) Cheshire West and Chester (33.3%) and Warrington Borough Council (33.3%) . This is the '**Secured Period**'.

After 12 months of the 'Secured Period' the Members' Agreement provides for WBC and the Successor Members (CW&C and CE) to work together agree the future membership rights and vary the existing Members Agreement. If they fail to agree then after a further 6 months membership rights will revert to Warrington 25% and the two new Authorities 75% to be apportioned to each in line with any formula or arrangement prescribed by the Secretary of State for the division of property rights and liabilities of Cheshire County Council (ie probably in the region of 38.2% to Cheshire West and 36.8% to Cheshire East).

No Member (CW&C and CE) can withdraw from the Company without giving at least 12 months clear notice in writing to other Members.

LGR TRANSITIONAL ISSUES

Governance and Membership Issues – to 1 April 2009

- CCC has a legal obligation to take forward these issues in order to transfer its interests to the Successor Authorities in line with the Members' Agreement with Warrington BC. In relation to the transfer of ownership and Governance changes, both Shadow LAs will be kept informed asked to note the transfer arrangements.
- The Company will need to make any necessary changes to the Articles of Association once these are agreed between the Company Members.
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- The Shadow Authorities will need to appoint Directors to the Company Board for 1 April 2009 when CCC's existing Directors will have to resign. CCC currently has 5 Directors (4 Elected Members as appointed by Organisation Ctte plus the DCS (Joan Feenan). CCC and WBC have agreed to amend the Company Articles to allow each Company Member from 1 April 2009 to have 3 Directors each (probably two Councillors and the DCS for each LA).
- It is the duty of the Company to register Directors at Companies House when CW&C and CE have nominated their Directors.
- CWAC and CE will also both need to decide upon a '**Nominated Member**' to exercise each LAs role in relation to **Protected Matters** and to exercise the member votes at Company meetings. For CCC this is currently the Lead Member for Children's Services (who is not a Director of Connexions in order to avoid conflicts of interests with his role as Lead Member).

Pensions Issues

- When the new contracting arrangements took place the company, due the scale of the change, was required to seek continued inclusion in the Cheshire Pension Fund. To enable this to happen the Company was required to provide a bond or a guarantor to underwrite the pension fund for it's members. The County Council agreed to act as guarantor. Future guarantee arrangements will need to be considered.

Governance Issues – from 1 April 2009

- The Company Members will need to agree their future membership rights that will take effect on or after the 'Secured Period'.

Contract and Specification Issues

- Cheshire County Council is one year into a 3 year Contract (to 31 March 2011) with Connexions for the Company to deliver a single IYSS service for Cheshire. **Both Shadow LAs need to come to an agreement on how they wish to proceed with this Contract.** It should be noted that Connexions is restructuring to deliver services on an East/West basis – but this is currently done under a single Contract

and Service Specification. The earliest break point in the contract is 30 September 2009.

- Continued delivery of a pan-Cheshire contract and specification is complicated by the funding arrangements for the Connexions Company. **Connexions services** will be directly funded by separate central government grants to Cheshire West and Cheshire East. Both LAs will need to pass on this funding to the Company in order for it to deliver Connexions services. In terms of scale, the Connexions Grant for Cheshire in 2008-09 is **£5.34m**.
- **Youth Services** however will be funded from Cheshire West and Cheshire East base budgets (ie Council Tax). Each LA may elect to continue to fund its youth services at the levels anticipated by CCC and the Connexions Company when Service Specifications were agreed. The contract price for 2008-09 is **£3.32m**. The budget disaggregation split, based on 15-19 population is 50.05 West, 49.95 East). **A potential issue would arise where one or both of the new LAs may seek to reduce its youth service funding in light of its post-LGR financial scenario. This would necessitate a review by the Company as to whether it could continue to deliver the same Service Specification for each LA in light of the level of funding that each is prepared to put in.**
- Both LAs will also need to relate their Service Specifications to their **Children's Plan**. Should significant variations in Children's Plan priorities emerge between the two LAs then this may impact upon the suitability of a single Service Specification. It may be possible to have Contracts for each Authority with the same terms but with 2 separate Schedule Bs (Service Specs). As both LAs have adopted the same Children Plan for 2009 then having the same specification is considered a viable option for 2009-10.
- Should CW&C and CE not be able to agree on the same contract price and/or specification, then separate contracting and specification arrangements will be needed, but this will require additional resources to deliver.
- In conclusion, continued delivery of a single pan-Cheshire IYSS contract (should the new LAs want this) will be dependent upon Cheshire East and Cheshire West also being able to agree to the same Service Specification and the necessary funding levels for youth services that each will need to contribute in order to deliver to that Specification.
- The current Service Specification is due for its annual review in Autumn 2008. That review needs to start soon and so **both CWAC and CE need to confirm in November that they are content for CCC to start this work now on their behalf.**

- It is very important that both new LAs identify and put in place from the outset an appropriate client management role in order to performance manage the Contract(s). Both LAs will need to consider how this is most effectively done. One option would be to explore the opportunity for a single joint appointment between CWAC and CE.

APPENDIX 2

ROLE OF DIRECTORS OF CONNEXIONS - CHESHIRE & WARRINGTON LTD

COMPANY LAW ISSUES

1. LEGAL ENTITY

A company is a legal entity which is distinct from its owners. Connexions – Cheshire and Warrington Ltd is owned by CCC and Warrington Borough Council (WBC). Its legal status is a Company Limited by Guarantee. This means that its two owners (ie CCC & WBC) have limited liability. The two Authorities as owners of the Company are referred to as the Company's members.

2. COMPANY GOVERNANCE

The Company is governed by its constitutional documents which are its Memorandum and Articles of Association. These documents set out the objects of the Company and how the Company is to be run. Day to day running of the Company is generally entrusted to its Board of Directors. However general company law sets out that some of the more strategic issues and particularly those relating to changes in the Company structure are to be decided by the Company's members voting in a Company General meeting. In addition in the Connexions Company its members have agreed that some issues are to be 'protected matters' and the Company's new Articles state that these 'protected matters' also have to be determined by the Company members rather than the Directors.

3. COMPANY MEMBERS

CCC and WBC are the Connexions Company's members or owners. Where issues arise which have to be decided by the Company's members these issues are decided by the Company members voting in a general meeting. CCC and WBC have nominated representatives who are authorised to exercise this member vote in general meeting. CCC's nominated representative is the Executive Member for Children's Services who will exercise the authority's vote in any Company general meeting. This is a role which is distinct and separate from CCC members who are appointed as Company Directors

3.1 COMPANY DIRECTORS

Company Directors are responsible for carrying on the business of a company and exercising its powers as set out in the company's memorandum and articles of association.

Generally the Company's Articles entrust the running of the Company to its Directors and Company Directors must ensure that the Company is run in accordance with its Memorandum and Articles.

4. DIRECTORS DUTIES

Each Company director has a duty to act in good faith in the best interests of the Company as a whole.

This means that when carrying out this role each individual Director must act independently from the organisation or Authority which may have nominated them to sit on the Board.

In particular :

- **Each Director owes a duty of skill and care to the Company. This means that a Director must act honestly and exercise a degree of skill and diligence which would amount to the reasonable care which an ordinary man might be expected to take in the circumstances on his own behalf.**
- **Each Director owes a fiduciary duty to his Company. This means that a Director must act not only honestly but also in good faith with regard to what the Director considers are the interests of the Company as a whole and not for any secondary purpose (including those of the authority who appointed him) or for his own purpose.**
- **Each Director owes a duty of confidentiality to the Company. This duty is such that even though a Director may have been appointed by a member Authority he must not, without the agreement of the Company disclose to that Authority any confidential information relating to the Company which has been gained by him as a director of that Company.**
- **Each Director must ensure that he does not put himself in a position where his duties to the Company conflict with his personal interests or those of the Authority which appointed him. Any conflict must be declared at Company Board meetings**