

CHESHIRE EAST COUNCIL

REPORT TO: Audit and Governance Committee

Date of Meeting:	20 November 2014
Report of:	Head of Corporate Resources and Stewardship
Subject/Title:	Payments to Directors of Council Owned Companies
Portfolio Holder	Cllr Peter Raynes

1.0 Report Summary

1.1 In February 2013 the Council set out its three year plan to becoming a strategic commissioning council. The strategic commissioning model ensures a measured approach to achieving the Council's ambitions alongside the required financial savings. An integral part of the Council's plan has been the establishment of a number of Alternative Service Delivery Vehicles (ASDVs) in a variety of service areas, with the aim of improving services and placing the needs of residents first. To date, the following ASDVs have been established:

- Cheshire East Residents First Limited (holding company) (CERF). Its subsidiaries are:
 - East Cheshire Engine of the North (EoTN).
 - Ansa Environmental Services Limited (ANSA),
 - Orbitas, Bereavement Services Limited (Orbitas),
 - Transport Service Solutions Limited (TSS),
 - New Cheshire Planning Limited
 - Cheshire East Energy Limited.
- Tatton Park Enterprises Ltd (TPE)
- Everybody Sport & Recreation Limited (ESAR),
- CoSocius Limited (shared HR Finance and ICT transactional services with Cheshire West and Chester Council) (CoSocius),

Details of the current Directors of all Council owned companies are included at Appendix 1.

1.2 The Council's policy on paying Directors within its owned and controlled companies was set out in the report 'Cheshire East Ltd – Group Structure and Governance Arrangements', which was approved by Cabinet on 24th March 2014. This report sets out the Council's policy and provides assurance to the Audit and Governance Committee with regard to its implementation.

2.0 Recommendation

- 2.1 That the Committee notes the report and the assurance it provides in relation to payments to company directors.

3.0 Reasons for Recommendations

- 3.1 To inform the Audit and Governance Committee of the action taken to implement a Cabinet decision and to allow the Committee to review those actions.

4.0 Wards and Local Ward Members Affected

- 4.1 All Members who are directors and in addition, Councillor Marren, who is both a Member of Audit and Governance Committee and Chairman of Orbitas Limited

5.0 Policy Implications

- 5.1 Not applicable.

6.0 Financial Implications (authorised by the Chief Operating Officer)

- 6.1 Contained within the report.

7.0 Legal Implications (authorised by Head of Legal Services and Monitoring Officer)

- 7.1 Under company law the right to pay Directors must be set out in the company's Articles of Association. All Cheshire East owned and controlled companies have adopted the model Articles of Association referred to in the Companies Act 2006 and are therefore permitted to remunerate directors as well as reimbursing them for reasonable expenses. To enable payments to be made the relevant Company Board must make a decision to remunerate its directors and record this decision. Where necessary, payments to Directors can be retrospectively approved by a decision of the Board. All of the payments that have been made to company directors to date fully comply with current company law.

- 7.2 A primary consideration in making payments to Directors has been to ensure that all HMRC requirements with regard to PAYE regulations have been adhered to. To this end, all payments have been made either by the companies directly via their own payroll system or by the Council, on behalf of the relevant company, through its own payroll system. This approach has ensured that all statutory deductions were made at source through PAYE and all tax and NI reported and paid promptly to HMRC. The Council's approach to paying directors in April 2014 was discussed with the Council's HMRC Relationship Manager at the time. The Relationship Manager confirmed that the Council's proposals were fully compliant with HMRC

regulations. The Council's External Auditors were also consulted and no concerns were raised.

8.0 Risk Management

8.1 The main risks with Directors' payments are similar to those associated with salary payments to employees, namely errors and overpayments. This risk is mitigated by the fact that all payments are made via the Oracle payroll system, governed by standard authorisation and approval procedures, with a full audit trail of payments retained. However, with regard to Directors' payments there is an additional risk of individuals benefitting twice from a Special Responsibility Allowance (SRA) and a Director's payment due to changes to payments or responsibilities by a company or the Council. Processes have been set up to ensure that the Council receives information on all payments made by controlled companies and any changes to a Director's payments will be immediately notified to the Democratic Services team so an assessment of any potential impact on SRA payments can be made.

8.2 As set out at 7.2, all payments have been made through the payroll system of either the company or the Council, with appropriate statutory deductions made at source. This ensures that the requirements of HMRC with regard to Real Time Information (RTI) framework are fully complied with.

9.0 Background

9.1 The Cabinet report of 24th March 2014 set out the overarching governance framework for all Cheshire East's wholly owned and controlled companies. Included within the report were the following provisions relating to Directors and their remuneration.

9.1.2 The composition of Company Boards was defined as:

- *a managing director; and*
- *(up to) three non-executive directors (Councillors).*

9.1.3 The principle of paying non-executive directors was set out as follows:

Company directors can be paid. Under company law the nature of any payments are for each board to determine. Under local government law the role of company director cannot be classed as a special responsibility allowance. They are not special responsibilities in relation to the Council.

9.1.4 The level of remuneration:

In principle any payment to a non-executive director through a council owned company should be pitched at a level of similar/comparative duties in the Council. For example being the chair of a company may be considered as being over and above the role of a Council committee chair but less than a Cabinet member. To ensure transparency and consistency

in relation to any such payments the shareholders agreement will set out the Council's expectations in relation to any remuneration offered. The Council expects all companies to:

- *offer councillors acting as the chair of a company payment of up to £10,000. It will be for each councillor to decide whether to accept this payment; and*
- *offer other councillors acting as non-executive company directors a payment of up to £5,000. It will be for each councillor to decide whether to accept this payment.*

9.1.5 The potential for some Councillors to be in receipt of both a Director's payment from a company and an SRA from the Council was also considered:

In each case where any individual councillor is also entitled to a special responsibility allowance in respect of their wider responsibilities the total amount paid is subject to the limits set out in paragraph 13.6 (the £10,000/£5,000 limits). This ensures that a councillor does not 'benefit twice' by receiving an income from the company in addition to their special responsibility allowance.

9.1.6 The issue of when payments should commence:

Directors' remuneration accrues from day to day. It is also generally accepted such accrual is from the day the company was incorporated/became active. It is for each board to determine what their remuneration is and from when it falls due in agreement with Cabinet. This will be reflected in the shareholder's agreement.

9.1.7 Following the 24th March meeting the following principles were agreed between the Leader of the Council and the Chief Operating Officer to enable officers to implement 9.1.6:

- *A company chair may be paid up to 3 months prior to the date of the incorporation provided they can justify activity such as planning meetings and business case development:*
- *Other non executive directors – from the date of incorporation or when they become active if later than date of incorporation.*

The key element in this criteria to initiate payments is the evidence to support involvement and activity by the Directors. In each case the Heads of Legal Services and Corporate Resources and Stewardship review this evidence before authorising payments to start.

9.2 Following approval of the report by Cabinet on 24th March 2014 arrangements were put in place to make payments to all qualifying Directors. The nature of the payments was particularly complex due to the interplay between SRAs paid by the Council and Director's payments made

by the Company. The payments were made on 4 April 2014 to bring all transactions up to date as at the end of the financial year 2013-14. A key objective was to ensure payments were made in the 2013-14 tax year. This meant that the last day that payment could be made through the PAYE system, and accounted for in the 2013-14 tax year, was 4 April 2014.

- 9.3 All payments on 4 April 2014 were made through the Council's payroll system to ensure that all statutory deductions were made at source and reported to the HMRC. The issue was discussed with HMRC at the time and they expressed satisfaction that it had been handled correctly and were re-assured that all deductions had been made correctly. The Council has since been reimbursed in full by each company involved. In addition, the approach taken has been subsequently shared with the Council's external auditors who have also expressed their satisfaction.
- 9.4 In line with company law all company boards passed resolutions setting out their policy on Director's remuneration. Some of the companies passed their resolutions on director's remuneration shortly after the initial payments had been made on 4 April 2014. Such an approach is in line with company law which permits the retrospective approval by the Board of actions taken by the company. The overriding principle is that remuneration for a directorship is paid first and where appropriate the SRA is reduced to ensure that the individual is not paid twice.
- 9.5 Apart from Tatton Park Enterprises Ltd (TPE), all Cheshire East owned and controlled companies resolved to pay Directors in line with the March Cabinet report. TPE Ltd have set their payments at a maximum of £2,000 per year for the Chair and £1,000 for Non Executive Directors, reflecting the different size and nature of that company.
- 9.6 The Board of CoSocius Ltd (the shared service company owned jointly with Cheshire West and Chester) is comprised of officers of the company and the two councils with no additional remuneration paid. The Leisure Trust (Everybody Sports and Recreation) is an independent Charitable Trust and its Directors receive no remuneration. The boards of New Cheshire Planning Limited and Cheshire East Energy Limited are not yet active and therefore no payments have been made.
- 9.7 In June this year, the Chief Operating Officer commissioned a comprehensive review of all payments made to date. The main purpose of his review was to confirm that:
- Council procedures were followed;
 - HMRC regulations were not breached;
 - payments complied with company law;
 - all calculations were correct; and
 - that no director benefited twice - by receiving an income from the company in addition to any SRA.

9.8 The Chief Operating Officer's review identified a small number of errors had been made in the payments made on 4 April 2014. The errors were primarily due to complex relationship between a councillor's SRA and director's remuneration. Particular issues related to the precise timing of when responsibilities in both the Council and the company were assumed or relinquished. All of these issues were corrected in August 2014. In all instances, directors were notified of transactions which affected them and detailed calculations were shared with the individuals concerned.

9.9 The total payments made as at the end of August 2014 were:

	Director Payments 2012-13	Director Payments 2013-14	Director Payments 2014-15 to end August '14	Total (exc. oncosts)	Monthly Amount from Sept 2014 (exc oncosts)
	£	£	£	£	£
CERF Ltd	0	0	0	0	0
ANSA Ltd	0	10,613	8,554	19,167	1,667
Orbitas Ltd	0	12,980	6,187	19,167	1,667
Engine of the North Ltd	973	23,144	8,338	32,455	1,667
TSS Ltd	0	0	6,667	6,667	1,666
TPE Ltd	524	3,166	586	4,276	146
Total	1,497	49,903	30,332	81,732	6,813

No payments are due in respect of Cheshire East Residents First Ltd as the Directors of this company elected not to take any remuneration. In all instances, the Chief Operating Officer found that Council procedures and company law were followed and that HMRC regulations were not breached. The total level of Special Responsibility Allowances (after allowing for Director's Payments which take precedence) paid by the Council in 2013-14 was £322,000. This is expected to reduce to about £286,000 in 2014-15. In addition, the total level of net SRA payments and Director's payments combined is projected to fall from £372,000 in 2013-14 to £364,000 in 2014-15.

9.10 Wherever possible payments were made directly by the companies themselves i.e. through their own separate financial systems and their own bank accounts. However, in the case of two companies – Engine of the North and Transport Service Solutions, payments were made by the Council on their behalf and then charged back to the company. This is because the payroll functionality required to make the payments directly from the company's bank account is not yet ready. Work is ongoing to

ensure that all payments are made directly by each company as soon as is practically possible.

- 9.11 From September 2014 onwards primary responsibility for initiating, processing and checking payments rests with each company. However, due to the interaction with the Council's Special Responsibility Allowances (SRAs), each company must report any amendments to Democratic Services who can then assess any impact on SRAs. In all instances, it is the Director's payment which takes precedence. Where appropriate it is the councillor's SRA payment that is reduced to avoid any individual benefitting twice.
- 9.12 To ensure openness and transparency full details of all Directors payments made to Councillors from a Council owned and controlled company will be published on the Council's website alongside details of all other allowances paid.

10.0 Access to Information

The following background papers relating to this report can be inspected by contacting the report writer:

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Appendix 1

Current Directors in Council Owned Companies

Name of Company	Directors
Tatton Park Enterprises Limited	Jamie Macrae – Chair Peter Raynes George Walton
East Cheshire Engine of the North Limited	Andrew Thwaite - Chair Damien Druce David Newton
ANSA Environmental Services Limited	John Hammond - Chair Steven Hogben Roger West
Orbitas, Bereavement Services Limited	David Marren - Chair Penelope Butterill Lesley Smetham
Transport Service Solutions Limited	Rod Menlove - Chair Gail Wait Derek Hough
Cheshire East Residents First Limited	David Brown - Chair David Topping
New Cheshire Planning Limited	Andrew Kolker - Chair Olivia Hunter
Cheshire East Energy Limited	Peter Mason - Chair Derek Bebbington
CoSocius Limited	<i>No Councillors on the board</i>