

Finance Sub-Committee

Date of Meeting:	1 June 2022
Report Title:	Appointment of Directors for Orbitas Bereavement Services Limited
Report of:	David Brown Director of Governance and Compliance
Report Reference No:	N/A
Ward(s) Affected:	None

1. Purpose of Report

- 1.1. On the 19 May 2022 Cheshire East council received notification of the resignation from office of two Directors of Orbitas Bereavement Services Limited to take effect from 1 June 2022.
- 1.2. Finance Sub Committee as the Shareholder Committee is now invited to consider whether to appoint director/s following these resignations.

2. Executive Summary

- 2.1 Orbitas must comply with the formalities under the Companies Act 2006. It must have at least one director S.154, who is a natural person S.155, and over the age of 16 S.157.
- 2.2 The minimum requirements are already achieved as Orbitas has two current directors. The appointment of any additional directors is discretionary.
- 2.3 The shareholder agreement dated 31 March 2015 (appendix 1) provides for certain matters to require the consent of the shareholders it provides for the shareholders to exert decisive influence over the company, and to dismiss any director. The appointment of a director is of fundamental importance to the shareholder.
- 2.4 The shareholder should be satisfied that the board has a diverse membership with the collective skills and attributes needed to lead the company effectively.

3. Recommendations

3.1. The Finance Sub-Committee consider:

- i) Whether to appoint any additional directors; and
- ii) if required, identify suitable persons.

4. Reasons for Recommendations

- 4.1. The appointment of suitably qualified and experienced individuals to support, challenge and develop the company can be of significant benefit to the company.
- 4.2. Where the Council appoints an elected Councillor¹ to a directorship it usually does so in a non-executive role.
- 4.3. The Committee should also be aware that the shareholder agreement predates the adoption of the committee system, the review of the wider company structures and the role of the holding company 'CERF'. Consideration will need to be given to updating the shareholder agreement to ensure it is fit for purpose.

5. Other Options Considered

5.1.

Option	Impact	Risk
Do nothing –	The company would continue with two directors and the current single Councillor appointed as Director	The company does not benefit from a wider perspective and the burden on individual directors is increased.
Appoint one or more than two additional directors.	The impact would be linked to the added value each individual director can contribute to the company.	The company has more directors to support. If a high number are appointed decision making can become diffuse.

6. Background

6.1. The Council has previously appointed three councillors to a non-executive directorship of this company.

¹ In this report the term Councillor is used to describe elected members to avoid confusion with the statutory language referring to members of a company.

- 6.2.** Following the resignations the committee is invited to consider and, if it is minded to do so make recommendations on the appointments of replacement/s.
- 6.3.** The committee will be aware of the recent concerns raised in public interest reports on other local authorities on how alternative delivery vehicles have functioned. A link to the Local Authority Company Review Guidance which arose from a recommendation by Max Caller Strategic Adviser and Lead Inspector for HM Government and the 2020 review of Nottingham City Council is provided. [Local Partnerships Local-authority company review guidance v1.pdf \(localpartnerships.org.uk\)](https://localpartnerships.org.uk/local-authority-company-review-guidance-v1.pdf)

7. Implications

7.1. Legal

- 7.1.1.** The potential appointment of Directors is being considered following the resignation of current post holders, effective from 1 June 2022. This will reduce the Board from four Directors to two (a Councillor and the Managing Director).
- 7.1.2.** The Companies Act 2006 requires a company to have 1 Director who is a natural person over the age 16. The Shareholders Agreement does require the Council to exercise decisive control over the company but does not embellish on the legal requirements as set out in the Companies Act 2006.
- 7.1.3.** The Board may therefore continue to operate via the 2 remaining Directors but it is open to the Committee, acting in the role of Shareholder, to consider further appointment to the role of Non-Executive Director.
- 7.1.4.** Under the Companies Act 2006, a company director is required to:
- 7.1.4.1.** Act in a way most likely to promote the success of the company (s172);
 - 7.1.4.2.** Exercise independent judgement (s173);
 - 7.1.4.3.** Exercise reasonable care, skill and due diligence (s174); and
 - 7.1.4.4.** Avoid conflicts of interest (s175).
- 7.1.5.** There is no legal bar to the inclusion of an elected Councillor as a Director. A Councillor can continue to act as a director and governance mechanisms both within the Council and the Company such as declarations of interest and observance of the requirements for registering and reporting conflicts of interest would need to be strictly adhered to.

7.1.6. There nevertheless remains a risk that actual or perceived conflicts of interest could arise, with consequential risks in terms of in terms of personal liability for the Councillor involved and financial/reputational risk for the Council should good governance not be followed/observed.

7.1.7. The Committee's attention is specifically drawn to Recommendation 3 of the Nottingham City Council SI Report 2020 that:

"Where it continues to use Councillors in such roles, it should ensure that non-executives (including Councillors) on the relevant Board have, in aggregate, the required knowledge and experience to challenge management. This is of particular importance where the company is operating in a specialised sector which is outside the normal experience of Councillors." A link to the full copy of the report is provided:

[Report in the Public Interest concerning the Council's governance arrangements for Robin Hood Energy Ltd \(nottinghamcity.gov.uk\)](https://www.nottinghamcity.gov.uk/~/media/2020/07/Report-in-the-Public-Interest-concerning-the-Councils-governance-arrangements-for-Robin-Hood-Energy-Ltd.pdf)

7.2. Finance

7.2.1. The Shareholder agreement at paragraph 4.10 provides that

7.2.2. *"4.10 The company will offer remuneration to members of the Council proposed to be appointed as non-executive directors of the company of up to:*

4.10.1 £10,000 per annum in respect of appointments to the chair of the company; and

4.10.2 of £5,000 per annum in respect of any other appointment;"

7.2.3 There are no implications for the Medium Term Financial Strategy of the Council from the recommendations in this report as remuneration for directors are funded by the company.

7.3. Policy

7.3.1. There have been several recent public interest reports resulting in additional guidance on council owned companies. The appointment of directors is a fundamental part of how the council manages its relationship with the company. It is understood additional guidance will be produced in the future by CIPFA to assist councils in making these decisions.

7.4. Equality

7.4.1. Any appointment should support the Council's responsibility to have due regard to the Public Sector Equality Duty.

7.5. Human Resources

7.5.1. The shareholder would normally expect and/or approve a director's service agreement specifying the obligations and remuneration of the

company and the director, particularly if it was proposed for a period of two years or more.

7.6. Risk Management

7.6.1. There has been recent guidance relating to the mitigation of risk in the management of companies owned and operated by local authorities and further guidance is expected. The committee should have regard to that guidance.

7.7. Rural Communities

7.7.1. None

7.8. Children and Young People/Cared for Children


7.8.1. None

7.9. Public Health

7.9.1. None

7.10. Climate Change

7.10.1. None

Access to Information	
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Appendices :	<p>Appendix 1 – Orbitas Shareholder Agreement (and link to New Articles)</p>  <p>Orbitas - Shareholders Agreee</p> <p>https://find-and-update.company-information.service.gov.uk/company/08747498/filing-history/QTQ0TjhPQVJhZGlxemtjeA/document?format=pdf&download=0</p>
Background Papers:	https://www.nottinghamcity.gov.uk/media/2835756/report-in-the-public-interest-rhe.pdf

	https://localpartnerships.org.uk/wp-content/uploads/2021/09/Local_Partnerships_Local-authority_company_review_guidance_v1.pdf
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