

meeting CABINET

date 14 September 2011

agenda item number 10

REPORT OF THE CABINET MEMBER FOR CHILDREN AND YOUNG PEOPLE'S SERVICES

Nottingham and Nottinghamshire Futures and Guideline Careers Services - Share Transfer

Purpose of item

1. To seek approval for the shares owned by the Council in the Guideline Careers Services Limited company to be transferred to Nottingham and Nottinghamshire Futures, and for the Corporate Director for Children, Families and Cultural Services, in consultation with the Assistant Chief Executive, to be authorised to agree the form of the agreements and associated documentation required to be entered into by the Council to implement this.

Information and advice

Background

2. The County Council is a member of Nottingham and Nottinghamshire Futures Limited ("Futures") with Nottingham City Council on a 50:50 basis with each Council having one share in the company. Futures was established in 2010 as an "in-house company", jointly owned by both Councils, to provide (i) information, advice and guidance services for young people in Nottingham and Nottinghamshire on behalf of both Councils (ii) the co-ordination of 14 -19 educational activity and funding across both Council areas and (iii) support to schools, colleges and businesses to develop and deliver quality work-related learning opportunities, including work experience and enterprise education, for young people. This involved the transfer of the Nottinghamshire Education Business Alliance (NEBA) business unit from the City Council into Futures.
3. The Company was previously known as Nottinghamshire Connexions and was also jointly owned by both Councils.
4. Both Councils are also the sole shareholders in Guideline Careers Services Limited ("Guideline"), a trading company established to deliver adult careers advice and guidance to the private and third sector as well as other public bodies. Guideline is the "sister company" to Futures and shares a common management structure.

5. The Cabinet Member for Children and Young Peoples Services (CYPS), Councillor Philip Owen, the Deputy Cabinet Member for CYPS with responsibility for Youth Services, Councillor Lynn Sykes, and the Service Director for Youth, Families and Culture, Derek Higton, currently represent the County Council as Directors on the Boards of Futures and Guideline.
6. The above arrangements have been previously approved by Cabinet. They allow both Councils to access an exemption (the “Teckal” exemption) from European Union (EU) procurement rules that enables contracting authorities to award contracts to “in-house companies” without going through a full EU compliant procurement exercise. This exemption was utilised to enable both Councils to secure continuing effective advice, information and guidance provision for young people through Futures. In order for both Councils to access the “Teckal” exemption, it was necessary to structure the management and governance arrangements for Futures so that:
 - the Councils exercised a degree of control over Futures similar to that which they exercised over their own internal departments
 - Futures carried out the essential part of its activities with both Councils.
7. This was achieved through the establishment of appropriate memorandum and articles of association and membership agreements between both Councils covering both Companies.
8. As Guideline does not contract directly with the either Council it is not subject to the same controls, set out above, as Futures.

Current Position and reasons for recommendations

9. Over the course of the financial years 2010/11 and 2011/12, both Councils have substantially reduced the contractual funding that they have made available to Futures, as a result of central Government funding reductions. In April 2011, central Government financial support for NEBA’s activities also ceased.
10. In consequence, Futures has been required to undertake a substantial programme of cost reduction and business re-evaluation. This has resulted in substantial reductions in its staffing establishment. The Company continues to deliver its core activities, however, and remains high performing. For example, its key performance indicator - the number of young people aged 16-19 in Nottinghamshire who are classified as NEET (Not in Education, Employment or Training) - remains below 4.5%, significantly below the national average and that of many of Nottinghamshire’s statistical neighbours.
11. As part of its programme of cost reduction and control, the Company has reviewed its governance structures in respect of their tax efficiency. In this respect, the Company is advised that the current arrangements whereby Futures and Guideline act as “sister” companies is both tax and administratively inefficient. In particular, there is a high cost of unrecoverable VAT in relation to the internal services provided between the two Companies.

It is estimated that this costs in the region of £40,000 per annum. In addition, the current arrangements make it difficult for both Companies to access a shared staffing resource - being able to do so would enable both Companies to respond more efficiently to changes in work flow and demand.

12. In consequence, the Board of Futures and Guideline has been considering the tax benefits that would arise should the shares of both Councils in Guideline be transferred to Futures so that Guideline becomes a wholly owned subsidiary of Futures. It has engaged an independent firm of valuers, Mazars LLP, to value Guideline. The result of this independent valuation of Guideline (undertaken in March 2011, based on the summarised balance sheet as at 31 March 2010) is set out below:

	£000
Goodwill	358
Current Assets	1,117
Creditors due within one year	(951)
Pension Liability	(580)
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Book Value	(56)
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13. As such, it is the case that the 2 shares held by both Councils in Guideline may be transferred concurrently to Futures for a nominal value of £1 each, so that it becomes a wholly owned subsidiary of Futures. The Board of Directors of Futures considered a report into the pros and cons of the proposed transfer at its meeting on 14 July 2011 and has recommended to the members of the Company that the transfer should be approved.
14. Such a transfer would not increase the current overall liabilities of either Council, as these are limited through the ownership and governance arrangements for Futures. However, it should be acknowledged that a transfer could potentially, in future, weaken the ability of the Councils to take advantage of the "Teckal" exemption outlined above in relation to the services agreements that Futures currently has with the Councils. However, it is understood that any transfer would not trigger a need to tender for these services at the present time.
15. This proposal is made on the basis that Nottingham City Council also agrees to the transfer as the other member of both Guideline and Future and the recommendations in this report are subject to those approvals being forthcoming.

Statutory and Policy Implications

16. This report has been compiled after consideration of implications in respect of finance, equal opportunities, personnel, crime and disorder and those using the service. Where such implications are material, they have been described in the text of the report. Attention is however drawn to the following:-

Powers of the Council

17. Legal Services have advised that it is within the power of local authorities to participate in the establishment and membership of companies. In this case the shares are being transferred from the Councils to another company (Futures) in which both Councils have equal shares as members. The primary source of legal power identified is Section 2 of the Local Government Act 2000 (the "Act"). Under Section 2, a local authority has power to do anything which it considers is likely to achieve the promotion or improvement of the economic, social or environmental well-being of its area. The power may be exercised in relation to, or for the benefit of, the whole or part of the local authority's area, or all or any persons resident or present in that area. The two limitations of the Section 2 power (set out in Section 3 of the same Act) do not apply as there is no legal prohibition, restriction or limitation preventing the transfer of these shares to another Company provided the appropriate process has been followed and the authorities are not transferring the shares to raise money (whether by precepts, borrowing or otherwise). The aims of both Guideline and Futures will continue to be for the social benefit of both Councils' areas and is consistent with the Council's community strategy priorities as required by Section 4 of the Act. In particular, the priority with regard to Children achieving their full potential and the priority for a more prosperous Nottinghamshire by improving careers advice and guidance available to young people.

Human Resources implications

18. All staff are and will continue to be direct employees of the company, not the County Council.

Financial implications

19. These are contained within the body of the report.

Implications for service users

20. The arrangements set out in this report are intended to ensure the continuation of high quality information, advice and guidance services for young people and adults in Nottinghamshire.

Equal opportunities implications

21. Futures provides specialist services to young people with learning and/or physical disabilities and for young people from black and minority ethnic backgrounds. These services will be continued under the proposed new arrangements.

RECOMMENDATIONS

22. It is recommended that, subject to approval by Nottingham City Council to the proposed transfer and its subsequent implementation by them, Cabinet approve:
- (1) the transfer by Guideline and the acquisition by Futures of the shares owned by the County Council in Guideline, on the basis set out in the report, and
 - (2) the Director representatives of the Council on the Boards of Futures and Guideline be authorised to confirm such consent to meetings of the respective companies
 - (3) the Corporate Director for Children, Families and Cultural Services, in consultation with the Assistant Chief Executive or her nominee, be authorised to agree the form of the agreements and associated documentation required to be entered into by the Council to implement the above recommendation.

COUNCILLOR PHILIP OWEN

Cabinet Member for Children and Young People's Services

Legal Services' comments (CEH/25.08.11)

23. Cabinet has the delegated authority to consider the matters set out in the report and decide upon the recommendations. Any legal agreements or documentation required for the transfer/acquisition of shares must be in a form approved by Legal Services.

Financial comments of the Service Director – Finance (NDR)

24. The financial implications are set out in paragraphs 11 to 13 of the report.

Background papers available for inspection

Cabinet Reports, 6 June 2007 and 18 November 2009 (previously published)

Electoral division(s) affected

Nottinghamshire.

M19C2868