

READING BOROUGH COUNCIL

REPORT BY DEPUTY CHIEF EXECUTIVE

TO:	POLICY COMMITTEE		
DATE:	13 DECEMBER 2021		
TITLE:	BRIGHTER FUTURES FOR CHILDREN LIMITED - RESERVED MATTERS		
LEAD COUNCILLORS:	CLLR JASON BROCK CLLR LIZ TERRY CLLR ASHLEY PEARCE	PORTFOLIOS:	CORPORATE GOVERNANCE CHILDREN'S SERVICES EDUCATION
SERVICE:	N/A	WARDS:	ALL
LEAD OFFICER:	MICHAEL GRAHAM	TEL:	0118 937 4130
JOB TITLE:	ASSISTANT DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES	E-MAIL:	michael.graham@reading.gov.uk

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 To report to the Policy Committee in its capacity as the sole member of Brighter Futures for Children Ltd (BFfC).
- 1.2 To make consequential decisions as sole member following the departure of the Company's Interim Executive Director for Finance and Resources on 19 November 2021.

2. RECOMMENDED ACTION

For Policy Committee to:

- 2.1 Endorse the secondment of the Council s151 Officer and Finance Director to act as the interim Executive Director for Finance for BFfC for 20% of his time for a maximum of 6 months to facilitate the appointment of a new permanent Executive Director of Finance and Resources,
- 2.2 Waive the requirement in the Articles for the interim Executive Director of Finance to be an employee of the Company for a maximum of 6 months to allow for the appointment of a new permanent Executive Director of Finance and Resources, and
- 2.3 Confirm to the Board of Brighter Futures for Children Ltd that it does not view the role of interim Executive Director for Finance to generally be in conflict with the role of Director of Finance and section 151 officer for the Council, and that for the purposes of Article 19.2 of the Articles of Association, the interest should not reasonably be regarded as one giving rise to a conflict of interest.
- 2.4 Note the requirement for the transformation work already underway within the RBC Finance Team, including the implementation of a new financial system, to continue at pace and that this may necessitate additional resources.

3. BACKGROUND

- 3.1 In October 2018 the Council approved the formation of a separate Company for the delivery of Children's Services in Reading; Brighter Futures for Children Limited (BFfC). The Company subsequently began delivery of services in December 2018.
- 3.2 BFfC is a company limited by guarantee without share capital. Its sole member is Reading Borough Council and the Council has several rights under the Articles of Association (the Company constitution).
- 3.3 Following the departure of the Interim Executive Director for Finance and Resources on 19 November 2021, it is the intention of the Company to seek to recruit a permanent Executive Director of Finance and Resources and not take on a new external interim for this post at a critical time in budget and business planning. The Company intends to commence this process as soon as possible in 2022. However, there needs to be an appropriate interim structure put in place to ensure that the Company is managed effectively, is accountable to the Board and can pursue its mission of protecting and enhancing the lives of the children of Reading.

4. PROPOSALS

Composition of the Board & appointment of a Director

- 4.1 The Interim Executive Director for Finance and Resources resigned from his position on 19 November 2021. This means that the Board is now comprised of the following Directors:
 - Director of Children's Services (DCS) (an Executive Director)
 - The Chair (a non-executive Director)
 - The Council nominated Director (a non-executive Director)
 - Four other independent non-executive Directors
- 4.2 The minimum requirements for the Board in Article 9.2 are specified as follows:
 - The Chair
 - At least one Executive Director in addition to the DCS
 - At least one non-executive Director
 - The Council nominated Director
- 4.3 These minimum requirements were built into the Articles to ensure a balanced Board. Following previous waivers to articles agreed by Policy Committee (acting in its capacity as sole member for BFfC), the Interim Executive Director for Finance and Resources counted as an Additional Executive Director and his departure now means that the Board is not in accordance with the minimum requirements of Article 9.2.
- 4.4 Article 9.3(b) specifies that whilst there are fewer Directors than specified by Article 9.2 then the only business that the Board can transact is the appointment or replacement of Directors.
- 4.5 At the Board meeting on 25 November, the Board resolved to appoint, subject to the approval of the Council, the Council's s151 Officer and Finance Director, Darren Carter as an additional (Executive) Director. This appointment will be enabled by way of secondment of Mr Carter to BFfC for 20% of his time. The agreed duties to be covered through the secondment are as listed in Appendix 1.
- 4.6 The appointment of an additional Executive Director is a Reserved Matter, and the Council's consent is required. It is proposed that the Council consents to the appointment of the additional Executive Director for a maximum of 6 months to facilitate the review and appointment of a new permanent Executive Director of Finance and Resources. This will give Mr Carter the authority he needs to be able to fulfil the duties of the Executive Director position. It will also ensure that the Board

is able to transact the full range of decisions required to progress the business of the Company.

- 4.7 This arrangement does not come without challenges: the proposals will have an impact on capacity to oversee the Finance transformation programme currently underway within the Council, including: the implementation of the new financial system which has a challenging timeline and ongoing work on the 2019/20 and 2020/21 audits. The potential risk is increased due to capacity issues within the Council Finance Team, including vacancies in key roles. Whilst these are being proactively managed there may be a need to bring in additional resource to ensure they do not slip.
- 4.8 Policy Committee is also asked to specifically note that the proposals will mean that Mr Carter will need to ensure that he is acting in the best interests of the Company whilst carrying out duties as part of his secondment, a different focus and approach to his substantive role and not ideal for any length of time. However, the Council fully supports the desire of BFFC to not take on a new external interim for this post at this time, hence the recommendations contained within this report.
- 4.9 This interim arrangement is proposed to be in place for a maximum of 6 months until the appointment of a new permanent Executive Director of Finance and Resources. The Executive Leadership Team until this time will comprise the Chair, the DCS and the Interim Executive Director of Finance.

Waiver of the Articles

- 4.10 Article 9.4 specifies that Executive Directors (other than the DCS, who is an employee of the Council seconded 80% of her time to BFFC) must be employees of the Company. This was specified for the stability of the Company. However, in his interim position, Mr Carter is not an employee of the Company but will be seconded. Given that his appointment to the Board is a temporary measure designed to bring stability to the Company in the interim before the longer term position can be ascertained and delivered, then it is necessary for the Council to consider if it will grant a waiver to the Articles and allow the interim appointment of Mr Carter for a maximum of 6 months. Mr Carter has indicated that he is willing to serve in this capacity.

Options Proposed

- 4.11 In its capacity as the sole member of the Company, Policy Committee is asked to approve all these arrangements:
- To appoint an additional Executive Director for a time limited assignment
 - To grant a waiver from the Articles for the Executive Director to be appointed via a secondment

5. CONTRIBUTION TO STRATEGIC AIMS

- 5.1 In Spring 2021 the Council refreshed its Corporate Plan, incorporating a number of major change projects under 3 themes:
1. Healthy Environment
 2. Thriving Communities
 3. Inclusive Growth

- 5.2 All elements of this report align with the delivery of the BFFC Business Plan, which forms part of the Thriving Communities theme.

6. ENVIRONMENTAL AND CLIMATE IMPLICATIONS

6.1 The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers).

6.2 There are no environmental or climate change implications arising from this report.

7. COMMUNITY ENGAGEMENT AND INFORMATION

7.1 Not applicable

8. EQUALITY IMPACT ASSESSMENT

8.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.2 An Equality Impact Assessment is not relevant to the requested decisions.

9. LEGAL IMPLICATIONS

9.1 The Constitution of the Company contained within the Articles is one of the main instruments of strong and effective corporate governance for the Company. The relationship between the Council and the Company, reflected in the Articles, was proposed in 2018 after careful consideration to give the Company a strong independent Board. The features of that Board are (i) having an independent non-executive Chair, (ii) Executives directly employed by the Company (iii) Executive representation balanced by non-executive directors who can support and challenge the Executive in the delivery of the Company mission. There is nothing to suggest that this Constitution is inappropriate and, whilst the present method of delivering services remains appropriate, departure from this Constitution should be considered carefully and Members should be satisfied that a longer term plan to regularise Board composition is capable of being delivered.

9.2 The Section 151 officer of the Council has a number of duties which are articulated and described within the CIPFA Statement on the role of the Chief Financial Officer in Local Government (2016). Part of which states:

CIPFA's view is that the statutory role of the CFO does not stop at the boundaries of the local authority but extends into its partnerships, devolved arrangements, joint ventures and companies in which the authority has an interest. As a minimum the CFO would exercise this through ongoing monitoring and obtaining rights of access to information in order to ensure financial probity. CFO's must be satisfied that whatever is being monitored is needed and the information available. The CFO should oversee the appropriate arrangements with respect to service contracts and alternative delivery models.

9.3 The role of a Director of a Company is described within in the Companies Act 2006. There are various duties on a Director:

- a. Act within powers
- b. Promote the success of the company
- c. Exercise independent judgment
- d. Exercise reasonable care, skill and diligence

- e. Avoid conflicts of interest
- f. Not accept benefits from third parties
- g. Declare interests in proposed or existing transactions or arrangements with the company

9.4 The main consideration is the possible conflict between a Director acting in the best interests of the Company and the role of the statutory section 151 officer. Generally, a director must avoid situations in which they have, or could have, an interest that conflicts, with the interests of the Company. There is no set of rules to determine which situations will or will not give rise to a conflict of interest. Potentially a conflict situation can also be approved by the other members of the Board to give reassurance to a Director who declares a conflict. This would allow the Director to continue to participate in the business at the Board. The Articles of BfC allow for this, but the circumstances described in the Articles are limited. Therefore the Council, as sole member, may wish to give direction to the Company that it does not view the appointment as necessarily giving rise to a conflict of interest in and of itself.

9.5 However, it is worth noting that in exercising the duty as a Director, these general duties are owed to the company and not other group companies or individual shareholders. Notwithstanding that the Council may wish to confirm to the Company that it does not see a general conflict of interest arising from the sharing of a senior officer in these circumstances for a limited time, this does not prevent Mr Carter from exercising his own judgement on any individual matter and referring conflict issues to the Board if needs be.

9.5 Many Finance Directors in local government have been appointed by their councils to the boards of Council companies. Where there is mutuality of interest between council and company and the companies perform in accordance with the business plan, the opportunity for conflict is lessened. Members will however wish to be alert to the possibility of a future conflict which could arise over a longer period of time, especially if the financial performance of the Company was considered to be matter which gives rise to Mr Carter's consideration of his professional duties under s151.

10. FINANCIAL IMPLICATIONS

10.1 The Interim Executive Director will not receive any additional remuneration as a result of this secondment. However, it may be necessary to bring in some additional capacity to ensure the effective drive and oversight of the Council's transformation programme as a result of Mr Carter's secondment.

11. BACKGROUND PAPERS

11.1 There are none.

Duties for the interim Executive Director of Finance for Brighter Futures for Children Ltd

- Attendance at BFfC Board mtgs
- Attendance at BFfC Finance Committee
- Review of the BFfC Finance function and agreement of proposed structure, which will be used as part of a recruitment process for the permanent Exec Director of Finance and Resources and for a new Head of Finance recruitment
- Oversight of MTFP development and monitoring reports - to be prepared by the BFfC Head of Strategic Budgets & Finance and the BFfC Strategic Finance Business Partner.
- To provide strategic direction to the BFfC Finance Team and advice to the BFfC Board