

Committee: Cabinet

Date: 12 July 2021

Wards: All

Subject: CHAS 2013 LTD

Lead officer: Caroline Holland, Director of Corporate Services

Lead member: Councillor Tobin Byers

Contact officer: Louise Round, Managing Director South London Legal Partnership

Recommendations:

- A. To appoint the Chief Executive, in consultation with the Director of Corporate Services and the Managing Director of the South London Legal Partnership (the Shareholder Panel) to act as the Council's Shareholder Representatives for the purposes of taking decisions on the matters reserved for the Council as the sole shareholder in CHAS 2013 Limited ("the Company"), except for the matters listed in paragraph 2.12 of this report which shall be reserved for decision by the Cabinet;
- B. To approve the revised articles of association and shareholder agreement attached as appendix A and B respectively, subject to any changes which the Shareholder Panel consider reasonably necessary in order to protect the Council's interests;
- C. To approve the proposed new company structure set out in paragraph 2.2 and that to delegate authority to the Shareholder Panel to agree the articles of association and any shareholder agreement relating to that new structure and to make any necessary applications in order to effect those changes;
- D. To authorise the Shareholder Panel to agree the proposal for the Company to acquire Company X at such a price and on such terms as in their view, having taken such advice as may be appropriate, represents a fair and proper commercial consideration;
- E. To note that decisions by the Shareholder Panel will, where appropriate, be taken in consultation with the Cabinet Member for Finance.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

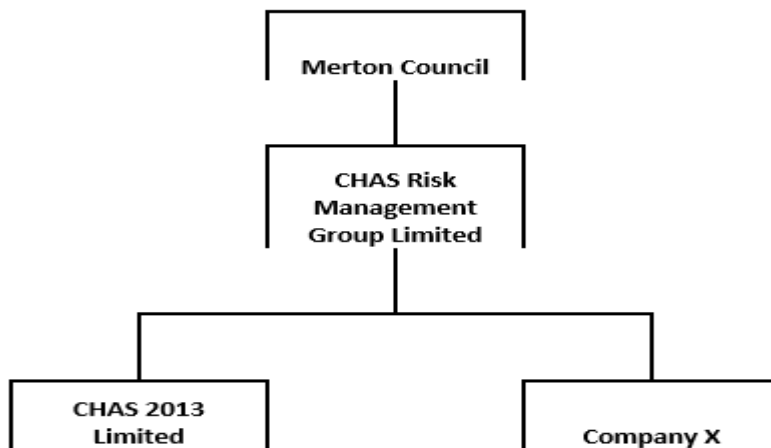
- 1.1. In 2013 the Cabinet agreed to "spin out" its internal Contractors Health and Safety (CHAS) Assessment Scheme which was acknowledged nationally as a highly respected scheme and the market leader for health and safety pre-qualification in the UK.
- 1.2. A limited company was incorporated as CHAS 2013 Limited ("the Company") in March 2013, with the Council as the sole shareholder. The Company has been very successful and has approached the Council seeking to vary its articles of association and the terms of the agreement between the Company and the Council as shareholder. This would seem an opportune moment to review the governance arrangements relating to the Council's oversight of its wholly owned company.

2 DETAIL

- 2.1. Following agreement by the Cabinet to the establishment of the Company in 2013, the Company was formed on the basis of Model Articles of Association and a draft shareholder agreement was approved by the Director of Environment and Regeneration who at that time acted as the shareholder representative on behalf of the Council. Subsequently, the Director of Environment and Regeneration was appointed as director of the Company and Chair of the Board. The role of shareholder representative was taken by the Director of Corporate Services.

Company Structure

- 2.2. In November 2019, the Cabinet agreed to establish a holding company based on a separate group model which would sit above a number of council owned companies, including CHAS. This proposal has not yet been implemented. CHAS now wishes to pursue this and is recommending that a new “ HoldCo” company be created, whose name is to be determined, to be wholly owned by the Council and which will act as the parent company for the current CHAS 2013 Ltd and any other associated company that may be acquired of part of a CHAS Group. The articles of association and shareholders’ agreement would mirror those of the existing CHAS 2013 Ltd. Although when Cabinet considered the matter in 2019 it envisaged this arrangement would be part of a wider group of local authority trading companies including, for instance, Merantun Ltd, this proposed new structure is in line with the overall approach agreed. The proposed new structure is illustrated below and includes an indication of where Company X would sit should the Company proceed with its acquisition.



- 2.3. The current arrangements are structured so that the articles of association define the division of responsibility between the board of directors of the Company and the Council as shareholder. The board of directors (“the Board”) is appointed by the Council and must comprise at between 3 and 8 directors, with an equal number of council officer directors and executive and non-executive directors. A Council officer director must be chair and will have a casting vote. At least one of which should be a council officer. The current directors are:

Council Directors	Other Directors
Chris Lee, Director Environment and Regeneration	Ian McKinnon, Managing Director
Nick Steevens, Head of the RSP	Bindi Lakhani, Finance Director
John Morgan, AD,	Peter Hepworth (Independent NED)
Kam Singh, Head of Law, Social Care and Education, SLLP	Elaine Bailey (INDEPENDENT NED)

- 2.4. The day-to-day operations of the Company are a matter for the Board who should act in accordance with an annual business plan to be approved by the council in its capacity as shareholder by the end of February every year.
- 2.5. More significant decisions require approval by the shareholder; these include issuing share capital, paying dividends and approving the Company’s business plan and pay policy.
- 2.6. The function of granting the approvals referred to in 2.4 and 2.5 above has since April 2017 been discharged by the Director of Corporate Services.

Proposed changes to arrangements

- 2.7. Since its establishment, the Company has become increasingly successful and as would be expected of any company is now reviewing its governance arrangements. The Board has taken the view that a more bespoke form of articles of association should be adopted and that some amendments should be made to the shareholder agreement to reflect the evolving nature of the Company. Attached to this report as appendices A and B respectively are the proposed new articles and amended shareholder agreement. The Cabinet is being recommended to agree these, subject to any further amendments which the Shareholder Panel (referred to in paragraph 2.13 below) may consider reasonably necessary to protect the Council’s interests.

- 2.8. Under the proposed new arrangements, the importance of the annual business plan is increased as a number of matters which previously required specific shareholder approval, will now be a matter for the Board as long as they have already been specifically authorised as part of the process of approving the annual business plan. The division of responsibility between the Board and the Council is set out in a delegation matrix which forms a schedule to the shareholders' agreement and is attached as appendix C.
- 2.9. If the proposals are agreed, it will therefore be really important that the business plan is clear and unambiguous about what steps are being proposed and that there is a robust process for formally approving it. Officers are in discussions with CHAS about how best to achieve this clarity on the face of the business plan.
- 2.10. To date the sign off of the business plan has been a relatively informal process. Given the value of the Company to the Council and of some of its potential future transactions, it would be prudent to strengthen the governance around this process. It is recognised that a balance needs to be struck between providing assurance that decisions are being taken in a sound matter and allowing the Company to operate in a commercial way without being overly constrained by bureaucratic processes. In that light it would not seem sensible to require all shareholder decisions relating to the Company to be taken by councillors. However, there might be some decisions which are so significant as to require formal member oversight.
- 2.11. Given the central importance of the annual business plan, officers are therefore recommending that its approval should be a matter for the Cabinet. If so, this could be built into the forward plan and need not add any delay to the process of approval. Should a significant decision need to be made mid-year which had not been specifically authorised by the business plan, this would require a separate specific Cabinet decision. In order to allow a degree of flexibility in decision making, it is suggested that the number of cases where such a decision is reserved for the Cabinet should be relatively few, namely:
- 2.11.1 Forming a subsidiary company or acquiring shares in another company, forming joint ventures or formal partnerships;
 - 2.11.2 Amalgamating or merging with any other company or acquiring a company or other business
 - 2.11.3 Entering into contracts with a value of £2million or more
 - 2.11.4 Borrowing or granting security over assets where the value is of £2million or more
 - 2.11.5 The admission of a new shareholder to the Company or the expulsion of any existing shareholder

- 2.11.6 Altering the amount of the Company's issued share capital, granting any option or other interest or in its share capital, redeeming or purchasing any of its own shares or effecting any other reorganisation of its share capital.
- 2.11.7 Applying for the listing or trading of any shares or debt securities on any stock exchange or market.
- 2.11.8 Making any petition or passing any resolution to wind up the Company or making any application for an administration or winding up order or any order having similar effect in relation to the Company or giving notice of intention to appoint an administrator or file a notice of appointment of an administrator including automatic strike out.
- 2.12. In all other cases, decisions would be delegated to officers in accordance with the arrangements set out below.

Officer Decision Taking – Shareholder Panel

- 2.13. At present, the responsibility for taking shareholder decisions rests solely with the Director of Corporate Services and it might be argued that it is preferable for that decision to rest with more than one individual, particularly if the extent of that authority is considerable.
- 2.14. It is therefore being suggested that that role be exercised by a panel of three officers, namely the Chief Executive, Director of Corporate Services (Section 151 Officer) and the Managing Director of the South London Legal Partnership (Monitoring Officer).
- 2.15. Decisions (other than those reserved for Cabinet under paragraph 2.12 above) would be taken by the Shareholder Panel on the basis of reports setting out the nature of the decision being contemplated, with the usual legal and financial implications. In some cases, it may be appropriate to call a meeting to discuss the matter, particularly if the matter under decision requires a formal resolution of the Company (as opposed to the board of directors). One example of this is the declaration of dividends, which under the articles is a matter for company, on the recommendation of the Board of Directors (although the directors can declare interim dividends). Although it would be hoped that the Panel would be able to take decisions unanimously, in the event of a disagreement, it is proposed that the final decision rest with the Chief Executive.
- 2.16. Delegating responsibility for decisions to the Shareholder Panel would not prevent them from being referred to Cabinet for decision where that panel considered the impact of those decisions on the Council's interests to be significant.

Acquisitions of New Companies

- 2.17. As stated above, one of the activities which are currently are, and it is proposed should remain, a decision for the Council as shareholder, is the acquisition of other companies. The Company has made an outline proposal at its meeting on 22 April to acquire an external company, referred to as Company X, further details of which are set out in the exempt appendix D. Due diligence is currently being undertaken but , subject to the outcome of that exercise it is recommended that authority be delegated to the Shareholder Panel to agree that the Company should acquire Company X at a price which in their view, and having taken such advice as may be appropriate, represents a fair and proper commercial consideration.

3 ALTERNATIVE OPTIONS

- 3.1. The Cabinet could decide to leave all decisions in relation to the Company to be decided by officers but given the value of some potential transactions, officers consider that the principles of good governance will be better served by creating some degree of member oversight. In relation to the acquisition of Company X, the Council could decline to agree this if, following due diligence, the Shareholder Panel forms the view that it the business case does not justify it.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. None.

5 TIMETABLE

- 5.1. If agreed, it is proposed that these proposals take immediate effect, subject to the final wording of the shareholder agreement and articles of association being agreed.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. Under the current arrangements, the decision to pay a dividend lies with the Council as sole shareholder. Since the company was established in 2013, the following dividends have been issued on the following occasions:

Financial Year	Amount of Dividend
	£m
2014/15	
2015/16	
2016/17	0.400
2017/18	0.700
2018/19	0.870
2019/20	1.160

2020/21	1.723
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The Company also contributes £500k year to the Council's overheads and for renting office space at the Civic Centre.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The arrangements for the Company must comply with the requirements of company law but the arrangements by which the Council takes its decisions as shareholder must comply with the law governing local authorities and the Council's constitution. As the Company is a separate legal entity from the Council it is not constrained by public procurement rules and nor need it be bound by the Council's employment policies. It is therefore a matter for the Council the extent to which it wishes to allow it the freedom to act as a fully commercial entity, balancing a range of considerations.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix A – draft revised articles of association - to follow
- Appendix B - draft revised shareholders' agreement – to follow
- Appendix C – draft delegations matrix – to follow
- Exempt Appendix D – details of possible acquisition of Company X
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12 BACKGROUND PAPERS

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