

# **Cumberland Shadow Executive**

**28th March 2023**

## **Cumbria County Holdings – Shareholder Agreement**

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<b>Report from:</b>	Leader of the Council
<b>Report Author:</b>	Monitoring Officer
<b>Wards:</b>	All Wards
<b>Key Decision:</b>	Issue Is Not a Key Decision

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### **1.0 Purpose/Summary of report**

- 1.1 From 1 April 2023 Cumberland Council and Westmorland and Furness Council will each own 50% of the shares in Cumbria County Holdings Limited (“CCH”) which is a holding company of a trading group (the “Group”).
- 1.2 The purpose of the report is to recommend entering into a shareholders agreement with Westmorland and Furness Council and CCH (the “Shareholders Agreement”) which sets out the terms upon which the company and its subsidiaries and the two Councils, as shareholders, shall exercise their rights in relation to the Group.

### **2.0 Recommendation**

#### **It is recommended that:**

- 2.1 The Executive approve entering into a shareholders agreement with Westmorland and Furness Council and CCH which sets out the terms upon which CCH and its subsidiaries and the two Councils, as shareholders, shall exercise their rights in relation to the Group.
- 2.2 The Executive delegates to the s151 Officer in consultation with the Leader and the Executive Member for Finance to agree the final terms of the Shareholders Agreement.
- 2.3 The Executive delegates to the s151 Officer in consultation with the Leader and the Executive Member for Finance to approve changes to

the articles of association of CCH and its subsidiaries to reflect the terms of the Shareholders Agreement.

### **3.0 Background and Proposals**

#### **The Group**

- 3.1 CCH is currently a wholly owned subsidiary of Cumbria County Council. It is the holding company for two operating groups of subsidiary companies. Cumbria Waste Group is the largest provider of waste management and recycling services to both local authority and trade customers in Cumbria. Orian Solutions Group is a leading regional provider of soft facilities management services to schools and commercial customers. Each trading Group has a principal trading company which is a 100% subsidiary of CCH, being Cumbria Waste Management Limited ("CWM") and Orian Solutions Limited ("Orian") respectively.
- 3.2 CWM has two wholly owned subsidiaries and an associated undertaking. These are Cumbria Waste Recycling Limited ("CWR") which focuses on domestic and commercial recycling and Lakeland Waste Management Limited ("LWM") which operates a site near Penrith and holds a 50% shareholding in Lakeland Minerals Limited which operates a sand quarry.
- 3.3 Orian is focussed on two core areas of activity. The cleaning division provides cleaning services to schools, commercial offices and public buildings. This includes the activities of SLS (Cumbria) Limited which is focussed on the leisure and tourism sector and, in particular the provision of services to holiday homeowners. This business trades as "Orian Property Services". The foodservice division delivers school meals to the primary and secondary school sectors. There is also a specialist services division which delivers a range of services including school crossing patrols, fire safety services, high level cleans, builders cleans and other similar activities.
- 3.4 The activities of the Waste Group are focussed on Cumbria, but Orian has a significant trading presence outside the county, in particular in the North West and North East of England.
- 3.5 The Group operates on a commercial basis as a for profit company.

## **The Shareholders Agreement**

- 3.6 The proposed Shareholders Agreement sets out the terms upon which the CCH and the two Councils as shareholders will exercise their rights in relation to the Group. Currently there is no Shareholders Agreement in place between Cumbria County Council, as shareholder and CCH. The rights of Cumbria County Council as shareholder (including shareholder reserved matters) are set out in the Articles of Association of CCH and its principal subsidiaries, CWM and Orian.
- 3.7 It is important that the rights of the two shareholders and CCH are clearly set out, especially as there will no longer be a single shareholder, to ensure the Group can continue to operate effectively on a day-to-day basis with the directors having the powers to take all necessary decisions, whilst ensuring the Councils, as shareholders, retain control of the strategic direction of the Group and receive the information and support they need to exercise that control. It also sets out how the two shareholders will work together to exercise their joint control over the Group.
- 3.8 The Shareholders Agreement sets out certain reserved matters which cannot be agreed without the consent of the two Councils as shareholders but subject to this makes it clear that the responsibility for the day-to-day supervision and management of the Group rests with the directors of the Company. Shareholder reserved matters will require the agreement of both shareholders.
- 3.9 The Shareholders Agreement also includes provisions setting out what information will be provided by CCH to the Shareholders including an annual Business Plan and the provision of accounting and other financial information to ensure the Shareholders have the information necessary to exercise their rights as shareholders and to make informed decisions.
- 3.10 Each Council will be appointing a Shareholder Representative who has the delegated authority to exercise the rights of the Council as shareholder in CCH. The Shareholders Agreement provides for a Joint Shareholder Board to be established to advise the Shareholder Representatives appointed by each Council, in the exercise of their responsibilities in that capacity. It is proposed that this Board will have no remit as a decision-making body and that the membership will comprise two Members and two Officers from each Council and that other officers and the directors of the Group can be invited to attend to assist the members of the Board as required.

3.11 The proposed Shareholders Agreement covers matters such as the appoint of directors and shareholder reserved which are currently set out in the Articles of Association of CCH and its principal subsidiaries. As a result, it will be necessary to make changes to the Articles of Association to remove those provisions which will instead be covered in the new Shareholders Agreement to avoid duplication.

#### **4.0 Consultation**

4.1 The directors of CCH have been consulted on the proposed governance arrangements relating to the group.

#### **5.0 Alternative Options**

5.1 The Council could decide not to enter into the Shareholders Agreement and make the consequential changes to the Articles of Association. They would then need to rely on the existing rights of the shareholders in the Articles of Association but these were drafted at a time when there was a single shareholder and so do not clearly set out the relationship between the two shareholders. This could result in lack of clarity and could make it more difficult for the Group to operate effectively on a day-to-day basis whilst ensuring the Council as shareholder can retain control jointly with Westmorland and Furness Council on the strategic direction of Group.

#### **6.0 Implications**

##### **Financial, Resources and Procurement**

6.1 The proposed governance arrangements proposed in their report have no direct financial implications

##### **Human Resources**

6.2 There are no HR concerns of this recommendation which facilitates efficient operation of Cumbria County Holdings.  
Alice Madden 15/03/23

## **Legal**

- 6.3 The Section 16 Agreement which Cabinet are asked to agree at this meeting provides for the transfer of 50% of the shares in CCH to the Council and 50% of the shares to Westmorland and Furness Council.
- 6.4 As shareholders in the CCH the two Councils will have certain rights including rights in relation to the reserved matters (which are matters requiring shareholder approval) which are currently set out in the Articles of Association of CCH and its principal subsidiaries.
- 6.5 The proposed Shareholders Agreement set out the terms upon which CCH and its subsidiaries and the two Councils, as shareholders, shall exercise their rights in relation to the company and will ensure the arrangements are updated to reflect the new ownership structure (with two shareholders not a single shareholder) and to ensure that the shareholders are kept up to date on the business of the Group and the directors of the Group are free to make decisions on the management of the business of the Group on a day to day basis.

## **Health and Sustainability Impact Assessment**

- 6.6 Have you completed a Health and Sustainability Impact Assessment?  
No
- 6.7 If you have not completed an Impact Assessment, please explain your reasons: There are no Health and Sustainability Impacts arising out of the recommendations in this report.

## **Equality and Diversity**

- 6.8 Have you completed an Equality Impact Analysis? No
- 6.9 If you have not completed an Impact Analysis, please explain your reasons: There are no equality impacts arising out of the recommendations in this report.

## **Contact Officers**

Clare Liddle Monitoring Officer

**Appendices Attached to this Report**

No appendices attached

**Background Documents Available**

None