

# Cabinet



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| Date of meeting:         | 16 December 2019   |
| Title Of Report:         | <b>Bereavement Services - Legal Structures and Arrangements</b>                  |
| Lead Member:             | Councillor Sally Haydon (Cabinet Member for Customer Focus and Community Safety) |
| Lead Strategic Director: | Ruth Harrell (Director of Public Health)   |
| Author:                  | David Northey, Head of Integrated Finance  |
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| Your Reference:          | DJN.12/2019  |
| Key Decision:            | No   |
| Confidentiality:         | Part I - Official  |

## Purpose of Report

The Council is embracing financial challenges in driving up revenue, reducing cost, utilising the full range of its resources and assets whilst ensuring customers receive high quality services and value for money.

Creating a new legal structure and arrangements for the Bereavement Service will achieve the primary objective of securing the operation of bereavement services for the city that are high quality, provide sufficient capacity to meet demand and are for the public benefit. Specialist legal and tax advice has set out a pioneering solution that will be compliant, tax efficient and benefit from reduced operating costs. The solution will provide the ability to secure external funding and donations to further enhance provision, the green estate and public health objectives as well as exploration of how to support or enable fundraising for families struggling with funeral costs.

The purpose of this report is to recommend setting up a flexible, scalable, and not for profit company. This will allow the Council to take advantage of innovative solutions to a broad range of financial challenges it currently faces and may well face in the future. It is proposed this would be a company limited by guarantee with charitable status (the “**Charity**”).

There is a desire to apply co-operative principles to the company structure to reflect the Council’s Corporate Values, which are:

“We are Co-operative: We will work together with partners to serve the best interests of our city and its communities”

The charitable objects (aims and objectives) of the Charity have been designed to focus on public amenities (cemeteries and crematoria), health and environmental protection. The charitable objects have been determined as part of the implementation phase and collaborative work undertaken with Co-operatives UK (Co-ops UK) and it is clear that there are a range of well-established charitable purposes of relevance to the pursuit of the delivery of bereavement services and the wider green estate and public health objectives of the Council.

## Recommendations

Cabinet is recommended to

1. Approve the creation of a Company Limited by Guarantee with Charitable Status
2. Endorse the proposed name of the entity as Plymouth Crematoria
3. Approve the Business Case for the creation of the new entity, including the approval of the leasing of the bereavement estate (the “assets”) from PCC to the new entity.
4. Nominate the Service Director for Finance (S151 Officer) as Member Representative of the Charity and to exercise all voting rights on behalf of the council (subject to Key Decisions being reserved to the Leader/Cabinet) and bring back a future Report to Cabinet setting out the detailed governance arrangement required to protect, safeguard, and effectively manage the council’s interest in the new bereavement model.
5. Note the endorsement from Co-ops UK that confirms that the proposed new legal entity will be eligible for membership as an Associate Member of Co-ops UK.

## Alternative options considered and rejected

Do nothing. This would prevent appropriate contractual arrangements being made for the opening of the new bereavement facility.

## Relevance to the Corporate Plan and/or the Plymouth Plan

A Democratic Council - The Council continues to adopt a pioneering approach to find flexible and innovative solutions to the challenges it faces, some of which are technical finance issues whilst others will resolve operational challenges to ensure best value for customers and the citizens of Plymouth. Adopting a strategic forward thinking approach will also ensure the company is set up to adapt, flex and ensure scalable solutions. Protecting the investment in co-operative assets will also assist with creating a more financially sustainable model.

## Implications for the Medium Term Financial Plan and Resource Implications:

There will be direct and indirect implications relating to the setting up of the company:

1. A new legal entity will be created; a Charitable company with the purpose of receiving charitable donations, sponsorship and fundraising and pay outgoings and expenses and execute documents and do all things required in connection with the use, maintenance, upkeep, expansion, alteration or improvement of the Crematoria in the City of Plymouth, including the existing cemeteries and crematoria owned by the authority;
2. The cost of setting up the company will be in the region of £80k covering all legal and tax advice and leases/licences which can be contained within existing service budgets.

## Carbon Footprint (Environmental) Implications:

Creating a sustainable model for the Bereavement Service will safeguard the future of service delivery for the bereaved as well as contributing to the Council’s Growing City priority of being a green, sustainable city that cares for the environment i.e. ensuring the continued care and maintenance of the cemetery and closed churchyard estate. In these latter years of operation if the existing facilities, the maintenance costs and down time will increase with gas consumption already significantly higher than modern equipment and manual tooling required to replace parts. Environmental regulations currently

require 100% of all new cremators to be abated and issued a requirement for Local Authorities to achieve a minimum of a 50% reduction in emissions (Plymouth currently is part of a burden sharing scheme to meet this requirement in the absence of abatement equipment). It is expected that by the end of 2020 100% abatement will be required; if this requirement does take effect then the service will have to make investment or cease operation.

### Other Implications: e.g. Health and Safety, Risk Management, Child Poverty:

The Trustee Directors of the new legal entity will be responsible for all aspects of Health & Safety and Risk Management associated with the management of the city's crematoria although all such aspects are expected to be delivered by the Council on the company's behalf. There will be no impact on child poverty.

### Appendices

| Ref. | Title of Appendix                   | Exemption Paragraph Number (if applicable)<br><i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i> |   |   |   |   |   |   |
|------|-------------------------------------|--|---|---|---|---|---|---|
|      |                                     | 1  | 2 | 3 | 4 | 5 | 6 | 7 |
| A    | Cooperatives UK Membership Criteria |  |   |   |   |   |   |   |

### Background papers:

Please list all unpublished, background papers relevant to the decision in the table below. Background papers are unpublished works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based.

| Title of any background paper(s) | Exemption Paragraph Number (if applicable)<br><i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i> |   |   |   |   |   |   |
|----------------------------------|--|---|---|---|---|---|---|
|                                  | 1  | 2 | 3 | 4 | 5 | 6 | 7 |
| Briefing note: Business Case     |  |   |   |   |   |   |   |

### Sign off:

|  |                      |     |              |            |              |    |  |        |  |               |  |
|--|----------------------|-----|--------------|------------|--------------|----|--|--------|--|---------------|--|
| Fin  | pl.19.<br>20.1<br>84 | Leg | MS/2<br>6462 | Mon<br>Off | MS/264<br>62 | HR |  | Assets |  | Strat<br>Proc |  |
| Originating Senior Leadership Team member: Ruth Harrell, Director of Public Health |                      |     |              |            |              |    |  |        |  |               |  |
| Please confirm the Strategic Director(s) has agreed the report? Yes                |                      |     |              |            |              |    |  |        |  |               |  |
| Date agreed: 10/12/2019  |                      |     |              |            |              |    |  |        |  |               |  |
| Cabinet Member approval: Councillor Sally Haydon (approved in briefing meeting)    |                      |     |              |            |              |    |  |        |  |               |  |
| Date approved: 09/12/2019  |                      |     |              |            |              |    |  |        |  |               |  |

## Introduction

- I.1 The Council is embracing financial challenges in driving up revenue, reducing cost, utilising the full range of its resources and assets whilst ensuring customers receive high quality services and value for money. The purpose of this report is to recommend setting up a flexible, scalable, not-for-profit Company. This will allow the Council to take advantage of innovative solutions to a broad range of financial challenges it currently faces and may well face in the future. It is proposed this would be a company limited by guarantee with charitable status (the “Charity”).
- I.2 Officers have engaged the services of highly respected external QC and legal professionals to consider the most appropriate legal form the new entity should take. Analysis has reviewed the following company structures, comparing the various Co-operative models (1-4) in addition to an approach similar to CATERed where co-operative values and governance principles are applied to a company structure (5). Number 5 has been identified as being able to achieve the financial, legal and tax objectives for the potential future operating model of bereavement services (5).

|                     |   |                                     |   |   |
|---------------------|---|-------------------------------------|---|---|
| 1. Consortium Co-Op | 2. Co-Op Multi-Stakeholder Company Limited by Guarantee | 3. Co-Op Community Interest Company | 4. Co-Op Charitable Community Benefit Society | 5. Charitable Company Limited by Guarantee with Co-Op Governance Principles |
| (Governed by Rules) | (Governed by Articles)                                  | (Governed by Articles)              | (Governed by Rules)                           | (Governed by Articles)  |

- I.3 Officers also engaged the support of Co-ops UK in the form of a half-day, on-site workshop. As per the brief, Co-ops UK provided valuable support and advice to enable the Project Aims and Outcomes to be met and provided clarity on:
- The co-operative elements to be integrated into the articles of the company, membership options and charitable purposes.
  - Achievement of a majority of the co-operative principles to achieve Co-operatives UK Associate Membership.
- I.4 Co-operatives operate according to the recognised International Co-operative Alliance's Values and Principles.
- I.5 Co-ops UK has established criteria that determines whether an organisation can be identified as a co-operative against the International Co-operatives Alliance Values and Principles. This criteria is the guidelines by which co-operatives put the Values and Principles into practice.
- I.6 **Appendix A** sets out how the new entity will apply these principles or implement a workable compromise.
- I.7 The seven cooperative principles are:

| Cooperatives UK Membership Criteria | Met | Not Met | Work around |
|-------------------------------------|-----|---------|-------------|
| 1. Membership                       |     | X       | ✓           |
| 2. Democratic Control               |     | X       | ✓           |
| 3. Economic Participation           |     | X       | X           |
| 4. Autonomous and Independent       | ✓   |         |             |
| 5. Education                        | ✓   |         |             |
| 6. Cooperation between Cooperatives | ✓   |         |             |
| 7. Community                        | ✓   |         |             |

## The Company Solution

2.1 The company will need to deal with the following range of potential challenges and opportunities

- Technical Financial Solutions
- Cost Reduction Initiatives
- Revenue generation
- Trading potential
- Potential to perform activities more effectively and efficiently
- Technical Employment Solutions
- Tax efficiency in both the cost base and the efficient collection of income and donations
- Supporting the delivery of the full bereavement service objectives

2.2 The company solution is not an off the shelf model so there will be some set up costs to ensure the company is scoped to deal with the range of needs of the full bereavement offer. The set up costs are estimated in the region of £80k which will include the tax and legal advice and the company registration.

2.3 The new legal entity will be a charitable company which will support the vision for education and outreach and to receive donations on a tax efficient basis.

2.4 The primary activities of the charity at this early stage will be establishing its governance arrangements.

2.5 The proposed legal entity will fulfil four of the seven cooperative UK principles in full, with agreed work around for the other three.

2.6 Whilst not eligible to be recognised as a co-operative, the proposed legal entity will be eligible for Co-ops UK Associate Member status. Co-ops UK recognises the co-operative nature of the proposed legal entity's governance arrangements and operations and the intention to behave in a co-operative manner and adopt a collaborative and co-operative approach wherever possible and where it is not possible to adhere wholly to the ICA Values & Principles. Co-ops UK is supportive of this approach and confirms that an application for Associate Member status would be accepted.

2.7 This Associate Membership category is open to organisations that are not co-operatives but that have an interest in the ideals of a co-operative and strive to support and operate in a co-operative and collaboration way.

## Appendix A

| Co-ops UK<br>Membership Criteria   | Delivery Options and<br>Recommendation   | Compliance   |
|--|--|--|
| <p><b>1<sup>st</sup> Principle:<br/>Membership</b></p> <p>Membership is clearly defined as users of the co-operative. Typically: consumers, workers, service users, or a community of interest.</p> <p>Membership is clearly stated as voluntary and non-discriminatory.</p> | <ul style="list-style-type: none"> <li>• The responsibility for the management and administration of the charity operating company sits with the Trustee Directors who are all volunteers.</li> <li>• The charity operating company will operate without discrimination as the law requires.</li> <li>• However membership will be by invitation only and there will not be a wider membership other than the Trustee Directors</li> </ul> | <p>Pure co-operative principle not met as opportunity for membership restricted. However, the charity will establish one or more Stakeholder Committees to advise the Trustees and will be designed to enhance the service provision as a result of collaboration and consultation.</p> <p>Although they are not Members, the company's Articles will recognise the importance of the stakeholder voice, including a 'requirement to consult' on certain matters; for example certain stakeholder groups having powers and rights on proposing to the Board how some funds are utilised.</p> |
| <p><b>2<sup>nd</sup> Principle:<br/>Democratic control</b></p> <p>For primary co-operatives, one member one vote or equal voting is clearly stated. If there is weighted voting by member class there must be maximum differentials.</p>                                     | <ul style="list-style-type: none"> <li>• The Trustee Directors will be appointed by PCC</li> <li>• The Membership Voting Structure operates entirely democratically i.e. typically one member one vote.</li> <li>• The normal day to day running of the organisation is the responsibility</li> </ul>  | <p>Compliant on the assumption of restricted membership.</p>   |

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| <p>The majority (51-75%) of positions on the Governing Body are elected / appointed from the “user” members.</p> <p>There are provisions for active membership opportunities: General meetings etc</p> <p>If the organisation is owned indirectly via a trust or other body; there are clear democratic ownership and control channels to the membership.</p> | <p>of the executive team, not the trustee directors who are all non-executive.</p>   | <p>In addition, there will be consideration of inviting stakeholders to be a Trustee Director if they hold the necessary skills etc.</p> |
| <p><b>3<sup>rd</sup> Principle: Economic participation</b></p> <p>Members contribute to and democratically control the capital. Typically via: direct share ownership or liable as guarantors.</p> <p>Payment of interest on share capital is limited.</p> <p>Members directly engage in and benefit from the activity of the organisation.</p>               | <ul style="list-style-type: none"> <li>• The Charity is wholly and exclusively focussed on delivering public benefit rather than financial benefits to members.</li> <li>• There are no shares and no ownership by individuals but rather a corporate structure designed to deliver overarching common good.</li> </ul>  | <p>Not compliant – the focus is not on money making.</p>   |
| <p><b>4<sup>th</sup> Principle: Autonomous &amp; independent</b></p> <p>The organisation is not a subsidiary of another organisation and non-user / investor members are 25% or less of the membership.</p> <p>Non-member Director places on the Board are limited to 25%</p>   | <ul style="list-style-type: none"> <li>• The Charity will establish one or more Stakeholder committees designed to enhance the service provision as a result of collaboration and consultation.</li> <li>• The overriding requirement to deliver public benefit facilitates a clear focus on much wider stakeholder interests than merely members of an organisation.</li> </ul> | <p>Not fully compliant, but strengthened by the Stakeholder engagement</p>   |

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|  | <ul style="list-style-type: none"><li>• There will be a requirement for the Council to keep some level of ownership and control over certain aspects which means autonomy will always be limited.</li><br/><li>• These stakeholders include:<ul style="list-style-type: none"><li>• Church / Clergy</li><li>• Citizens of Plymouth</li><li>• Armed Forces bereavement office</li><li>• Shekinah mission</li><li>• Registry office</li><li>• Funeral Directors</li><li>• Staff visiting the Crematorium for training from local charities / Hospices / Care Homes re assurance when supporting 'end of life' care</li><li>• Medical referees</li><li>• Monumental Masons</li><li>• Ford Park cemetery</li><li>• Supported Internships</li><li>• Environmental permitting</li><li>• Public funerals</li><li>• Visitors and history of existing PCC cemeteries</li><li>• Compassionate Plymouth</li><li>• Baby gardens</li><li>• Coroners offices</li><li>• Environmental Protection: Air Quality</li><li>• Street Services</li><li>• Memorialisation</li><li>• Emergency excess death planning</li><li>• Little Things &amp; Co</li><li>• Commonwealth War Graves Commission</li><li>• Book of Remembrance</li><li>• Ministry of Justice</li><li>• Garden of Remembrance</li><li>• Voluntary Groups</li><li>• Schools</li></ul></li></ul> |  |
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| <p><b>5<sup>th</sup> Principle: Education</b></p> <p>There is a provision to offer education and training to members, directors and workers within the co-operative.</p>   | <ul style="list-style-type: none"> <li>• The Co-Op educational focus is quite narrow i.e. those directly party to the organisation and most specifically members.</li> <li>• The Charity is keen to educate all of its stakeholders about the nature of the services; possible enhancement and to collaborate to do better. This is a many-fold wider class of persons/entities.</li> </ul>  | <p>Compliant – plus much more.</p>                 |
| <p><b>6<sup>th</sup> Principle: Co-operation between co-operatives</b></p> <p>There is a clause on dissolution that any assets can be transferred to another co-operative or the co-operative movement.</p> <p>By applying for membership of Co-operatives UK an organisation implies adherence to this principle.</p> | <ul style="list-style-type: none"> <li>• Charities exist purely for the public benefit. The Charity will liaise actively with charities or other with similar or related focus who will be part of the relevant stakeholder group.</li> <li>• This type of activity is already being carried on by the existing service team.</li> <li>• The drop in event held on 4 November 2019 (details below) is a good example of the collaborative and co-operative approach being adopted towards the ongoing development of the services to be operated from the new facility.</li> <li>• On Monday 4<sup>th</sup> November between 3pm and 7pm at the Future Inn, the Bereavement Service held a drop in session so their service users could catch up on the latest developments of Plymouths new crematorium and share some details on the internal design and finishing. To represent the project the drop in session was attended by:</li> </ul> | <p>Compliant as a matter of parallel principle</p> |

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|  | <ol style="list-style-type: none"> <li>1. Bereavement Service Manager</li> <li>2. Business and Customer Manager</li> <li>3. Project Manager</li> <li>4. Architect</li> <li>5. Strategic Director, Public Health</li> <li>6. Portfolio Holder</li> </ol> <p>We had excellent attendance from a cross section of our service users, this included Funeral Directors from national companies and independent family owned companies from both inside the city and outside, Clergy, Celebrants and organists.</p> <p>The Project Team were able to talk attendees through the latest plans, show interior designs layouts and also see the types of materials that would be used in the building of the Crematorium.</p> <p>The feedback from all the attendees was positive and some of their initial concerns had been addressed with some changes of the plan. The event was a great success with stakeholders excited about the building of the new crematorium. Further positive feedback has continued to arrive since the event about the opportunity of engagement with relevant stakeholders which had been provided.</p> |                  |
| <p><b>7<sup>th</sup> Principle: Community</b></p> <p>The activity of the co-operative is of benefit to society as a whole.</p> | <ul style="list-style-type: none"> <li>• This is explicit in the proposed Charitable Objects which require operation exclusively for the public benefit.</li> <li>• We plan to operate using a collaborative and co-operative approach through the involvement of stakeholders.</li> </ul>   | <p>Compliant</p> |