

OPTIONS PAPER

WEST HERTS CREMATORIUM JOINT COMMITTEE

1. BACKGROUND

- 1.1 A facilitated workshop took place with some officers of the West Herts Crematorium Joint Committee (“the Committee”) on 10 June 2021, during which the current arrangements for the provision of crematorium services were discussed and a number of matters of concern were identified.
- 1.2 We then produced an advice note looking at some of the wider issues in terms of how the Joint Committee currently operates and considering a “Lead Authority” model for future delivery of crematoria services. We also produced an advice note looking at the employment law and pension implications looking at the current arrangement and moving to a lead authority model.
- 1.3 A meeting took place involving the Member Authorities in October 2021 and a further meeting took place on Wednesday, 2 February 2022. Afterwards, further advice was requested in relation to the options and this was provided in April 2022.

2. OPTIONS

- 2.1 We have been asked to set out the options in respect of the provision of crematorium services, particularly in light of the fact of the new crematorium that is being built in Dacorum.
- 2.2 We have seen some financial information which suggests that the Joint Committee is operating the crematoria services in surplus this financial year, although the surplus is forecast to be less than the budgeted surplus figure. We are unsure of the projected financial position once the new crematorium is operational.
- 2.3 Essentially, the options available to you are as detailed below.
- 2.4 We understand that the view of members is that they would like to continue with the Joint Committee and it should be noted that the Joint Committee can continue to be the senior decision making body under any of the options; including if the option of a company, LLP or Joint venture was chosen.

A change to the way in which the services were structured would mean that the Terms of Reference and other documentation relating to the way in which the Joint Committee operated should be reviewed, including scrutiny arrangements and a new agreement

drawn up between the participating authorities in relation to indemnities, risk, assets and liabilities.

2.5 We also understand that the second crematorium is under construction and expected to open by the end of the calendar year. More staff will be recruited and so there is a consideration needed as to decide whether they will be employed under the current arrangements or be employed by the Lead Authority, if this is the solution decided upon.

Options	Advantages / disadvantages
<p>Continue to run crematorium services through the Joint Committee</p>	<p>Advantages – it avoids the upheaval involved with other options; there is an established way of working that is producing a surplus, albeit it there are improvements that the Lead Authority model offer which the Joint Committee cannot benefit from.</p> <p>Disadvantages - The challenges with this approach are (i) the lack of a developed management structure at the Crematorium to allow staff to progress and upskill; (ii) the lack of senior officer oversight into the day to day operation of the crematoria services (iii) the management of the service and (iv) if an employee was to bring a claim against the Joint Committee in an Employment Tribunal (or indeed any other legal forum), it is not currently clear who would pick up liability beyond the Joint Committee’s ability to pay. We understand that the authority (Dacorum) where the new crematorium is being built is concerned about the legalities relating to the building and the difficulties of creating a lease with a Joint Committee as the lessee.</p>
<p>Designate one of the five Member Authorities as the “Lead Authority”</p>	<p>Advantages – (i) Liability for any employment dispute would sit with the Lead Authority and an agreement would need to be put in place between the five Member Authorities of how liability would be shared; (ii) staff will operate within a wider management structure (ie in the Lead Authority) and there will be greater development opportunities for them as well as greater opportunity for the Lead</p>

	<p>Authority to input into the day to day management of the service.</p> <p>Disadvantages - An exit payment would fall due from the Local Government Pension Scheme on the Joint Committee ceasing to have any active members and the Hertfordshire LGPS fund are likely to want to put in place a subsumption agreement whereby the amount of the exit payment is added to the liabilities of the Lead Authority. Alternatively, the five Member Authorities may decide to share liability (either directly with the Fund or between the Member Authorities and the Lead Authority).</p>
<p>Set up a Local Authority Company -including a Joint Venture with the Private Sector</p>	<p>Advantages- setting up a company or LLP would in theory take the delivery of the service out of the control of the authorities and into a private limited company. A company limited by shares would be most appropriate if the councils wished to receive income from the profits of the company.</p> <p>If the company is to employ staff, any existing employees would be TUPE transferred to the company on existing terms and conditions. However, it is possible for new staff to be employed on different terms and conditions (including pension terms), although care should be taken with this as it can be seen as creating a two-tier workforce and may be subject to equal pay claims.</p> <p>If the company is to employ staff who are in the LGPS it would need to gain admitted body status.</p> <p>The councils would be able to loan the company money provided that the necessary rules around subsidy control were observed; and provided that the loan was within the councils' investment strategies. The interest payable on the loan would be classed as income to the councils; and would be an expense so far as the company was concerned.</p> <p>Disadvantages- There is considerable work in setting up and then running a local authority company owned jointly by the councils; any company needs to operate under the requirements of the Companies Acts and the requirements of the regulator, Companies House, which is a not inconsiderable burden. A joint committee would still be needed, and the councils would have to decide on what functions that joint committee was to</p>

	<p>have, including how the shareholder function is to be exercised for each council. (Where councils operate an Executive model of governance, the shareholder function is an executive function.)</p> <p>A business case would be required in order to make the decision to set up the company and the company would need to draw up detailed business plans. Directors would need to be appointed, and care taken to avoid conflicts of interest between the company and the councils.</p> <p>Whilst the service delivery would be the responsibility of the company, the councils cannot avoid ultimate liability; and would need to agree amongst themselves how to share any liabilities that might arise.</p> <p>Any profits made by the company would be subject to corporation tax; which is levied at 19% on trading profits. This is a disadvantage against the current position where councils are not subject to pay corporation tax on any surplus.</p> <p>If the council were to consider a Joint Venture, with a private sector partner, an alternative to a company for the councils would be a LLP arrangement. In such a scenario each party to the LLP would be taxed in accordance with the tax regime which applied to that body and so the councils would not pay corporation tax on any profits. However, setting up a JV is both a costly and time-consuming arrangement; the selection of a partner alone can take a long time and inevitably the councils would lose some control over the service.</p> <p>If the service is going to be provided by a third party, care must be taken with how the company is set up so as to avoid any procurement implications.</p> <p>This advice does not deal in detail with the implications of the situation with the current arrangements for financing the second crematorium. However, if the councils are minded to consider further setting up a company or entering into a joint venture, detailed legal and financial advice would be required in relation to the implications of this on these arrangements.</p>
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2.6 If the decision is taken to go down the 'Lead Authority' route then questions that will need to be addressed are as follows:

2.6.1 Which member authority will be the 'Lead Authority'?

- 2.6.2 How will the Member Authorities share the risks, surplus, assets and liabilities?
- 2.6.3 How will the Member Authorities seek to share liability for the pension exit payment that will arise on the Joint Committee ceasing to have any active members?
- 2.6.4 How will crematorium staff fit into the staffing structure at the Lead Authority?
- 2.6.5 What is the timeline for seeking agreement from the Member Authorities to a Lead Authority model?
- 2.6.6 What is the timeline for implementing the Lead Authority model (to include a timeline to ensure sufficient engagement with employees and trade unions)?
- 2.6.7 What is the current position on the development of the second crematorium in Dacorum? How many new staff will need to be employed to run it and over what timescales?

2.7 If the councils wish to consider the setting up of a company further detailed legal, tax and financial advice should be taken on the implications of this for the authorities; both in terms of the funding arrangements and the implications due to corporation tax. The councils would need to fund this, and the costs of setting up and then administering the company; setting up the Board of Directors and dealing with the shareholder requirements.

2.8 In reality, for most councils the costs of setting up a company, combined with the additional administrative burdens; the loss of control and the taxation burden, mean that many decide that it is better to keep the services in house unless there are other issues which mean that a company makes corporate and financial sense. Often this relates to housing issues; or to situations where the setting up of a company or a Joint Venture enables additional investment and expertise to be provided which outweighs the disadvantages outlined above.

Anthony Collins Solicitors LLP

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Anthony Collins Solicitors LLP 134 Edmund Street | Birmingham | B3
2ES
76 King Street | Manchester | M2 4NH www.anthonycollins.com |
@ACSLLP

Anthony Collins
solicitors