

## Monmouthshire County Council

### Advice re membership of the Board of MonLife Plus Ltd and of the Shareholder Committee relating to MonLife Plus Ltd.

1. MonLife Plus Ltd (the “**Company**”) is a distinct legal entity. Although it is wholly owned by the Council, and is set up as a “Teckal” vehicle, which means that the Council is able to award contracts directly to it without a procurement exercise, it is a limited company which has a Board of Directors in charge.
2. However, as the Company is owned by the Council, and is funded by public money to deliver services on behalf of the Council, it is important that the Council has sufficient control over its activities to ensure that the Council is able to protect the asset whilst allowing the Company to be take advantage of its company status in the way it operates.
3. This control is exercised through two documents. The first is the Articles of Association, which act as the Company’s constitution in that they govern the way in which the Company behaves, what it is set up to do etc. The second document is the Shareholder’s, or Governance Agreement. This takes priority over the Articles; and sets out the relationship between the Council (as shareholder in the Company) and the Company and the way in which the Council, through the Shareholder Committee, controls the activities of the Company.
4. There are two sets of appointments to be made. The Company needs to have a Board of Directors; and a Shareholder Committee must be established. There needs to be a different membership serving on the Board and on the Shareholder Committee, as there is a clear danger of conflict if this was not the case.
5. Firstly, the Board of Directors. The Board should be made up of a set of people whose skills and experiences are, together, what the Company requires to operate to optimum success. Certainly when starting up, it is felt advisable that the number on the Board should be relatively low; consisting for example at the most of the Managing Director and Finance Director of the Company, a couple of senior officers from the Council, and a Non-Executive Director to add some assurance and external expertise. One member of the Board will be appointed as the Chair.
6. It is also possible to have Board advisers, such as the Head of Service or equivalent. Advisers are able to attend meetings and speak, but do not have a vote.

7. A Non-Executive Director would normally be appointed through an open recruitment process, with the NED being offered a small sum of remuneration for taking on the office.
8. Appointments of Members to the Board are appointments to an outside body and under the constitution the Council appoints Members to outside bodies. Accordingly, if the Council wishes to have any elected Members as Directors, the appointment is made by Council.
9. The appointment of Members to the Board can cause difficulty in terms of potential conflicts. Where an elected Member is also a Director they have two sets of legal obligations to observe, neither of which can be avoided. Firstly, as a Member of the Council they have to act in the best interests of the Council; but as a Director of the Company they have to act in the best interests of the Company. Even where the Company is wholly owned by the Council, such conflicts can arise. This also means that they should not participate in decisions for the Council which involve the Company. For example a Member Director who also has budgetary responsibilities at the Council may find that they have a conflict when it comes to considering payments or awards to the Company.
10. For these reasons some councils do not appoint Members as Directors and instead Members exercise control through the Shareholder Committee. If there is a desire nonetheless for Member involvement, the Articles and Shareholder's Agreement can provide that Members of the Shareholder Committee are able to attend the Board as observers, able to speak with the Chair's permission, but without a vote.
11. The role of the Council as Shareholder is an Executive function. This means that the Shareholder Committee has to be either Cabinet or a Cabinet Committee, which can only have Cabinet Members as voting members, although other Members can be co-opted as non-voting members. Given the potential for conflict between Cabinet and the Company – for example with the approval of budgets etc., there can be some issues with Cabinet exercising the Shareholder function itself. However, there is no legal reason to prevent this if the conflicts can be managed.
12. As the Shareholder panel is not an outside body, but is exercising an internal role, Council does not appoint Members to it. The Leader appoints the Cabinet Members and if Members of other groups are to be appointed, he would ask the other group leaders for their nominees. Alternatively, should the Cabinet exercise the role itself,

where group leaders are already invited to attend Cabinet, this could continue as it provides the involvement of these Members, even if they cannot vote.

13. If Cabinet is to exercise the role itself, we would recommend that it is clear when the Cabinet is sitting as Shareholder Committee, so that for example where the meetings are held on the same day as Cabinet, there is a clear definition between the meetings. In this way it helps to ensure that the business of the Shareholders is clearly given sufficient attention, thus helping to assure any scrutiny or select committee that this is the case. It also assists with the necessary filing of documents in relation to the Company as it is then clear as to what decisions have been taken by the Shareholders. Decisions of Cabinet acting as the Shareholder Committee are subject to call-in in the normal way.
14. As with the Board, unless Cabinet is to act as the Shareholder Committee, it is generally advisable to keep the number of members on the Shareholder Committee low – four or five at most between the Executive and co-opted members; and certainly to avoid any cross-over membership with the Board of Directors.
15. The schedule to the Shareholder's Agreement gives details of the way in which the relationship between the Council and the Company works and details what decisions need to be referred to the Shareholder Committee; what decisions are for the Board; and what decisions individual Directors are able to make. The most critical control points for the Shareholder Committee are the approval of the Business Plan, as the Company cannot then deviate from that without seeking the approval of the Shareholder Committee; the appointment and dismissal of directors; and the appointment and removal of the Chair.

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