



## Committee and Date

Cabinet

13<sup>th</sup> July 2016

## **TRANSFER OF EMSTREY CREMATORIUM CONTRACT**

**Responsible Officer** George Candler – Director of Place and Enterprise  
e-mail: George.Candler@shropshire.gov.uk Tel 01743 258671 Fax

### **1. Summary**

In April 2009, when Shropshire Council became the new Unitary Authority, it inherited a number of services from the former Shrewsbury & Atcham Borough Council including provision of Bereavement Services and ownership and operation of the Crematorium at Emstrey on London Road and 7 Cemeteries in Shrewsbury and surrounding villages.

In September 2011, following a competitive tendering process, Shropshire Council entered into a concession agreement with Funeral Services Limited, trading as Co-op Funeralcare, to manage and operate Emstrey Crematorium and 7 Cemeteries on behalf of Shropshire Council. This contract began in September 2011 is for 30 years and will run until September 2041.

Co-op Funeralcare has provided these services on behalf of Shropshire Council successfully since this time, but with only a small stake in the market has now decided that crematoria are not core to its strategy, which is focussed on the growth of Funeral Director branches. Following a competitive sales process, Dignity plc was selected as the preferred buyer of its five crematoria operations (three freehold and two leasehold run on behalf of local authorities).

On 31<sup>st</sup> May 2016 Funeral Services Ltd (FSL) signed a conditional business asset transfer agreement to transfer the business and undertakings of Emstrey Crematorium to Newco (Crematoria) 2 Ltd. (Newco). On the same date FSL and Dignity Funerals No. 3 Ltd. (DF3L) signed a conditional share sale and purchase agreement in relation to the sale and purchase of the entire issued share capital of Newco. Both the business transfer and the share transfer are conditional on the consent of the Council and the novation of the Concession Agreement to DF3L.

Since being notified of this proposed sale, Shropshire Council has been undertaking due diligence on the proposed new operator, Dignity Funerals No. 3 Limited. This has now been completed and has shown DF3L to be a suitable assignee of the Concession Agreement. Members are now asked to agree to the Novation of the Contract to Dignity Funerals No. 3 Limited to reflect the various transfers summarised above.

## **2. Decision**

It is recommended that Cabinet Members:

2.1 Agree to the Novation of the Contract from Co-op Funeralcare to Dignity Funerals No. 3 Limited (a subsidiary of Dignity Plc), via Newco (Crematoria) 2 Limited as described above, with an indemnity from the parent company, Dignity Funeral Limited.

2.1 Agree to give delegated authority to the Director of Place and Enterprise in consultation with the Portfolio Holder for Health & Wellbeing, to complete all the necessary paperwork to complete the transfer.

## **REPORT**

### **3. Risk Assessment and Opportunities Appraisal**

Officers under the direction of the Director of Place and Enterprise have looked at the risks associated with the Novation of the Contract. A number of key areas have been involved to ensure that due diligence and all risks to Shropshire Council are mitigated. These include colleagues from Risk Management, Insurance, Property Services, Pensions, Legal, Communications, Procurement and Finance, as well as involvement with the existing Bereavement Services Client Manager.

As part of this due diligence, Dignity Funerals No. 3 Limited have been asked to complete the original pre-qualifying questionnaire (PQQ) and all the necessary financial checks have also been undertaken.

Shropshire Council recognises that Dignity has a strong reputation as an employer and have been told that they will be maintaining the Terms and Conditions of the transfer of employees for whom the move, being part of a larger crematoria operator, opens up greater career opportunities for them.

### **4. Financial Implications**

Shropshire Council's contract with Co-op Funeralcare requires that Co-op Funeralcare pays Shropshire Council approximately £411,600 per annum (inflated annually) in order to manage and operate the crematorium on behalf of Shropshire Council. In addition to this, Shropshire Council also receives a proportion of sales revenue and exclusive right of burial income, which is worth approximately £70,000 per annum to Shropshire Council.

Since the commencement of the contract, Co-op Funeralcare has invested in excess of £1.5m into Emstrey Crematorium. This investment has funded the replacement of cremators and installation of necessary abatement equipment to meet tighter air quality emission limits and general works to the buildings including the removal of asbestos and improvements to staff and visitor waiting and welfare facilities.

The existing terms and conditions with regards to the contract will be novated across to Dignity and therefore the same financial implications will remain.

As the novation of the contract has been instigated by Co-op Funeralcare, the company has agreed to pay for all of Shropshire Council's legal costs. Shropshire Council has employed Gowling WLG to undertake the due diligence in this specialist area. Therefore no financial cost implications to Shropshire Council are forecast from this novation of contract.

In accordance with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 Dignity must comply, as Co-op Funeralcare did, in relation to pension benefits. All employees transferred under TUPE who are members of the Local Government Pension Scheme (LGPS), under the Shropshire County Pension Fund administered by Shropshire Council must (as a minimum) be offered in respect of future service either;

- the opportunity to join or remain in the LGPS by means of Dignity seeking to become an admission body within the LGPS; or
- Membership of an occupational pension scheme sponsored by Dignity which is actuarially certified as providing pension benefits that are at least broadly comparable to those benefits provided by the LGPS. The certification should be by reference to the criteria for 'broad comparability' set out by the Government Actuary's Department (GAD).

This requirement is already built into the existing contract that will be novated to Dignity.

As part of the due diligence the provision of contractual security for the performance by DF3L and its obligations under the Concession Agreement have been scrutinised. The present situation is that the performance of the obligations under the Concession Agreement by Funeral Services Limited are supported by a Parent Company Guarantee from its parent company Co-operative Group Limited. Co-operative Group Limited is a £9 billion turnover entity. The parent company of DL3L is Dignity plc. As part of its securitisation Dignity plc entered into a Borrower Loan Agreement which has a number of restrictions and this prevents Dignity plc from giving any guarantee or similar contractual comfort. It has been suggested by Dignity that the most appropriate company to give the necessary contractual comfort is Dignity Funerals Limited (DFL), a £280 million turnover company. Although the turnover is not of same level as Co-op, the liabilities in the Concession Agreement are capped at £3 million. This will be given by way of a deed of indemnity and the advice from the Council's solicitors is that this gives the Council the equivalent protection to a deed of guarantee. This is therefore an acceptable alternative on the contractual security for the performance of DF3L.

## **6. Background**

Bereavement Services transferred from Shrewsbury & Atcham Borough Council to Shropshire Council in April 2009. This transfer included ownership of the bereavement estate asset and authority status for provision of bereavement services. The bereavement estate comprised the crematorium and cemetery at Emstrey, chapel and cemetery at Longden Road and rural cemeteries located at Alberbury, Church Pulverbatch, Great Ness, Minsterley and Westbury. The service

that transferred included operation of the crematorium, funeral booking administration, grave preparation and upkeep and retention of records. Since September 2011 provision of the majority of bereavement services has been carried out by Co-op Funeralcare who lease and occupy the crematorium and Longden Road Chapel.

The council remain as owner occupier of Longden Road cemetery, and the 5 rural cemeteries and whilst most administration functions are undertaken by the Co-op decisions on some service aspects are deferred to the council as owner occupier. Grounds maintenance of the bereavement estate and most grave preparations are undertaken by Shrewsbury Town Council but the works are funded and directed by the respective occupier of that site accordingly.

## **7. UK Cremation Market**

The UK cremation market is highly fragmented with local authorities owning and operating 70% of the UK Crematoria. Dignity is the largest individual operator with 15% of the market. With less than 2% of the UK Crematoria, Co-op are very limited in their ability to shape or influence this segment of the market. In selecting Dignity as the preferred supplier, the Co-op believe that Dignity have the skills, resources and capability to take over the Co-op's responsibilities for the Council owned sites at Shropshire and Stockport.

Dignity has a strong reputation as an employer and expects to maintain the terms and conditions of the transferring employees for whom the move, being part of a larger crematoria operator, opens up greater career opportunities.

## **8. Dignity Plc**

Dignity is the foremost and largest, private sector cemetery and crematoria operating in the UK running 39 crematoria 4 owned cemeteries and a further 20 cemeteries on behalf of Local Authorities. Dignity Funerals Limited is the main trading entity for the group owning the majority of assets and businesses.

Dignity employees form a key part of the high levels of service standards and are critical to the continued success of Dignity. Dignity's Customer Service Centre was voted number one in both the 2012 and 2013 Contact Centre Awards.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

Future delivery of Bereavement Services Item 20 – Cabinet 10th November 2010 (Public report)

Future delivery of Bereavement Services – Appointment of service provider – Item 15 – Cabinet 3rd August 2011 (exempt report).

**Cabinet Member (Portfolio Holder)**

**CLlr Karen Calder, Portfolio Holder for Health & Wellbeing**

**Local Member**

**All**

**Conflicts of interest declared by members**

**Appendices**