Agenda Item No: 6

Opus LGSS Update

To:	General Purposes Committee
Meeting Date:	23 March 2021
From:	Deputy Chief Executive & Chief Finance Officer
Electoral division(s):	All
Key decision:	No
Outcome:	The report sets out some proposed changes in respect of Opus Limited, a joint venture company, which provides agency workers to its shareholding councils. The outcome required is to gain the Committee's agreement to a new shareholder structure and profit distribution methodology following the changes to the local government structure in Northamptonshire with effect from 1st April.
Recommendation:	It is recommended that the Committee approves: a) The change to CCC's shareholding in Opus Limited in order to support the potential on-boarding of other Local Authority partners; b) The change in dividend distribution policy to one based on "Gross Margin" generated by throughput of work; c) The appointment of the Director of Customer and Digital Services as the Shareholder Representative on the Board of the Company.

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1. Background

1.1 General Purposes Committee (GPC) approved the creation of a new company, Opus LGSS People Solutions, in July 2016. The Company was established so that the Council could access agency staff without the margins charged by private sector providers and would benefit from direct access to a wider pool of staff resources. Under the proposal, CCC and Opus (who are owned by Suffolk County Council) were the initial shareholders. The GPC paper also outlined the intention and benefits of other LGSS partners joining as shareholders at the end of their existing contractual arrangements.

1.2 Northamptonshire County Council (NCC) joined the arrangements as planned in August 2017 and Milton Keynes Council (MKC) joined as a shareholder in September 2018, which was approximately a year later than originally envisaged at the time of the GPC paper.

1.3 Delegation in relation to the creation and on-going arrangements was given to the LGSS Managing Director in consultation with the Chair of the GPC Committee and the Council's S151 Officer.

1.4 Since incorporation the Opus Cambridgeshire, Northamptonshire and Milton Keynes joint venture has realised excellent financial performance as follows:

Financial year	Net profit	Commentary
2017/18	£131k loss (Actual)	Initial period, loss expected due to set-up costs. CCC – from Jan 17 NCC – from Aug 17
2018/19	£129k (Actual)	Set-up costs recovered MKC – from Aug 18
2019/20	£320k (Actual)	£200k dividend paid to Shareholders
2020/21	£260k (Forecast)	Impact of Covid-19
2021/22	£350k (Forecast)	Expected growth from PCC and District Councils

Projected dividends to be paid for the 2020/21 financial year are expected to be similar to that paid in 2019/20.

1.5 In addition to the excellent financial performance of the Joint Venture, the councils have received the following benefits:

- Over £2m (9% of overall spend) has been saved by councils in the first 3 years to January 2020 in respect of the cost of agency staff.

- CCC, NCC and MKC have seen annual spend on temporary workers reduce by more than £5m (20% of overall spend) in the same time-period.

- Strong relationships have developed with operational management and the wider organisation via Opus teams being embedded on site, delivering quality recruitment solutions at pace, which provides significant savings to both the time and resources of CCC, NCC and MKC.

- Excellent customer satisfaction (96%), compliance (100%) and direct fill rate levels (88% direct fill rates outside of social work) have been delivered across all sites.

- Opus have upheld and enforced CCC, NCC and MKC policies and processes and have supported the organisations through recruitment freezes.

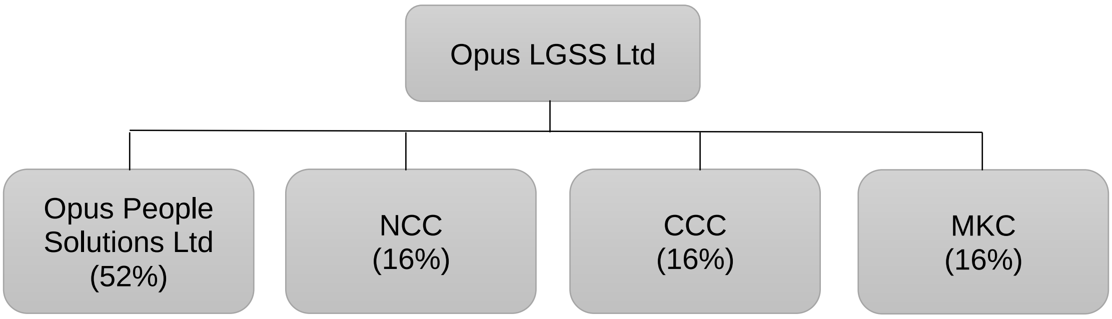
2. Proposed Changes to the Structure of the Company

2.1 As a consequence of the changes to local government that are occurring in Northamptonshire, an alternative structure needs to be considered for Opus. The changes in Northamptonshire will see the creation of a Northamptonshire Children's Trust (NCT), and the creation of two new Unitary Councils.

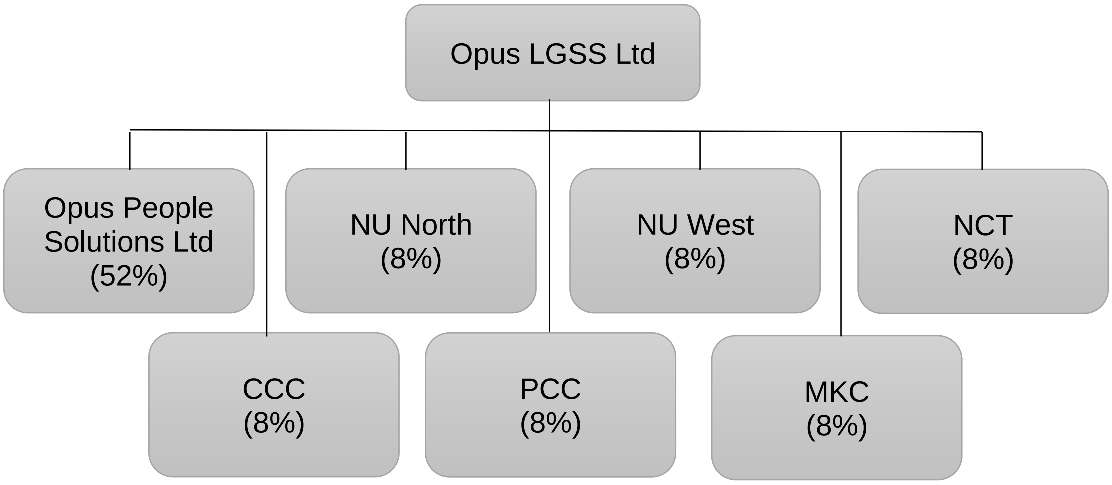
2.2 It is possible that Peterborough City Council (PCC) will also join the joint venture.

2.3 In terms of the changes in NCC, and the creation of the three new entities, Opus will continue to provide recruitment services to the new entities under the Successor Rights provision in place. In order to maintain the quantum throughput of the vehicle, following the organisational changes in Northamptonshire the shareholders are therefore being asked to consider an alternative shareholding structure. The proposals put changes to the structure are set out below.

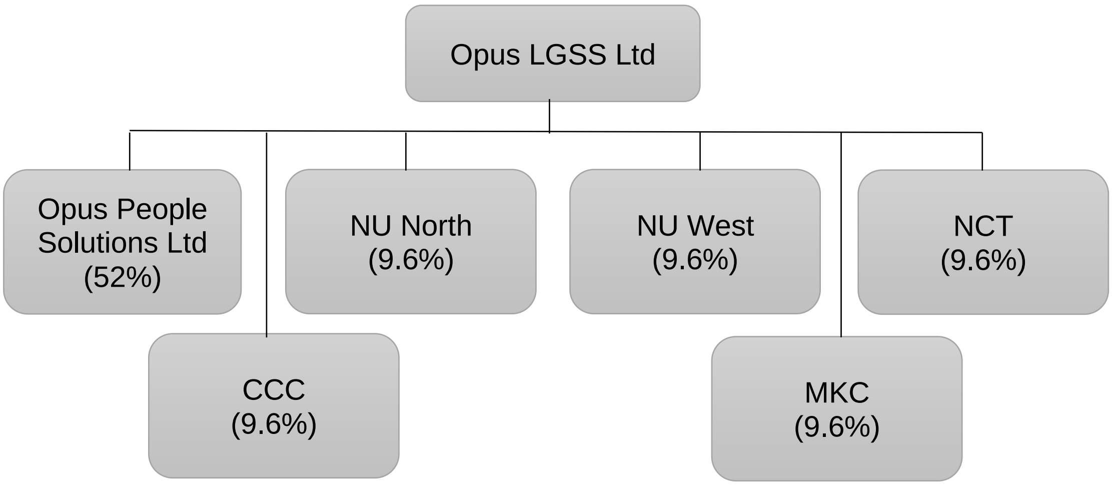
2.4 The current Shareholding structure is as follows:



2.5 Following the establishment of the two new Unitary Councils and the Children's Trust in Northamptonshire and if Peterborough City Council were to join the vehicle the joint venture shareholding structure would be as follows:



2.6 If Peterborough were not to join, then the shareholding would be as indicated below:



2.7 The Opus joint venture offers a shareholding in the business, including a right to a dividend and a seat on the Board, which gives complete transparency of financial and operational performance, and input and influence on the strategic direction of the company.

3. Profit Distribution

3.1 In conjunction with the proposed shareholding amendments, the Opus Board also want to change the way that any future profits are distributed. Once the Opus Board has approved that a Dividend will be payable, all Dividends are currently distributed proportionately to the relative shareholdings. This approach however does nothing to reflect how much each shareholder contributes to the profit of the Company and therefore offers no incentives to maximise the throughput.

3.2 In addition, given that the potential additional shareholders would disproportionately benefit those organisations that place less business through the Company, the Board are recommending that future dividends are distributed on the basis of Gross Margin generated on the throughput of work by each of the shareholding councils. This will protect Cambridgeshire's position compared to maintaining the current methodology with a greater number of shareholders.

3.3 Furthermore, in order to ensure that new shareholding organisations do not benefit from the funds accumulated by the Company to date, it is proposed that any profit and loss reserves as at 31 March 2021 will be allocated to the existing shareholders in line with the existing shareholding held.

3.4 An element of reserves will be retained within the business for working capital purposes, however if distributed in the future, these sums will be distributed based on the current shareholding prior to the changes which, if approved, will take effect from 1st April 2021.

4. Protecting The Council's Position

4.1 Any CCC accumulated profits as at 31st March will be protected under the current dividend distribution methodology. The proposed changes will however affect future distributions. Even though it is possible for the Board to propose further changes in the future that could disadvantage this Council, the Council is protected under the terms of the Shareholders Agreement. The relevant extract from the Agreement and the associated Reserved Matters are set out in the Appendix 1 to this report.

4.2 Any distribution of funds/assets etc is a reserved matter and therefore requires the approval of all shareholders. This Council would therefore have the right of veto on any proposal that detrimentally affects this Council's position.

4.3 In addition, it may be useful to point out that the shareholding change does not dilute CCC's (or any shareholders) control over the company. Voting rights remain the same, as do the Reserved Matters and with the dividend policy being linked to the throughput each council puts through the company, this protects their share and right to the distributable funds even in a scenario of the company dissolving and parties going their separate ways.

4.4 Whilst the focus of this paper will naturally be on the change to the shareholding and profit sharing arrangements of the Company the key benefit to the Shareholders actually derives from reduced margins and access to a larger resource pool.

4.5 The change of profit distribution methodology will detrimentally affect both this Council and Milton Keynes Council who both contribute similar levels of activity through the Company. Based on the 19/20 distributable profit (£200k) the impact of adopting the proposed distribution method on that year's dividend is set out below:

Authority	Current Split - £k	Based on throughput £K
Opus	104	104.0
CCC	32	24.8
NCC	32	47.7
MKC	32	23.5

4.6 The table clearly demonstrates that Northamptonshire County Council places as much activity through the Company as the other two partners combined. As a consequence it is unlikely that any proposal that is not based on throughput will be acceptable to the two new Northamptonshire unitary councils and the Children's Trust.

5. Board Representation

5.1 To date, the Councils' representation on the Board of the Company has been undertaken by an officer of LGSS, currently the Acting Managing Director. With the changes to both the Company and LGSS, this is clearly not appropriate going forward. The Council therefore need to appoint someone to represent the Council's interests on the Board of the Company. Having discussed this at the Council's Strategic Management Team, and given the highly operational nature of the business, it is recommended that this role continues to be filled by an officer. It is proposed that this role is undertaken by the Director of Customer and Digital Services, as that post is now responsible for the Human Resources Service.

6. Options

6.1 As highlighted above any change to the shareholding or profit distribution cannot be undertaken without the agreement of all shareholders. Given the imminent local government changes in Northamptonshire the status quo is not an option. The two local authorities and Children's Trust in Northamptonshire do have succession rights but these organisations generate a higher proportion of the turnover of the Company. The Council does however have a few options available to it:

- Accept the proposed structure and accept that the Council is likely to receive less 'dividend' based on its current use of Opus agency staff;
- Refuse to accept the proposed structure and propose an alternative;
- Attempt to retain the status quo and seek that the current benefit attributable to NCC is shared by its successor organisations.

6.2 We are aware that the new councils in Northamptonshire would not accept any proposal that does not reflect their throughput to the vehicle and are prepared to establish their own vehicle if necessary. Given the financial impact on the reduction surplus coming back to Cambridgeshire by a change in the methodology (as highlighted in the table above) it is felt that on balance the Council would benefit more by retaining the new partners within the vehicle going forward.

7. Alignment with corporate priorities

7.1 A good quality of life for everyone

There are no significant implications for this priority.

7.2 Thriving places for people to live

There are no significant implications for this priority.

7.3 The best start for Cambridgeshire's children

There are no significant implications for this priority.

7.4 Net zero carbon emissions for Cambridgeshire by 2050

There are no significant implications for this priority.

8. Significant Implications

8.1 Resource Implications

The financial and human resource implications are set out in the report. There are no property or IT related matters appertaining to the content of the report.

8.2 Procurement/Contractual/Council Contract Procedure Rules Implications

None.

8.3 Statutory, Legal and Risk Implications

As set out in the report.

8.4 Equality and Diversity Implications

None.

8.5 Engagement and Communications Implications

None.

8.6 Localism and Local Member Involvement

None

8.7 Public Health Implications

None.

8.8 Environment and Climate Change Implications on Priority Areas

None.

Have the resource implications been cleared by Finance?
Yes
Name of Financial Officer: Chris Malyon

Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement?
No – not applicable

Has the impact on statutory, legal and risk implications been cleared by the Council's Monitoring Officer or LGSS Law? Yes
Name of Legal Officer: Fiona MacMillan

Have the equality and diversity implications been cleared by your Service Contact?
No – not applicable

Have any engagement and communication implications been cleared by Communications?
No – not applicable.

Have any localism and Local Member involvement issues been cleared by your Service Contact?
No – not applicable.

Have any Public Health implications been cleared by Public Health
No – not applicable.

9. Source documents

9.1 Opus Shareholders Agreement

6. MATTERS REQUIRING CONSENT OF SHAREHOLDERS

6.1 Each party shall procure that the Company shall not, without the prior written approval of all Shareholders carry out any of the Reserved Matters.

Schedule 2

Reserved Matters

i. the making of any material change in the nature of the Business or the jurisdiction in which it is managed and controlled;

ii. the issue or allotment of any shares in the capital of the Company or any Subsidiary Undertaking of the Company or the creation of any other security or the grant of any option or rights to subscribe in respect thereof or to convert any instrument into such shares;

iii. the reduction of the share capital or variation of the rights attaching to any class of shares in the capital of the Company or any Subsidiary Undertaking of the Company or any redemption, purchase or other acquisition by the Company of any shares or other securities of the Company or any Subsidiary Undertaking of the Company;

iv. the passing of any resolution or the presentation of any petition for the voluntary winding-up or administration of the Company or any Subsidiary Undertaking of the Company;

v. the sale, transfer or disposal of the whole or a substantial part of the Business, or any dilution of the Company’s interest in any Subsidiary Undertaking;

vi. the formation of any Subsidiary Undertaking or the acquisition of or investment in any other company or business;

vii. the merger or amalgamation of the Company or any Subsidiary Undertaking of the Company with any other company or the participation in any partnership or joint venture;

viii. the application for the listing of any shares or debt securities on any stock exchange or market;

ix. the incurring of any borrowings or other indebtedness (other than normal trade credit or any loans as detailed in the Business Plan) or the giving of any guarantees;

x. the approval and/or adoption of the Business Plan (or annual budget or any variation of the Business Plan or annual budget from time to time;

xi. the entering into any purchase, sale, lease or licence of any freehold or leasehold property above £10,000 in the case of a purchase or sale or £10,000 annual value in case of lease or licence (other than in accordance with the Business Plan);

xii. the approval of any Company branding or variation to the Company branding (to the extent that this is not dealt with in the Business Plan);

xiii. any changes to the articles of association of the Company or any Subsidiary Undertaking of the Company;

xiv. the execution, modification, termination or renewal of any agreement, arrangement or transaction between the Company or any Subsidiary Undertaking of the Company and any third party:

1. under which the Company shall pay an annual sum in excess of the amount already approved in the Annual Business Plan for that purpose; or

2. is outside the ordinary course of the Company's business or is otherwise there on arm's length terms; or

3. is a transaction or arrangement with any Shareholder or Director or any person who is connected (within the meaning of section 1122 of the Corporation Tax Act 2010) to any Shareholder or Director; or

xv. the registration of any person as a member of the Company other than the Shareholders in respect of their initial investment and/or any permitted transferees;

xvi. the establishment or amendment of:

1. any profit-sharing, share option, bonus or other incentive scheme of any nature for directors or employees other than in accordance with the Annual Business Plan; or

2. any pension scheme

xvii. the dismissal of any Director, officer or employee in circumstances in which the Company or any Subsidiary Undertaking of the Company incurs or agrees to bear redundancy or other costs in excess of the public sector exit cap or any different amount specified in regulations issued under section 154 of the Small Business, Enterprise and Employment Act 2015 that are in effect at the time;

xviii the treatment of and distribution of any surpluses generated by the Company including the distribution of any dividend.