

**WIRRAL COUNCIL  
CABINET  
19 JUNE 2014**

<b>SUBJECT:</b>	<b>TRANSFORMATION OF DAY SERVICES</b>
<b>WARD/S AFFECTED:</b>	<b>ALL</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF ADULT SOCIAL SERVICES</b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b>COUNCILLOR CHRISTINE JONES</b>
<b>KEY DECISION</b>	<b>YES</b>

## **1.0 EXECUTIVE SUMMARY**

1.1 Cabinet on 14 March agreed the following recommendations:

1. Agree to the establishment of a Wirral Local Authority Trading Company (LATC) model.
2. Agree for officers to progress the development of the Co-design Project Group with key stakeholders including staff and parent/carers.
3. Agree to receive a further progress report in June 2014 that will include the full project plan and implementation timeline.

This report brings forward the Strategic Business Case, Implementation and Project Plans and a report in relation to the Due Diligence undertaken.

It also gives Cabinet an update on progress in relation to recommendation 3, the development of the Co-Design Project Group.

### **Exempt Information**

- 1.2 This report contains exempt information at Appendix D, F & G as defined in Schedule 12A of the Local Government Act 1972. It is in the public interest to exclude the press and public under **Paragraph 3** *'Information relating to the financial or business affairs of any particular person (including the authority holding the information'* the information contained in the appendix is commercially sensitive.

## **2.0 BACKGROUND AND KEY ISSUES**

### **The Case for change**

- 2.1 The Families and Wellbeing Directorate, Department of Adult Social Services (DASS) identified that there may be a significant opportunity to improve outcomes, achieve efficiencies and create sustainability of service provision by implementing a new approach to delivering its Day Services for people with a learning disability. With a continued national focus on personalised services and more specifically, offering more choice through Direct Payments, the Council needs to ensure the sustainability of a range of services within this changing environment. Moreover, personalisation is driving councils to become commissioners rather than providers of services and the Council needs to consider a delivery model that will strategically meet this impetus.

- 2.2 A decision was made by Cabinet in December 2012 to consider a wide range of options for the delivery of day services. As a result, the council has undertaken a review of new service delivery models for Day Services.
- 2.3 The review recommended that the preferred model of a Local Authority Company with an expanded scope beyond day services could be viable.
- 2.4 The Local Authority Company was recommended as the most viable option because it:
- Can achieve savings and can generate income from other sources such as direct payments, private funders and potentially other contracts from outside of the Council. This will drive services to become more viable and more efficient.
  - Has potential to provide leadership in a relatively disparate market which could help to manage quality issues in the external market. This ensures that the Council can continue to meet its legal obligations in the event of market failures.
  - Would be wholly owned by Wirral Council and therefore subject to democratic scrutiny.
- 2.5 A decision was made by Cabinet in March 2014 to develop a Strategic Business Case for a Local Authority Company, setting out a clear rationale for the establishment of a Company that will deliver sustainable services whilst meeting Medium Term Plan (MTP) savings.
- 2.6 Wirral Council, like other councils, faces the challenge of ensuring the quality of adult social care provision amid increasing and more complex demand and severe financial constraints. There are a number of reasons why the current model of provision is not sustainable. These are listed and briefly outlined below:
- Demographic pressures means services such as day care cannot remain the same;
  - Financial constraints means that these services have high MTP commitments; and
  - Income generation cannot be tapped into without a new delivery model.
- 2.7 This business case aims to provide the evidence that a Local Authority Company is the optimum solution for alternative delivery of the services in scope through evidencing the ability to achieve the following objectives:
- Improving performance and productivity, thereby enhancing the quality of services and outcomes for people in Wirral
  - Ensuring future sustainability of services – through a viable marketable approach
  - Managing financial pressures – through efficiency and additional revenue generation.
  - Supporting the council's strategic ambition and objectives.

## **The services in scope for the Local Authority Company**

2.8 There are a number of options in terms of scope for the Company. These are labelled as 'levels' in order to capture the concept that each level builds upon the one below it.

**Level 1** service areas are in scope now. These are able to be transferred by the intended go-live date and provide a critical mass of services necessary. The review has included some services that whilst not being included in the first phase of implementation could potentially form part of the future model

**Level 2** service areas are potentially in scope for consideration during implementation. These are those services that offer real opportunity for expansion and focussed on other support service areas. These would enable the council to commission services from the company on a more cost effective basis and would enhance the market availability and choice.

**Level 3** service areas are out of scope but can be seen as future opportunities. These are wider Council services that could join a broader company once established. The exception to this is Leisure Services which is a current opportunity that could be considered now.

2.9 Full rationale is contained in the Strategic Business Case which can be found at Appendix A of this report.

2.10 It is important that the delivery of day services and other support services for people with a disability is aligned with the Council's strategic ambition. In particular it provides for:

- An alignment to the Corporate Plan 2014-2016
- Assists delivery of the Families Wellbeing Improvement Plan
- Assist the achievement of the council's commissioning intentions

## **Governance and Structure**

2.11 In order to create a Local Authority Company there are a number of key governance and contractual matters which will need to be addressed by both the Council and the new Company. There are four main relationships that the Council will have with the Company are:

- As the shareholder;
- Through the commissioning relationship with the contract for service delivery;
- Through operational links related to the delivery of strategically important services that form part of the Council's access pathway; and
- Through a contract for the Council to deliver support services to the Company.

## **Company Board Structure**

2.12 There are some important considerations to be made when appointing the Board. For example, if the Council is considering other services for inclusion in the Company the Board would need to have a skill set that can manage diversity within the portfolio. There may also be opportunities in the future to include health services within the company.

## **Shareholder Governance and the Council's control and influence**

- 2.13 From experience with other companies, this business case recommends that the Council exerts its controlling powers through the creation of a Shareholder Scrutiny Group (SSG). Members could potentially sit on the SSG and therefore if this option was agreed, it would be necessary to select Members with business experience and commercial acumen on the SSG will help to provide constructive challenge to the new company board. However, this will require further discussion and agreement early in the implementation.
- 2.14 The fundamental purpose of the SSG is to act on behalf of the shareholder in scrutinising performance against the contract and Business Plan, review investment plans and review risks.
- 2.15 The Shareholder Scrutiny Group would typically have the following membership:
- Five Members including a Chair and possibly an opposition Member;
  - Section 151 Officer;
  - Director of Adult Services;
  - Strategic Commissioner;
  - Director of Public Health;
  - Health and Wellbeing Board representative; and
  - Senior Contracts Manager.
- 2.16 It is suggested that the SSG would meet on a quarterly basis with one of these meetings acting as the Annual General Meeting.
- 2.17 If the company were to decide, at a future date, to widen its membership or develop a trading arm providing services on a commercial basis, the governance arrangements would need to be reviewed so that the Council has an arm's length arrangement with the company.

## **The Board structure and business operations**

- 2.18 The company will require a Management Board which oversees the business. The Board structure will reflect the commercial nature of the company. The proposed composition of the Board at set-up of the Company could consist of:
- Independent Chair (part time);
  - Managing Director
  - Finance Director
  - Business Development Director
  - Two part-time Non-Executive Directors.
- 2.19 The structure of the company Board has to be future proof. For example, if the Council is considering other services for inclusion in the company, the Board would need to have a skill set that can manage diversity in the portfolio. There may also be opportunities in the future to include health services within the company and therefore the board structure may want to reflect partner representations.

## **Shareholder / Commissioner Relationship**

- 2.20 Whilst the focus of the implementation of a Local Authority Company will be on the forming of the company, it is also important to ensure that the relationship between the shareholder and the commissioner is clearly articulated as there could be potential for conflict of interest.
- 2.21 The strategic business case sets out the vision, operational remit and financial plan that aims to overcome this context through establishing a Local Authority Company. The strategic business case can deliver:
- An increase in flexibility and viable nature of way the services are run
  - An ability to trade and generate new income
  - The required MTP savings
  - Establishment of new preventative services
  - Maintenance of 'provider of last resort'
- 2.22 The business case will also provide the evidence that the company will deliver the following desired objectives:
1. Improving performance and productivity - the company delivers improved performance in service delivery. It will provide the current services in a more flexible and viable manner. In relation to the staff, productivity will improve and as such performance will be further enhanced. The viable approach to workforce management will deliver improved service outcomes being delivered.
  2. Ensuring future sustainability of services - the company will secure the need to reshape and size services without the need for wholesale decommissioning. Through adopting a viable approach it allows new services to enter the market and existing ones to be protected.
  3. Managing financial pressures - through efficiency and additional revenue generation - the company provides the mechanism that means over £1.2m savings from MTP can be identified and delivered. This is the only way the services in scope could deliver this target without decommissioning.
  4. Supporting the council's strategic ambition and objectives – through alignment of corporate principles, the delivery of priorities and milestones set out in the Families and Wellbeing Directorate Plan and by strengthening the Council's role as a commissioning body.
- 2.23 The business case demonstrates a clear rationale for the establishment of a Local Authority Company that will deliver sustainable services whilst meeting MTP savings. There is also significant potential to include other services, generate greater revenue and deliver services more innovatively.

## **Impact of the Local Authority Company on the Council**

- 2.24 Setting up a wholly owned Company will have a number of impacts on the Council including:
- An additional requirement on commissioning / contract monitoring through the Shareholder Scrutiny Group.

- It is understood that the services remaining with the Council are already managed within the current Families and Wellbeing portfolio and will therefore not require any additional management capacity.
- A contract will be required that specifies the Council support services that will be supplied to the Company, defining cost and volume and creating a commercial arrangement between the two. It would be anticipated that this arrangement may lead to improvements in customer focus and a more viable ethos to these services. This should not require additional capacity as it will be 'business as usual'. There may be an impact over the longer term if the Council agrees to the Company being able to review the sourcing of these services in a more competitive manner.

## Transition

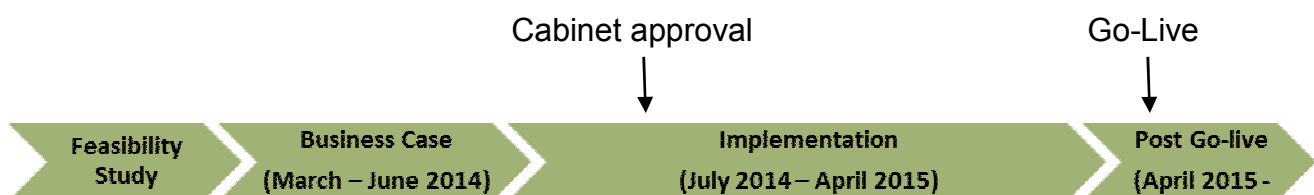
2.25 It is recommended that in the period between approval of the business case and go-live of the company, some form of 'shadow' arrangements should be put in place to oversee the setting up of the company. Key to these arrangements will be negotiation with the Council's support services on the level of service and associated costs.

## Performance Management

2.26 A benefit for the Council of establishing a Local Authority Company is the opportunity to put in place new service specification arrangements which define the required contractual relationship between the Council (Commissioning, Assessment and Care Management) and the company. Central to the service specifications will be the creation of a Key Performance Indicator (KPI) regime to monitor the activity and delivery targets for the services.

## The Implementation of the Local Authority Company

2.27 Subject to Cabinet approval the establishment of the company would take approximately nine months. Therefore, company go-live is anticipated to be April 2015. The diagram below outlines the timeline from feasibility study to post go live.



## Benchmarking

### Examples of service mix successfully applied in Local Authority Companies

COMPANY	Established	Turnover	Core Service
Essex Cares <sup>1</sup>	2009	£33m	Reablement, LD Employment and Inclusion, Older People's Day Services, Extra Care, Equipment
Optalis (Wokingham)	2011	£9m	Reablement, OP and LD Residential, OP and LD Day Services, Sensory Services, Brokerage and Long Term Social Work support
Your Choice <sup>2</sup> (Barnet)	2011	£6.5m	LD Services, MH Services (part of Barnet Group LATC)
Olympus Care (Northamptonshire)	2012	£32m	Residential Homes, Reablement / Enablement Day Services, Community Opportunities, EADS
Buckinghamshire Cares	2013	£9m	Reablement, OP and LD Day Services, Respite Care, Home Care, Employment, Laundry and Prevention Matters

### Co-design reference group work

- 2.28 The work around the Co-design of the company is gathering pace, and excitement, to date there have been four group meetings for people who use services consisting of 41 individuals from across the service. The meetings have been very productive, discussions have included the Vision of the company, the objectives, the offer of services and the scope of them. Staff groups have met on three occasions and have 37 members to date; once again these meetings have been positive, energetic and producing plenty of ideas and support for the company. Groups for Carers commenced on 22 May and we have representatives from all services and the group is very diverse in terms of the ages of their sons and daughters who attend the services.
- 2.29 Two other groups consist of volunteer organisations, and young people who have disabilities and their Carers, as well as social workers working with people in transition from children's services into adulthood. These groups commenced 3 June and will feed into the process as it develops. Meetings are very structured and all information is being collated and fed back in to the company infrastructure development work, this will continue throughout the implementation phase of the project.

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<sup>1</sup> Currently the most successful enterprise with a £33 million turnover

<sup>2</sup> This model is the closest to the Wirral LATC model

### 3.0 RELEVANT RISKS

3.1 As the only shareholder, the Council will retain the ultimate financial risk associated with the company as it currently does in providing these services from within the Council. Whilst this would be the beginning of an exciting new era for these services it is important to recognise that business failure is always a possibility and not always directly within the control of the organisation. Therefore mitigation actions are required to deal with the risk of failure and include:

- Proper scrutiny of the business plan - the first mitigation has to be through the robustness of a realistic and achievable Business Plan where assumptions are understood and acceptable. Scrutiny of the Business Plan through the governance of this project will provide challenge and confidence if the challenge is able to be withstood or improvements achieved to the satisfaction of Members and Officers.
- Proper scrutiny and oversight of the Board - should the Council believe that the Board are failing the Company, the position of the Council as sole shareholder entitles it to remove members of the Board and replace them through their own recruitment process.
- Ensure the Company is truly viable - as with any new enterprise the company will need to have suitable insurance in place. The company, with agreement of the shareholder, can also create a reserve from surplus generated to mitigate significant unforeseen financial losses.

3.2 It is important to recognise that the company as a model of provision is tested and successful elsewhere and this is therefore not a leap of faith. There are two fundamental reasons to consider an exit strategy:

- Transition of Local Authority Company services into the independent market - whilst it has been accepted that it is not appropriate at this stage to transfer these services to a fully independent state, the alternative options will continue to be available at a later date. This could mean that the Council sells some or all of the services within the company after an initial contract(s); thereby transferring a successful enterprise to independence. Fundamentally all of the options explored in the initial options appraisal will still be open to the Council and different market conditions or policy requirements may lead the Council to choose one of these at a future date.
- Failure of the company to deliver the proposed business plan - in the event of business failure or poor performance, the Council would need to consider alternative arrangements.

3.3 There are two solutions:

1. Bringing the services back in to the Council - this would be a relative quick and inexpensive solution. Whilst it would be a retrograde step it may provide confidence to service users, carers, staff and unions and help to manage risk.
2. Move services to the independent sector - alternatively the Council could look to the market to take on these services although this would take some time to achieve and incur significant procurement costs. The reasons for the potential failure of the company as a business may also have an impact on the interest and response of the market and push up the costs. Therefore, an analysis of the costs of either bolstering the services or the Board versus making them attractive to independent providers would need to be undertaken.



## **4.0 OTHER OPTIONS CONSIDERED**

- 4.1 Wirral Council, like other councils, faces the challenge of ensuring the quality of adult social care provision amid increasing and more complex demand and severe financial constraints. There are a number of reasons why the current model of service delivery for the services within scope is not an option. These are listed and briefly outlined below:
- a) Demographic pressures means that services cannot stay the same
  - b) Financial constraints means these services have high MTP commitments
  - c) Income generation cannot be tapped into without a new delivery model that offers greater scope
- 4.2 Cabinet in December 2013 considered a number of different delivery models including a shared services unit with a neighbouring authority. Other options considered were the establishment of a Local Authority Company or form of social enterprise.
- 4.3 However, restricted Council control, limited access to generated income and unfavourable procurement regulations for a social enterprise means that the Local Authority Company is the most viable option.
- 4.4 Outsourcing is also an option, with the potential to reduce cost and ensure a financially sustainable service. However, the aggressive MTP savings attached to the services in scope makes outsourcing them unviable.

## **5.0 CONSULTATION**

- 5.1 Stakeholder engagement is critical to the success of the company. Ensuring operational staff, service users and carers and trade unions are engaged with and support the company not only lends itself to an easier transition but also to a more successful Company. There will be a full consultation aligned to the Future Council consultation; this will include staff, people who are directly impacted who use services, Carers, Trade Unions and key stakeholders.
- 5.2 A clear change management strategy will be designed at the beginning of the implementation phase. Service areas should feel engaged with the process and operational managers need to have ownership of programme. Articulating clear goals and delivery plan as well leadership from above are critical success factors.
- 5.3 The transfer of staff under TUPE will require an appropriate staff consultation period and will also require dedicated HR project resource.

## **6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

- 6.1 Through engagement with Voluntary Community Action Wirral (VCAW) the company will be working to create real partnerships and approaches with voluntary, community and faith groups and organisations to achieve the best outcomes for the people who live and work locally.

## **7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

### **Post Go Live**

7.1 The Company is not expected to begin trading immediately. Services and staff will need time to grow accustomed to their new identity and relationship to the Council. At post go-live the Company may wish to consider the potential for future income generation in terms of business planning and measuring additional capacity requirements. This timeline has been assumed in the financial case for the company

### **Financial benefits of the Local Authority Company**

7.2 The company as a new delivery vehicle provides many benefits to services, two of these can be classed as financial benefits:

- More viable and efficient way of working
- The ability to provide services to all sectors of the local community

## **8.0 LEGAL IMPLICATIONS**

8.1 The recommendation involves the formation of a 100% Council controlled Company (not for profit) to enter into an agreement with the Council to operate day care services. The Company needs to be established carefully to ensure that it is recognised by HMRC as being 'not for profit' and it also needs to be able to meet the Council's discretionary rate relief policy. If the new Company is structured as a Teckal 'in-house' Company, as recommended by this report, then it will qualify as a 'body governed by public law' and will have to comply with public procurement law when letting contracts on behalf of the Council.

8.2 The Teckal case established that where a contracting authority enters into arrangements for the supply of services with a distinct legal entity but with which it is closely connected, this can be classed as an in-house arrangement which does not need to be procured. This is provided two conditions are satisfied:

8.3 The control test – the entity must be subject to the same or similar level of control as an in-house unit. This means control over the strategic and operational direction of the Company, therefore the members must be contracting authorities not private sector bodies.

8.4 The activity test – the entity must operate so it provides the essential part of its activities with its members. Some peripheral third party trading activity is permitted but if it exceeds 20% this will cause the Teckal exemption to be breached and all services to the Company would then be subject to competitive tendering.

8.5 It is recommended that the Council take further detailed advice once its longer term plans are clearer.

8.6 If the Council wishes to explore the possibility of future private sector participation, this will not on its own undermine the application of the Teckal exemption, however care must be taken about the circumstances under which private interests could be brought in and when this could happen.

## **9.0 EQUALITIES IMPLICATIONS**

9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

Yes and impact review is attached.

## **10.0 CARBON REDUCTION IMPLICATIONS**

10.1 The Local Authority Trading Company/Wholly Owned Company will aim to minimise the local authority's overall carbon footprint, through better use of shared partner resources e.g. Leisure and Culture centres. This should lead to a reduction in the use of energy and water resources. The environmental performance of existing buildings will be improved through complying with new Building Regulations requirements. Where buildings require refurbishment the Company will adhere to sustainable building techniques and technologies.

## **11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

11.1 N/A

## **12.0 RECOMMENDATION/S**

12.1 The business case demonstrates a clear rationale for the establishment of a Local Authority Company that will deliver sustainable services whilst meeting MTP savings. This will be subject to a robust challenge process.

12.2 Consideration will be given to the potential to include other services to generate greater revenue and deliver services more innovatively.

12.3 It is therefore recommended that:

1. The Council approves the formation of a Local Authority Company.
2. The Council agrees to the transfer Day Services and Daytime opportunities into the Local Authority Company and then further defines the Company's strategic ambitions to plan to move towards an expanded commercial scope.
3. The Council considers its Council-wide strategic approach and aligns appropriate other work to maximise the benefits of an expanded scope.
4. An implementation programme is established to oversee the transition of services to the new Company.
5. Cabinet receives regular updates on progression commencing in mid-September.

## 13.0 REASON/S FOR RECOMMENDATION/S

13.1 The Council is in a situation whereby it:

- Cannot continue the provision of services in-house without significant change
- Is unable to outsource the provision and meet its objectives
- Does not want to simply decommission services that are required and wanted by people
- Needs to establish key early intervention and preventative services

13.2 Therefore it is vital that the recommendations above are agreed in order to:

- To enable the establishment of the new business model and function of the Local Authority Company
- To enable the company's strategic ambitions to be established and ensure these meet with the future direction of travel of the wider council and achievement of the corporate plan strategic objectives
- To ensure that the implementation programme is progressed within a timely and appropriate timescale to oversee the transition of services to the Local Authority Company and deliver the required savings.

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## APPENDICES

Appendix A – Strategic Business Case for a Local Authority Company

Appendix B – Stakeholder Engagement including initial feedback from Co-design Project Reference Group

Appendix C – Options for scope of the Company

Appendix D – Local Authority Company Implementation Plan (**exempt**)

Appendix E – Risk Management

Appendix F – The Implementation of the Local Authority Company (**exempt**)

Appendix G – The Financial Plan for the Local Authority Company (**exempt**)

## REFERENCE MATERIAL

N/A

## SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	20 December 2012
Health & Wellbeing Overview & Scrutiny Committee	4 December 2012
Health & Wellbeing Overview & Scrutiny Committee	14 January 2013
Cabinet	18 February 2013
Council (Budget)	5 March 2013
Cabinet	10 December 2013
Cabinet	13 March 2014