

**WIRRAL COUNCIL
CABINET
6 NOVEMBER 2014**

SUBJECT:	TRANSFORMATION OF DAY SERVICES - LOCAL AUTHORITY COMPANY
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF ADULT SOCIAL SERVICES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR CHRISTINE JONES
KEY DECISION	YES

1.0 EXECUTIVE SUMMARY

1.1 Cabinet on 19 June 2014 resolved the following:

1. *To undertake more detailed work is required on some of the financial implications to the Council including the potential savings, business rates and VAT implications. At this stage the business case demonstrates a clear rationale for the establishment of a Local Authority Trading Company that will deliver sustainable services whilst meeting MTP savings. This will be subject to a robust internal challenge process;*
2. *Consideration be given to the potential to include other services to generate greater revenue and deliver services more innovatively; and*
3. *Subject to satisfactory outcomes, approved by the Cabinet Portfolio Holder for Governance, Commissioning and Improvement and Chief Executive, in relation to the detailed financial and governance implications, it be recommended that:*
 - a. *The Council approves the formation of a Local Authority Company;*
 - b. *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;*
 - c. *The Council considers its Council-wide strategic approach and aligns appropriate other work to maximise the benefits of an expanded scope;*
 - d. *An implementation programme is established to oversee the transition of services to the new Local Authority Company;*

- e. *The Cabinet receives regular updates on progression commencing in mid-September; and*
- f. *The business case for transferring Day Services to a Local Authority Company to be presented to the Cabinet for final approval after the conclusion of the challenge process.*

1.2 This report brings forward an update on the above resolutions, the outcome of the internal financial challenge and the Strategic Business Case, The Outline Business Plan, 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 the development of the Co-Design Project Groups

1.3 Exempt Information

This report contains exempt information at Appendix D and F 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

2.1 Internal Challenge Process

Following a report to Cabinet in June 2014, the strategic business case has now been fully challenged and scrutinised in order to 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.

The business case and operational plan demonstrate 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. There will be ongoing work throughout the implementation phase to ensure clarity and transparency going forward. Key to these arrangements will be negotiation with the Council's support services on the level of service and associated costs.

2.2 The Implementation of the Local Authority Company

The company 'go-live' is anticipated to be April 2015. There is considerable work to be undertaken not only in relation to the service but in relation to future arrangements and the instigation of service level agreements with some parts of the council and the negotiations with the corporate centre in relation to support services and the requirements of the new company in accessing these or not.

2.3 Governance and Structure

As previous reports to Cabinet have outlined, there will be clear and robust governance and contractual arrangements. There are four main relationships that the Council will have with the Company, these 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.

2.4 Shareholder Governance and the Council's control and influence

The creation of a Shareholder Scrutiny Group (SSG) will be the main governance function. 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.

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

The SSG will meet on a quarterly basis with one of these meetings acting as the Annual General Meeting.

The Board structure and business operations

The company will have 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)
- Leader of the Council
- Managing Director
- Finance Director
- Business Development Director
- Head of Operations
- Two Non-Executive Directors (part time)

2.5 Co-design reference group's work

This has been and continues to be an exciting time for all those involved in Day Services and the provision of Daytime Opportunities, the feedback from people who use the services, staff and Carers involved in the group work has been overwhelmingly positive.

Co-design Roles

In order to shape and design an alternative delivery company for day services, the Council have sought out a diverse group of people who use services, parents and carers, Council staff and members of the community. We have sought individuals who possess a variety of the following qualities:

- 1. Results driven** – individuals with a 'getting stuff done' mind set, who want their actions to generate major positive impact. This means actively doing, not deliberating.
- 2. Passionate professionalism** – individuals with a mix of professionalism and passion. People bring their best to work, so they should bring their best to their co-production effort.
- 3. Collaborative co-operation** – individuals who understand the shared goals, identify with and are able to develop a highly added value partnership.
- 4. Dedicated contributors** – individuals who stick to their commitments. If they say they will contribute something specific, they do their absolute best to make it happen. They are problem solvers and find ways forward.
- 5. Constant champions** – Individuals who find ways to spread their collective ambition. The purpose and passion for the project integrates into their daily lives.
- 6. Energisers** – Individuals who provide energy for themselves and others. They collaborate, form friendships and have fun achieving their collective aims.
- 7. Group investors** – Individuals who think less about what they can get from the experience and more about what they can contribute and achieve as a group

The Co-design Project Reference Group is jointly responsible for two primary tasks:

1. Representation of the people who use services, parents and carers, and staff who work in the services to develop ideas and alternative options for provision and delivery of services in order to produce a co-designed model
2. Strategic Business Case for a Local Authority Company
3. Working in small groups to discuss stages of development of the delivery model, reviewing progress and providing information and feedback into the Co-design Project Reference Group following each meeting

This work includes the following:

- Determine the vision, priorities and outcomes for the service
- Undertake any analysis of the current service, including opportunities for the service
- Outline suggested future service offers (service specifications)
- Analyse the proposed new operating model, including partnerships with other services and organisations in the local community
- Review progress against the goals, objectives , milestones and priorities of each phase of activity

This work has included the design of the Vision, Mission Statement, Values (Principles) and Objectives (priorities) for the new Local Authority Company. The group have a continued commitment to continue to be involved in the Implementation Plan moving forward.

The implementation will include work around Future State, Communications and Marketing and also Benefits Realisation, and will continue through to the 'Go live' date of April 2015.

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.

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.

4.0 OTHER OPTIONS CONSIDERED

4.1 Previous reports have outlined the options considered and disregarded in favour of Local Authority Company model

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 has been a full consultation aligned to the Future Council consultation; this included staff, people who are directly impacted who use services, Carers, Trade Unions and key stakeholders.

5.2 A clear change management strategy has been 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

7.1 Pre Go Live

Staffing - TUPE legislation will apply. All Terms and Conditions of employment (including pension rights) are protected by TUPE in a transfer. An actuary service will be commissioned (at cost) to advise of all implications regarding the transfer of pension.

The new employer must make provision to ensure the transferred employee receives pension rights equitable and comparable to the existing pension agreement.

TUPE applies in two sets of circumstances:

- When there is the transfer from one organisation to another of an economic entity that retains its identity. An economic entity is defined as “an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary”; and / or
- Where a specific employee or dedicated group of employees provide a service to a client, and the identity of the service provider changes. The change in service provider may be from ‘in house’ to a third party provider (which may include another public sector body); from one third party provider to another; or from a third party provider back ‘in house’.

The transfer of staff under TUPE will require an appropriate staff consultation period (usually between 6 weeks and 3 months) and will also require dedicated HR project resource.

In transferring the workforce a decision will be needed on whether the newly formed Company will offer the same terms to new employees post-transfer or look to amend to 'broadly comparable' including the possibility of implementing alternative pension arrangements

7.2 Assets

Work is in progress in relation to assets. Consideration will need to be given to plans in Year 2 for Community Asset Transfer of buildings and physical assets. The assets transferring needs to be planned in good order for which the Council has an allocation within the Capital Programme.

7.3 Post Go Live

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

7.4 Financial benefits of the Local Authority Company

The company as a new delivery model will provide additional benefits to services, two of these can be classed as financial benefits:

- More viable and efficient way of working by the use of innovative solutions and working in different ways than previous
- The ability to provide services to all sections of the local community including those individuals who are self funders, or use Direct Payments, and who fall into the moderate banding following their care assessment

7.5 Staffing

The savings identified are largely from staffing efficiencies; these are broadly allocated to a reduction of agency costs and efficiencies in staffing costs as a result of time management and sickness monitoring but do include the reduction of posts previously deliinted between care and support but moving forward will require more generic and flexible job roles which are being introduced.

These will largely be achieved through an improvement in productivity and as such performance will be further enhanced. The viable approach to workforce management will deliver improved service outcomes being delivered. Due to the nature of the changing service new staff will not be recruited on local authority terms and conditions thereby achieving a reduced staffing budget year on year.

This will not impact on the quality of the service as it is forecast that the service will expand in its operation across the Wirral offering more diverse services.

8.0 LEGAL IMPLICATIONS

- 8.1 The formation of a 100% Council controlled Company (not for profit) is initially required to enter into an agreement with the Council to operate day care services and daytime opportunities. 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. As the Company will be structured as a Teckal 'in-house' Company, 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. Wider trading activity is permitted to a level of 20% (currently 10%) under the new procurement regulations which will be in force later this year.
- 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.
- 8.7 TUPE generally applies where a public authority outsources its service delivery, provided the conditions set out in paragraph 2 above are satisfied. As there is a dedicated group of employees working on the activities to be outsourced then TUPE will apply.
- 8.8 The Local Government Pension Scheme regulations prescribe that the actuaries of both schemes must agree the transfer payment relative to the actual and potential liabilities accrued under the LGPS to be subsumed by the new scheme based on appropriate actuarial assumptions.
- 8.9 Merseyside Pension Fund advise that in this case, a transfer can take place before the final pension details have been agreed and settled, providing appropriate provision is made by the transferee to collect contributions and place 'on hold' until a new pension arrangement is in place.

9.0 EQUALITIES IMPLICATIONS

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

Yes - Equality Impact Assessment (EIA) completed.

10.0 CARBON REDUCTION IMPLICATIONS

- 10.1 The Local Authority 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. There is also significant potential to include other services, generate greater revenue and deliver services more innovatively.

- 12.2 It is therefore recommended that:

1. Cabinet notes the content of this report in relation to the transfer of Day Services into Local Authority Company
2. Cabinet notes that an implementation programme is to be established to oversee the transition of services to the company
3. Cabinet receives a final report in February 2015 prior to the launch of the company in April 2015.

13.0 REASON/S FOR RECOMMENDATION/S

- 13.1 To enable the establishment of the new business model and function of the Local Authority Company.
- 13.2 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.
- 13.3 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.

REPORT AUTHOR: Christine Beyga
Head of Delivery
telephone: (0151 666 3624)
email: christinebeyga@wirral.gov.uk

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**)

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
Health & Wellbeing Overview & Scrutiny Committee	18 February 2013
Cabinet	5 March 2013
Cabinet	10 December 2013
Council (Budget)	13 March 2014
Cabinet	7 July 2014