

WIRRAL COUNCIL

Cabinet

6 November 2014

SUBJECT:	Schools Traded Services Separate Legal Entity
WARD/S AFFECTED:	All
REPORT OF:	Julia Hassall, Director of Children's Services
RESPONSIBLE PORTFOLIO HOLDER:	Councillor Tony Smith
KEY DECISION?	Yes

1.0 EXECUTIVE SUMMARY

- 1.1 In April 2014 Wirral Council and Cheshire West and Chester (CW&C) Council Chief Executives agreed a mandate to jointly develop a business case for a Schools Traded Services company.
- 1.2 This report is intended to enable Cabinet to make a decision on the future delivery model for school traded services. It proposes that a Separate Legal Entity (SLE) jointly owned by Wirral Council and CW&C Council is established.
- 1.3 This report contains the results of the business planning analysis and presents the Strategic Business Case.
- 1.4 This proposal will also be presented to CW&C Executive on the 19th of November 2014. The project can only proceed if both Councils agree to the recommendations.
- 1.5 This report contains exempt information in Appendix B 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 Appendix B is commercially sensitive.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 Both Wirral and CW&C Councils currently deliver a wide range of education and support functions to schools, academies, parents and other education establishments (for example, further education colleges). These are delivered within a trading environment that aims for cost recovery for services, through a range of structures developed jointly with schools and customers. Trading results in a revenue of approximately £30m per annum across the two local authorities. These services are provided to 160 schools in the borough of

CW&C and 132 in the borough of Wirral, as well as to other schools outside their localities.

- 2.2 Both Councils have consistent visions for the education and well-being of children in their communities and a strong commitment for continued involvement in driving educational excellence. In March 2014 Council Chief Executives agreed a mandate to jointly develop a business case for a Schools Traded Services company (see Appendix A for the mandate). The main ambition for the new organisation is to:
- Deliver high quality services that are value for money.
 - Support improving outcomes for children and young people by reinvesting profits into service improvements and the local community.
 - Create a single front door through which schools, and other customers, can access services.
 - Include mutual principles through shared ownership, control and influence with schools as the main customers.
 - Be commercially successful.
- 2.3 The relevant Heads of Service from both Local Authorities agreed to sponsor and support the project. A joint project team was assembled to develop the business case over a six month period to include baseline activity, financial analysis, engagement (staff and customers), business development and modelling (financial, legal and governance). The project team was funded jointly by both Councils and comprised of existing staff resources along with £100K contingency provided by each Council to fund two joint posts and any requirement for specialist advice.
- 2.4 The work was further supported by the Cabinet Office, Department of Communities and Local Government (DCLG), SOLACE and the Local Government Association (LGA) through an award as part of the national Delivering Differently Programme. The award comprised of £100K worth of bespoke consultancy support.

2.3 The Strategic Case for Change

- 2.3.1 There has been a fundamental shift in the relationship between local authorities and schools and the resulting education market. Nationally there is increased delegation of budgets to schools and this is further heightened by a rise in conversions to academy and free school status which reduces the traditional connection between schools and the Local Authority. Locally, conversion to academy status is 64% of mainstream secondary schools converting in Wirral and 47% in CW&C.
- 2.3.2 These two main changes result in a more flexible relationship between schools and Local Authorities against a background where schools can procure services from providers of their choice. The Local Authority is therefore in a position where it could see demand for its services drop significantly with an increase in provision from companies who may not see their role as being to also to support local aspirations and strategic aims. This will impact on the ability of both Councils to achieve their education and social objectives for children and represents a financial risk in terms of loss of

revenue, economies of scale and the potential costs of downsizing services in both Council traded and support functions.

2.4 Strategic and Operational Benefits of Creating a Shared SLE

2.4.1 The proposal delivers a number of critical non-financial benefits which are unlikely to be achieved separately. The main benefits include:

- a) Schools will be able to deliver better outcomes through:
 - Higher quality, more joined up services
 - Improved value for money
 - The opportunity to actively shape the SLE through Board representation and the supporting User Group
 - Less time sourcing and managing suppliers
 - New innovative services tailor made for schools
 - Bringing lessons and experience from a wider range of schools.
- b) Local authorities will see benefits across a range of agendas:
 - *Children & Young People*: retain a strategic role in the shaping and delivering of high attainment and outcomes for children.
 - *Quality traded services*: improvements to quality and value for money of corporate and other school services trading through the 'front door' as they are made to trade with schools on more commercial grounds and receive coaching and support from the SLE to better meet schools' needs.
 - *Trading volumes*: growth in revenue and business to local authority services from SLE market facing activity to achieve its objective of being a single source for services to schools and the local authorities supply a proportion of these services.
 - *Local economy*: creation of a thriving local business generating employment and skills.
- c) The Schools Traded Services will benefit from being an SLE:
 - Freedom to define and implement ethos and culture aligned to education objectives.
 - Ability to be even more customer focused and responsive to the schools and wider education market.
 - Investment into education in a way that directly benefits schools and children.
 - Staff work in a thriving growing business that is investing in front line services while retaining the ethos of public sector and focusing on outcomes for children and young people.
- d) Collaborating between CW&C and Wirral to create the SLE brings additional benefits to all stakeholders:
 - Opportunities for sharing of knowledge, good practice and insights to deliver higher quality services bring new ideas to schools and deliver efficiencies to reinvest into education.
 - Legitimacy to the SLE as it has a balanced ownership rather than being the 'extension' of a local authority. This will help it to be seen as 'separate' and customer focused in the market.

2.5 The Education Market

- 2.5.1 Market analysis (Appendix 2 of the Business Case) was conducted to test the viability of the SLE by evaluating the suppliers of schools traded services on a national, regional and local level, as well as the customers they provide for.
- 2.5.2 The increasing number of providers entering the market gives an indication of the commercial potential and growth in the market. Local Authorities across the country are recognising the potential to harness and thrive on this change, for the benefit of the schools, communities and children that they serve.
- 2.5.3 There is no standard formula for success and so the Local Authorities can benefit from potential “first mover advantages” by setting up a company with unique aspects, to serve their local market and beyond, rivalling other types of provider.
- 2.5.4 Schools traded services have a strong uptake locally, however neither local authority has 100% uptake for all services from schools within their borough, meaning that these schools source a range of services from other suppliers. Creating a new SLE with both Local Authorities would increase potential benefits and the growth potential of a new school traded services provider model as well as sharing the risk in this new, immature market. Attracting and retaining customers in the short term may also reduce migration to other providers in the medium term as schools change to academy status.
- 2.5.4 Future growth projections based on market analysis have informed the company financial model. Four areas for growth opportunities were identified for the new proposed SLE – penetration and cross-selling, expansion, service innovation and market-making. Cautious and stretch estimates for the 5-year revenue growth were modelled to allow sensitivity modelling and cautious growth estimates are included in the financial model in the business case.

2.6 Traded Service Company Model and Scope

- 2.6.1 It is proposed the incorporated body for the shared traded service with schools should take the form of a Community Interest Company (CIC), limited by shares with the local authorities retaining a 100% shareholding (50/50 split). A CIC will ensure that social value is at the core of the organisation but this model has fewer restrictions and reporting criteria than a charity organisation. A company limited by shares will allow ownership to change in the future as shares can be transferred to customer or employees to create a mutual organisation. A company limited by share will allow the distribution of profits and so ensure the company is able to meet the test of being a “Non-Eligible” body for VAT purposes, which in turn will avoid non-recoverability of VAT.
- 2.6.2 The organisational design principles core to the future delivery model of the SLE include: centred on customers; cost effective; change friendly and flexible; sustainable; supports improved education outcomes / social value and the innovation of products. The current vision for the SLE is:

“Working with customers to deliver quality, innovative, services that are both value for money and sustainable, and contribute to improved outcomes for children”.

2.6.2 Further specialist legal advice will be sought post cabinet decision to ensure the CIC is the optimum legal structure. Delegated powers are requested to enable the Directors of CYP, in collaboration with the monitoring officers and section 151 officers to finalise the legal structure to ensure it meets all regulatory requirements whilst meeting the outcomes being sought.

2.6.3 The Business Case outlines the full proposals including the three main categories of service affected by the proposal which are as follows:

- *In scope services:* Traded services that will move from the Local Authorities to become the SLE. These will then be sold directly to customers. Currently worth £22m (turnover).
- *Front door services:* Traded services that will stay within each Local Authority. These will be sold to customers through the SLE who will act as a prime contractor creating a single ‘front door’ for schools and other customers. Currently worth £7.5m (turnover).
- *Support services:* Council ‘support services’ that will stay within each Local Authority and be sold to the SLE to support the running of the company. Such services include, occupational health, insurance, finance, procurement, HR, payroll, ICT, legal and internal audit. The corporate allocation for support to service delivery in scope of the SLE is currently £1.5m per annum across the two Local Authorities.

2.6.4 The SLE will therefore be a direct provider of services but also a prime contractor of services and to ensure the greatest benefit is achieved. This will strengthen the offer of all partners; the SLE will have instant access to a wide range of services, the Local Authority will have support to develop its offer and sell services to new customers and new markets, and customers will be able to access all the services they need in one place.

2.6.5 The SLE will act as a single ‘front door’ to all Local Authority services for schools and other educational settings. In most cases, where services are operated by the local authority primarily for the benefit of the schools, the services will be transferred into the new SLE. Where a service is delivered to schools as part of a larger team / organisation that delivers services to other parts of the council, these will not be transferred into the SLE and the SLE will act as a ‘front door’ for these services.

2.6.6 In general the statutory services will remain within the Local Authorities. Where the statutory element of a service is small in comparison with the traded element, and hard to separate, the whole service will migrate to the SLE and the local authorities will commission the provision of statutory services from the SLE.

2.6.8 Where services to schools are undergoing significant strategic reviews they are initially retained in the Local Authority but may be considered in the future for migration to the SLE.

2.6.9 Applying these principles, the traded services are classified as in-scope services proposed to transfer to the SLE and be provided to schools directly by the company and those traded services retained by the local authorities which will be accessed by the schools via the SLE's front door arrangements, 'front door services'.

In scope services:

CW&C services	Wirral services
Governor Services	Governor Support*
Music	Music
Outdoor Education	Outdoor Education
Learning Outside the Classroom (LOTC)	Educational Visits*
School Development incl. NQT support	School Improvement* incl. NQT support
Catering	Catering
Cleaning	Cleaning & Caretaking
	PE & Swimming*
	Leadership, Safeguarding*
	Data Support*
FTEs: 366 Income: £14.5m	FTEs: 157 Income: £7.5m

* Delivered as part of Education Quality package

'Front door' services:

CW&C services	Wirral services
Educational Psychologists	Educational Psychology
Educational Welfare	Education Welfare
Human Resources	HR Advice & Guidance
Schools Financial Management Support	Finance – Local Management of Schools
Occupational Health Unit	Occupational Health Unit
Health & Safety	Health & Safety
Leases & Licences	Managed Moves
Schools IT Support	Information Technology One Solution (ITSOS)
Insurance	Risk Management & Insurance
Schools Employee Service Centre & Transaction Services	Payroll & HR Admin
Legal Services	Minority Ethnic Achievement Service (MEAS)
Capital Delivery & Property (Property & Regen)	Capital Delivery & Property (Asset Management)
	Cash Collection
	Library Service

	Grounds Maintenance
	Wirral Community Patrol

2.7 Governance and Shareholder Agreement

2.7.1 The programme team has examined national best practice to develop a governance structure for the SLE. Consultation has been held with the School User group in reference to governance composition. The proposed governance structure is shown in Figure 1.

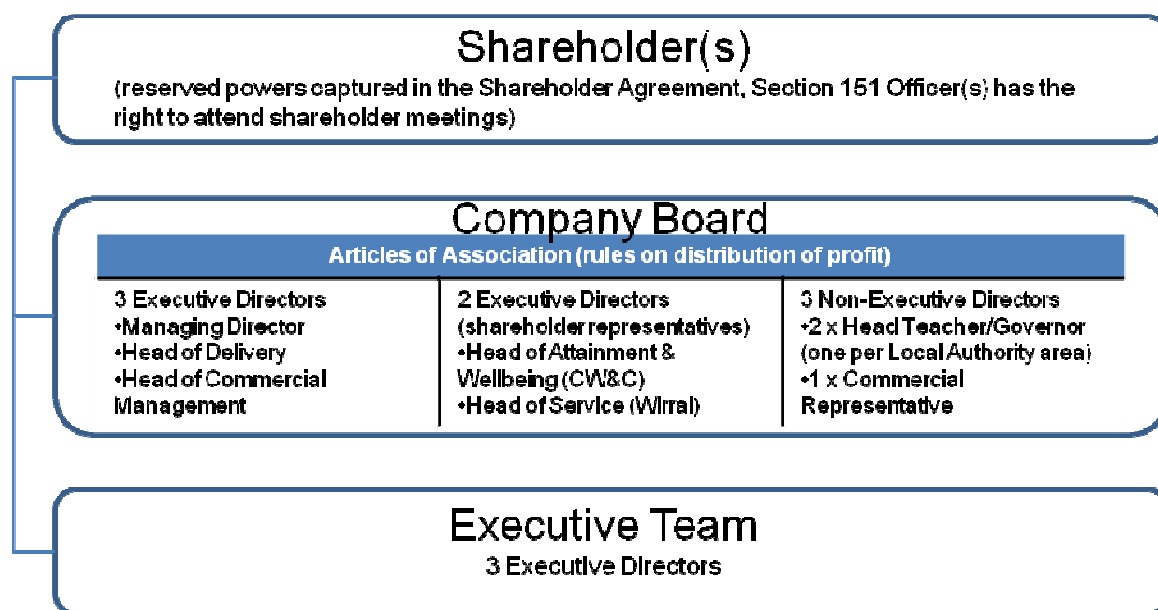


Figure 1: Proposed SLE Governance Structure.

2.7.2 The composition of the Company Board is proposed as a Board of Directors up to a maximum of eight individuals. Three Executive Directors represent the senior officers of the company and two Executive Directors represent the senior officers from each corporate shareholder. Three non-executive Directors (NEDs) will be assigned, two representing schools as the main customer (one from each geographical area) and one with the relevant commercial focus and expertise.

2.7.3 The Company Board would also have a Chair (preferably independent, with extensive commercial experience) and include a Company Secretary to be provided as part of the buy back arrangements from one of the Local Authorities.

2.7.4 It is proposed that Elected Members are represented along with relevant Officers as part of a Shareholder Board to maintain a strategic overview. Elected Members will not be represented on the Company Board which will focus on operational trading and commercial matters. Arrangements for the Shareholder Board will be developed as part of the legal arrangements throughout implementation to be outlined as part of the shareholder agreement.

- 2.7.5 The articles of association define the relationship between the board of directors and the shareholders and most commercial companies are based on a model form of articles (previously known as Table A) which generally give the directors wide powers to manage the day to day affairs of the company. Certain powers traditionally reserved to directors are proposed to be retained by the Council as the shareholder e.g. choice of pension fund(s) for ex-Council employees.
- 2.7.6 As ownership of the SLE will be vested in the two Councils, the way in which they deal with each other will be set out in a shareholder agreement. This will be developed in the implementation phase. The matters covered by the shareholder agreement could include:
- Appointment of external auditors and rights of access for the Councils' auditors;
 - Financial reporting arrangements;
 - Future funding;
 - Confidentiality;
 - Deadlock provisions;
 - Exit arrangements including provision for what happens if one shareholder wants to sell their holding;
 - Choice of pension fund(s) for ex Council employees.

2.8 Buyback of Council Support Services

- 2.8.1 Traded services in both Local Authorities currently include a range of support services. The proposal is that to reduce the impact of change on support services and to minimise disruption and business continuity risks to the SLE, the SLE will purchase services back from both Local Authorities for a period of two years from 'go live'. At the end of the two year period the SLE will have the option to source its support services in the open market and/or continue to source some or all from the Local Authorities.
- 2.8.2 As two Local Authorities are involved and it will not be beneficial to provide two sets of duplicate services the proposed approach is to bundle support services. Bundles are the smallest groups of inter-related services that can be separated from the other corporate services without adversely impacting the operation of either service or disadvantaging one Local Authority over the other.
- 2.8.3 Based on these agreed principles during the implementation phase the Councils and the SLE will agree the scope and terms and conditions of the buyback process and preferred supplier Authority for each bundle. Additional analysis will be carried out regarding the cost of existing support services, any additional requirements the SLE will need to meet as a separate entity and term of the proposed buy back.
- 2.8.4 This proposal will mean that one Local Authority may decommission part of its back office provision while the other may have to increase theirs. Part of this exercise will therefore be identifying the associated costs and any wider impacts such as the TUPE rights of staff. All of this information will be taken into account and will support the fair allocation of services between the two

Authorities which will need to be agreed with both Corporate Management Teams. Efforts will be made to maintain the existing proportions of back office services provided by each Authority based on a 'no worse off' principle.

2.9 Pensions

- 2.9.1 Local authority staff transferring to the SLE under TUPE are entitled to pension protection under the Best Value Authorities Staff Transfer (Pensions) Direction 2007. The protection is such that a new employer must provide all transferring staff who are members of the Local Government Pension Scheme (LGPS) or entitled to join with continued access to the LGPS or to a broadly comparable pension scheme.
- 2.9.2 Depending on the employee's current employer and job description the transferring employees could be a member of one of three separate pension schemes: Local Government Pension Schemes (LGPS) for Cheshire or Merseyside, or Teachers Pension Scheme (TPS).
- 2.9.3 Secretary of State approval is required for the SLE to be a member of the TPS and this can be applied for post decision. As a company wholly owned by the Local Authorities the SLE will be able to join the LGPS Funds (most likely as a resolution body).
- 2.9.4 At the date of transfer the Local Authorities must recognise the historic liabilities due to the LGPS Funds for the element that is currently unfunded. The deficits can be treated in a number of ways with either the Local Authorities retaining the deficits or sharing the deficits with the SLE. If shared there are different methods of calculating the share.

In respect of the Merseyside Pension Fund a fully funded basis (option 1) would mean that Wirral Council would fund the whole deficit and the SLE would make no contribution. If option 2 a 'Share of the Deficit' is adopted the indicative deficit funded by the SLE is estimated at £1.7m. Option 3 is a share of the deficit after adjusting for pensioners and deferred pensions whereby the estimated deficit funded by the SLE would be £4.3m. A similar approach would apply to CW&C in respect of the Cheshire Pension Fund and applying the estimates of their Actuary.

It is proposed that the SLE will share the deficits with the Local Authorities by allocating a notional share of the assets and liabilities based on the funding level of the Local Authorities at the date of transfer (option 2). This recognises there are insufficient assets to fund the past service liabilities for transferring staff and the SLE is now responsible for funding the deficits.

In accordance with the Fund Admission Policies, the Local Authorities act as ultimate guarantors but may require the company to take out a bond to minimise the risk of default by the SLE. The regulations in respect of State Aid only allow the Councils to provide guarantees up to 80% of the risk. Any guarantees provided must be charged for at the market rate.

The actuarial review expresses the risk in terms of a total bond value and this alters depending on the decision on the historic deficit. The value for the Merseyside Fund for a shared deficit (option 2) is estimated at £2.4m and the cost has been estimated at 3% p.a. for the purpose of the business case. The bonds are subject to annual review and will be subject to fluctuation depending on the market and acceptable level of risk.

It is proposed that the Local Authorities guarantee 80% of the risk and charge the SLE accordingly. Bonds would be purchased by the SLE on the external market to cover the remaining 20% thereby mitigating the risk to the Local Authorities. The payment to the Local Authorities would be considered part of the 'No Worse Off' payment (see Section 8.1.4) for 5 years but then would need to continue beyond this period.

The default position is that the SLE would remain a member of both Funds. However, there is flexibility (subject to approval by the Secretary of State) that the company could elect for one of the two Funds to be the 'Host' Fund. Membership of two schemes is administratively more onerous however, for one to be a 'Host' the LGPS regulations require the actuaries to agree a transfer payment between the two Funds. This process is likely to be lengthy and costly and could not be completed prior to implementation.

It is proposed the SLE remains a member of both Funds at transfer and they are 'Open' to new members. This allows the SLE to consider this more fully at a later date as part of the total staff benefit package. A system of allocation of new staff to each pension scheme will need to be developed. Any change by the SLE in the pension arrangements would require the approval of both Local Authorities.

2.9.5 Actuarial reports were commissioned for both LGPS schemes to determine the potential financial impact of the different options. This analysis has been used to inform the financial model in the business case.

2.9.6 The SLE will be responsible for future pension contributions for the transferred staff and for all new employees who are able to join the pension scheme.

2.10 Tax and VAT

2.10.1 SLEs are not able to continue to deal with VAT through the Council's VAT status (Section 33 body).

2.10.2 Expert VAT advice was sought (VAT Report included in Appendix 5 of the Business Case). Whilst the SLE will not have the benefit of the Partial Exemption Recovery available to Local Authorities it is anticipated that for the majority of services offered by the new Schools SLE the supplies will be subject to VAT at the standard rate and it will be possible to recover the relevant input tax on the associated expenditure.

2.10.3 It is proposed that a number of buildings are leased to the SLE. It is planned that the Council will opt to tax these lease rental charges in order to reduce risks associated with partial exemption.

2.10.4 There will still be some areas that will be classed as 'exempt' where VAT cannot be recovered on the costs associated with those services. On the information available the non-recoverable VAT is not expected to be significant. However, additional work will be carried out in the implementation phase to consider the liability of each of the proposed services offered by the SLE and to ensure that the correct VAT treatment is applied.

2.10.5 The company will be subject to corporation tax on profits. The Main Rate of Corporation Tax (profits above £300k p.a.) for the current tax year is 21% and is not now payable by the Local Authorities.

2.11 The Implementation of the Company

2.11.1 An implementation plan has been created and will be further developed post decision. The overarching principle is to ensure that services continue business-as-usual throughout the transition.

2.11.2 On decision it is planned to incorporate the company from April 2015. To drive the implementation an MD will be appointed as soon as possible. A high level road map through implementation and transition is shown below and expanded on in the Business Case (Appendix 7):

2014/15		2015/16				2016/17
Q3	Q4	Q1	Q2	Q3	Q4	Q1
<ul style="list-style-type: none"> • Decision to proceed • Recruit MD • Back office selection process 	<ul style="list-style-type: none"> • CIC company incorporated • Exec Directors & Shadow Board appointed • SLE business plan • Back office arrangements 	<ul style="list-style-type: none"> • SLE Quick wins 	<ul style="list-style-type: none"> • Work with schools and local authorities to set up front door agreements 	<ul style="list-style-type: none"> • Front door prime contracts live 	<ul style="list-style-type: none"> • Lessons learnt • Revised business plan 	<ul style="list-style-type: none"> • Efficiency targets delivered

2.11.3 One off set up costs will be incurred in order to create the SLE. The proposed approach is for the SLE to pay the majority of set up costs. However if agreement is given to establish the SLE it is assumed Local Authorities will identify and fund the necessary staff resource as outlined in the Business Case to undertake implementation. The Local Authorities would also share the cost for additional expert legal and pension advice that may be required by the Local Authorities (estimated to be £70,000).

2.11.4 In response to lessons learned from the Business Case development it is recommended that one implementation Programme Team is created to cover both authorities. Each Local Authority should release these individuals to co-locate for the duration of implementation. Programme Governance for implementation will operate across both Local Authorities.

3.0 RELEVANT RISKS

- 3.1 A detailed risk assessment is included in the Business Case (Appendix 7). It is included in this report Appendix due to the commercially sensitive nature of the information.

4.0 OTHER OPTIONS CONSIDERED

- 4.1 A range of alternative options have been investigated.
- 4.2 Operating 'as-is' was not chosen as cuts to funding and increasing competition in the market would make the continued supply of schools traded services in this way much less secure, with quality of services at risk.
- 4.3 Stop delivering schools traded services was not considered viable as schools may struggle to find another supplier of some of these services, which could dramatically affect the running of the schools and hence the quality of education. This option would not fit with the local authorities' strategies by not maintaining being actively involved with the supply of these services.
- 4.4 Outsourcing would have allowed schools to have a commercially competitive private provider of services however it would not guarantee quality and again would not fit with the local authorities' strategies by not staying a provider of schools traded services.
- 4.5 A joint venture between the local authority and a private provider was discounted as profits would have to be distributed to shareholders and would not be reinvested into the education system.

5.0 CONSULTATION

- 5.1 A Schools User Group has been convened to engage with school leaders in order to ensure school engagement in future developments. School newsletters have been distributed to keep schools up to date with the progress of the programme. In general schools have reacted positively to the proposed changes and their views have been used to assist the development of the business case.
- 5.2 Workshops have been held with traded services managers providing expertise from both Councils in development of the new company model.
- 5.3 Staff workshops and briefings have been held to raise awareness of the proposals with all staff potentially involved in any future change. Staff newsletters have been distributed to keep staff up to date with the progress of the programme. If the decision is taken to establish the SLE formal staff consultation will commence.

6.0 OUTSTANDING PREVIOUSLY APPROVED ACTIONS

- 6.1 None associated with this report.

7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

7.1 None associated with this report.

8.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

8.1 The Financial Case

8.1.1 The financial baseline was captured based on 2014-15 budgets with adjustment for known variances. The financial model in the business case includes all the services transferring into the SLE. These figures only include those services that will transfer.

Analysis	CW&C £000	Wirral £000	Total £000
Pay	8,361	4,475	12,836
Non-pay	4,892	2,671	7,563
Corporate support allocation	982	385	1,367
Gross service cost	14,235	7,531	21,766
Income	(14,405)	(7,531)	(21,936)
Net service cost	(170)	nil	(170)

SLE baseline position for 2014/15

8.1.2 The SLE is expected to realise efficiencies in pay and non-pay and to grow through offering new services and attracting new customers. Financial modelling has utilised both growth and efficiency projections. Projections are based on a number of assumptions:

- Pension schemes will remain open to staff.
- The SLE will take a share of pensions deficits.
- The majority of set up costs will be charged to the SLE; however Local Authorities will provide staff to join a shared programme team to undertake implementation.
- The SLE will be in receipt of a working capital loan, paid back at 5% interest rate (necessary as there will be no budget transfers from the Local Authorities. A loan estimate of £1.7m has been costed into the financial model; the exact figure will be determined in the implementation stage. The loan is expected to be provided by one or both of the Local Authorities.

This approach has produced the following financial forecast:

Forecast – Combined (SLE)	Year 0 2014/15 £000	Year 1 2015/16 £000	Year 2 2016/17 £000	Year 3 2017/18 £000	Year 4 2018/19 £000	Year 5 2019/20 £000
Net Cost/ (surplus)	582	346	(315)	(954)	(1,627)	(1,760)
Cumulative Net cost/ (surplus)	582	928	613	(341)	(1,968)	(3,728)

SLE forecast analysis

- 8.1.3 Based on the assumptions the SLE would come into profit in year 2, however, cumulatively this would result in profit in year 3. In the first two years the company would make a deficit due to the costs of set up and costs which are new to the organisation. The cumulative figures show when the SLE will achieve a return on investment but it should be noted that the model assumes any profit achieved will be reinvested.
- 8.1.4 The transfer of services to the SLE will result in a loss of revenue to the Local Authorities which, if removed, would cause significant budget pressures. On the basis that the authorities should not be put in a worse financial position the business case assumes the same level of contribution will be paid to the local authorities (adjusted for corporate buy-back). This is referred to as the 'No Worse Off' principle and amounts to £1.5m across the two authorities (£385k to WBC and £1.1m to CW&C). The proposal is to review this approach after five years based on the principle that the no worse off test is maintained so that the councils are not worse off at a future date.
- 8.1.5 This income stream currently received contributes to the corporate overheads of the Local Authorities. These overheads include some of the corporate support services the SLE will purchase from the Local Authorities. An element of the 'No Worse Off' payment will relate to the buy-back of those corporate services. This element of the 'No Worse Off' figure will be identified as part of the process of awarding the bundles and will remain in place for a period of two years. If the SLE ceases to buy-back at the end of the two years the 'No Worse Off' figure will be adjusted and the Local Authorities will need to reduce their costs accordingly. The Board of the SLE will be under a duty to buy corporate services at competitive rates and this will take precedence over the 'No Worse Off' principle.

8.2 Employment Perspective

- 8.2.1 If the decision to proceed with the SLE is made, then essentially those staff providing the services immediately before transfer will follow the work and transfer to the SLE under the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 8.2.2 Approximately 1,119 staff, 523 FTE; (157 FTE Wirral) will be affected. They would transfer on their current terms and conditions with Trade Union recognition and continuity of service would be preserved. Given the scale of the transfer being considered, there may be staff within support services who could be within scope of a TUPE transfer but further work is required to assess this potential impact. The Local Authorities will ensure they comply with information and consultation requirements set out in the Regulations and allow sufficient time for this process to be completed.
- 8.2.3 The intention is for the SLE to initially buy back services from both Councils. This will mitigate any immediate impact on the Councils.
- 8.2.4 As part of the conversation and consultation process, briefings have been provided for staff and trade union representatives. Depending on the decision

made, a full consultation exercise will be carried out with all staff involved to comply with statutory requirements, Council policy and best practice.

- 8.2.5 Once the company is established any redundancy costs would be met by the SLE.

8.3 Assets

8.3.1 Local Authorities will retain ownership of property assets with the SLE renting properties at a market rent. There are 7 buildings fully occupied by in-scope SLE services across the local authorities (1 Wirral (Oaklands), 6 CW&C), six of these are fully owned (freehold) and one, the Conway Centre is a leasehold property. On current terms, the existing lease cannot be transferred or sub-let to the SLE due to the proposed legal structure (CIC, limited by share). Worst case scenario, a request to transfer occupancy to the SLE could be refused; however, as the lease is open to sub-letting to charitable organisations with public interest this would align with the ethos of the SLE so agreement to transfer occupancy to the SLE is considered likely. Discussions need to be held with the owner (National Trust) to negotiate a way forward. There is also time to reconsider the limited by share status and instead opt for limited by guarantee which would allow Cheshire West and Chester to sub-let to the SLE.

8.3.2 The terms of the licenses/leases in respect of premises required to provide the service will be based on legal advice and will be agreed by the Heads of Assets and on such detailed terms or conditions as deemed appropriate by the Head of Legal and Democratic Services in the two Councils.

8.3.3 There are non-property assets associated with the SLE in-scope services. This is predominantly outdoor equipment, musical instruments and ICT. The assets have been valued at £680k (across both Authorities) based on asset lists across all service areas. The full market value will be assessed further as part of the inventory check immediately before transfer. A single charge will be applied annually to cover the cost of the assets, allowing the SLE to spread the payment. The Local Authorities may need to add a charge to this arrangement to ensure that it is not considered to be State Aid through effectively giving the SLE access to credit at no cost. Any additional assets required by the SLE will need to be factored into their business planning.

8.3.4 In order to ensure state aid guidance is followed asset arrangements will be included in the Shareholder Agreement between the Councils and the SLE.

9.0 LEGAL IMPLICATIONS

9.1 Legal Services have been working closely with the project team so that all legal aspects are incorporated into the proposals.

9.1 Legal Powers - The Localism Act 2011 introduced a general power of competence which gave local authorities power to do anything that individuals may do. The legislation was designed to remove uncertainty as to what local authorities may do and to enable them to explore innovative solutions to deliver services. The power includes the right to charge for discretionary services.

However, charges must be based on actual costs incurred by the Council in providing the services and cannot include a profit element. Commercial trading must be carried out via a company. As with the exercise any local authority powers, the Council is under a duty to act fairly and reasonably.

- 9.2 Local Authority companies - Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies Order) 1995 introduced categories of local authority companies and controls which apply to each type. For the purposes of Part V, the SLE would be a “controlled” company given that the Councils will own more than 50% of the voting rights and certain proprietary controls will apply to the SLE. In addition the CIPFA/LASAAC Code of Practice on Local Authority Accounting requires all local authorities that have “material” interests in a company to produce Group accounts that will take and recognise the Council’s share of the results, assets and liabilities of the SLE.
- 9.3 There are a number of reasons why a local authority is required to trade via a company governed by ordinary company legislation and by Part V of the 1989 Act. Using a company vehicle to trade:
- Ensures a level playing field between local authorities and private sector companies.
 - Means that local authorities do not receive the tax advantage they would otherwise have had over private sector companies.
 - Results in greater transparency arising from the company law requirements. This is useful for the purposes of state aid and competition law
 - It means that there is greater protection for the Council tax payer and the monies paid to the public purse as a result of limited liability.
- 9.4 Preparing to Trade - a local authority has a fiduciary duty to look after the funds entrusted to it and to ensure that the taxpayer’s money is spent appropriately. Local authorities must consider the guidance set out by the ODPM when considering establishing a Trading Company. The project has reflected this guidance throughout its analysis.
<http://www.communities.gov.uk/documents/localgovernment/pdf/133628.pdf>
- 9.5 State Aid – State aid involves giving financial assistance which may be seen as distorting competition and could include granting leases rent free and providing guarantees and other financial benefits which are not available to other market providers. State aid which is above the de minimis level (200, 000 Euros over a 3 year rolling period) and not otherwise exempt is unlawful. State aid rules are complex, legal advice will ensure the rules are not breached.
- 9.6 If the decision is made to create the shared SLE then the following decisions/authorisations will also be required:
- 9.6.1 To establish a separate legal entity as a company limited by share wholly owned and controlled by Wirral and CW&C Councils.
- 9.6.2 To incorporate the SLE from April 2015.

- 9.6.3 To authorise the appointment of a Managing Director (MD) for the SLE at Head of Service A band and to commence recruitment as soon as practicable for the rest of the board of Executive and non-Executive Directors.
- 9.6.4 To authorise the Director of Children's Services in collaboration with Director of Resources and Head of Legal and Democratic Services in collaboration with counterparts in CW&C to implement all things necessary to establish the SLE including but not restricted to:
 - 9.6.4.1 Finalising the legal form and structure of the SLE following detailed legal and financial advice.
 - 9.6.4.2 Developing the operation of the customer side function.
 - 9.6.4.3 Agreeing the memorandum and articles of association based on the principles outlined in this report; including those matters to be reserved to the Council as shareholder.
 - 9.6.4.4 To oversee the completion of the due diligence work taking external advice as appropriate.
- 9.6.5 To agree the following financial provisions:
 - 9.6.5.1 To act as ultimate guarantor to the Merseyside Pension Fund. This risk will be mitigated by the SLE purchasing a bond for 20% of the risk the remainder will be guaranteed by the Local Authorities and a charge made to the SLE at a market rate.
 - 9.6.5.2 To fund the historic deficit in the Merseyside Pension Fund on a shared basis with the SLE based on a notional share of the assets and liabilities of the Local Authority at the time of transfer.
 - 9.6.5.3 To agree in principle to provide such financial guarantees as the company may reasonably require subject to the approval of the Director of Finance (and subject to Standing Orders) on a case by case basis including Parent Company Guarantees and bank guarantees.
 - 9.6.5.4 To fund the Local Authority implementation costs including provision or funding of staff to join a shared programme team to undertake implementation.
 - 9.6.5.5 To agree to make a working capital loan available to the SLE based on the interest rate allowed in the State Aid regulations. The financial model in the business case assumes a loan of £1.7m charged at an interest rate of 5%. The proportions, rate and terms and conditions of which will be jointly agreed with CW&C Council during implementation and may be provided wholly or in part by one of the two councils.
- 9.6.6 That the terms of the licenses/leases required be agreed by the Head of Asset Management and such detailed terms or conditions as deemed appropriate by the Head of Legal and Democratic Services.

9.6.7 To finalise costings for each Council for a 'no worse off' position.

9.6.8 To agree the principle of the buy back of corporate support services.

10.0 EQUALITIES IMPLICATIONS

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

(a) Yes and impact review is available:

<https://www.wirral.gov.uk/my-services/community-and-living/equality-diversity-cohesion/equality-impact-assessments/eias-april-2014/eias-families-wellbeing>

11.0 CARBON REDUCTION AND ENVIRONMENTAL IMPLICATIONS

11.1 The proposed SLE is wholly owned by Wirral and CW&C Councils and will aim to minimise the overall carbon footprint through best use of shared resources.

12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

12.1 None associated with this report.

13. RECOMMENDATIONS

13.1 Cabinet is asked to agree:

13.1.1 The overall direction and strategic agenda for change for schools traded services identified in the business case prepared jointly by CW&C and Wirral councils.

13.1.2 The establishment of a Community Interest Company limited by shares and wholly owned and controlled jointly by Wirral and CW&C councils for the purpose of providing the services identified in the business case to schools in their area and outside.

13.1.3 To act as guarantor to the pension liabilities of the company as a designating body to the Merseyside Pension scheme. The risk will be mitigated by the SLE purchasing a bond for 20% of the risk, the remainder will be guaranteed by the Local Authorities and a charge made to the SLE at market rate.

13.1.4 To fund the historic deficit in the Merseyside Pension Fund on a shared basis with the SLE based on a notional share of the assets and liabilities of the Local Authority at the time of transfer.

13.1.5 To provide, in conjunction with CW&C council, such further financial guarantees as the company may reasonably require subject to the requirements of state aid regulations and the approval of the Director of Finance.

13.1.6 To meet the Local Authority designated set up costs of the new company, as identified in the business case jointly with CW&C council (50/50 split).

13.2 Cabinet is asked to make the following delegations:

13.2.1 To authorise the Director of Children's Services in collaboration with the Director of Resources and Head of Legal and Democratic Services to do all things necessary to establish the company and to allow it to provide services to schools in accordance with the business case. Including but not limited to:

13.2.1.1 The recruitment and appointment of a Managing Director for the company at the Head of Service, A pay band and the recruitment of the remaining board of executive and non-executive directors.

13.2.1.2 To determine the memorandum and articles of association of the company in accordance with the principles outlined in the business case, including those matters to be reserved to the councils as shareholders and the content of the shareholder's agreement.

13.2.1.3 To determine the shareholder governance arrangements in accordance with the principles outlined in the business case.

13.2.1.4 To determine the content of the following agreements to be entered into with the company:-

13.2.1.4.1 - the 'buy back' of council support services;

13.2.1.4.2 - the arrangements for the 'strategic payment';

13.2.1.4.3 - the provision of statutory services by the company for the councils;

13.2.1.4.4 - the agreement for the transfer of assets and staff to the company;

13.2.1.4.5 - any other contractual arrangements required to give effect to the business case;

13.2.1.4.6 - pension admission and guarantee arrangements;

13.2.1.4.7 - any loan agreement for working capital or asset purchase.

13.2.2 To authorise the Head of Asset Management to determine the terms of any property lease or licence to the company required to give effect to the business case and on such detailed terms or conditions as deemed appropriate by the Head of Legal and Democratic Services.

13.2.3 To authorise the Head of Legal and Democratic Services to enter into and execute all legal documents necessary to give effect to the establishment of the company and its operation in accordance with the business case.

13.3 Cabinet is asked to note and agree that:

13.3.1 The business case for the company is based upon the financial assumptions listed at paragraph 8.1.2 of the report and further detailed in the business

case. If, in the opinion of the Director of Resources, any of those assumptions have materially changed or any financial matter materially affects the detail of the business case; the matter shall be the subject of a report to Cabinet or the matter may be determined by the Director of Resources in consultation with the Lead Member for Children's Services and the Lead Member for Governance, Commissioning and Improvement.

13.3.2 The pension's liability, bond and admission arrangements and VAT status are to be the subject of further specialist financial advice. Any material impact upon the business case that arises as a consequence of that advice shall be the subject of a report to Cabinet or the matter may be determined by the Director of Resources in consultation with the Lead Member for Governance, Commissioning and Improvement.

14.0 REASON/S FOR RECOMMENDATION/S

14.1 To allow the Council to proactively shape how it wants services to be delivered in the future and meet the challenges outlined in the strategic case for change section, ensuring the Council drives events rather than be driven by them.

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APPENDICES

Appendix A: Collaborative School Traded Services Mandate for Change
Appendix B: Schools Traded Services Separate Legal Entity Business Case

BACKGROUND PAPERS/REFERENCE MATERIAL

BRIEFING NOTES HISTORY

Briefing Note	Date

SUBJECT HISTORY (last 3 years)

Council Meeting	Date