

REPORT FOR DECISION



DECISION OF:	CABINET
DATE:	21 January 2015
SUBJECT:	Future Service Options for Social Care Provider Services
REPORT FROM:	Cllr Rishi Shori, Deputy Leader of the Council and Cabinet Member for Health and Wellbeing
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TYPE OF DECISION:	KEY DECISION
FREEDOM OF INFORMATION/STATUS:	In the public domain
SUMMARY:	<p>The report provides an update following an earlier decision from Cabinet (1 October 2014) to develop a business plan for an alternative delivery model for a group of in-house adult social care services.</p> <p>Work undertaken to date has resulted in a proposed vision for the new organisation which has been shared with a range of stakeholders for their input. Detailed consideration has been given to the type of alternative delivery model most appropriate to Bury and it is recommended the Local Authority Trading Company is the preferred option.</p> <p>The report recommends an in principle decision to establish a Local Authority Trading Company for these services. This is subject to a further report based on the full and detailed business plan being presented to a future Cabinet for final sign off 8 April 2015.</p> <p>The Council will continue to fulfil its duties to safeguard those who are most vulnerable whilst targeting the resources the Council will have available from 2015/16 onwards.</p>

<p>OPTIONS & RECOMMENDED OPTION</p>	<p>1. Develop a detailed business plan for development of a Local Authority Trading Company The services would be developed into a new organisation wholly owned by the Council but separate to it. Customers and staff would transfer into this new organisation.</p> <p>2. Do Nothing Savings would not be achieved and would have to be met elsewhere within the Council. Alternatively the options of closure or privatisation considered and dismissed 1 October 2014 would need to be re-considered.</p> <p><u>Recommended Option</u></p> <p>1. Option 1 Develop a detailed business plan for development of a Local Authority Trading Company</p>
<p>IMPLICATIONS:</p>	
<p>Corporate Aims/Policy Framework:</p>	<p>Do the proposals accord with the Policy Framework? Yes</p>
<p>Statement by the S151 Officer: Financial Implications and Risk Considerations:</p>	<p>The services in question have already experienced significant cuts, and more will be required in 2015/16 and beyond.</p> <p>Benchmarking has highlighted that the costs of the service are high compared to other providers.</p> <p>Maintaining the current service design is not financially sustainable going forward, and the service will be unlikely to adapt to meet the increasing demands of customers.</p> <p>A range of different delivery options have been considered, balancing financial return with staff and customer impact. Another important factor is the extent to which the Council can continue to influence and control provision / standard of services going forward.</p> <p>As a result of this option appraisal, the "Local Authority Trading Company" is the preferred option.</p> <p>It should be noted that this option will incur</p>

	<p>one-off start-up costs; which would have attracted external funding (Cabinet Office) under the Public Service Mutual model.</p> <p>These costs are currently being determined through a procurement exercise, and will be funded from reserves on an “invest to save” basis.</p>
Health and Safety Implications	The recommendation does not present any health and safety issues in respect of physical demands. Health and safety matters would continue to be managed in the same way as currently within the services concerned.
Statement by Executive Director of Resources and Regulation (including Health and Safety Implications)	Wider resource implications e.g. Procurement, IT, Staffing and Property considerations will be addressed in the development of the Business Plan for the preferred option.
Equality/Diversity implications:	Yes (see paragraph below)
Considered by Monitoring Officer:	<p>Yes JH</p> <p>The power to establish a Local Authority Trading Company derives from The Local Government (Best Value Authorities) Power to Trade Order 2009 (the ‘Trading Order’) which was made under sections 95 and 96 of the Local Government Act 2003. Under this Order the Council is authorised to do anything which it is authorised to do for the purpose of carrying on any of its ordinary functions but on a commercial basis. The Council must recover the costs of any accommodation, goods, services etc that it supplies to the Company.</p> <p>The Trading Order also provides that a business case be prepared before the Council can exercise this trading power. This will be a “comprehensive statement” as to—</p> <p>(a) the objectives of the business, (b) the investment and other resources required to achieve those objectives, (c) any risks the business might face and how significant these risks are, and (d) the expected financial results of the business; together with any other relevant outcomes that the business is expected to achieve.</p> <p>With the establishment of a Local Authority Trading Company, a new legal entity is created under the Council’s ownership, but with the ability to trade. This is different to only charging for our services, in that charging is limited to recovery of the cost of</p>

	<p>providing those services, while trading can be at a profit. Under the legislative framework, trading is only exercisable through a company.</p> <p>The most appropriate structure and mandate for the Company will be developed according to the business case. It is anticipated that this will ensure that the Company benefits from the exemption from public procurement law (referred to in paragraph 4 of the report).</p> <p>All decisions regarding business development and any consideration of commercial opportunities would be a matter for the Board of the new LATC, as would the day to day operation of the Company.</p> <p>Implementation of its internal procedures would rest with Directors, as would be detailed in the Company's Articles of Association. The Council as shareholder/sole member would be required to approve any decisions which would have an effect on its rights.</p>
Wards Affected:	All
Scrutiny Interest:	

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Cabinet Member/Chair	Ward Members	Partners
Scrutiny Committee	Cabinet/Committee	Council	

1.0 Background

The Services

- 1.1 This report is concerned with a group of adult social care provider services currently delivered in-house. The services concerned are Short Stay (Elmhurst and Spurr House), Shared Lives, Supported Accommodation (Community based), Day Services for Older People (Grundy, Pinfold), Day Services for Physical Disability (ReStart at Castle Leisure), and Day Services for Learning Disabilities (various community bases).
- 1.2 The budget for the services concerned was £12.4 million gross in 2014/15.

- 1.3 The majority of this budget funds the 286 FTE staff (approx 400 people) who work in these services.
- 1.4 108 customers are supported by Supported Accommodation 22 customers are supported by Shared Lives, and 192 customers are supported in Learning Disability and Physical Disability Day Services. There are 75 places per day at Grundy Day Centre, 40 customers per day at Pinfold Lane Day Centre, and 58 beds available per night in short stay. The older people's day service and short stay are accessed by a large number of customers on a flexible basis at around 80% occupancy or more dependent on the service area and seasonal variations.

Why things can't stay the same

- 1.5 Savings achieved by these services in the past 3 years equate to more than £1.4 million. A further £450k reduction is targeted to be achieved in 2014/15.
- 1.6 The Council is required to reduce cost by £16 million in 2015/16 with potential for similar levels of cuts thereafter.
- 1.7 The services concerned within this report are targeted to achieve a saving of £1.2m in 2015/16.
- 1.8 Despite the reductions achieved over recent years the in-house services are still provided at significantly greater cost than external providers. Work undertaken around establishing unit costs for the services in 2013/14 has indicated that external providers are on average 60% of the cost of equivalent in-house services.
- 1.9 The level of saving that would be required in 2015/16 could not be achieved without making a significant change to the service. As the majority of the budget is allocated to staffing this would mean a reduction in staff. However, customers still need to receive a service and there is no capacity to deliver the service with reduced staffing. Therefore if the saving was to be achieved in this way it would mean that to achieve £1.2m of savings there would have to be an assumption of £720k costs of the care being provided by a different provider (60% assumption for external provision). Therefore the full saving required would be approximately £1.92m which on an average salary of £15k equates to 128 job losses (32% of the workforce in this area). The savings achieved would need to be further offset by one off costs of redundancy or alternatively if staff transferred under TUPE to a new care provider for example, this may impact the contract price increasing costs further.
- 1.10 Demand for social care is rising due to demographic and lifestyle pressures and this means that budget allocated for social care services not only needs to reduce to enable Council budget pressures to be met, it also needs to be able to accommodate increased demand.

Previous reports to Cabinet

- 1.11 A report was considered by Cabinet on 16 July 2014 which outlined three options for the future of these services; Closure of some services; Externalisation of services; Developing an Alternative Delivery Model. The report made a series of recommendations:
 - i. Proceed to seek staff and employee representatives' views on all of the possible options

- ii. Proceed to consult with customers, carers and families on all of the possible options
 - iii. Identify any potential external funding that could be relevant
 - iv. Undertake further work including identifying issues in relation to legal form, governance and procurement
 - v. Establish a project board to oversee the work undertaken
 - vi. Endorse the proposed approach and project milestones
- 1.12 A report was considered by Cabinet 1 October 2014 which reported back on staff and customer/family feedback on the three options and the work that had taken place to date in respect of the project. The report made the following recommendations:
- i. To confirm the Option 3 Development of an Alternative Delivery Model as the preferred option.
 - ii. To agree to the next phase of work to establish the business plan for the potential new organisation and the form to be taken to deliver this.
 - iii. To continue to involve, engage and consult with stakeholders in respect of development of the model.
 - iv. To continue to engage with the Cabinet Office Mutual Support Program in respect of support available to proceed with Option 3.

2.0 Work completed in this phase

- 2.1 The Project Team have continued to progress work and have undertaken independent research and taken technical advice on a number of areas relevant to the business plan including assets, state aid, pensions, VAT, Procurement and workforce.
- 2.2 A Business Plan format has been developed and agreed to include the following:
- Vision and Purpose
 - Market Analysis
 - Services Proposed to be delivered
 - Operating Model
 - Resources and Assets
 - Financial Plan
 - Quality
 - Risk
- 2.3 Work has commenced on all areas of the business plan. More detailed work has been undertaken on the Vision and Purpose and the Operating Model sections as the decisions made in these areas influence the other aspects of the business plan.
- 2.4 A group of elected members have acted as a reference group in respect of the work undertaken on the vision and purpose and operating model, helping to shape the recommendations of this report.
- 2.5 A series of staff and customer drop-ins have taken place as well as a number of road shows. These have allowed stakeholders to raise questions and queries with the project team and to learn more about the progress of the business plan. This has included sharing the proposed vision and purpose with them and seeking their views in respect of operating models which provide greater levels of staff involvement.

- 2.6 Officers have engaged in training provided by The Cabinet Office in order to develop greater understanding in respect of business planning processes and approaches, increase opportunities to network and learn from others who are following the same path or have already created successful alternative delivery models, and to maximise the opportunity of securing funding for later stages of the project.
- 2.7 Unison have provided a response outlining their observations about the process being followed, as well as raising a number of queries about how the Public Service Mutual option and the Local Authority Traded Company option could/would impact on the workforce. This has been responded to in writing.

3.0 Vision and Purpose

- 3.1 The Vision and Purpose has been developed in conjunction with Members, Senior Officers, Commissioners, customers, and staff. It is based on information in respect of the social care market in Bury, the demographics of the Borough and projections for how these may change in future years, customer/carer feedback, and evidence of what works well elsewhere.
- 3.2 The vision is for the organisation to have a number of principles at its heart:
- Staying Well - taking a holistic approach to the person being supported to consider all areas of their life and where signposting or support outside of traditional social care areas may benefit health and wellbeing.
 - Whole Family – seeing the person being supported in the context of their natural network i.e. family and carers, in order to identify solutions which meet needs most effectively.
 - Enablement – maximising people’s ability to be as independent as possible.
 - Personalisation – being flexible and responsive to enable people to live the life they choose and to structure any support to allow this rather than people fitting in to what is on offer.
 - Quality – maintaining a focus on quality services and our good reputation.
 - Healthy Lifestyles – embedding healthy lifestyles into the ethos and culture of the services we provide and the staff we employ. Maximising the opportunity that we have to influence people to make healthy lifestyle choices such as physical activity, eating well and mental stimulation which are key to early intervention and prevention.
- 3.3 In addition to the services currently provided the vision for the organisation is to provide added value to the Council. The vision is proposed to achieve this by reducing dependency, working with people to have healthier lifestyles which keep them well for longer, providing additional services such as carer support and extra day care opportunities. In addition, the organisation would propose to provide support to a wider group than currently enabling direct payment recipients and people who self fund to access support who are not eligible under Fair Access to Care Services (FACS) criteria. This enables work to be undertaken at the early intervention and prevention stage which should impact by reducing the number of people who become dependent on social care and health services over time.
- 3.4 Beyond the substantive contract with the Council it is proposed that the organisation should seek to secure contracts with other commissioners

including personal budget holders and self funders. This could be on existing services or through the development of new services designed to tackle gaps within the market.

4.0 Operating Model

- 4.1 Significant research has been undertaken in order to understand the differences, advantages and risks of both a Public Service Mutual (PSM) and Local Authority Trading Company (LATCo) model. In addition to desk top research and professional advice, information has been obtained via training sessions, from Unison and presentations by organisations which operate in both formats.
- 4.2 The outcome from this work was to identify the Local Authority Trading Company model as the most appropriate model for Bury. If this recommendation is accepted the intention would be to establish the organisation under the 'Teckal exemption'. This means that subject to specific criteria the organisation can be awarded the contract to carry out the services without a procurement exercise, removing the risk of privatisation which may have resulted from such an approach.
- 4.3 'Teckal' refers to a piece of European Union case law allowing Councils to transfer services into external entities over which the Council retains the power of decisive influence and then award council contracts to the "Teckal" entity, without having to follow competitive tendering rules and procedures. To qualify for "Teckal exemption", the Company has to carry out the essential part of the activities with Bury Council. The LATCo will only fall within the Teckal exemption where it meets both the "Control" and "Function Tests." This is achieved by the Council wholly owning the organisation, having this reflected in the governance structure, and at least 80% of the organisation's activity must be for the Council. The LATCo will be able to trade in the open market and charge for certain services that currently in-house provider services cannot do. This ability will allow the LATCo to market and sell its services to customers including self directed support direct payment holders (which at present the law prevents local authorities to do so) and self funders. The LATCo will also be able to sell services to other commissioners. Whilst the Council will have 100% ownership, the LATCo will have an Executive Board who will have a legal responsibility to act in the best interest of the organisation.

5.0 Stakeholder Engagement

- 5.1 29 drop in sessions were provided to staff and customers to give them information on the progress of the project and to answer their questions and queries. These have been available across a variety of venues.
- 5.2 In November 2014 a series of 4 customer road shows and 8 staff road shows took place to provide further information and share the work to date on the business plan. In particular these focussed on the proposed vision and purpose of the organisation and the different operating models.
- 5.3 Attendance at customer sessions was minimal compared to those sessions run in July/August 2014. Indications are that this is because customers and carers are satisfied with the decision of Cabinet 1 October 2014 not to recommend privatisation or closure, and are receiving satisfactory information on an ongoing basis regarding this project.

- 5.4 126 staff attended the road show sessions. The majority of staff were positive about the concept of alternative delivery and the proposed vision and purpose of the organisation. When asked to indicate their views on models which included staff involvement and ownership 116 people responded to the question and 77% of these were supportive of finding out more about models which provided greater staff involvement/ownership.
- 5.5 Unison have been engaged in sessions to develop the vision and purpose and the operating model. They have also been in attendance at staff road shows. They have provided a response to the proposals outlining a number of issues and queries. A response to this has been provided and a number of the issues identified will be considered in the next phase of work.

6.0 Equality and Diversity

- 6.1 The equality analysis identifies that in respect of customers, people with disabilities, older people and carers are groups which would be affected by changes within these services. In addition, for older people's short stay female customers are significantly higher than males. There is no difference in impact between Local Authority Trading Company models as compared to a Public Service Mutual. Both may involve some short term disruption but in the longer term should be positive for customers as a result of creating a more sustainable solution for service delivery which is specifically aimed at supporting people in these groups.
- 6.2 The equality analysis in respect of staff identified that the workforce in this areas has a significantly higher number of females than males. Figures are similar to that of the Council as a whole. Overall alternative delivery may be unsettling for staff but it avoids large scale redundancy and should be a more sustainable option in terms of retention of employment. It may pose a greater risk in respect of Equal Pay as the new organisation would be deemed an 'associated employer'. There is no difference in impact between a Local Authority Trading Company as compared to a Public Service Mutual.

7.0 Risk

- 7.1 Neither a Public Service Mutual or a Local Authority Trading Company model are without risk. In recommending the Local Authority Trading Company model as the way forward, the risks which are specific to that option can now be more clearly considered. These include:

7.1.1 Inability to attract social investment

Investigation into social investment options indicates that investors are unlikely to engage with a model where the organisation is wholly owned by the Council. Social investors would ordinarily be attracted to staff ownership models or models where they could see a dividend return. Therefore the financial plan must be constructed without any assumption of social investment. Any one off monies required to balance the financial plan would have to be sought from the Council in the first instance.

7.1.2 Inability to attract one off funding to support transition to the new organisation

The Cabinet Office Mutual Support Program provides support to help public sector organisations create alternative delivery models. This

support is procured by Cabinet office and can reduce the amount that the Council would have needed to commit to enabling transition. However, Cabinet Office will only provide support to implement Public Service Mutual models. Support will still be required to implement a Local Authority Traded Company model but this will need to be fully funded by the Council and procurement completed for an appropriate organisation/organisations to undertake this support as soon as possible.

7.1.3 *Inability to realise benefits in productivity attributable to staff ownership models*

The initial business case financial plan had assumed some productivity improvements as a result of improved attendance which are evidenced in public service mutuals. This same improvement is not evidenced in Local Authority Traded Company models so the financial plan should remove this assumption.

7.2 There are risks in terms of timescales for further work. Budget pressures mean that a solution needs to be implemented as close to 1 April 2015 as possible. However, this needs to be balanced with the need to meaningfully engage and communicate with stakeholders and to develop a robust business and transition plan. It is likely that transition to a new organisation is more realistically achievable by 1 October 2015. This delay could impact on achievement of savings.

7.3 Initial work on the financial plan indicates significant expenditure in relation to support services, both departmental and corporate. In order to finalise the detail of the financial plan an agreed way forward in respect of support services will need to be found.

7.4 There are interim staffing arrangements in place to support the work of this project. If work is to progress to the next phase, this will require dedicated leadership and support. It would be proposed that this is achieved by:

- Secondment of the Head of Workforce Modernisation (CWB) to lead this project with the intention of permanent appointment to the new organisation if full sign off is given at a later date
- Secondment of the Head of HR (DCN) to backfill Head of Workforce Modernisation for the duration of secondment with the intention of permanent appointment to the this role if it becomes vacant at a later date
- Extension of Interim Head of Service and Project Officer until 30 September 2015

8.0 Project Plan and Milestones

8.1 The overall project milestone has been amended as follows:

Phase 3: 15 January 2015 – 8 April 2015

- Appointment of an organisation(s) to provide support in developing the detailed business plan
- Development of detailed business plan with key stakeholders
- Development of Cabinet report for final sign off business plan 8 April 2015
- Regular communication with stakeholders

Phase 4: 9 April 2015 – 30 September 2015

- Project management and transitional arrangements for implementation
- Shadow operation
- Regular communication with stakeholders and progress reports

Phase 5: 1 October 2015

- Go-Live
- Post launch review

9.0 Conclusion

- 9.1 The work undertaken in Phase 2 of this project has produced a proposed vision and purpose for the organisation and identified the Local Authority Trading Company model as the preferred option for delivery.
- 9.2 If these outcomes are accepted then further work will be required to develop the detail of the business plan in light of these initial decisions.

10.0 Recommendations

- 10.1 To confirm the vision and purpose of the proposed organisation.
- 10.2 To confirm the preferred option as Local Authority Trading Company model.
- 10.3 To approve the next phase of work including procurement of support to develop the business plan and implementation of the interim staffing arrangements as outlined in 7.4.
- 10.4 To approve the timescales for the next phases of work including the proposal for final sign off at Cabinet 8 April 2015.

List of Background Papers:-

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