

Report of the Cabinet Member for Health, Housing and Adult Social Services

Update on the creation of a Warden Call/Community Equipment Loan Store (CELTAS) Community Interest Company

Summary

1. This report provides a summary of the work underway in the development and creation of the CELTAS (Community Equipment Loan & Warden Call/Telecare Service) Community Interest Company (CIC). This report is seeking to provide an update on progress and seeks approval for a 1 April 2014 start date for the CIC subject to the completion of the remaining preparatory work.

Background

2. On 7 May 2013 the Cabinet approved the following recommendations:
 - i. The creation of a mutual, CIC organisation to provide the Warden Call/CELS service in shadow form to facilitate a smooth transition.
 - ii. the provision of a Community Interest Company, (in the form of a Company Limited by Guarantee).
 - iii. the provision of a further report on progress in December 2013 to seek confirmation of a 1 April 2014 start date for the new organisation.
3. The expected benefits from the creation of the CIC are that it:
 - secures the future provision and development of these services and an ability to retain surpluses and invest in service improvement

- creates new opportunities to expand service lines, innovate and develop partnerships to improve the quality of service and outcomes for users.
 - can consume growth in service user numbers at no additional cost to the Council within agreed thresholds
 - can provide social care prevention services to a wider audience through increased marketing and geographical spread
 - will deliver budgeted savings of £200k over four years made possible through the introduction of revenue generating services to avoid cutting the service.
4. The strategic and social objectives of the organisation will help the Council in at least three of its five stated objectives within the current Council Plan.
 5. Since the decision in May there has been much work done within the service to prepare both the management and staff for the transition from a public sector service into a commercial business as a CIC.
 6. The Mutual Support Programme has provided support for the nascent organisation to help ensure that all the required processes and legal requirements are met.

Workstreams

Work already completed

7. Due diligence on the original Business plan and financial model was required and conducted by Bates, Wells and Braithwaite (BWB). BWB have confirmed their agreement with the decision made to form a Community Interest Company (limited by Guarantee). BWB were commissioned and funded by the Cabinet Office to undertake this work and provide ongoing legal support to CELTAS.
8. A Council Project Board has been created to coordinate the programme of work and has representatives from; legal, finance, HR, IT, Property, procurement and unions, with Heather Barden, Service Manager and BWB representing the nascent organisation.

9. Governance and Advisory Board arrangements have been agreed. The position of Staff Director has been filled following a vote by the staff team. The recruitment process for the Non-Executive Directors (NEDs) is underway and they will be interviewed and selected based on the skills they can offer the Social Enterprise. The first full Executive Board meeting is scheduled for January 2014.

There will also be 3 Advisory Boards;

- The staff director will chair a customer/carer advisory board.
 - The Head of Operations will chair a staff advisory board.
 - The Chief Executive will chair a voluntary sector and professional advisory board.
10. Management team preparation
The management team are working in shadow form and holding weekly scheduled meetings supported by 2 days Training from Consultants (Mutual Ventures) plus an additional 6 days (Going for Growth) training being provided by the Cabinet Office. The team have also formed peer links with other regional and local CICs to share learning and experience.
 11. Branding support
The Mutual Support Programme have been running workshops and the branding experts are due to generate possible names to choose from for the new organisation. They will then design a whole brand concept around the preferred name.

Work to be completed

Pensions

12. Work is currently being carried out to assess the full financial and operational issues associated with pension decisions.
13. In instances where a service is being transferred to a body other than a private operator consideration needs to be given to the suitability of the new organisation being a member of the Local Government Pension Scheme. This suitability is a decision taken by the North Yorkshire Pension Funds (NYPF) Pension Committee and so far the Committees legal advisors have concluded that, in principal, the new organisation is suitable for consideration for the Committee. The next Pension Fund Committee meeting that could grant admission to the LGPS is on 20 February 2014. If permission

is granted the admission agreement can be drafted quickly and typically concluded within three weeks.

14. It is expected that the Pension Fund Committee will approve the approval for admitted body status at the February meeting, subject to all pension fund requirements being met ahead of setting up the admission agreement. The requirements relate to a number of assurances such as the guarantor responsibility and the level of employer contribution to be paid, should this be a concern from the Actuary's or Pension Fund Committee's point of view.
15. If the Pension Fund Committee are concerned about the level of risk involved they may opt to impose a requirement that the 'least risk, matched approach' is used to determine the employer contribution rate at each actuarial valuation. The financial implications of this are in the financial section of the report.

Transfer Agreement

16. A Transfer Agreement document is required. This will be drafted by BWB and discussed and negotiated through the project board in readiness for final Council and CELTAS signatures closer to the 1 April start date.
17. A Contract for the Services to be provided by the CELTAS CIC is being developed and will be in place prior to the March signing of the Transfer Agreement.
18. A 12 month Contract for back office support services between the CELTAS CIC and the Council for HR, payroll, finance and IT services etc is also being developed and will be in place prior to the signing of the Transfer Agreement.

Employees

19. The Council and CELTAS will agree the wording of the terms of the transfer agreement relating to the transfer of employees and any warranties/indemnities to be provided by one party to the other.

Property

20. The landlord of the Community Equipment Store premises has been approached by CYC Property Services to request permission for a lease extension either to the CIC directly or to CYC who will then be able to sub-let.

State of readiness

21. There is a lot of work to be done but BWB who have extensive experience of supporting spin out CICs are confident about the timescale and the work plan necessary for a 1 April 2014 start date.

Consultation

22. This was reported on in May 2013 to Cabinet in order to inform the decision taken at that time.

Options

23. The May 2013 report to Cabinet presented a range of options to consider on the type of organisational form available when creating a new Community Interest Company.
24. This report now updates Cabinet on progress made toward creating a Community Interest Company in line with the decision of Cabinet.

Analysis

25. The rest of this report sets out progress on the necessary preparatory work still to do, highlights risks and provides updated financial business plan to consider prior to agreeing a 1 April 2014 start date for the CELTAS CIC

Council Plan 2011-15 Priorities

26. The strategic and social objectives of the organisation will help the council in at least three of its five stated objectives within the current Council Plan. These are: Create jobs and grow the economy, Build strong communities, and Protect vulnerable people.

Implications

Financial

27. The detailed analysis of the financial viability of the proposed enterprise, prepared by Mutual Ventures, was set out in the cabinet report of 7 May 2013. This has been updated to reflect the Cabinet member's decision to increase the charge to Tier 1 customers to £7 per week and Tier 2 customers to £10 per week from 1 April 2014 and to charge cohabitees £3 per week. Annex 1 shows the revised position of the enterprise over the next 5 years; it projects that the CIC will generate cumulative retained profits of £186k by the end of year 5.

28. The future viability of the enterprise is dependent on the assumptions within the business plan for customer and income growth. The plan assumes that by year 5 additional income totalling £501k (£106k net of associated costs) will be generated from the introduction of new services. In addition, private customer numbers are assumed to rise by 5%, 6%, 7%, and 8% respectively over years one to four of the business plan.
29. The financial impact of CELTAS being admitted to the Local Government Pension Scheme needs to be clearly outlined. For financial modelling purposes the initial business plan factored in employer's contributions at 19.7% but the actual rate will change depending on the basis which CELTAS joins the fund. There are two pension fund employer contribution rate options available; the full exposure basis and the least risk or matched basis and both present significantly different contribution rates reflective of the risk associated.
30. A valuation from the NYPF has been commissioned and is expected to be received by the Council before the end of December 2013. The valuation will set out the future employers pension contribution rates that the CELTAS would be required to make. The contribution rates of each method can vary significantly reflecting the different risk and rewards associated with each. Although it is not possible to estimate with any certainty at this stage the pension contribution rate to be used, the Councils approach will be to use the lower of the two contribution rates and for an element of the existing pension budget in relation to this service to be retained to address future pension fund shortfall. This approach aims to minimise future pension shortfall risk as far as reasonably possible whilst ensuring the viability of the business model.
31. As an example (noting the contribution rates can vary significantly to reflect the staff proposing to transfer) the approach chosen above would see employer contribution rates of c15%. This approach would leave the Council carrying the financial risk of underperformance of the pension fund in relation to the staff being transferred. CELTAS would pay the c15% contribution (which would vary every 3 years per the triennial valuations) and the Council would be liable to pay any shortfall over and above the 15%. In a worst case scenario this could be up to 15% per annum of the transferred staff payroll value (£170k per annum), however it should be noted that the likelihood of such a scenario is low and a more likely estimate would be around the 5-7% value of c£80k. Through

retention of some of the existing pension budget provision the Council will aim to reduce this risk but this may not be sufficient to cover all the associated liability build up. Members should note therefore that under this approach there are continued pensions risks carried by the Council.

32. Members should note that the NYPF Committee do have the authority to only grant admitted status to the LGPS on a 'matched basis' (that is an employers contribution rate of say 30% as opposed to 15%) if it has concerns over the viability of the service and the certainty of its funding sources. If the NYPF committee were to conclude that such risk were present then under such a scenario CELTAS would have to increase their employers contribution to approx 30% from c15% under this basis. The Council will not know until the NYPF Committee makes its decision in February the outcome and therefore impact of this decision. For information the extra cost (£103k) of such a scenario has not been factored into the business plan and would need to be met either by CYC increasing the contract value or by the new organisation making further efficiencies/increasing income. This approach could mean the CIC is not financially viable if such efficiencies and other sources of funding were not found.
33. The proposed new enterprise is to be incorporated as a Community Interest Company. As such it will have to charge VAT to non-disabled customers for the warden call response service. This could increase some customers' charges by 5% (the 20% rate would not apply). This was considered in the consultation with customers about the introduction of a tiered charging policy which was the subject of a separate report to the Cabinet Member in June 2013.

Implications for CYC Budgets

34. The current net CYC base revenue budget (excluding capital financing costs, but including 2014/15 staff increment growth and estimated support service costs) for the services transferring would form the basis of the value of the contract that CYC would have with CELTAS. These budgets total £1,159k.
35. The council's Medium Term Financial Forecast assumes £50k saving each year over the period 2014/15 to 2017/18 (£200k in total). The annual contract value (subject to adjustment to the support service charge amounts discussed below) would be:

- Year 1 £1,159k
 - Year 2 £1,109k
 - Year 3 £1,059k
 - Year 4 £1,009k
 - Year 5 onwards £1,009k
36. Within the figures above there are support service charges totalling £198k covering centrally provided services such as HR, payroll, finance, ICT, legal etc. The business plan assumes that these services will continue to be purchased by CELTAS from CYC in the first year at the level of the current recharge values.
37. CYC will set out the actual charge it proposes to make for each support service from year 2 onwards. At this point the annual CYC contribution to CELTAS would be adjusted to reflect these actual support service costs. The business plan assumes that CELTAS will review these services and may decide to procure some or all of them from an alternative provider. These support services would need to reduce their own costs accordingly to avoid additional pressure on CYC budgets from the loss of this business and income.
38. There is a further potential risk for CYC budgets in relation to customers currently in receipt of Housing Benefit and/or Council Tax Benefit. There are approx 1400 such customers who do not pay for the service. The CELTAS business plan assumes that this number of non-paying customers will remain relatively stable. However if the numbers were to increase significantly then CELTAS would request an increase in the contract value. This risk could be mitigated by requiring CELTAS to agree in advance any increase in CYC customers prior to any additional funding being made available.
39. The business plan assumes that the current CYC capital (£250k) and revenue (£147k) equipment budgets for warden call and telecare equipment are made available on an on-going basis to purchase equipment that will be used by CELTAS for CYC customers. The council's currently approved capital programme includes this sum through to the 2017/18 financial year (approval to extend beyond this financial year is being sought as part of the

ongoing budget process). The equipment will remain the property of CYC.

40. It has been assessed that CYC's VAT position would not be adversely affected financially from the proposal to spin out CELTAS. The partial exemption limit of 5% is not breached by moving these services outside of the council, nor does it move the council into a repayment rather than a recovery position and as such there is no financial impact on CYC.
41. The uncertainty over how (and with whom) Health commission equipment will have an impact on the financial position of the new organisation and in turn what CYC may be expected to contribute. However, it is anticipated that efficiencies can be made within the service to offset any loss of Health income until the picture becomes clearer on this front.

Human Resources (HR)

42. The development of the business plan has included HR advice and guidance to determine the TUPE implications for the staff group concerned. Transfer of Undertakings and Protection of Employment (TUPE) would apply to all staff and managers in the current service when they transfer to the new organisation. Actuary work is being completed with regards to staff pensions. A Business Case is currently being prepared to be considered by the Pension Fund Committee to apply for this CIC to acquire admitted body status into the LGPS. The success of this application is critical to CYC complying with the TUPE regulations in relation to this transfer.
43. The ongoing consultation with staff and unions will continue throughout the period of time in shadow form and include the production of the Transfer Agreement
44. The transfer will impact on a total of 51 front line staff members, one supervisor (CELS), two team leaders (Warden Call), one service lead and one service manager – all staff and managers are to be included in the TUPE transfer.

Equalities

45. Under S149 Equalities Act 2011, the Local Authority (LA) has a general duty to have due regard to the need to eliminate discrimination and advance equality of opportunity. This will involve

a comprehensive Community Impact Assessment of the service as a result of the change of provider.

46. A full Community Impact Assessment was completed as part of the final Business Plan and report to Cabinet. There are no equality issues arising from this proposal.

Legal

47. There are various legal implications associated with the proposed decision to establish a Community Interest Company and the main considerations may be summarised as follows:
- power to establish the Company - Section 1 of the Localism Act 2011 provides a general power of competence, enabling local authorities to do anything an individual can do, which includes the power to set-up a company
 - fiduciary duty - The LA is under a duty to local tax payers to ensure that it is spending their money prudently. In addition the LA must demonstrate, through its business case, that it is obtaining best value in setting-up the Company, and in any contract with it
 - procurement - There are no procurement implications in setting-up the Company, but if the LA decides to contract with the Company, consideration will need to be given to the EU Public Procurement Regulations and Directives. These apply to services above the threshold value of £173,934
48. "Part B" services, such as health and social services, are not subject to the full extent of the Procurement Regulation, such as the requirement for an OJEU (The Official Journal of the European Union) notice (although a Contract Award Notice will still be required). However, the general principles of the Treaty need to be followed where there may be cross-border interest in a contract. These are the principles of non-discrimination, transparency, equal treatment, proportionality, and mutual recognition.
49. Compliance with these requirements is generally demonstrated though a formal tender process although it can be demonstrated through a degree of advertising sufficient to enable the market to be opened up for competition.

50. We have concluded that there is no market and no possibility of cross border interest and so no obligation to advertise or go through a formal tender process.
51. There will be detailed contractual arrangements which will provide for the transfer or use of assets, the transfer of staff, the services to be provided back and the price to be paid for those services. The contract will aim to secure during its lifetime financial benefits for the council arising from the business plan being realised.

Crime and Disorder

52. There are no crime and disorder implications

Information Technology (IT)

53. The practical IT considerations are being considered during the physical move of Warden call into the existing CELS building.
54. The implications of access to CYC systems are also being considered in discussions with care Management colleagues.
55. Licences and ownership of software etc will be dealt with through the due diligence process.

Property

56. As described earlier in the report (para 16)

Other

57. No known implications

Risk Management

58. The Business Plan contains a full list of the risks identified with the “spin out” of the CELTAS services. All of the risks have been assessed and activities undertaken to mitigate these.
59. The Project Board with representatives from all required departments will safeguard the interests of CYC during the contract negotiation process.

60. The key risks have been summarised:

#	Risk	Mitigation Activity
1	Changing NHS landscape	The current greatest risk to the nascent organisation is the lack of clarity around the CELS aspect of the business. Commissioning meetings are being planned to try to provide clarity as soon as possible. It is clear that we will remain a provider of equipment for CYC and the NHS but the geographical boundaries are what is yet to be determined.
2	Admitted body status not being achieved could lead to staff not being in favour of proceeding.	Initial positive discussions with local LGPS administrator, North Yorkshire County Council, have been had. Discussions are continuing and actuarial work has commenced to complete a valuation and agree the risk transfer for pension contributions etc.
3	Staff concerns regarding leaving the LA may result in staff not wishing to transfer into the new organisation. This would result in the loss of expertise to the organisation.	Human Resources and Union involvement being provided on the project board.
4	Procurement challenge by other potential providers to uncontested contract award could delay/end the spinning-out process.	Market analysis completed and it indicates that no single provider currently provides the range of services delivered by the potential Public Service Mutual (PSM), and therefore be in a position to challenge. Legal advice taken on options for mitigation (eg exemptions from public procurement rules).
5	State aid challenge by other potential providers could delay/end the spinning-out process.	Market analysis completed and it indicates that no single provider currently provides the range of services delivered by the potential PSM, and therefore be in a position to challenge. Legal advice taken on overall risk of challenge and solutions identified to mitigate this (eg lease arrangements for asset transfer) and a challenge is therefore less likely, but still possible.

#	Risk	Mitigation Activity
6	The governance of the new organisation may not be sufficiently robust leading to failure of the new organisation.	Robust governance structure developed as part of the Business Plan that includes recruitment of 3 Non-Exec Directors with financial experience, social entrepreneur/business expertise and communication and marketing experience.
7	Staff lacking skills required to fulfil all of the requirements could lead to poor performance by the new organisation.	Completed a detailed training needs analysis during shadow form period and a tailored training programme being provided for the management team.
8	The level of commercial acumen within the management team could impact on the development of the new enterprise.	<p>A board member will be appointed with social entrepreneur/business/financial expertise.</p> <p>The capability for service delivery already exists and will be bolstered by the composition of the Board.</p> <p>Additional commercial, legal and marketing support being provided from the Mutual Support Programme through this transition phase of the process.</p>
9	Competition from market/ ability to win contracts could threaten the new organisation becoming sustainable.	<p>Continuous engagement with initial key clients.</p> <p>Seek contracts outside locality for current services, and within/outside of locality for future services.</p> <p>Ensure marketing strategy & materials is in place from go-live. Web design and ability for online sales to be developed as soon as possible to boost initial income levels.</p> <p>Develop enhanced services that will aim to achieve better social outcomes.</p>
10	The inability to make a profit to re-invest into the new organisation could cause the new organisation to fail.	<p>A flexible resourcing model will be adopted to limit our overhead costs and ensure we adapt our operational model to the development of the market.</p> <p>Ensure close relationship with CYC Financial Services, and review financial statements regularly.</p>

Recommendations

61. Members are asked to agree to a start date for the new CELTAS Community Interest Company of the 1 April 2014 subject to the completion of all the necessary preparatory work.

Reason: To create a viable CIC opportunity that will provide services to a wider customer base whilst providing value for money to the council.

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Wards Affected: All			√
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Background Papers:

None

Annexes

Annex 1 - Revised 5 year financial plan

Annex 2 – Abbreviations used in report