

Director of Governance and Monitoring Officer

Portfolio of the Executive Member for Finance, Performance, Major Projects, Human Rights, Equality, and Inclusion

Veritau Public Sector Limited – Appointment of Director

Introduction

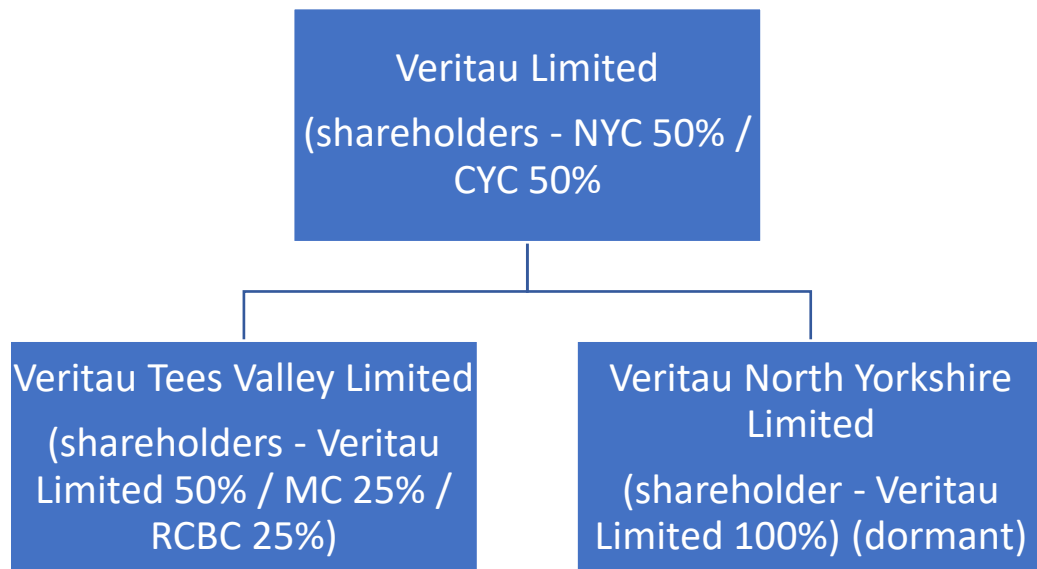
1. This report sets out the proposal to appoint the Council’s representative on the board of directors of the recently created *Teckal* company, Veritau Public Sector Limited (“**VPSL**”).

General context and Background

2. The Council’s current internal audit, counter fraud, and information governance service provider, Veritau Limited (“**VL**”) was established and began trading on 1st April 2009 as a shared service for internal audit, counter fraud, and information governance services for the Council and North Yorkshire Council (then North Yorkshire County Council). VL is currently jointly owned by the Council and North Yorkshire Council, with each holding 50% of the share capital.
3. A second joint venture company called Veritau Tees Valley Limited (“**VTV**”) was formed in December 2019. Ownership of the company is as follows:

	Shareholding
Middlesbrough Council	25%
Redcar & Cleveland Borough Council	25%
VL	50%

4. VL and VTV currently operate as a single business entity and together form the Veritau group. The current structure is therefore:



5. Both VL and VTV were established as a *Teckal* company. This enabled the local authority members of both companies to take advantage of the exemption contained under Reg 12(1) of the Procurement Regs and Schedule 2, Part 1, Para. 2 of the Procurement Act 2023 to award long-term contracts to the companies for the supply of services without the requirement to undertake a public procurement exercise, providing certain conditions were satisfied throughout the life of any long-term contracts they have with local authority members, namely:
- a. The relevant local authority on its own or jointly with other contracting authorities exercises a similar degree of control over the company as it does over its own departments (the “**Control Test**”);
 - b. More than 80% of the work undertaken by the relevant company is for the benefit of the local authority members or for other organisations controlled by the same local authorities (averaged over 3-years) (the “**Function Test**”); and
 - c. There is no private capital participation in the relevant company.

6. However, in addition to providing assurance services to its four local authority members, the Veritau Group now provides assurance services to over 700 clients. These clients include other councils, council owned companies, other local authority shared services, a children’s trust, national park authorities, multi academy trusts and schools. In addition, services are also provided to two national sports governing bodies, and some EdTech companies and charities. The group’s budgeted turnover for 2024/25 is approximately £3.8m, split as follows:

Client	£k	%
NYC (VL)	1,662	43.9
CYC (VL)	657	17.4
RCBC (VTV)	221	5.8
MC (VTV)	221	5.8
Other fee income – LA controlled	220	5.8
External clients	806	21.3
Total	3,787	100.0

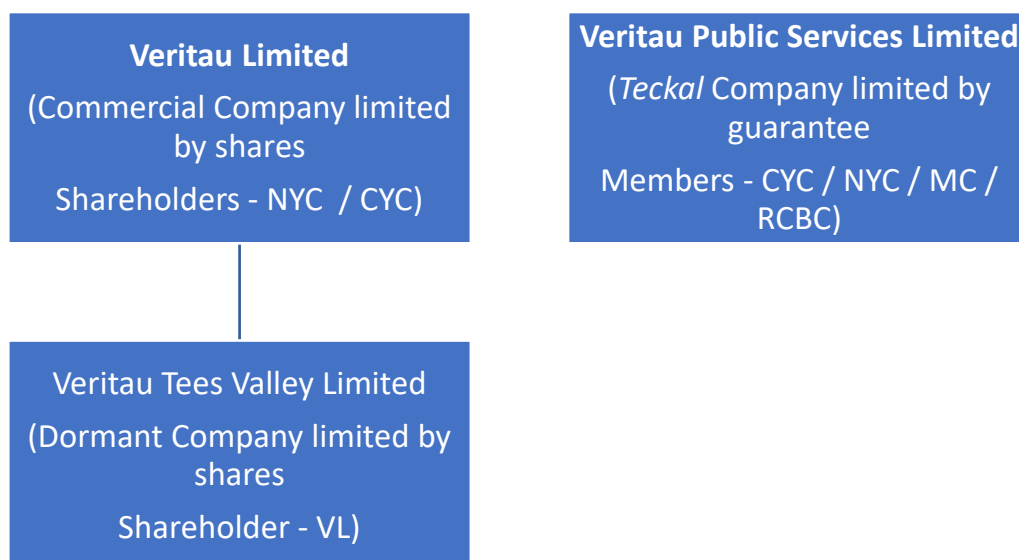
7. This expansion of the commercial offering has coincided with a reduction in the value of services provided to the Council and the other local authority members in recent years as a result of the need to deliver budget savings, which means that VL and VTV are not expected to be *Teckal* compliant in 2024/25. This is due to the estimated value of the work undertaken for the benefit of the contracting authorities or for other organisations controlled by the same contracting authorities falling below the required 80% threshold (averaged over 3-years).

8. The fee structure for the local authority members is also different to that for external clients. The fees charged to the local authority members are intended to cover the costs of providing the service. In other words, Veritau does not aim to make a profit from this work. The fees charged to external clients include a notional element to cover the costs of office accommodation provided by local authority members but are also set to deliver a profit. The additional work helps to maintain capacity, avoids the need to make redundancies, delivers further economies of scale, keeps costs down for the member councils and the profits can be reinvested into service development. However, there are cost inefficiencies with the current shared service model based on two *Teckal* companies, for example insurance, external audit, financial management and administrative costs are effectively duplicated.

9. Notwithstanding the above, the shared service model continues to attract interest from other councils. As a result, discussions have been held with a number of councils about the possibility of them joining Veritau as full members, with two further councils now formally requesting to join. The addition of new local authority members would help to counteract the increasing shift to external work in recent years that has placed the Veritau Group's *Teckal* status at risk; however, the existing corporate structure for both VL and VTV does not allow new local authority members to be easily admitted due to the need to issue additional shares, and the impact this has on existing shareholdings. Existing member councils also cannot easily leave.
10. Finally, a change to the current shared service model could help to address the possible threats to Veritau's competitive position caused by the emergence of other local authority shared service providers. In terms of its commercial offering, Veritau is in competition with a number of established providers of internal audit and information governance services. These include large and medium sized accountancy firms and smaller specialist providers. There is generally less competition for counter fraud services. In terms of Veritau's non-commercial/public sector offering, more local authorities are shifting away from having in-house internal audit and counter fraud teams to more partnership working and other forms of collaboration to address capacity issues, deliver economies of scale and provides access to technical expertise. Veritau expects some of these new shared service providers will increasingly come to dominate the sector and Veritau may lose its ability to compete. Being able to admit new councils as full members in the short to medium term will help to mitigate this risk.
11. In short, the key drivers for a change to Veritau's current shared service model are as follows:
 - a. To maintain its *Teckal* status to allow Veritau to continue delivering audit and assurance services to its current local authority members;
 - b. To allow Veritau to continue to grow its commercial offering, for the benefit of its local authority shareholders and to allow Veritau to remain competitive in the current shared service market;
 - c. To allow for more local authorities to join to ensure its *Teckal* compliance and continue said expansion.

12. On 9th May 2024, the Council's Executive approved further to Article 12 of the Constitution for the Council the formation of a new *Teckal* compliant company limited by guarantee together with NYC, Middlesbrough Council, and Redcar and Cleveland Borough Council for the delivery of audit and assurance services to these authorities. This new company will be VPSL.
13. The four existing member authorities (the Council, North Yorkshire, Middlesbrough, and Redcar) would all become members of VPSL, along with the two new local authorities who have expressed an interest in joining (and potentially further members in time).
14. Each member authority of VPSL will be required to pay a one-off subscription fee of £20,000 each to join to cover set-up costs, working capital and contingencies. With regards to the Council, this £20,000 fee will come from a £40,000 dividend from VL to the Council and North Yorkshire. There would be no external financing or requirement for the member authorities to provide additional loans to VPSL. Future members may be required to pay an increased subscription fee in later years.
15. The future liability of the Council and the other member authorities, otherwise known as the guarantee, would be capped at an agreed value of no more than £10. The guarantee is the maximum sum which would need to be paid by the member council to the company in the event of the company being wound up. If the Council or one of the other local authorities ceased to be a member of VPSL, the guarantee would continue to apply for one year after the date of exit.
16. The existing contracts for the supply of assurance services to the current member authorities would then be novated to the new company. Other local authorities outside of the Council, North Yorkshire, Middlesbrough, and Redcar will be required to enter into new contracts with VPSL.
17. All the existing commercial contracts would remain with VL, and VL would become a non-*Teckal* company providing services to external clients. VL would continue to be a company limited by shares co-owned by CYC and NYC. To the extent that VL makes a surplus in respect of any services it provides externally, this would either be reinvested in its business operations or returned to CYC or NYC in the form of a dividend.

18. In respect of staffing, VPSL would recharge the associated payroll and overhead costs to VL at a market rate, and, in respect of strategic leadership services, VPSL would charge VL a management fee.
19. To the extent that VPSL make a surplus in respect of any services it provides (whether to VL or to its member councils), this would either be reinvested in its business operations or returned to the member councils in the form of a rebate.
20. VTV would then be wound up and have its bank accounts closed, and insurance cover reduced. Any savings achieved from winding-up VTV would be offset against the costs of establishing and operating VPSL.
21. The projected fee income of VPSL in 2024/2025 is expected to be approximately £3,942,000, including income from the two new member councils and recharges to VL. The projected fee income of VL in 2024/25 is expected to be approximately £806,000, with an assumption that fee income from external contracts would be expected to grow by up to 10% per annum.
22. Following the formation of VPSL, the Veritau Group structure would be as follows:



23. This corporate structure would satisfy the Function Test under the *Teckal* Exemption. A company limited by guarantee would also facilitate the admission and exit of member authorities.

24. Following Executive approval on 9th May 2024, VPSL was officially incorporated at Companies House on 22nd May 2024 with Company Registration 15735835.
25. In order to meet the requirements of the Control Test under the *Teckal* Exemption, the Council and the other local authority members are required to have a presence on the board of directors for VPSL to make sure the member authorities take part in the operational day-to-day decision making and management of VPSL.
26. At present, only North Yorkshire and Redcar have a presence on the board of VPSL along with two non-local authority directors.
27. The Council needs to appoint a representative to the board of VPSL in order to have a voice in the decision making and operation and management of the company.
28. Going forward, in order to safeguard the Council and VPSL against any sudden changes in circumstances and to allow the Council to respond to such circumstances as quickly as possible, whether for example due to a change in the company's *Teckal* status or due to any other circumstances requiring further appointments to be made and/or changes to appointments going forward, it is recommended that Staffing Matters and Urgency Committee delegate authority to the Monitoring Officer and Chief Operating Officer to select and appoint any member, officer and/or person willing to act as a director to represent the Council on the board of directors of Veritau Public Sector Limited, and where necessary in the future remove and/or replace said individuals from the board in line with company law, the company's articles of association and any agreement between the company's members in force from time to time.

Recommendations

29. Staffing Matters and Urgency Committee is asked:
 - To delegate authority to the Monitoring Officer and the Chief Operating Officer of the Council to select and appoint any member, officer and/or person willing to act as a director to represent the Council on the board of directors of Veritau Public Sector Limited, and where necessary in the future remove and/or replace said individuals from the board, pursuant to Staffing Matters and Urgency Committee's delegated authority under Article 11 and paragraph 5.2 of Article 12 of the Council's Constitution and in line with company law, the company's articles of association and any

agreement between the company's members in force from time to time.

Reason:

- To ensure that Veritau Public Services meets the requirements of the Control Test under the *Teckal* Exemption under contained under Reg 12(1) of the Procurement Regs and Schedule 2, Part 1, Para. 2 of the Procurement Act 2023.

Financial Implications

30. There are no financial implications arising from this report.

HR Implications

31. There are no HR implications arising from this report, however, should a conflict of interest arise between the Council and VPSL then any appointee of the Council's would need to declare this. Further, any appointee would need to declare their directorship on the Declaration of Interest form.

Legal Implications

32. At the time of writing, VPSL is subject to Model Articles for Private Companies Limited by Guarantee prescribed under Schedule 2 of the Companies (Model Articles) Regulations 2008. Article 17.1 of the model articles states that any person who is willing to act as a director for the Council, and is permitted by law to do so, may be appointed to be a director either by an ordinary resolution of the Council and the other local authority members passed by simple majority, or by a simple majority decision of the current VPSL board directors.

33. Paragraph 5.2 of Article 12 (**Shareholder Committee**) of the Council's Constitution delegates authority to Staffing and Urgency Committee to approve the appointment, dismissal, and terms and conditions of Council Directors, and to recommend such matters to the board of the relevant company.

34. Any decision to appoint, or not to appoint, any particular individual to the board of VPSL must be taken with regard to matters set out under (**Guidance to Councillors and Officers Appointed to Outside Bodies**) of the Council's Constitution (in particular, but not limited to, paragraph 2.1 of Appendix 18), with any particular concerns referred to Monitoring Officer before any decision is taken.
35. The appointment by the Council of directors to VPSL's board of directors will help to enable VPSL to meet the requirements of the *Teckal* Exemption.

The *Teckal* Exemption under Regs 12(1), 12(4) and 12(5) of the Public Contract Regulations 2015 requires (*inter-alia*) that:

- a. each contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments; and
- b. for the purposes of (a) above, contracting authorities are deemed to exercise joint control over a legal person where all of the following conditions are fulfilled:
 - i. the decision-making body of the controlled legal person (i.e., the board of directors) is composed of representatives of all participating contracting authorities;
 - ii. the contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person.

Schedule 2, Part 1, Para. 2 of the Procurement Act 2023 requires (*inter-alia*) that:

- c. no person other than the authority, or authorities, exerts a decisive influence on the activities of the person (either directly or indirectly); and
- d. in the case of joint control, each of the contracting authorities is represented on the person's board, or equivalent decision-making body.

Each member authority of VPSL will appoint a representative to VPSL's board of directors. Initially this will amount to 4-directors for the Council, North Yorkshire, Middlesbrough, and Redcar, with other further local authority members being required to nominate a representative to the board. The board will also have two non-local authority directors from VL.

With this in mind, appointment by the Council of directors to the board of VPSL, along with the other local authority member directors to the board of VPSL, will help to ensure VPSL will be a *Teckal* compliant company, in line with the Executive decision of 9th May 2024.

Other Implications

36. N/A.

Contact Details

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Chief Officer Responsible for the report:

Bryn Roberts,
Director of Governance and
Monitoring Officer

**Report
Approved**

Date 24 May 2024

Specialist Implications Officer(s): List information for all

Financial:

Name: Debbie Mitchell
Title: Chief Finance Officer

Legal:

Name: Dan Moynihan
Title: Senior Lawyer

HR:

Name: Helen Whiting
Title: Head of HR

Wards Affected: [List wards or tick box to indicate all]

All

For further information please contact the author of the report

Background Papers:

1. Report for Executive Meeting 9th May 2024 - <https://democracy.york.gov.uk/documents/s176174/Veritau%20Assurance%20Exec%20Report%20-%20Re-submitted%2024.04.2024.pdf>
2. Executive Decision 9th May 2024 - [Decision - Veritau - Creation of New Audit & Assurance Company Limited by Guarantee \(york.gov.uk\)](#)

Annexes

No annexes.