
Executive

15 February 2011

Report of Director of Customer and Business Support Services

Creating a Local Authority Company

Summary

1. Executive are asked to approve the creation of a local authority company through which the Council will be able to provide services and carry out works for profit on behalf of other public bodies and private organisations.
2. The setting up of such a company will allow the council to trade in such a way that maximises the potential of the council resources and contributes in the medium term to the efficiency agenda.
3. The initial structure and scope of the company will be developed primarily around the services currently offered from the CBSS Directorate. This will allow us to take advantage of opportunities which it is felt both exist now for that directorate, and which are set to increase in the future, but which the Council is unable to exploit without the mechanism of a trading company.

Background

4. Since 1970 Local Authorities have traded with each other and other public bodies utilising the powers within the Local Authorities (Goods and Services) Act 1970 and the Local Government Act 2000 with the main intent to either save money or to achieve efficiency through economies of scale. This power to trade was enhanced by the Local Government Act 2003 where authorities were given the power to trade anything deemed as a public function with the private sector as long as it did so through a limited trading company.
5. Despite the fact that the legislation has been in place for a number of years now, very few authorities have taken advantage of the opportunities that it creates – this means that the market for selling services to other authorities is relatively untapped and available. Some examples of successful implementations include NORSE (formally Norfolk Property Services) wholly owned by Norfolk County Council, Solutions SK wholly owned by Stockport Council, Kent Commercial Services the trading arm of Kent County Council with a variety of other operations ranging greatly in size and complexity such as those in Gateshead, Durham, Westminster and Essex.

6. In the current climate we have a duty of care to both our customers and our staff to do the best we can with the resources that we can afford. The establishment of a trading company would not only allow the council to take advantage of the income generation opportunities that trading will provide, but will also demonstrate that the council is taking a positive attitude towards the current climate in the public sector, developing new ways of “doing business” within the local economy and providing new opportunities for employees who may otherwise be adversely affected by the necessary savings activities.
7. Any trading must be in “function-related activities”, i.e. the Council must already have the power to provide the services it proposes to offer to another party. However, in practice this requirement can, in many cases, be satisfied through use of the power of the authority to provide employees, goods, services and accommodation to any person in order to promote the economic, environmental, and social well being of the area.
8. In order to ensure a level playing field with the private sector and to avoid breaching state aid and other legal requirements, the company must not be subsidised by the authority. The authority must therefore recover the cost of any accommodation, goods, services, employees or any other support it supplies to the company. It will be necessary to set up suitable systems and financial controls to ensure this is the case and to demonstrate the independence of the company. It should also be noted that, far from being a threat to the local economy, the trading company will provide employment opportunity and trading opportunities in terms of:
 - The company may develop new products and services that would need to be delivered and supported.
 - The company may need to procure goods and services from the local economy.
 - It will also be the case that all new ventures developed by the company will be required to undertake a market impact assessment to ensure fair consideration of the local market position.

Options

9. In considering how services might be provided by CBSS in the future , we have narrowed the options down to the following:
 - Option 1: To continue as is.
 - Option 2: To look to “share” some services with other organisations.
 - Option 3: To look to be a “provider” to others.
 - Option 4: To look to be a buyer from others – outsourcing, or receiving from another public body.

10. **Option 1** is not considered sustainable in what is a much changing public sector, and the financial constraints would mean that further significant cuts in service levels would be inevitable, potentially leading to a gradual decline in service quality, and significant implications for staffing and resulting in low morale of staff. The implications would also impact on frontline services that are reliant upon excellent support services to enable their effective operation.
11. **Option 2** has some merit. However, the reality of “shared “ service is that it can take considerable time to develop a proposal, and during that time significant opportunity may be wasted – there is also the chance that no final agreements can be established, which would again result in a waste of resources. In essence we consider this is not the way forward at this stage for support services due to the complexities of establishing such an arrangement, and the time it would take. In addition any efficiencies are not considered to be significant. The diversity of services provided within CBSS also means that one partner for all services is highly unlikely. There may however be some selected areas where such an approach might work and these will be considered as and when opportunities are identified/arise. Many of the potential benefits of “sharing” will accrue through the establishment of a company in any case, such as sharing overheads across a wider business activity, developing a broader skills set, and achieving efficiency.
12. **Option 3** is the preferred way forward. In summary this option is considered to give the Council control over its plans, is something that we can ensure happens (and not dependant upon others), and is something that has already got staff committed and excited about the future opportunities. This staff commitment is considered crucial as ultimately the success of any option will depend upon high morale and commitment of the workforce. It potentially allows the Council in time to create something highly innovative, and which if done correctly could grow in size over time and position the Council at the forefront of innovation in the provision of support services. It is anticipated that the option to trade and the need to provide competitive solutions, will become one of the drivers towards achieving better services to customers in an effective and efficient way. It also allows us to exploit the talents and innovation of staff who are keen to deliver services to new organisations, and it also allows us to fill a niche in the geographical area that no other authorities have yet addressed.
13. **Option 4** is not considered something we should in general pursue with professional services, as the outsourcing of professional services is likely to lead to significant job losses, and the Council would only receive the benefit of a part of these reductions – in that a part would be required to achieve profit. Receiving services from other public organisations is something that could be considered, however there is no real provider of such services – and in some respects this is reflective of our proposed approach to establish a trading company in that we see considerable opportunity in establishing a company that can provide such services to others.

Analysis

14. The precise form of the local authority company will be developed in coming months. Whilst the Government have announced proposals to allow Councils/employees to establish co-operative forms of service, it is not felt that this model is applicable in relation to the services being provided by the Company.
15. It is proposed that the company will be 100% owned by City of York Council, and that its primary objective initially will be to “provide business support services “. However, it is suggested that flexibility should be retained to enable other parts of the Council to have the ability to trade through the company if appropriate. The company will apply for admitted body status within the North Yorkshire Pension Fund.
16. The Council will need to appoint directors to the board of the company. It is proposed that initially a small board of Senior Officers will act as the Board of Directors:
 - The Director of Customer & Business Support Services acting as the Chief Executive.
 - The Assistant Director Governance and Legal (acting as company secretary),
 - The Assistant Director Financial Services (who will act as the Head of Finance for the Company)
 - The Assistant Director Customers and Employees (who will be responsible for any staffing matters).
17. Further Directors, including independents, may be appointed in future if it is believed they may benefit the business of the company.
18. Initially, the services within CBSS will be looked at to identify which ones are commercially viable and/or the levels of work required to get them to such a position, to enable them to be offered via the trading company framework – an initial assessment is given at Appendix 1. However, the company’s structure and governance arrangements will permit other activities or services to be incorporated in the future if they are deemed as suitable, following the production and consideration of a robust business case.
19. No staff will be transferred to the Company initially. Instead, employees from the Council’s services will be seconded in to the trading company as and when required to carry out individual projects or tasks. A Charging Policy will be developed which will be used to determine the charge out rates for resources attributed to delivering the company business. Thus a transparent and auditable pricing structure will be maintained. In future it may be that some staff will be transferred across to the Company, which would then require the company to establish its own terms and conditions, and to make sure that all the relevant consultations take place. This would be reported if and when it was being considered.

20. Existing Council resources will clearly need to be deployed towards the establishment of the company and the early stages of development. Such costs will be borne by the Council but these will not be additional to existing staffing costs, and very much reflect necessary work to take forward changes in service delivery that will contribute to financial savings. An initial outline business case for the company is set out in Appendix 2. This is clearly a broad estimate, and will need to be developed further in time. The financial structures to support this will ensure that all company accounts are separately identifiable and reportable.
21. There will be some additional direct set up costs (over and above existing staff costs allocated towards establishing the company). These will include legal costs and the costs of setting up the relevant company structure. These costs need to be viewed as a necessary investment cost that is required in order to achieve the long term benefits that it is felt the company will deliver to the Council.
22. A maximum cap of £20,000 on any such expenditure is proposed, in order to limit risk exposure. Customer & Business Support services are projecting an underspend during 2010/11 and it recommended that Members approve a carry forward of £20k to fund the set-up costs. .
23. Further reports will be brought to Executive as the Company develops, and Members will be kept fully informed of matters. In the longer term, once established it will be for the Company to adopt its own policies and procedures. It is proposed that staff within CBSS will be asked for ideas with regard to the name, and that this will be agreed by the Director of CBSS and the Executive Member. This approach reflects the same process that was adopted for Veritau.

Corporate Strategy

24. The creation of a Local Authority Company accords directly with the need for the Council to become an effective organisation which delivers what the customer wants and encourages improvement in all that we do. It will contribute directly to the desire for the Council to become a into a modern, agile organisation and will have the potential to provide staff with new opportunities going forward.

Implications

25. **Financial** - The Company will need to comply with the regulatory requirements of the Companies Act 2006 and additionally with the regulatory regime for local authority companies under the Local Government and Housing Act 2003. The Council must recover the full cost of any accommodation, goods, services, employees or anything else it supplies to the company in pursuance of any agreement or arrangement to facilitate the power to trade. Initial set up costs will be met from existing resources and recovered against expected company profits. Any areas of business being considered for transition into the trading company structure will be subject to the development of an extensive and rigorous business case for consideration, prior to any

transition work taking place. Costs incurred in the setting up of the company will be funded from a carry forward request.

26. **Human Resources (HR)** - As the company will not employ any staff directly at this stage, TUPE will not apply to employees. This needs to be monitored on an ongoing basis and would need to be considered further if the trading company were to employ people directly, or Council employees were to be transferred to the Company at a later date.
27. **Equalities** – There are no equalities issues arising from this report.
28. **Legal** – Set out in this report. The Assistant Director for Governance and ICT will ensure all legal implications of setting up a wholly owned company are considered and addressed.
29. **Crime and Disorder** - There are no crime and disorder issues arising from this report.
30. **Information Technology (IT)** – The appropriate financial structures will need to be established on the council financial systems. Any new IT applications that the company identifies will be procured through the company but will be hosted on the council's IT platform.
31. **Property** – There are no property implications initially, any property requirements of the company going forward will need to be established and/or funded through the company itself.

Risk Identification and Management

32. There will be a need for clear operational control procedures and monitoring. All risks and uncertainties affecting the Council's and the Trading Company's position will be identified and mitigation will be put in place. The key strategic risks to be considered in setting up the trading company are detailed in Appendix 3.

Recommendations

Executive are asked to approve:

- 1) The creation of a local authority company with the primary purposes of providing business support activity to public sector and other organisations.

Reason: To allow the Council to take advantage of income opportunities and make efficient use of assets, workforce and knowledge.

- 2) The appointment as Directors of the Company of the Director of Customer and Business Support, and the Assistant Directors of CBSS, with the Director of CBSS acting as Chief Executive and the AD Governance and Legal acting as Company Secretary.

Reason: To ensure the company works under a suitable governance structure.

- 3) That regular further reports be brought back to the Executive

Reason: To ensure transparency at all stages of the Company development and to ensure that the company activities are in keeping with the Council's priorities and operating model.

- 4) That the company name be determined by the Director of CBSS and the Executive Member for corporate services, following a consultation with staff.

Reason: To ensure staff involvement in setting up of company.

- 5) To agree that any additional costs incurred as a result of establishing the company be capped at a maximum of £20,000, with these funded from a £20k carry forward of Customer and Business Support Services budgeted underspend.

Reason: To provide set up costs, but in such a way as the cost to the Council is minimised.

Contact Details			
Authors:		Chief Officer Responsible for the report:	
Paul Kear Business Change Manager More for York Phone no. 553476		Ian Floyd - Director (CBSS)	
		Report Approved	✓ Date 3 rd February 2011
Specialist Implications Officer(s)			
Finance – Patrick Looker Legal – Andrew Docherty			
Wards Affected Not applicable			All
For further information please contact the author of the report			

Annexes

Annex 1 – Summary of CBSS Services potential opportunities for trading

Annex 2 – Initial high-level financial projections

Annex 3 – Initial Risk Assessment