



ARMS LENGTH ORGANISATION – PROGRESS UPDATE

Aim

1.1 This report provides an update to the Integration Shadow Board on progress with the development of a Council Owned Arms Length Company for Adult Social Care and advises of the next phase of the development.

Background

2.1 In January 2014 the Council considered an Options Appraisal for the future of Adult Care Services. The Council agreed that the most viable option was an Arms Length Council Company and a full Business Case for a Limited Liability Partnership (LLP) was produced for consideration by Council in June 2014. Further work was requested by Council to clarify governance and scrutiny arrangements associated with the LLP and a progress update and these items were further considered and accepted by Council on 30th October 2014. A copy of this report is attached at Appendix A.

Progress Update

3.1 A programme has been set up with project support to meet the implementation date of 6th April 2015.

3.2 The programme has been structured with nine distinct workstreams, with each being responsible for a critical business area such as Finance, HR, Legal or Contracts. The scope of work required for 06 April 15 is wide ranging and includes; (but is not limited to) TUPE arrangements for approximately 800 staff, Service Level Agreements for provision of Council run support services to the LLP and a detailed Partnership Agreement between the two organisations.

3.3 The programme recognises that stakeholder communication is critical to organisational and service change of this nature and to that end there is a dedicated Communications workstream to ensure this is delivered to the highest possible standard.

3.4 Progress within these workstreams has been rapid and a detailed implementation plan is now in place. The programme regularly reports to the Council Care Company Programme Board and will also work with the Members & Officers LLP Working Group in due course.

Issues for the Integration Shadow Board

4.1 The Integration Shadow Board has an interest in the development of the Arms Length Organisation in several ways:

- a) In terms of governance arrangements, the Council has agreed that a member of the Shadow Board be nominated to be part of the Strategic Governance Group which will monitor the performance of the company together with an identified commissioning lead.
- b) The current business case includes the Joint Borders Ability Equipment Store to which NHS Borders currently contribute approximately £200k to the budget. There are significant opportunities identified for this service including online direct sales of items to the public, demonstration opportunities and more effective use of staffing and management. A paper is currently being drafted for NHS Borders Board for formal consideration of this proposal.
- c) Strategic Commissioning as it relates to the delivery of the strategic plan will be of interest to the Integration Joint Board and its role in terms of delivering positive outcomes and increasing independence to people in the Borders and their carers.

Summary

- 5.1 By establishing an LLP, the Council is taking steps to protect and enhance future delivery of direct care services in the Scottish Borders. The Shadow Integration Board will be updated on progress as implementation arrangements progress.

Recommendation

- 6.1 The Integration Shadow Board is asked to:

- a) **Note** the report.
- b) **Respond** to the proposal that a member of the Shadow Board be appointed to the Strategic Governance Group (SGG).
- c) **Agree** that the Chief Officer or nominated representative be the commissioning lead on the SGG.
- d) **Note** the Council report.

Policy/Strategy Implications	In line with Council's strategic direction and Self Directed Support Policy.
Consultation	Ongoing discussions with identified Council Trade Unions and staff briefings are continuing.
Risk Assessment	A full risk assessment and management plan is in place.
Compliance with requirements on Equality and Diversity	A full Equality Impact Assessment has been completed.
Resource/Staffing Implications	Identified efficiencies to be realised in line with SBC financial plan.

Approved by

Name	Designation	Name	Designation
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APPENDIX A

ARMS LENGTH ORGANISATION BUSINESS CASE

Report by Depute Chief Executive People

Scottish Borders Council

30 October 2014

1 PURPOSE AND SUMMARY

- 1.1 **This report addresses the questions raised following the previous report submitted to Council on 26 June 14 relating to the Council setting up a Council owned Company for the direct provision of Adult Care Services and seeks approval for the governance arrangements for Limited Liability Partnership "the Care Company".**
- 1.2 In January 2014 the Council considered an Options Appraisal for the future of Adult Care Services. The Council agreed that the most viable option was an Arms Length Council Company in the form of a Limited Liability Partnership (LLP) and a full Business Case was produced for consideration by Council in June 2014. The outcome of that meeting of Council was a request that Officers report back in October 2014 with clarification and detail in two areas as follows:
 - (a) Further report on progress with implementation and any refinements required to the Business Case; and
 - (b) Governance and scrutiny arrangements associated with the LLP to be finalised and addressed in the October Report.

2 RECOMMENDATIONS

2.1 I recommend that Council agrees:-

- a) **to continue to support the implementation of the proposals to set up a wholly owned Council company as a Limited Liability Partnership for its Adult Care Services as agreed by Council on 26 June 2014;**
- b) **the formation of a short life members/officers reference group to monitor the progress of the**

implementation and to appoint 3 members to this group until the company is established in April 2015;

c) to consider at a meeting of Council in early 2015 a LLP Partnership Agreement to include the following governance arrangements:

(i) the establishment of a Board for internal governance of the LLP and that this Board has no Councillors as members

(ii) a Member/Officer Monitoring Group referred to as the "LLP Strategic Governance Group"

3 BACKGROUND

3.1 In January 2014 Council considered an Options Appraisal for the future of Adult Social Care Services. Four options were considered including externalisation of services, redesigning the service in-house, the development of a Community Interest Company or the development of an Arms Length Council owned company. Key criteria considered included quality, acceptability to stakeholders, governance, flexibility and cost. The Council agreed that the most viable option was the establishment of an Arms Length Organisation and agreed that a full Business Case be presented to Council in June 2014.

3.2 The June 2014 paper set out the following benefits and drivers for Council to establish an LLP to provide Adult Social Care Services. This new model affords a number of opportunities to improve the quality of services to people receiving care and their carers.

BENEFITS

- The ability to continue to provide quality services that are more cost effective and thereby more affordable to people who will be purchasing care through Self Directed Support (SDS)
- The ability to provide and sell a range of services to people who do not meet Council's current eligibility criteria to provide preventative services
- The establishment of a robust business culture and ethos across the new organisation
- More efficient deployment of resources resulting in efficiency savings
- Ensuring Council continues to be able to meet its statutory responsibilities by establishing a provider of last resort
- Ability to provide a more responsive service at a local level to service users and carers
- The establishment of an LLP is designed to ensure the continuation of publically owned services to the people of the Borders in the most cost effective way possible

- Meets Council's priorities by providing high quality support and protection

Drivers for Change:

- Scottish Borders Council (SBC) is required to save £5.6m in Social Work, in addition to its existing savings requirements, over 5 years
- SBC is facing additional annual cost pressures of £1.25m and the forecast impact of SDS is £1.4m over 5 years
- Doing nothing is not an option – without significant change the results will be increased costs and reduced service provision to residents of the Borders
- Demand from the over 65's for social care in Scottish Borders will increase by 11% over the next 5 years and will increase market opportunities
- Legislation requires that all Social Work clients will need to move onto Self Directed Support in the future
- The Health and Social Care Integration body will need to be more engaged in the commissioning of adult care
- The reshaping care agenda will require more people to be provided with care in their own homes over the coming years

3.3 In June 2014 Council considered the full Business Case and instructed Officers to proceed with the initial preparatory work required for implementation. Care and Health Solutions, a company specialising in this area, was appointed to support implementation and a Project Board was established. The Project Board is now working closely with Officers across Council to develop detailed implementation plans to meet the implementation date of April 2015.

4 EXPERIENCE OF OTHER COUNCILS

4.1 A number of Councils across England and Scotland have adopted similar models of establishing a Council owned care company. The largest of these is Essex Cares Ltd, established in 2010. Essex Cares has a current turnover of approximately £38m and employs over 900 staff in full and part time positions. Another example is Sandwell Community Care Trust, a social enterprise model. In Scotland, Cordia is the largest example of an arm's length company, providing care services to Glasgow City Council. More recently Aberdeen City Council has also established a new company, Bon Accord Care, which is in the early stages of set up. All companies are trading successfully and have made savings through effective budget management, absence management and the sale of a wide range of services.

4.2 A recent visit to Cordia by Officers and Members was helpful to discuss in practice the relationship between Glasgow City Council and Cordia, how efficiencies have been made, and business opportunities that have been developed.

5 GOVERNANCE ARRANGEMENTS

5.1 While this report refers, for simplicity, to a Care "Company", the term "company" is not strictly accurate in law. What is proposed is that an Arm's Length Organisation (an "ALEO") is established in the form of a Limited Liability Partnership (an "LLP"). Such a body is a unique legal entity. As a legal entity, an LLP is something of a cross between a limited company and a partnership. What is important to note is the following:

1. The LLP will be a legal entity in its own right
2. The LLP will have two Partners (referred to in the legislation as Members)
3. Those Partners (Members) shall be (a) the Scottish Borders Council and (b) a shell company bought and wholly owned by the Scottish Borders Council
4. The LLP will therefore be entirely owned by the Scottish Borders Council

5.2 As was therefore highlighted in the report in June 2014, there are four main relationships between SBC and the LLP:

1. As the partner
2. Through the commissioning relationship with the contract for service delivery
3. Through operational links related to the delivery of strategically important services that form part of the Council's Access Pathway
4. Through a contract for the Council to deliver support services to the LLP

INTERNAL GOVERNANCE ARRANGEMENTS WITHIN THE LLP

5.3 One feature of an LLP is that there is no statutory regime requiring that it organise its control mechanisms in any particular fashion. That body is therefore entirely free to determine and establish whatever management and governance processes are appropriate for its circumstances.

5.4 Therefore, the constitution document of the LLP is of key importance. That document will be the Partnership Agreement. Within that document a number of matters will be established; the internal process for governance will be created and the roles and functions of the LLP itself will be detailed. It will also contain provisions as to the element regarding the process of winding up or terminating the LLP. In addition, the Partnership Agreement will dictate the relationship between the LLP itself and its two members (i.e. Scottish Borders

Council and the shell company). Through this document, therefore, the primary means of scrutiny of the LLP by Scottish Borders Council will be established. The Partnership Agreement will be able to establish spheres of decision making which will be taken entirely by the LLP and will also be able to detail spheres of decision making which cannot be taken without the written agreement of Scottish Borders Council. The Partnership Agreement is, therefore, the critical foundation document. Its terms are legally binding upon the LLP itself and in addition are binding on its Members. Examples of the type of decisions which will require the written agreement of Council are:

- Approval of the annual business plan
- Any future proposed changes to Support Service agreements with Council
- Entering into new areas of business
- Changes to the structure of the LLP Board

This list of examples will require to be further developed and will be set out in a schedule to the partnership agreement.

- 5.5 A second document which will play an important role in the scrutiny arrangements in respect of the LLP will be the Service Contract. In establishing the contract between Scottish Borders Council and the LLP for the provision of the care services, a number of Key Performance Indicators (KPIs) will be established. A Reporting Schedule shall also be established as part of the contract and the contract will contain provisions as to potential penalties in respect of failures to meet the KPIs agreed.
- 5.6 Therefore through the Partnership Agreement and the Service Contract, a regime will be established whereby the LLP reports regularly to the Council on issues including performance, financial management and key strategic decisions.

THE BOARD

- 5.7 It is proposed that the Partnership Agreement establish a Board for the internal governance of the LLP. As detailed in the report submitted in June 2014, it is proposed that the LLP Board may be made up of the following posts:
- Chair
 - Managing Director
 - Finance Director
 - Operations Manager
 - Non-Executive Directors (x 3)

It is of course important to the success of the LLP that this Board contains individuals with the correct experience to be able to contribute meaningfully to that success.

- 5.8 Officers have also been asked to consider whether, in addition to those posts detailed above, one or more SBC Councillors should be appointed to the Board. Audit Scotland has prepared a paper entitled: "Arm's Length External Organisations (ALEOs): Are You Getting it Right?" That paper is designed to promote and encourage good practice in the way ALEOs are set up and operated. It is the key message of the paper that where a Council seek to establish an ALEO, sound governance is needed from the outset and also that the monitoring of ALEOs should be risk-based and proportionate. The paper considers the role of Councillors in that monitoring process. It notes that Councillors do often serve on Boards of ALEOs and notes that this can be seen to help ensure that the Board acts in the interests of Council and to ensure Council has early warning of matters such as financial difficulties faced by the ALEO.
- 5.9 The paper does not state that such arrangements are necessary to achieve good governance. It neither advises in favour of, nor against, such an appointment. Rather it advises that, in deciding whether Councillors should be so appointed, careful thought be given to what that appointment will achieve. It also comments that becoming a member of the Board can impose significant additional responsibilities upon those Councillors appointed. In addition, appointment to such a Board gives rise to certain potentials for conflict of interest. The Audit Scotland paper suggests that where a Councillor is appointed as a member of a Board within an ALEO, that Councillor cannot be involved in any Council discussion or decision regarding the funding of that ALEO or indeed the scrutiny of that ALEO.
- 5.10 It is of note, perhaps, that if Councillors are to be appointed to the Board, those Councillors, under the model proposed in the report, will not have a majority control of that Board. It is therefore a matter for Council to determine, in the consideration of this report, whether it considers the appointment of a Councillor or Councillors to the LLP's Board would be helpful or necessary – mindful that such Councillors would therefore be unable to take part in further scrutiny of the LLP through the formal Council processes.
- 5.11 This issue has been considered and it is recommended that the proposed arrangements set out in the Business Case in June 2014 are adopted; that is that no Councillors should be appointed to the Board of the LLP. This clarifies roles of Members and avoids any potential conflicts of interest. Members will be fully involved in monitoring arrangements as set out in paragraph 5.12.

COUNCIL MONITORING

- 5.12 Scottish Borders Council will require to establish scrutiny, monitoring and control processes in respect of the relationships between the

LLP and Council. It is therefore recommended that a new monitoring group of Council be established- LLP Strategic Governance Group (the 'SGG'). It is recommended that the makeup of the Monitoring Group would include Councillors , the Chief Financial Officer, and the Chief Social Worker, the Lead Commissioner and a member of the Integration Board.

- 5.13 The SGG will be responsible for considering the reports from the LLP submitted to Council through the governance arrangements established in the Partnership Agreement and the Services Contract and where appropriate in turn form recommendations and report to the Executive. In addition an annual report will be presented to the Council.
- 5.14 The recommendations of the SGG, and subsequent decisions of the Executive, shall be much more than a superficial noting of the LLP's performance. Those recommendations and decisions will, when required, involve making key strategic decisions as to future direction and financial strategy for the LLP. They will also, if necessary, involve decisions as to the enforcement route to be adopted in respect of any remedies available to Scottish Borders Council under both the Services Contract and the Partnership Agreement.
- 5.15 Further work will be undertaken to define the role of the monitoring arrangement in more detail during the implementation stages which will be fully detailed in the partnership agreement which will be brought back to members in early 2015.
- 5.15 During the implementation phase it is proposed that an Officer and Member Reference Group be established to monitor the progress of the implementation and be appraised of any revisions to the implementation plan. It is proposed that 3 members would sit on the Reference Group.

6 IMPLEMENTATION OF BUSINESS CASE

- 6.1 Officers have commenced work on the early stages of the implementation of the Care Company which includes reviewing the original business case presented to members in June 2014 and an initial impact assessment on the Council.
- 6.2 A review of the business case has led to the removal of Local Authority Coordinators, who will now remain within the commissioning team in Scottish Borders Council. This change has no impact on new income or savings set out in the June 2014 business case.

- 6.3 An initial impact assessment on the Council of transferring the Council's services set out in the business case to the Council Care Company has been undertaken. The impacts fall into two main areas as follows:

New client/provider relationship

- 1) New commissioning strategy to reflect the transfer of Council services to the Care Company
- 2) Robust contract specifications and contract management
- 3) Performance monitoring of the Care Company will be introduced
- 4) Staff transfer to the Care Company to work under new delivery model
- 5) Improved management information for the contract

Support Service Contracts

- a) Support services will continue through contractual arrangements between the Care Company and Council e.g. IT, HR, Communications, Legal and Property
- b) Performance monitoring of support services by the Care Company will be introduced
- c) New lease agreement for buildings required by the Care Company

- 6.4 As Council will continue to provide the majority of support services to the newly established Care Company for at least the first two years, it is not anticipated that there will be any staff redundancies within the support service functions as a consequence of establishing the LLP. The impact assessment will continue to be reviewed as the project implementation develops over the next few months.

- 6.5 Over the next five months there is a considerable workload to ensure that Council meets the implementation deadline of April 2015. The key areas of work that will need to be progressed will include:

- i. Establishment of the Officer and Member Reference Group
- ii. Appointment of the Managing Director and Finance Director
- iii. TUPE transfer of staff
- iv. Finalising governance arrangements
- v. Designing and agreeing Service Contract
- vi. Establishing Commissioning arrangements for Council
- vii. Developing Service Level Agreements for Support Services
- viii. Establishment of the Strategic Governance Committee

7 IMPLICATIONS

7.1 Financial

The Business Case will continue to be subject to review and refinement during project implementation. All assumptions and detail provided in the previous report to Council in June 14 regarding new income and savings are still considered to be correct. The budget to be transferred will be verified during the project implementation and as part of Council's financial planning process for 2015/16.

7.2 **Staff Implications**

- (a) Managers and staff currently employed in the existing services will be TUPE transferred to the new organisation. The business case assures no change to terms and conditions for staff but does anticipate there will need to be new working practices adopted to ensure the benefits projected are realised. As Council will continue to provide the majority of support services to the newly established Care Company for at least the first two years, it is not anticipated that there will be any staff redundancies within the Support Service functions.
- (b) HR support will continue to be provided by Council and additional support to manage the TUPE process has been put in place to ensure that all staff affected will be fully consulted.

7.3 **Risk and Mitigations**

- (a) There is a risk that the company may not be successful in the future. The Business Case is based on a set of realistic assumptions and is subject to ongoing diligence and refinement.
- (b) There is a risk that by not establishing an Arms Length Company the cost of Council's own services will increase and fewer people will purchase these services resulting in higher unit costs or closures or reductions in service options.
- (c) There is a risk that staff are unsettled with the change during the implementation phase and a detailed communication plan is in place, including engagement and consultation with the Trade Unions to address this concern.
- (d) The project maintains a Risk Register and all risks are managed and reviewed on a regular basis.

7.4 **Equalities**

An Equalities Impact Assessment has been carried out on this proposal and it is anticipated that there are no adverse equality implications as the company will continue to provide services to all groups across the Borders.

7.5 Acting Sustainably

The new company will operate across the Borders and therefore there will be no economic or social impact.

7.6 Carbon Management

There are no known effects on carbon emissions associated with this report.

7.7 Rural Proofing

The LLP will be set up to provide services across the Borders including rural areas.

7.8 Changes to Scheme of Administration or Scheme of Delegation

Changes to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report will be required to the remit of Executive.

8 CONSULTATION

8.1 The Corporate Management Team, the Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR, the Service Director Interim Projects, Clerk to the Council and Corporate Communications are being consulted and their comments incorporated into the report.

8.2 During the development of the Business Case, and since the June 14 report to Council, there have been discussions with staff, managers and Union representatives in the Council about the proposals and written information has also been sent out. In addition a session was held with service user/carer representative groups to explain the rationale and a presentation has also been made to the Integration Shadow Board. Further staff and managers sessions will continue to be arranged throughout the implementation phase. The Project Team also continues to meet with the Joint Trade unions on a monthly basis.

Approved by

Depute Chief Executive People

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Signature

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Background Papers: Council Care Organisation (CCO) Business Case

Previous Minute Reference: Minute – Scottish Borders Council 26 June 2014

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Elaine Torrance can also give information on other language translations as well as providing additional copies.

Contact us at Elaine Torrance, Chief Social Work Officer, 01835 825080