

HERTFORDSHIRE COUNTY COUNCIL

CABINET

MONDAY, 18 DECEMBER 2017 AT 2.00PM

**ADULT CARE SERVICES ESTABLISHMENT OF A LOCAL AUTHORITY
TRADING COMPANY TO PROVIDE ADULT SOCIAL CARE SERVICES**

Report of the Director of Adult Care Services

Author: Steven Lee-Foster, Operations Director, Community
& Specialist Services (Tel: 01992 555748)

Executive Member: Colette Wyatt-Lowe, Adult Care & Health

1. Purpose of report

- 1.1. To outline to Cabinet the business case, attached at Appendix 1 to the report, for the establishment of a Local Authority Trading Company (LATC) to provide Adult Care Services and to seek Cabinet's approval to the business case.

2. Summary

- 2.1. Adult Care Services in Hertfordshire are facing unprecedented challenges while the demand for care is rising. At the same time there have been a number of cases of providers withdrawing from the market, and occasions in the home care, supported living, and residential care sectors that have required the Council to intervene to source alternative provision or take on the services itself. This has highlighted the need to look at innovative solutions when the Council is required to intervene to stabilise services and ensure continuity of care.
- 2.2. Where alternative providers cannot be sourced, or urgency means it is not feasible to re-procure a service in time, the only option at present is for the Council to take on the direct management of a service. While this can work well, the increasing number of interventions is placing a considerable strain on resources and new ways of addressing the problems in the local care market need to be explored. Officers have undertaken preparatory work assessing various options including the option of creating a Council-owned LATC.
- 2.3. This approach is now well established with many local authorities operating LATCs to deliver Adult Care and other services. The initial feasibility work suggests this would be an appropriate option.

3. Recommendations

- 3.1. The Adult Care and Health Cabinet Panel considered a report on this item of business at its meeting on 14 November 2017. The Panel recommended to Cabinet:-

“That Cabinet:

- i. approves the business case for, and the establishment of, the wholly owned trading company as referred to in this report;*
- ii. delegates to the Director of Adult Care Services in consultation with the Executive Member for Adult Care & Health, the Executive Member for Resources, Property & the Economy, the Director of Resources and the Chief Legal Officer, the authority to agree such documents and arrangements and to take such other actions as are appropriate to establish the company;*
- iii. authorises the Chief Legal Officer, in consultation with the Director of Adult Care Services, to appoint officers as directors of the company;*
- iv. agrees to provide indemnities (or equivalent insurance) under the Local Authorities (Indemnities for Members and Officers) Order 2004 to employees of the Council who are appointed as Directors of the company and delegates to the Chief Legal Officer the power to finalise and issue the indemnities;*
- v. delegates authority to the Director of Resources to exercise the rights of the Council as shareholder including attending and voting at meetings, and requesting the Directors to take or refrain from taking action.”*

4. Background

- 4.1 Adult Care Services are facing unprecedented pressures due to the combination of a growing and ageing population, increasingly complex care needs, and rising care costs. There is evidence that care providers are facing significant challenges, and in some areas the provider market is precarious. Alongside this there is significant demand for homecare and supported accommodation of all kinds across the county with particular pressures in certain areas. In addition, while the care market is relatively stable, there are widespread shortages of care workers. Some providers are reviewing their services, and some are withdrawing from the care market altogether. Others are willing to invest and develop services providing adequate funding can be secured.
- 4.2. There is a significant challenge to support providers to ensure that care services can meet the demand for care and deliver high quality services at a price the Council can afford. Where an external provider is no longer able or willing to continue to provide a service, the Council has to source an alternative service or intervene directly to prevent a service from ending prematurely. There are a number of established

processes that give rise to the need to intervene in the local care market. The four most common areas are set out below.

- i. Concerns identified through the Adult Care Services commissioning, market resilience and monitoring processes;
 - ii. Serious concerns relating to care quality (including safeguarding);
 - iii. Best value and financial appraisals of services and service providers;
 - iv. Financial failure or a provider withdrawing from a service;
- 4.3 Where the Council is required to intervene in the care market it may have to re-provide a service, or maintain the service and replace the service provider. This can entail complex contractual and regulatory issues as well as all the practical matters related to the service quality and ensuring the safety of those receiving care.
- 4.4 Over the past two years Adult Care Services have been faced with having to source alternative provision – sometimes at very short notice – in the areas of supported living for residents with a learning disability, day opportunities, and home care. In addition, the Council has also had to remedy service failures in the areas of residential care, including taking on the temporary management of a residential care home. Adult Care Services have looked at ways of mitigating the risks associated with these interventions and the development of a LATC will offer a new alternative to existing in-house solutions as this is currently the only option available when time and other constraints mean it is not possible to source a replacement provider.
- 4.5 If a LATC is formed, it will provide a new option to be assessed when responding to events that involve the withdrawal, cessation, failure, or likely failure of an adult care service. The placement of services within the LATC will only be considered for delivery through the company subject to individual business appraisals and while it is likely to undertake services on a temporary basis where necessary to stabilise a service, it would also be able to deliver services for longer periods.
- 4.6 The company's primary focus will be on responding to the need to have in place the option of taking on adult care services where there are no viable alternative options. For any service undertaken by the LATC the approach will involve partnership working, service-user involvement, and adding value to other existing services provided by external providers.
- 4.7 The company would be able to receive services that need to be placed with a new provider because the existing provider is unable or unwilling to continue with the service (this may be for financial reasons, concerns around quality of care, or because a provider is withdrawing from the market or service area).

- 4.8 A LATC would be focused on ensuring the Council can fulfil its requirement to ensure safe care can continue to be provided when a provider is facing difficulties or is no longer able or willing to provide a service. It is currently envisaged that the most likely areas where the LATC could be used as a suitable vehicle are:
- i. Supported living and accommodation-related services;
 - ii. Care at home;
 - iii. Day opportunities;
 - iv. Residential care.
- 4.9. If approved, the LATC would initially be established with directors without any other staff, but as business appraisals are undertaken for future market interventions these would need to consider the staffing and other implications for the Council of using the LATC. If established, the current market resilience and appraisal system would be adapted to include the potential to use the LATC as part of the due diligence and cost-benefit process that is used to assess the options for any service intervention or re-provision. The market resilience work of Adult Care Services has framed the business case for the LATC in order to clearly define what its objectives would be.
- 4.10. The strategic objectives of the company are set out below.
- i. To deliver adult social care services by developing care and support solutions in partnership with other providers and stakeholders.
 - ii. To increase the options available to the Council in order that it can support the care market and mitigate risks of market failure.
 - iii. To be in a position to respond to provider failure if asked to do so, including developing short-notice response and “turnaround” services.
 - iv. To provide high quality services ensuring every customer is safe and has an opportunity to influence and shape the Company’s services.
 - v. To manage the business efficiently so that the LATC is able to provide alternative options to mitigate risk to vulnerable people.
- 4.11. There are a number of alternative options to the limited company approach and these have been explored as the business case has been developed. All of the options below have been considered.
- i. Mutual;
 - ii. Charity;
 - iii. Social Enterprise;
 - iv. Local Authority Trading Company;
 - v. Shared Management Arrangements.
- 4.12. The LATC option has been recommended for a number of reasons. These include the importance of retaining direct influence over

activities to ensure the Council's "provider of last resort" responsibility can be fulfilled through the LATC. Market intervention involves the provision of services and therefore there is no need for a vehicle to own any community assets, such as land and buildings. Importantly, the preferred option also has to be flexible enough to adapt and change: some services may only need to be stabilised and managed for a short period, while others may need to be managed for longer periods. To allow for this flexibility, a LATC is considered a good model for intervention.

- 4.13. A LATC would need to develop a strong values-based approach to the work and importantly it would need to offer the same opportunities for co-production, involvement and engagement with service users and residents as other options.

5. **Legal considerations and governance arrangements**

- 5.1. The provisions of Section 1 of the Localism Act 2011 and the Local Government Act 2003 allow the Council to establish a wholly owned company. The primary purpose of the wholly owned company is to undertake commercial activities with a view to making a profit. By adopting a company vehicle there will be the ability to pursue trading opportunities if necessary.
- 5.2. Subject to Cabinet's approval, a company limited by shares will be set up. This will be a wholly owned company of the Council. The company's day to day governance will be managed by a Board of Directors. The Board of Directors is likely to consist of Council officers and independent directors who can bring commercial and other expertise to the company.
- 5.3. The Council will be the sole shareholder of the company and will have the ability to direct the Directors to take or refrain from taking specified action. This is likely to be achieved through arrangements with the company whereby certain key matters will be reserved for consideration by the Council or its nominated shareholder.
- 5.4. It is proposed that officers will be appointed as Directors to the company and these appointments will be made by the Chief Legal Officer – this is in line with the post's general powers in relation to appointments to outside bodies. Such delegation is important to ensure that the Council's nomination can be changed at short notice, which might be necessary from time to time.
- 5.5. In order to manage the personal risk to employees of the Council who are appointed as Directors of the company, it is proposed that the Council provides an indemnity or equivalent insurance to those who are appointed as directors of the company.

6. Financial Implications

- 6.1. There are no immediate financial implications relating to the company at this stage other than the administrative cost associated with the company formation. The business case attached outlines potential set up costs if the LATC were to be used in the way proposed. These costs together with the operating costs for the company will need to be subject to a separate business case and detailed financial appraisal.

7. Equalities Implications

- 7.1. When considering proposals placed before Members it is important that they are fully aware of, and have themselves rigorously considered the equality implications of the decision that they are making.
- 7.2. Rigorous consideration will ensure that proper appreciation of any potential impact of that decision on the County Council's statutory obligations under the Public Sector Equality Duty. As a minimum this requires decision makers to read and carefully consider the content of any Equalities Impact Assessment (EQiA) produced by officers.
- 7.3. The Equality Act 2010 requires the County Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics under the Equality Act 2010 are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief, sex and sexual orientation.
- 7.4. An Equality Impact Assessment (EqIA) has been undertaken and this is attached at Appendix 2 to the report. It has been assessed that currently there will be no negative impact on anyone with identified protected characteristics. There is however the potential for a positive impact on older people, as a clear objective of these proposals is to improve market resilience to help the Council respond effectively to provider failures in order to safeguard service users.

Background Information

Local Authorities (Indemnities for Members and Officers) Order 2004

<https://www.legislation.gov.uk/ukdsi/2004/0110495314>

Localism Act 2011

<http://www.legislation.gov.uk/ukpga/2011/20/section/1/enacted>

Local Government Act 2003

<https://www.legislation.gov.uk/ukpga/2003/26/contents>