

Transition of Shared Services

Cabinet	25 January 2023
Report Author	Ingrid Brown, Head of Legal and Democracy and Monitoring Officer
Portfolio Holder	Councillor Rob Yates
Status	For decision
Classification:	Unrestricted
Key Decision	No
Reasons for Key:	This is not a key decision
Previously Considered by:	This report has not been previously considered
Ward:	No direct impact on wards

Executive Summary:

Civica has provided Revenue, Benefits and Customer Services functions to Canterbury, Dover and Thanet Council as a shared service since 2018. In 2021 Civica indicated the intention to cease providing such services after the expiry of the current contract in January 2025. The report attached at Annex 1 which is the report taken to East Kent Services Committee on the 8 January 2024, provides details of alternative options in relation to service delivery in these areas to the three district councils.

Recommendation(s):

It is recommended that Cabinet:

1. Note that the contract between East Kent Shared Services and Civica UK limited for the delivery of Revenue, Benefits and Customer Services will terminate in March 2025.
2. Note the content of the Service Transition Case at Annex 1 of this report and agree in principle to the formation of a joint local authority trading company together with Canterbury and Dover for the delivery of the services referred to in 1 above.
3. Agree that a further report will be presented to Cabinet for approval within 4 months together with a detailed business plan for the proposed company, a draft shareholders agreement and proposed articles of association.

Corporate Implications

Financial and Value for Money

The economic case outlines the options for the delivery of the programme and recommends the option that is most likely to offer best value for money, least risk and maximum social value to the EK partnership, this being a LATCO.

Other models have been considered as part of this process and are currently ruled out based on financial viability.

Legal

In exercising any power or duty the Council must act for proper purposes, in good faith and must exercise its powers properly, following proper procedures in a "Wednesbury reasonable" manner. In other words, the Council must act for proper motives, taking into account all relevant considerations, ignoring irrelevant matters, not act irrationally and must balance any risks against any potential rewards. Additionally, the Council must observe its usual fiduciary duties to its tax and business rate payers and must discharge its functions with reasonable care, skill and caution, and with due regard to the interest of those tax and rate payers. The Council must also exercise its powers and comply with its duties in accordance with best value duties as set out in the Local Government Act 1999, that is to say it must make arrangements to secure continuous improvement in the way in which it exercises its functions, having regard to a combination of factors, including economy, efficiency and effectiveness.

Section 95 of the Local Government Act 2003 gives the Council the power to trade, subject to restrictions contained within the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the 2009 Order). The 2009 Order empowers the Council to do for a "commercial purpose" anything which it is authorised to do for the purpose of carrying on its ordinary functions. Section 1 of the Localism Act 2011 introduced the concept of the General Power of Competence (GPOC), but section 4 requires the exercise of the GPOC for a commercial purpose to be undertaken through a company (inter alia per section 1(1) of the Companies Act 2006); this includes a company limited by shares.

Where the Council exercises power under the 2009 Order to do anything for a commercial purpose, the 2009 Order states that it must first prepare a business case and approve that business case. A business case must contain the objectives of the business, the investment and other resources required to achieve those objectives, any risks the business might face (and how significant they are) and the expected financial results of the business, together with any other relevant outcomes the business is expected to achieve (s2(4)(a)-(d)). It must also ensure that it recovers the costs of accommodation, goods, services, staff or any other thing that it supplies to a company in pursuance of the exercise of that power. The business case will thus necessarily include consideration of the proposed company structure including consideration of Teckal, subsidy control, set up costs, details of any commercial transfer agreement, capital loan etc.

The legal risks inherent in setting up a company should be mitigated by taking legal advice on all aspects of the proposal. The advice will need to cover aspects such as:

- a. procurement (including Teckal criteria and compliance);
- b. governance and directors;
- c. subsidy control;
- d. TUPE;
- e. equal pay; and
- f. information governance.

Further advice will be required on the implementation of the proposed operating model (once defined), including the contractual arrangements such as:

- a. legal review of any existing contracts proposed to be accessed by the newly incorporated vehicle;

- b. incorporation;
- c. shareholder agreement;
- d. support service agreement
- e. working capital loan agreement;
- f. commissioning contract; and
- g. any lease / licence to occupy.

Risk Management

There are a number of risks arising from this report. The first is that the contract with Civica will expire before new arrangements are in place for the delivery of services. For this reason it is imperative that an in principle decision is made in respect of future service delivery.

There are a number of risks associated with setting up a shared company. These can be mitigated by ensuring close consideration of a detailed business plan as well as the shareholders agreement, articles of association, details of any working capital loan and commercial transfer agreement. Legal review of these documents will ensure that the Council's interests are protected.

Equality Act 2010 & Public Sector Equality Duty

An equalities screening tool has been completed. This demonstrates that there are no equalities considerations arising out of the decisions being sought in this report.

Corporate Priorities

This report relates to the following corporate priorities: -

- Growth- depending on its structure, there is potential for a LATCo to trade commercially. The extent of such trading will again depend on the structure of the company. It is understood that the

1.0 Introduction and Background

The background and introduction to this report are set out in the report appended at Annex 1

2.0 The Current Situation

This is set out in detail in the report appended at Annex 1. This report was presented to East Kent Services Committee for approval on the 8 January 2024. The Committee agreed that an identical report would be presented to the Cabinet of each of the District Councils.

3.0 Options

Options in relation to future service delivery are fully explored in the report appended at Annex 1. Cabinet may however decide not to agree in principle that services currently being provided by Civica to Thanet, Dover and Canterbury, should be

provided through the establishment of a Joint Local Authority Trading Company. In the event Cabinet took this decision work could not progress to ensure that arrangements are in place for the future delivery of services in time for the termination of the contract with Civica. In the event Cabinet agrees to the decision being sought this work can commence and alternative arrangements for service delivery can be in place in time for the termination of this contract.

The report appended at Annex 1 demonstrates that the preferred option and most financially viable option for the future delivery of the services referred to in this report, is for them to be delivered through a Joint Local Authority Trading company.

Cabinet will note that there are more extensive recommendations in the report that was presented to East Kent Services Committee. It is open to Cabinet to agree these recommendations and it is understood that these are the recommendations that are being presented to the other two district councils. These recommendation allow for all matters in relation to the establishment of the LATCo to be delegated to East Kent Services Committee without further reference to Cabinet. The recommendations in this report allow for Cabinet to consider a more detailed business plan, detail of the Shareholders agreement as well as the Articles of Association.

4.0 Next Steps

In the event that Cabinet agree the decisions sought in this paper then work will continue to prepare a detailed business plan. External legal support is also being sought to assist with the drafting of a Shareholders Agreement, the Articles of Association and any other necessary documentation. It is proposed that these are presented to cabinet for approval together with a detailed business plan within four months.

Contact Officer: Ingrid Brown
Reporting to: Chris Blundell

Annex List

Annex 1: Report to East Kent Services Committee and Business Plan

Background Papers

With the exception of the papers included in Annex 1- there are no background papers.

Corporate Consultation

Finance: Matthew Sanham- Head of Finance and Procurement

Legal: Ingrid Brown- Head of Legal and Democracy and Monitoring Officer

