

## TRANSITION OF SHARED SERVICES

<b>Overview and Scrutiny Panel</b>	16 July 2024
<b>By</b>	Jasvir Chohan (Interim East Kent Services Transition Manager)
<b>Cabinet Portfolio Member</b>	Councillor Rob Yates
<b>Key Decision</b>	No
<b>Decision classification</b>	Unrestricted
<b>Call in status</b>	No
<b>Ward:</b>	N/A

### Purpose of the Report

This report seeks Cabinet's authority for the creation of a Local Authority Trading Company, a joint teckal company, together with Dover and Canterbury. The company will deliver Revenue, Benefits and Customer Services to the three Council. These services are currently being provided by Civica. The contract with Civica will expire in January 2025. If Cabinet agrees this report's recommendations, Thanet District Council (the Council) will become an equal Shareholder with Dover and Canterbury, the company, to be known as PartnershipOne, can formally be registered at Companies House and work can commence in respect of the further establishment of the company as detailed in the body of this report.

### Recommendation(s)

Overview and Scrutiny Panel is being asked to note the content of this report, to note the recommendations being asked of Cabinet and set out below and to make any recommendations it considers appropriate for Cabinet to consider.

Cabinet is asked to:

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 January 2025.
2. Agree to exit from the contract with Civica UK Limited for the delivery of the Revenue, Benefits and Customer Services.
3. Approve the LATCo service delivery vehicle as the preferred option for future service delivery of Revenue, Benefits and Customer Services.
4. Approve the Business Case at Annex 1 setting out the rationale for the delivery of the aforementioned services by a Joint Teckal Company, a Local Authority Trading Company (LATCo), together with Dover and Canterbury, pursuant to Article 2 (2)(b) of the Local Government (Best Value Authorities) Power to Trade)(England) Order 2009.
5. Agree the Shareholders Agreement and Articles of Association at Annex 2
6. Authorise the East Kent Services Committee, to the extent that it is not otherwise authorised to do so, to exercise the powers and functions of the Council to form the

LATCo and to enter into the contract with it, (to include but not limited to); making decisions on behalf of the Council in relation to:

- (i) Establishing the LATCo and enter into any associated shareholders agreements.
- (ii) Appointing officers to the LATCo.
- (iii) Subscribing for shares in the LATCo
- (iv) Advancing money by way of loan capital to the LATCo to finance its capital requirements.
- (v) Entering into a contract with LATCo for the delivery of the Revenue, Benefits and Customer Services on behalf of each of the councils.
- (vi) Managing the contract.
- (vii) Renegotiating the contract.
- (viii) Varying the contract.
- (ix) Assigning the contract.
- (x) Novating the contract.
- (xi) Terminating the contract.
- (xii) Enforcing the contract.
- (xiii) The doing of anything in relation to the exercise of the powers and functions under Part II of the Deregulation and Contracting Out Act 1994 and the orders and regulations made under it.
- (xiv) Authorising entry into contracts\* with third parties in relation to any functions of the Council which are not the Revenues, Benefits and Customer Services Functions but which can usefully be entered into in connection with or in order to facilitate contracts entered into, or to be entered into with regard to the Revenues, Benefits and Customer Service Functions.

\*the contracts shall be entered into in accordance with each local authority's respective Contract Standing Orders.

- (xv) Anything which is calculated to facilitate, or is conducive to or otherwise expedient to (i) to (xv) above.
7. To authorise the East Kent Services Committee, to the extent that it is not otherwise authorised to do so, to exercise the powers and functions of the Council in its capacity as a shareholder of the LATCo, including the giving of any consent, approval or permission under the provisions of any shareholders agreement BUT NOT the giving of any approval under the shareholders agreement to carry out any matters which are specified as Reserved Matters under the shareholders agreement.
8. Agree that a report be considered by EKSC on final contract terms and, if approved, authorisation of entry into the contract and associated documentation.
9. Agree that a new collaboration agreement be entered into between the authorities dealing with and reflecting:
- (a) The fact that the existing collaboration agreement makes specific reference to Civica (UK) Limited.

- (b) The management of the service contract with the LATCo and the rights of liabilities of the councils (inter se) in relation to the service contract with the LATCo.
- (c) The reduced number of services now being delivered as shared services e.g. ICT and Human Resources are no longer delivered as shared services.
- (d) The changes to the procurement regime effected by the Procurement Act 2023.
- (e) Data protection matters.
- (f) Such other matters as are considered appropriate by the monitoring officer.

The terms of such new agreement to be determined by the monitoring officer in consultation with the Leader.

## **1. Summary of Reasons**

- 1.1 The contract with Civica to deliver Revenue, Benefits and Customer Services will expire in January 2025. As set out in the Business Case appended to this report, a number of Options have been considered for the alternative delivery of these services. The options considered are as follows:
  - Shared Services
  - Disaggregation of Services
  - Alternative outsourcing company
  - LATCo
- 1.2 On the 25 January 2024 Cabinet considered a report and an initial business case setting out the various options for service delivery. Cabinet agreed in principle to the formation of a LATCo together with Canterbury and Dover for the delivery of the services referred to above. Cabinet also agreed that a further report will be presented for approval together with a detailed business plan for the proposed company, a draft shareholders agreement and proposed articles of association.
- 1.3 Since Cabinet's decision on the 25 January work has continued together with Canterbury and Dover towards the establishment of the LATCo. This has included developing the Shareholder's Agreement and the Articles of Association. In order to progress matters further in relation to the establishment of a LATCo, the decisions sought in this report now need to be made.

## **2. Background**

- 2.1 In 2011, Canterbury, Dover and Thanet councils formed a shared services vehicle 'EK Services' through which Revenues, Benefits, Customer Services and ICT functions were delivered on behalf of the three authorities.
- 2.2 In 2017, Canterbury, Dover and Thanet Councils made a joint decision to outsource the Revenues, Benefits and Customer Services functions to Civica and since 2018 these services have been delivered by Civica. To date this service has been a successful service with high customer satisfaction rates.
- 2.3 In 2021 Civica informed the Council that it was strategically exiting the Business Process Outsourcing Market and that its contract with East Kent Services would not be extended beyond January 2025.
- 2.4 As a result of Civica's decision work commenced between the three different councils to explore the most suitable service delivery vehicle for these services. The possible options are explored in some further detail in the attached business case.
- 2.5 In October 2022, an outline business case was developed and approved by the East Kent Services Board.
- 2.6 In January 2024 the business case was presented to Cabinet and Cabinet agreed in principle that a joint LATCo with Canterbury and Dover was the preferred method of delivering the services previously being delivered by Civica.
- 2.7 Since January 2024 work has been ongoing between the three Councils to develop the Shareholders Agreement, Articles of Association as well as the Business Plan for the Company. These now require Cabinet approval.
- 2.8 In view of the changes to the way in which the three councils are to be delivering the aforementioned services, changes also need to be made to the Collaboration Agreement which was signed between the three Councils originally on the 4 May 2011.

### **3. Relevant Issues**

- 3.1 As indicated throughout this report a number of options have been explored in relation to the best model to deliver Revenues, Benefits and Customer services previously delivered to the three councils by Civica. The business case attached to this report indicates that the establishment of a LATCo will provide best value. In accordance with the decision made by Cabinet in January 2024, work has commenced towards establishing the Governance Framework necessary for the operation of a joint LATCo.
- 3.2 The LATCo's Governance arrangements are determined by the Articles of Association and Shareholder Agreement. The Articles of Association regulate how the LATCo is managed, the rules of the company whilst the Shareholders agreement sets out how the company is to operate and outlines the rights and obligations of each shareholder. Both documents are required by Companies House in order to register the LATCo. Once the LATCo is registered it becomes a legal entity and can start to operate as such and enter into the necessary contracts for the delivery of services.

- 3.3 The Shareholders' Agreement provides that each Council has an equal share in the company. The company structure is also provided for in this agreement. This provides that there should be a Board of Directors, and an Executive Shareholder Committee (East Kent Services Committee) made up of Councillor representatives from each of the Councils. Each Council will retain a level of oversight and those matters for decision listed as 'reserved matters' within the Shareholders' Agreement must be decided by each Council.
- 3.4 In order to further progress the transition of services from Civica to the LATCo new contracts will be required between the separate parties, some contracts may need to be novated and there are additionally staffing and pensions considerations. These maybe further progressed once the company exists as a legal entity and it is proposed that East Kent Services Committee make decisions on behalf of the Council in relation to these matters.

## **4. Alternative Options**

- 4.1 Options in relation to future service delivery are fully explored in the business case which is appended at Annex 1. As set out earlier in this report there are essentially four options for future service delivery. These are the disaggregation of services, an alternative outsourcing company, a shared service or a LATCo. The disaggregation of services is costly and inefficient. A shared service benefits from economies of scale and efficiency through sharing limited resources. Whilst there are some financial advantages to a shared service the options analysis in the business case illustrates that the most financially beneficial option is the LATCo in that it both benefits from economies of scale and also the option to operate commercially.
- 4.2 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.
- 4.3 In relation to the Shareholders Agreement and the Articles of Association, it is open to Cabinet to approve, reject these or propose some amendments. Both documents have been carefully drafted with the benefit of expert legal advice from those with expertise in Local Authority Trading Companies. The structure of the company as well as the list of reserved matters to be agreed by the executive shareholder committee has been given careful consideration. In the event that Cabinet does not accept these, it will not be possible to register the company and to progress the transfer of services in the way proposed.

## **5. Consultation**

- 5.1 There is no statutory or public law duty to consult in relation to the decisions sought in this report.

## **6. Corporate Implications**

- 6.1 **Finance and Resources**

- 6.1.1 All costs relating to establishing the proposed LATCo and also all costs associated with the operation of its services can be met from within existing approved budgets.

### **Legal and Constitutional**

- 6.1.2 In accordance with the provisions set out in Article 6 of the Council's constitution the Overview and Scrutiny Panel may make reports or recommendations to Cabinet in respect of the discharge of any function. Cabinet must then consider and respond to any recommendations made.
- 6.1.3 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 ratepayers and must discharge its functions with reasonable care, skill and caution, and with due regard to the interest of those tax and ratepayers. 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.
- 6.1.4 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.
- 6.1.5 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.
- 6.1.6 The legal risks inherent in setting up a company should be mitigated by taking legal advice on all aspects of the proposal and in relation to these proposals specialist external legal advice has been obtained. Further legal advice will also be required in respect of the intent to exit the Civica contract as well as new contracts between the parties and the novation of any existing contracts.

### **6.1.7 Council Policies and Priorities**

6.1.8 The decision sought in this report relates to the following Corporate Priority:

- To work efficiently for you

#### **6.1.9 Risk**

6.2.0 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 the decisions sought in respect of service delivery are made at the earliest opportunity.

6.2.1 There are a number of risks associated with setting up a shared company. These are mitigated by provisions within the shareholder's agreement and articles of association which have been carefully drafted by leads from each of the three Councils together with advice from in-house and external legal advisors.

#### **6.2.2 Climate Change and Biodiversity**

6.2.3 There are no climate change or biodiversity implications arising out of the decisions sought in this report.

### **8. Equality, Equity and Diversity Implications**

8.1 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.

### **9. Crime and Disorder Implications and Community impact**

9.1 There are no Crime and Disorder implications arising from the decisions sought in this report.

### **10. Subject History**

10.1 This is set out in paragraphs 2.1 to 2.8.

#### **Annexes**

Annex 1 - Business Case  
Annex 2- Shareholders' Agreement  
Annex 3 - Articles of Association

#### **Background Papers**

There are no background papers

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**Report Sign Off**

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