

# Health and Adult Social Care Overview and Scrutiny Committee Supplementary agenda no 1

**A meeting of the committee will be held on:**

**Date:** Tuesday, 24 January 2017

**Time:** 6.30pm

**Venue:** Meeting Room 2 - Level 3, Gun Wharf, Dock Road, Chatham  
ME4 4TR

**Membership:** Councillors Wildey (Chairman), Purdy (Vice-Chairman), Aldous,  
Fearn, Franklin, Freshwater, Hall, Howard, Iles, Khan, McDonald,  
Murray and Shaw

**Co-opted members without voting rights:**

Christine Baker (Medway Pensioners Forum), Dan Hill (Healthwatch Medway CIC)  
and Paddy Powell (Healthwatch Medway CIC Representative Substitute)

## Agenda

**11 Call-In - Health and Wellbeing Traded Services**

**(Pages  
5 - 16)**

This report advises the Committee of a notice of call-in received from six Members of the Council of the Cabinet's decision (174/2017 and 175/2017) to approve the establishment of a subsidiary of Medway Commercial Group, to be called MCG Health and Wellbeing, or a suitable alternative, to commission and deliver public health services as set out in the attached Cabinet report (attached as Appendix 1).

The Committee must consider the Cabinet decisions and decide either to take no further action, to refer the decisions back to Cabinet for reconsideration or to refer the matter to full Council.

## **Reason for Urgency**

The Chairman is asked to accept this report as urgent because the next meeting of the Committee after 24 January takes place on 16 March 2017. Consideration of the report by the Committee at this meeting would risk a delay to the establishment of a subsidiary of Medway Commercial Group from 1 April 2017, as per the Cabinet decision. In accordance with Chapter 4, part 5, paragraph 15.4 of the Council's Constitution, once a decision has been called in, it must be considered by the next available meeting of the relevant Overview and Scrutiny Committee.

## **12 Exclusion of Press and Public**

**(Pages  
17 - 34)**

This report summarises the content of an exempt appendix which, in the opinion of the proper officer, will contain exempt information within one of the categories in Schedule 12A of the Local Government Act 1972. It is a matter for the Committee to determine whether the press and public should be excluded from the meeting during consideration of this document.

**For further information please contact Jon Pitt, Democratic Services Officer on Telephone: 01634 332715 or Email: [democratic.services@medway.gov.uk](mailto:democratic.services@medway.gov.uk)**

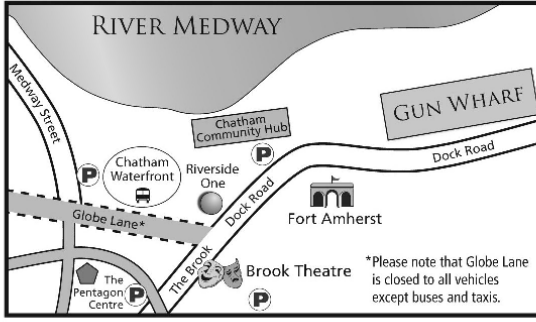
**Date: 20 January 2017**

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## HEALTH AND ADULT SOCIAL CARE OVERVIEW AND SCRUTINY COMMITTEE

24 JANUARY 2017

### CALL-IN: HEALTH AND WELLBEING TRADED SERVICES

Report from: Andrew Burnett, Interim Director of Public Health

Author: Jon Pitt, Democratic Services Officer

#### Summary

This report advises the Committee of a notice of call-in received from six Members of the Council of the Cabinet decisions (174/2017 and 175/2017) to approve the establishment of a subsidiary of Medway Commercial Group, to be called MCG Health and Wellbeing, or a suitable alternative, to deliver public health services as set out in the attached Cabinet report (attached as Appendix 1).

The Committee must consider the Cabinet decisions and decide either to take no further action, to refer the decisions back to Cabinet for reconsideration or to refer the matter to full Council.

#### Reason for Urgency

The Chairman is asked to accept this report as urgent because the next meeting of the Committee after 24 January takes place on 16 March 2017. Consideration of the report by the Committee at this meeting would risk a delay to the establishment of a subsidiary of Medway Commercial Group from 1 April 2017, as per the Cabinet decision. In accordance with Chapter 4, part 5, paragraph 15.4 of the Council's Constitution, once a decision has been called in, it must be considered by the next available meeting of the relevant Overview and Scrutiny Committee.

#### 1. Budget and Policy Framework

- 1.1 In accordance with Chapter 4, part 5, paragraph 15.3 of the Constitution with regard to decisions, Cabinet decisions 174/2017 and 175/2017 have been called-in to this Committee by six Members of the Council.

#### 2. Background

- 2.1 The Cabinet considered this matter on 17 January 2017 and the discussion and the decisions are set out in paragraphs 2.2 to 2.6 below

## 2.2 Discussion

The Cabinet report provided details of proposals to create a traded service for the delivery of health and wellbeing services (attached as Appendix 1). It provided details of six potential models and recommended the establishment of a Local Authority Trading Company, specifically as a subsidiary of Medway Commercial Group (MCG), enabling the combined team to bid for upcoming health and wellbeing commissioning opportunities in Thurrock, Kent and East Sussex.

2.3 The report stated that the company would be a subsidiary of MCG and would be 100% owned by Medway Council, which provided a number of safeguards and mitigated key risks.

2.4 The report stated that, given the service delivery model for Medway residents was not changing, it was not considered necessary to undertake a Diversity Impact Assessment on the proposals.

2.5 An exempt appendix (Appendix 2, attached to the Exclusion of the Press and Public agenda item) set out the outline business case, options appraisal and detailed business case.

## 2.6 Cabinet Decision

***Decision number:***

***Decision:***

**174/2017**

**The Cabinet approved the establishment of a subsidiary of Medway Commercial Group to be called MCG Health and Wellbeing, or a suitable alternative, to commission and deliver public health services as set out in this report, from 1 April 2017.**

**175/2017**

**The Cabinet agreed to delegate authority to the Chief Legal Officer, in consultation with the Leader, the relevant Portfolio Holder(s) and Chair of the MCG Ltd Board to finalise the governance arrangements for the new company and complete any necessary legal requirements and any other arrangements as necessary.**

**The Cabinet noted that the Chief Executive will make the necessary appointments to the new subsidiary board for Health and Wellbeing Services and any other MCG Subsidiary Boards subsequently established under his delegation from Full Council in consultation with Group Whips and having taken into account the views of the Leader and the Chair of MCG Ltd Board.**

## **2.7 Reasons for decision**

With Local government funding restrictions continuing to reduce overall budgets and the ring fence coming off the Public Health Grant by 2020, trading services provides an opportunity to generate income and deliver more efficient services in Medway.

- 2.8 The above decisions were subsequently called in by six Members of the Council. The reason for the call in is as follows:

*“This decision is being called in to allow for full scrutiny prior to a substantial change in Council structures.”*

## **3 Director’s Response**

- 3.1 Medway Council is in an almost unique position in having its own public health provider arm, which thus has substantial ‘inside’ understanding of Council requirements as well as an excellent track record in service delivery. This service is thus particularly well placed to go to market with service offers that are both of a type and in a style likely to appeal to other councils (as well as NHS organisations) to help address population-level health needs.

- 3.2 With the Public Health Grant decreasing year-on-year, and its current ring-fence likely to be removed by 2020, generating income by trading services in which we have substantial expertise is an important way of providing a funding stream to support such services for Medway residents.

- 3.3 It is important to note that this proposal will not change the way that public health services are provided to Medway residents; rather, it is intended to better secure their continuation.

## **4. Options**

- 4.1 The options open to this Committee in dealing with this call in are to:

- a) ask Cabinet to reconsider its decisions if Members have concerns about them (setting out in writing the nature of any concerns), or
- b) refer the matter to full Council so Council can decide whether or not to object to the decisions and, if so, then refer them back to Cabinet for reconsideration, or
- c) to consider the matter and accept the Cabinet decisions.

- 4.2 In accordance with rule 15.8 of the constitution, Overview and Scrutiny Committees should normally only use the power to refer a matter to the full Council for consideration with a request for referral back to the decision-maker if it considers either:

- a) that the decision is contrary to the policy framework or contrary or not wholly in accordance with the budget;
- b) where a request for call-in is signed by six or more members representing at least two political groups.

## **5. Risk Management**

- 5.1 Risk management is addressed in section 5 of the Cabinet report attached as Appendix 1.

## **6. Financial and legal implications**

- 6.1 The financial and legal implications are set out at sections 7 and 8 of the Cabinet report attached as Appendix 1.
- 6.2 In accordance with rule 15.3 of the constitution, six members of the Council may call in a decision for scrutiny by the relevant Overview and Scrutiny Committee.

## **7. Recommendations**

- 7.1 The Committee is asked to consider the called-in Cabinet decisions and decide either to:
  - 7.1.1 Accept the Cabinet decisions 174/2017 and 175/2017 set out in paragraph 2.6 of this report and to take no further action or;
  - 7.1.2 Refer the decisions back to Cabinet for reconsideration, setting out the reasons for the referral back or;
  - 7.1.3 Refer the decisions to full Council so Council can decide whether or not to object to the decisions and, if so, then refer them back to Cabinet for reconsideration (taking into account the advice in paragraph 4.2 above).

### **Lead officer contact**

Jon Pitt, Democratic Services Officer  
Telephone: 01634 332715 Email: [jon.pitt@medway.gov.uk](mailto:jon.pitt@medway.gov.uk)

### **Appendices**

- Appendix 1 – Report to 17 January Cabinet meeting – Health and Wellbeing Traded Services
- Appendix 2 - Exempt Appendix (attached to the Exclusion of the Press and Public agenda item)

### **Background papers**

None





## CABINET

17 JANUARY 2017

### HEALTH AND WELLBEING TRADED SERVICES

Portfolio Holder: Councillor David Brake, Adult Services

Report from: Dr Andrew Burnett, Interim Director of Public Health

Author: Scott Elliott, Head of Health and Wellbeing Services  
Aeilish Geldenhuys, Head of Public Health Programmes

#### Summary

Medway Public Health is a well-recognised, strong provider of Health and Wellbeing services. We directly deliver and commission programmes, which has created expertise and strong insight into innovative, best practice service design and delivery models. This places us well to continue delivering high quality services in Medway and to compete to deliver commissioned Health and Wellbeing services across the South East.

This paper sets out the potential vehicles to establish a traded service and recommends an option that is considered the most viable. This option is then explored in greater detail, including how mobilisation could work, potential risks, how the service could be structured and the financial implications

#### 1. Budget and Policy Framework

- 1.1 The establishment of a subsidiary of Medway Commercial Group Limited to deliver commissioned health and wellbeing services is a matter for Cabinet.

#### 2. Background

- 2.1 The Public Health Grant currently makes up some 5.5% of Medway Council's income and is ring-fenced for the council's health improvement, healthcare public health and health protection responsibilities. The Public Health Grant is subject to a reduction of approximately 2.5% annually, with the ring fence expected to be lifted in 2020.
- 2.2 Local government funding restrictions continue to reduce overall budgets for the local authority and the Public Health team have actively supported the authority with this challenge in the last three years. With an unsecure funding stream for public health beyond 2020, the Public Health Team has proposed a number of solutions to generate cost efficiencies. We now feel that further efficiency savings will have disproportionate impact upon service delivery and

outcomes to Medway resident's health and wellbeing. Traded services offer an alternative way to finance our delivery in Medway, eventually leading to a financially self-sufficient delivery model. This will relieve pressure on Medway Council and difficult decisions around service cuts in the short, medium and long term.

### 3. Options for traded model

3.1 Six options have been considered as summarised below:

Do nothing	
Opportunities	Threats
None identified	Diminishing grant, further cuts to important frontline services

Shared Service	
Opportunities	Threats
Shared learning, resources and risk	No other regional partners deliver services
	Reduced opportunity for income

Local Authority Trading Company (LATCo)	
Opportunities	Threats
Opportunity to bid for contracts in other areas and therefore generate income	
Subsidiary of MCG would remain 100% owned by Medway Council	
Provides opportunities around TECKAL contracts	
Protects existing frontline services for Medway residents	

Charitable Incorporated Organisation (CIO)	
Opportunities	Threats
Would provide the service with access to charitable funding opportunities	A charity approach will not enable financial returns to filter back to Medway Council. There would be no formal or legal Council ownership and a maximum of 20% Board representation by law.
Would enable growth outside of Public Health grant	Funding Opportunities are finite
	Perceptions of control or ownership outside of the charity could be negatively viewed by funders who can withdraw their investment, and lead to investigation by the Charity Commission

Public Sector Mutual	
Opportunities	Threats
This approach has been promoted by central government and could unlock a number of start up loans, investments and support.	This would however transfer ownership and profit away from Medway Council

Joint Venture	
Opportunities	Threats
Opportunity to generate income, reduce reliance on PH grant	MC would only own 50% of the company and therefore only benefit from 50% of the profit.
	There is currently no such arrangement in place and no partners who could present a strategic, compelling joint case to a commissioner

3.2 The recommended option is the establishment of a Local Authority Trading Company and furthermore it would be proposed to set up Medway Health and

Wellbeing as a subsidiary of Medway Commercial Group, enabling the combined team to bid for upcoming health and wellbeing commissioning opportunities in Thurrock, Kent and East Sussex. MCG already has financial accounts, established track record, governance arrangements, policies, procedures and systems to meet commissioners' requirements for compliance, governance and deliverability.

#### 4. Advice and analysis

- 4.1 As a new company within Medway Commercial Group, it will be well placed to deliver current business in Medway, funded by Public Health Grant through the "Teckal" procurement exemption. We will also be well placed to bid for new business, which can provide a financial surplus to reduce the costs to Medway Council of our Medway operations, enabling us to maintain and improve our service offer for residents. Importantly, a subsidiary of MCG would ultimately be 100% owned by Medway Council (as the grandparent), which provides a number of safeguards and mitigates key risks. Some further commercially sensitive advice and analysis can be found in the exempt appendix.
- 4.2 Given that the Service delivery model for Medway residents is not changing, therefore, it is considered that it is not necessary to undertake a Diversity Impact Assessment.

#### 5. Risk management

Risk	Description	Action to avoid or mitigate risk
Financial implication of NHS pension liabilities	Financial implications for staff pension liability costs	<p>Short term secondments whilst achieving omitted status for pension bodies.</p> <p>We will ensure positive financial terms to ensure business viability for new contracts and/or NHS pension liabilities to be held by the commissioner of external contracts</p> <p>NHS and LGPS pension liabilities to be underwritten by existing Medway Council redundancy reserves as part of TUPE arrangements for current Medway Council staff.</p>

Service performance and quality	Ensuring the high levels of performance and outputs are maintained by the Medway delivery team and valued front line services are not compromised	<p>MCG Health and Wellbeing will agree service levels with Medway Council, in line with the Public Health Directorate Business Plan. We will continue to deliver high quality provision providing regular reports on performance to the contract manager (Director of Public Health)</p> <p>MCG Health and Wellbeing is 100% owned by MCG Ltd, which in turn is 100% owned by Medway Council and the Council retains the right to pull the service back into the Council if performance drops below an acceptable standard or if financial milestones are not met.</p> <p>We will maintain high quality standards when developing our wider business offer, fully resourcing new service mobilisation and management from external funds. Our high quality reputation and ability to deliver against outcomes will be a key benefit for commissioners that we will seek to uphold to enable us to win further business in the future.</p>
Investment into health and wellbeing market	Ensuring sufficient contracts exist and are available on the market, allowing the service to reach its financial targets	<p>We must have a full awareness of the funding opportunities available via the STP intervention list, relationships with key commissioners and enrolling on relevant funding portals.</p> <p>If public sector health and wellbeing funding reduces, then we will further explore diversification of funding into the private sector. We will explore service commercialisation; an area explored within Individual Service Plans e.g. Workforce Development pricing</p> <p>To counter a reduced market size, we will also explore product/service diversification to appeal to a wider pool of funders and make us more competitive to existing funders. Areas include Intelligence and pilot service development.</p>
Financial implications for council back office	Implications for current SLA costs for other services	Continue with current SLAs that will be agreed with departments concerned including a pay as you go approach with legal services. Joining SLAs of MCG at group level to maximise value and scope of work for Medway Council.

Redundancy	Potential redundancy costs for staff from external contracts	Negotiate contract terms with commissioners, which shares the redundancy risks
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## 6. Consultation

6.1 Consultation has taken place with the following officers, Members and other stakeholders and their guidance has been factored into the proposals brought forward:

- Legal – Mo Olatuja (Lawyer (Place Team Medway Council) and Perry Holmes (Chief Legal Officer Medway Council)
- Finance – Phil Watts (Chief Finance Officer Medway Council)
- HR – Carrie Mckenzie (Chief People Officer Medway Council)
- MCG – Vikram Sahdev (Chief Executive Officer Medway Commercial Group)
- Portfolio holder – Cllr David Brake (Portfolio holder for Adult Services and Public Health)
- Health and wellbeing peers/Potential commissioners at Thurrock Council, East Sussex County Council and Kent County Council.

6.2 Staff affected by this proposal will be consulted at the earliest opportunity following Cabinet decision. All TUPE implications will be undertaken in accordance with Medway Council's Organisational Change Policy and Procedure and in line with this the Council will seek to minimise the need for compulsory redundancies wherever possible.

## 7. Financial implications

7.1 The Public Health Grant is subject to a reduction of approximately 2.5% annually, with the ring fence expected to be lifted in 2020. Through a combination of restructuring, recommissioning of contracts and income generation through traded services, the service would anticipate responding to the reductions in Public Health Grant over the medium term, as well as making a contribution towards meeting the Council's wider resource 'gap'.

7.2 Further financial implications can be found in the Exempt Appendix.

## 8. Legal implications

8.1 Section 95 of the Local Government Act 2003 enables Local Authorities to provide, on a commercial basis, anything that is related to a function of the authority. The powers under the Act enable Local Authorities to trade with private bodies and persons for profit (i.e. charges fixed at more than the cost recovery) through a company. Surpluses on commercial operations under the section 95 trading power would be available to individual authorities.

8.2 The Council's health and well being functions are derived from the Health and Social Care Act 2012 which in turn amended the NHS Act 2006. The Council also has a number of additional health functions delegated to it by the Department of Health through secondary legislation or s75 agreements.

8.3 Normally, the provision of services over certain values from a company to a local authority is subject to the public procurement regime set out in the Public

Contracts Regulations 2015. There is an exception to this rule that means, in certain circumstances, a contract let by a local authority to a company it owns or is owned by its own wholly owned subsidiary will not be deemed to be a contract for the purposes of the public procurement regime. This exception is known as the “Teckal” exemption and was established by a European legal case but is now set out in section 12 of the Public Contracts Regulations 2015.

- 8.4 The proposed MCG Health and Wellbeing subsidiary will need to be registered at Companies House.
- 8.5 Internal and external legal advice was sought in relation to establishing the MCG group of companies. The governance arrangements for the new subsidiary will therefore follow the current arrangements for the existing subsidiaries of MCG Ltd and will be “Teckal” compliant. Some variations may be required to account for any statutory requirements specific to the Council’s health and well being functions and in particular, health and well being scrutiny functions.
- 8.6 The Transfer of Undertaking Protection of Employment (TUPE) Regulations 2006 will apply to this arrangement with staffing costs and conditions, including MCG Health and Wellbeing Ltd Limited having to maintain the current LGPS or NHS pension benefits (as applicable) for existing employees and as such full staff consultation will be carried out with HR.
- 8.7 A representative from Legal Services will be consulted at all times during the transition period from establishment through to novation of services into the new company.
- 8.8 A number of legal documents will be required to implement the proposed delivery model and these will be drafted in-house with support from specialist external lawyers only when this is needed.

## **9. Recommendations**

- 9.1 The Cabinet is asked to approve the establishment of a subsidiary of Medway Commercial Group to be called MCG Health and Wellbeing, or a suitable alternative, to commission and deliver public health services as set out in this report, from 1 April 2017.
- 9.2 The Cabinet is asked to agree to delegate authority to the Chief Legal Officer, in consultation with the, Leader, the relevant Portfolio Holder(s) and Chair of the MCG Ltd Board to finalise the governance arrangements for the new company and complete any necessary legal requirements and any other arrangements as necessary, subject to paragraph 9.3 below.
- 9.3 The Cabinet is asked to agree to delegate authority to the Chief Executive in consultation with the Leader and the Chair of the MCG Ltd Board to make the necessary appointments to the new subsidiary board for Health and Wellbeing Services and any other MCG Subsidiary Boards subsequently established.

**10. Suggested reasons for decision(s)**

- 10.1 With Local government funding restrictions continuing to reduce overall budgets and the ring fence coming off the Public Health Grant in 2020, trading services provides an opportunity to generate income and deliver more efficient services in Medway.
- 10.2 MCG is an established Medway Council owned trading company that will provide the most efficient way of delivering traded public health services.

**Lead officer contact**

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**Appendices**

Exempt Appendix

**Background papers**

None

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**HEALTH AND ADULT SOCIAL CARE  
OVERVIEW AND SCRUTINY COMMITTEE  
24 JANUARY 2017**

**EXCLUSION OF PRESS AND PUBLIC**

Report from/Author: Perry Holmes, Monitoring Officer

**Summary**

This report summarises the content of an exempt appendix which, in the opinion of the proper officer, will contain exempt information within one of the categories in Schedule 12A of the Local Government Act 1972. It is a matter for the Committee to determine whether the press and public should be excluded from the meeting during consideration of this document.

**1. Recommendation**

1.1 The Committee is required to decide whether to exclude the press and public during consideration of the following document because consideration of this matter in public would disclose information falling within one or more of the descriptions of exempt information contained in Schedule 12A to the Local Government Act 1972, as specified below, and, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

<b>Report Title</b>	Call-in: Health and Wellbeing Traded Services
<b>Agenda Item</b>	Exempt Appendix
<b>Summary</b>	This Exempt Appendix sets out the outline business case and options appraisal and detailed business case.
<b>Category of exempt information (Schedule 12A of the Local Government Act 1972)</b>	Not for publication under paragraphs 1, 2 and 3 of Schedule 12A of the Local Government Act 1972 – <ol style="list-style-type: none"> <li>1. Information relating to any individual.</li> <li>2. Information which is likely to reveal the identity of an individual.</li> <li>3. Information relating to financial or business affairs of any particular person (including the authority holding that information).</li> </ol>

**Lead Officer Contact:**

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**Appendices**

Exempt Appendix.

**Background Papers:**

None.

NOT FOR PUBLICATION

By virtue of paragraph(s) 1, 2, 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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