

CABINET

24 NOVEMBER 2015

ALTERNATIVE DELIVERY MODEL FOR MEDWAY CONTROL CENTRE SERVICE

Portfolio Holder: Councillor Andrew Mackness, Corporate Services

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Summary

The current Medway Control Centre (MCC) delivery model has reduced its cost to the council year on year. Within its current model, MCC has reached its maximum potential; therefore this report seeks permission to commence the Alternative Delivery Model for the Medway Council Control Centre Service. Alternative Delivery Model, being the setup of a commercial Local Authority Trading Company (LATC), with Medway Council being the Majority Shareholder.

The services to be transferred to the new company will be the entire Medway Control Centre Service, including CCTV Partnership, out-of-hours and associated personal safety services such as Telehealthcare and lone-working.

This report has been approved for submission to the Cabinet after review and discussion with the Directorate Management Team on 3 September 2015.

The reputational and service sensitivities are that this is a service that benefits other local authorities through a partnership for CCTV service. The associated personal safety services are delivered across Medway. The Telehealthcare services are provided to vulnerable people valued by the families and carers of these service users.

The new vision of this service aims to ensure that the Council secures value for money, income generation and efficiencies by allowing the company from the Local Authority constraints associated with current service provisions.

The Alternative Delivery Model, in the initial 5 years (2016-2021) is forecasting to deliver an accumulative savings, profit (before tax) and re-investment in the existing CCTV infrastructure as set out in Exempt Appendix No.3.

1. BUDGET AND POLICY FRAMEWORK

- 1.1 Whilst there are no statutory requirements for this service; the Crime and Disorder Act 1998 places an obligations on local authorities to co-operate in the development and implementation of a strategy to reduce crime and anti-social behaviour in their area.
- 1.2 Medway Council has legal obligations to the CCTV Partnership based on contractual arrangements. Any future delivery models must ensure that CCTV Partnership Agreement is fully adhered to.
- 1.3 The pricing structure will be such that the council will be transferring the current (2015/16) complete budgets to the new company. There is a breakdown of the costs in Exempt Appendix No. 1.

2. BACKGROUND

2.1 Service Background Information

- 2.1.1 The control centre has distinct functions including, CCTV Partnership, Telehealthcare and Out-of-Hours.
- 2.1.2 Over the last 5 years the management team at the control centre has delivered efficiencies to reduce the cost subsidy to the current level. We now consider that any further reductions to the cost subsidy must come from growth through winning new business. The newly established legal entity proposed in section 3.4 below and Exempt Appendix No. 2 will be a LATC and would therefore have the flexibility to respond quickly to opportunities for growth.
- 2.1.3 Over the next five years the Public Bodies will continue to experience significant financial pressures. The proposal in this report is an innovative response to protecting a non-statutory but greatly valued service by creating a commercial legal entity that benefits taxpayers both in terms of the service that will continue to be provided and the income that it will generate for Medway Council.

2.2 Funding/Engagement From External Sources

- 2.2.1 Following Cabinet approval in March 2012, Medway Council facilitated the creation of a partnership with three other local authorities – Maidstone Borough Council, Gravesham Borough Council and Swale Borough Council. The three local authorities delegated their CCTV function to Medway Council through exercising their powers under the Local Government Act 1972, Local Government Act 2000 and Localism Act 2011 to establish and participate in a Partnership. The CCTV infrastructures were transferred from each of three local authorities to Medway Council as the host authority in April 2012, with the Partnership officially launched in December 2012. Since then, cost benefits have been realised with savings in excess of 25% per local authority partner. The Partnership has built solid capability and intellectual capacity during that time which can be further capitalised upon.
- 2.2.2 The Joint 'Assistive Technology Strategy – Social Care 2016-2019', tells us that the number of older people in Medway is growing and the number who are likely to live with dementia is equally accelerating. This is an important and increasing market

for Telehealthcare, which is where the anticipated growth in income will come from.

3 OPTIONS

3.1 Do nothing

3.1.1 Not considered a viable option for the future of MCC. The management team has strong commercial acumen which is constrained by managing in a public body, which necessarily has governance arrangements that require senior management and, at times, executive sign off, which can slow down decision-making and implementation.

3.1.2 As a public body, Medway Council is subject to the EU regulations in relation to public sector procurements and as such is constrained in terms of its agility to procure goods and services (in spite of our commitment to reducing bureaucracy); unlike our competitors in the private sector. As explained in paragraph 3.1.1, with the constraints of minimum timescales for procurements over the EU thresholds, opportunities to purchase the most up to date equipment emerging on the market can be missed. This means that we would not be at the leading edge of available equipment making us less competitive.

3.1.3 In the current Medway Council's pay and grading system, there is no provision to incentivise employees, encouraging them to commercially offer services, which would result in income generation. **Not recommended.**

3.2 Split the divisions so that the commercial service is outsourced

3.2.1 Separate the CCTV Partnership operations from the telehealthcare and other personal safety services. This option is costly (personnel costs are £1.16 million) and time consuming because of the duplication of costs for a 24-hour service, moving from a multi-skilled workforce working across the two divisions to silo'd working and forfeits efficiencies realised from shared effort and infrastructures and accumulated intellectual property.

3.2.2 This would increase the cost of operating both services (CCTV, Telehealthcare and personal services) individually and therefore would not be attractive to the CCTV partners, corporate clients and citizens.

3.2.3 For Medway, this would increase the cost subsidy and overall lose all the benefits of a multi-skilled and motivated workforce that has won a national award for innovation and management of CCTV services.
Not recommended.

3.3 Establish an organisation with employee and council profit share

3.3.1 There is now a Government drive to increasing the role of employee led organisations. Public sector workers being given a 'right to provide', meaning they will have the option to set up new organisations outside of the public sector and take on full responsibility for the services they deliver.

3.3.2 The company would have to be structured, where the council would be a 20% shareholder, and the remainder would be shared between the employees. To take the full advantages of commercial opportunities, the majority of the shares would

have to belong to a non-public body.

- 3.3.3 It is usual for employees to hold different shares or shares with different rights attached. Those with more responsibility or those with longer service may be given greater incentivisation or participation through a larger shareholding than someone with a more operational level of input or someone who has just joined.
- 3.3.4 A number of studies have been commissioned to measure the success where the employee/employees have led the companies. The key features are:
- Improved business performance;
 - Increased economic resilience;
 - Greater employee engagement and commitment;
 - Driving innovation
 - Enhanced employee well-being and;
 - Reduced absenteeism
- 3.3.5 Continuous business improvement is the only way for a business to survive effectively in a competitive marketplace. Taking ownership introduces new expectation and cultural shifts concerning 'harder' skills, such as winning contracts, and emphasis placed on ongoing evaluation of performance.
- 3.3.6 Building strategic partnerships is often a key aspect of an organisation's development plan: such partnerships can help to minimise costs, by sharing core services and overheads, and also open up new potential markets.
- 3.3.7 Whether employees (two or more) exercise their right to provide or the council chooses an alternative model for service delivery, a procurement exercise must take place to demonstrate best value for the tax payer.
- 3.3.8 Though this option would reap the maximum reward of becoming commercialised, it also poses a greater risk for the council as the LA would be a minority shareholder in the new organisation and would lose the overall control. **Not recommended.**
- 3.4 Local Authority Trading Company (Section 95, Local Government Act 2003)**
- 3.4.1 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.
- 3.4.2 This legislation has been further strengthened by the Localism Act 2011, which expands Local Authority's trading activities to areas not related to their existing functions and removes geographical boundaries so trading can take place for a variety of service provisions and anywhere in the UK through a company.
- 3.4.3 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 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.

- 3.4.4 To take full advantage of a Local Authority Trading Company (LATC) the ‘Teckal’ exemption, whereby an authority or a group of authorities set up arrangements to supply services to and from a company in the same manner as in-house arrangements would need to be applied.
- 3.4.5 In order to be Teckal compliant (and exempt from EU procurement rules), the company would need to abide by the Teckal rules: (a) the company should be controlled as a department of the local authority, (b) the major part of the company’s business must be with the local authority owner (80% of revenues) and (c) there is no private sector ownership of the company.
- 3.4.6 In line with external legal advice, the Authority will incorporate the following legal entities to enable it to trade legitimately to initially deliver Technical Services, these are; (see Exempt Appendix No. 2 and Point 2 of Exempt Appendix No. 3).
- 3.4.7 This New LATC, named as MCG Limited (subject to registration requirement), will be setup in an adaptable model. This will provide a seamless platform for other services wishing to adopt a commercial delivery model.
- 3.4.8 The benefits of creating a Local Authority company are:
- Create future value and service improvement for the authorities that requires modest investment and represents a low financial risk
 - Exploiting the Teckal exemption allows the shared services company to be more agile in partnering with other local authorities. This eradicates undertaking a lengthy procurement and incurring the sizable associated costs.
 - In the “in house incubator” employees could have more independence in the day-to-day running of the service embedding a culture of innovation and creativity, and the market has time to develop whilst the services are kept in house.
 - Desire to trade commercially for a profit with other public and private sector organisations – an opportunity for the Partners to undertake commercial activities to test the market.
- 3.4.9 MCG Limited will continue to purchase ‘back office’ services from the council, for a minimum of 5 years. This will be done at an agreed price through a detailed Service Level Agreement (SLA). **Recommended.**

3.5 Company Model

- 3.5.1 Three vehicles have been identified to deliver the LATC model. Further details in point 3 of Exempt Appendix No. 3.

3.6 Governance - Board of Directors

- 3.6.1 The new company will consist of Board of Directors, careful consideration will need to be given to ensure there is no conflict of interest in respect of decision making within the company and the council in accordance with external legal advice.

- 3.6.2 It is proposed that the Monitoring Officer, in consultation with the Portfolio Holder for Corporate Services, finalise the governance arrangements. Once these arrangements are in place, it is proposed that the Chief Executive, in consultation with the Leader, make appointments to the Board of Directors.
- 3.6.3 Once MCG Limited is established, it is recommended that initially the Board of Directors would meet on a monthly basis, to track progress of the newly formed LATC.
- 3.6.4 MCG Limited will prepare an annual Business Plan and Budget, which will be presented to the council's client officer for endorsement.
- 3.6.5 MCG Limited will submit financial reports on a quarterly basis to the council's client officer.

4 ADVICE AND ANALYSIS

- 4.1 This ownership model allows for any surplus or dividend arising from its success to be paid back to the Council for further investment in services or to facilitate savings. This dual element of control (through contract and through governance) allows flexibility, but lowers risk in terms of strategic alignment.
- 4.2 Potential forecasted savings and profits (before tax) are set out in Exempt Appendix No. 3.
- 4.3 As it is independent of the operational decision-making processes within the Council, the service can deliver services which are more flexible and adaptable than through in-house delivery and its arm's length nature allows it to make cost reductions more readily than with in-house provision. However, as the majority shareholder of the service, the Council retains control, and as a result, is able to readily influence how the company grows and develops in order to deliver the strategic vision of the Council.
- 4.4 In setting up a Local Authority Trading Company, the authority needs to invest in set up.
- 4.5 Proposed timetable:

24 November 2015 Cabinet approval required

Dec – March 2016	Transitional Period, Company Formation, Novation of Contracts
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01 April 2016	Trading commences.
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5. RISK MANAGEMENT

1. Risk Category: Finance and Reputational	Likelihood: Low	Impact: II
Outline Description: Council does not benefit from future income from the new company		
Plans to Mitigate: Medway Council will hold majority shares in the company and therefore has the opportunity to remove any of the Directors and bring the services back in-house.		
2. Risk Category: Contract delivery	Likelihood: Low	Impact: II
Outline Description: That the new company does not generate income or the overall arrangement is not successful		
Plans to Mitigate: As the majority shareholder, Medway Council will have the full steppin rights to revert back the service in-house with immediate effect. Risk will be minimised through regular business review of the LATC performance by the Governance Board, as per <u>Section 3.6</u> .		
3. Risk Category: Contract Delivery	Likelihood: Low	Impact: I
Outline Description: CCTV partners do not agree to progress with transferring their services into the new company		
Plans to Mitigate: Early, and continued, consultation by key officers from the council		
4. Risk Category: Staff (Workforce)	Likelihood: Medium	Impact: II
Outline Description: The key knowledge & skills within the workforce are not retained		
Plans to Mitigate: A staff incentivisation (PRP) will be attractive to ensure maximum staff retention.		

6. CONSULTATION

6.1 Internal (Medway) Stakeholder Consultation

- 6.1.1 From 2 December 2015 to 28 February 2016 consultation will take place with all relevant internal departments.
- 6.1.2 Consultation with staff about the proposed model and TUPE will commence from 2 December 2015.

6.2 External Stakeholder Consultation

- 6.1.1 Consultation with, and sign off from, CCTV partners prior to publishing this report for Cabinet is taking place between 29 September 2015 to 23 November 2015.

7 SERVICE IMPLICATIONS

7.1 Financial Implication

- 7.1.1 The legal, procurement or any other service requirement and its associated delivery (as per the recommendations at Section 9) will be funded from existing revenue budgets.
- 7.1.2 For the initial 2 years, advance cash flow will be required at the beginning of each financial year. Medway Council will transfer a total expenditure budget across to MCG Limited bank account and retrieve elements of this budget back in years 1 and 2 as business expands. By year 3, and thereafter, it is projected that no subsidy will be required by the council to MCG.
- 7.1.3 The pricing structure will be such that the council will be transferring the current (2015/16) complete budgets to the new company. There is a breakdown of the costs in Exempt Appendix No. 1.
- 7.1.4 Five year financial forecast is presented in Exempt Appendix No. 4.
- 7.1.5 During the initial transitional period, permission will be sought, if possible for the New Company to have access to 'Integra' the Medway Council financial system. This will allow for a seamless service delivery to its existing client base.
- 7.1.6 MCC current cost centres, will need to be analysed and re-aligned accordingly to ensure that actual expenditure & income is related to the individual service area rather than the whole combined service as one, i.e. CCTV Partnership and Telehealthcare.
- 7.1.7 A representative from Finance will be consulted at all times during the transition period from establishment through to novation of services into the new company.

7.2 Tax liabilities:

- 7.2.1 MCG Limited will adhere to all statutory tax legislation, i.e. Corporation and Value Added Tax (VAT).
- 7.2.2 The New Company will have to ensure that it adheres to corporation tax rules and pays its tax liabilities.
- 7.2.3 In addition they will be liable in their own right for VAT, will have to pay national nondomestic rates and will be liable for any stamp duty and land tax.

7.3 Legal Implications

- 7.3.1 MCG Limited and all associated companies will need to be registered at Companies House.
- 7.3.2 Legal comments on the Council's statutory powers and ability to set up trading companies, some of which will be Teckal exempt have been incorporated into section 3.4 above. The Teckal test will be implemented in the constitution of the companies to be set up. Where the Council is either the sole shareholder of the company or the parent company, governance arrangements will be straightforward. In relation to the JV (Joint Venture) LATC (Teckal) company, a shareholders agreement with the other public sector shareholders will be required. The Shareholders agreement will have provisions for joint control, restrictions on third party activity and prohibitions on private sector ownership to comply with the Teckal Test.
- 7.3.3 Both internal and external legal advice was sought in relation to the company set up and distribution of profit and ownership shares. There are some legal and financial implications for the partnering authorities in relation to how many shares they each take in the JV LATC (Teckal) company and they have been briefed on the issues. Further clarification will be sought in relation to employment issues and the most appropriate delivery vehicle for the workforce to be placed.
- 7.3.4 Full staff consultation will be made with HR as set out in section 6.1.
- 7.3.5 A representative from Legal will be consulted at all times during the transition period from establishment through to novation of services into the new company. 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. Officers have sufficient delegated authority to sign off on the legal documentation required.

7.4 HR

- 7.4.1 Transfer of Undertaking Protection of Employment (TUPE) regulations apply to this with staffing costs and conditions, including MCS Limited having to maintain the current LGPS for existing employees.
- 7.4.2 TUPE regulations will apply on the grounds of a Service Provision Change in the event that the same or similar services will be continued by the new LA

Company.

7.4.3 It is important to ensure that both the incoming and outgoing providers of the service complies with their respective obligations under the TUPE Regulations to minimise the risks of successful legal challenges with the council likely to be a party to any potential legal challenges.

7.4.4 A representative from HR will be consulted at all times during the transition period from establishment through to novation of services into the new company.

7.5 Category Management

7.5.1 Category Management have worked collaboratively from the initiation stage to verify and advice with regards to the commercial viability of this exercise.

7.5.2 Novation of existing contracts will have to take place during the transitional period.

7.5.3 The Head of People Category will be working in conjunction with the Head of CCTV Partnership & Commercial Division through the establishment and novation of the services into the new company.

7.6 ICT Implications

7.6.1 ICT services will be purchased at an agreed price through an detailed Service Level Agreement (SLA).

7.6.2 MCG Limited will provide access to ICT, allowing them to maintain their current infrastructure.

7.6.3 Use of the existing ICT infrastructure is party to certain compliance standards, such as the PSN Code of Connection compliance requirements set by Central Government. Discussions and adherence to such standards would need to be considered to ensure that Medway Council can continue to remain compliant.

7.6.4 As there are ICT implications, primarily connected to the ICT infrastructure provided, which would need to be discussed in detail with ICT therefore a representative from ICT will be consulted at all times during the transition period from establishment through to novation of services into the new company.

8 Other Considerations

8.1 Diversity & Equality

8.1.1 During the mobilisation period, HR and other consultations will take place at which point a Diversity Impact Assessment (DIA) screening will be undertaken.

8.2 Social, Economic & Environmental Considerations

- 8.2.1 Establishing a profit share for employees, Medway Council and the CCTV partners.
- 8.2.2 Creation of apprenticeships in accordance with the council's procurement strategy.

8.3 Assets

- 8.3.1 **Premises**—MCC currently sited in a purpose built one storey building (Strood, Medway). Its structure enables the services to be provided from a secure unit, exceeding the requirements of the Home Office CCTV Code of Practice. This strengthens the position for MCG Limited to obtain the National Security Accreditation (NSI) Gold, which is essential for Alarm Monitoring.
- 8.3.2 Discussions with the property team have taken place. It has been ascertained that, if MCC was to remain in situ whilst the disposal of the Civic Centre site took place, there will be no negative impact on the value of the entire site.
- 8.3.3 **Medway Council CCTV Infrastructure** – Currently existing CCTV Infrastructure belonging to Medway Council will remain the property of Medway Council and MCG Limited becoming the CUSTODIANS of this infrastructure. This will mean that any maintenance, repair and upgrade responsibility associated with this infrastructure lies with MCG Limited. This will ensure that there are no financial liabilities for Medway Council.
- 8.3.4 **Telehealthcare infrastructure** – Currently majority of the field equipment is on lease agreements; therefore a revenue payment is made for leasing this equipment. Due to the nature of the equipment, leasing is the more favourable option, as at the end of the leasing period, the equipment is out-of-date and newer technology is available and is required. Taking this into consideration, the Telehealthcare Infrastructure (assets) should be transferred to MCG Limited, making them responsible for any repairs, replacements, upgrades or renewals of the Telehealthcare infrastructure. Again this will ensure that there are no financial liabilities for Medway Council.
- 8.3.5 **Back Office Equipment** – This includes all other assets that are required to fulfil the MCC business operations. These assets are:
 - a) Vehicles (leased)
 - b) IT Equipment (Including Telephony)
 - c) Furniture
 - d) Stationery

Again either due to the above assets being leased or their age, the assets have minimal value, therefore all the above 'Back Office Assets' should be transferred to MCG Limited, making them responsible for any repairs, replacements, upgrades or renewals of the Telehealthcare infrastructure. Again this will ensure that there are no financial liabilities for Medway Council.

A full asset inventory including Pre Planned Maintenance schedule will be created during the transitional period between 2 December 2015 and 28 February 2016.

9 RECOMMENDATIONS

- 9.1 The Cabinet is asked to agree that Medway Council creates a new Local Authority Parent Trading Company (LATC), named as Medway Commercial Group (MCG) Limited and in addition create three trading vehicles, as set out in paragraph 3.5.1 of the report.
- 9.2 The Cabinet is asked to agree the following timetable, and its associated activities:
- December 2015 – March 2016:
Transitional Period, Company Formation, Novation of Contracts
- 1 April 2016:
Trading Commences.
- 9.3 The Cabinet is asked to:
- 9.3.1 Delegate authority to the Monitoring Officer, in consultation with the Portfolio Holder for Corporate Services, to finalise the governance arrangements as set out in paragraph 3.6 of the report.
- 9.3.2 Delegate authority to the Chief Executive, in consultation with the Leader, to make appointments to the Board of Directors as set out in paragraph 3.6 of the report.
- 9.4 The Cabinet is asked to agree that on the legal establishment of MCG Limited, that initially the Medway Council Control Centre Service to be transferred into the new entity.

10 SUGGESTED REASONS FOR DECISION

- 10.1 This ownership model allows for any surplus or dividend arising from its success to be paid back to a Council for further investment in services or to facilitate savings. This dual element of control (through contract and through governance) allows flexibility, but lowers risk in terms of strategic alignment.
- 10.2 Within the initial 5 year (2016-2021) trading period, the Alternative Delivery Model, in the initial 5 years (2016-2021) is forecasting to deliver an accumulative savings, profit (before tax) and re-investment in the existing CCTV infrastructure.

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APPENDICES

EXEMPT Appendix 1 – Financial summary 2015-16

EXEMPT Appendix 2 – New Company structure

EXEMPT Appendix 3 – Further commercially sensitive information

EXEMPT Appendix 4 – Five Year Financial Forecast

BACKGROUND PAPERS

None