

## **CABINET**

**17 JANUARY 2017**

### **STAFFING AGENCY TRADED SERVICES**

Portfolio Holder: Councillor Adrian Gulvin, Resources  
Report from: Neil Davies, Chief Executive  
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#### **Summary**

For Medway the challenge of attracting and retaining permanent staff such as talented Social Workers is now an almost impossible task. This is not just a local challenge but one that is being felt by most local authorities across the country.

Employment as an agency worker pays significantly more than rates which can be offered via a permanent contract. Over the last 3 years the Council has looked at innovative methods to bridge this gap such as golden hello and market premia payments but these have only been moderately successful and have not borne the significant reduction in agency costs needed.

The difficulty to recruit a permanent workforce has resulted in spiralling employment costs and a high risk and transient workforce. There are a number of reasons for this:

- Salary is the main focus for individuals who choose to work via an agency and the hourly rates offered meet the demands of changes in lifestyle, housing and general increased living costs
- Contribution to a Local government pension is not a priority as it once was and a commercial pension offering is sufficient.

The outcome of the agency control over some specialist area markets is that Medway is spending significant funds on failed recruitment drives and now rely heavily on agency staff to meet the needs of the organisation and its priorities.

Social Care staff is just one of the opportunities for using an alternative employment model which could help the Council reduce agency costs.

In addition to using the agency to provide temp staff to Medway Council we can also supply staff directly to other organisations.

## 1. Budget and Policy Framework

- 1.1 The establishment of a subsidiary of Medway Commercial Group Limited to deliver a staffing agency is a matter for Cabinet.

## 2. Background

- 2.1 Medway Council is restricted in terms of the recruitment of agency staff using an external agency who will charge up to 20% 'agency fee' on top of the already increased salary to agency staff.
- 2.2 If we considered using a LATC as the contracting employer with an agreement in place to second the staff over to the council we could save significant amounts on the agency placement fees.
- 2.3 This model facilitates recruitment of permanent staff into "comparable" contracts within the council and affords us the ability to reduce agency spend.
- 2.4 The new offer must be comparable to that offered directly by the council; through this you reduce the risk of challenge regarding equal pay from Trade Unions. The council do not currently have the ability to do this themselves as they are bound by LGPS contributions and a pay and grading structure which cannot be flexed to accommodate the shifting market demands.
- 2.5 A LATC and other alternative employers would have freedom to decide their own Pay, T&Cs, pension etc. This freedom would enable us to pay a higher overall salary (through the use of flexible benefits) and lower pension contributions but the overall package would be comparable to our total spend for permanent staff
- 2.6 Recruitment would be facilitated through direct recruitment in the market place through the agency and Identifying existing high cost agency staff placed within the Council who we could employ through the LATC.

## 3. Options for traded model

- 3.1 Six options have been considered as summarised below:

Do nothing	
Opportunities	Threats
None identified	Escalating costs of using agency staff Instability for Children and Families Lack of control over quality of provision

Shared Service	
Opportunities	Threats
N/A	

<b>Local Authority Trading Company (LATCo)</b>	
Opportunities	Threats
Reduction in the overall cost for agency staff	Subject to corporation tax on profits
Subsidiary of MCG would remain 100% owned by Medway Council	
Opportunities to increase the offering of Employ Medway	
Protects existing frontline services for Medway residents	

<b>Community Interest Company (CIC)</b>	
Opportunities	Threats
N/A	

<b>Public Sector Mutual</b>	
Opportunities	Threats
This would need significant investment in systems and time and the required licencing to run a recruitment agency from REC would be difficult to obtain without a previous history of employing status	This would transfer ownership and profit away from Medway Council

<b>Joint Venture</b>	
Opportunities	Threats
Long standing recruitment companies could see this as an investment opportunity	MC would only own 50% of the company and therefore only benefit from 50% of the profit.
	The partner agency would benefit from the relationships and contacts Medway have already established such as NHS and Schools

3.2 The recommended option is for the current internal temporary agency to move into the LATC and for this to be the sole arm for recruiting temporary staff within the Council. In addition to this it would be beneficial for the LATCO to be in a position to provide a recruitment service to other organisations such as Employ Medway, Schools, Academies and the NHS at a cost.

#### 4. Advice and analysis

4.1 As a new company within Medway Commercial Group, the agency will not be bound by the terms and conditions which need to be offered to employees of Medway Council. The agency will continue to offer the same overall package for staff but this can be made up in different ways such as increased hourly rates offset by a reduced pension contribution. Staff supplied to Medway Council via the agency will not incur the same agency fees as the current temporary agencies used charge which can be anything up to 20% on top of salary costs. The creation of a recruitment agency would provide a reduction in overall costs and stability of workforce for children and families.

## 5. Risk management

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>
Challenge of differing terms and conditions for staff	Permanent staff working for Medway Council will have different terms than those working through Medway Staffing Agency	Ensure the total overall package (total reward) of benefits to Medway Council and Medway Staffing Agency staff is the same.
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 within Medway Staffing Agency	All redundancies will be managed using the Councils organisational change policy which aims to preserve as many roles as possible using training and coaching where applicable to re-deploy people.

## 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)
- MCG – Vikram Sahdev (Chief Executive Officer Medway Commercial Group)
- Portfolio holder – Cllr Adrian Gulvin (Resources)

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 provision of HR, Legal, ICT, Finance and any other service and its associated delivery will be funded under an SLA for the initial years of trading.

7.2 Medway Council will transfer a total agreed expenditure budget across to the new entity at inception, see exempt appendix.

7.3 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.

## **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 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.

8.3 The proposed MCG staffing agency will need to be registered at Companies House.

8.4 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.

8.5 The Transfer of Undertaking Protection of Employment (TUPE) Regulations 2006 will apply to this arrangement with staffing costs and conditions, including MCG staffing agency having to maintain the current LGPS for existing employees and as such full staff consultation will be carried out with HR.

8.6 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.

8.7 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 Medway Staffing Agency or an appropriate alternative.

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 note that subject to the agreement by the Cabinet of recommendation 9.3 in agenda item 9, the Chief Executive will have authority to make the necessary appointments to this and any MCG Subsidiary Boards subsequently established, in consultation with the Leader and the Chair of the MCG Ltd Board.

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

- 10.1 The cost of recruiting staff through external agencies is placing a huge burden on the Council's budget. Establishing an agency will significantly reduce these costs.
- 10.2 MCG is an established Medway Council owned trading company that will provide the most efficient way of employing agency staff whilst maintaining quality standards and driving down costs.

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**Appendices**

Exempt Appendix

**Background papers**

None