



## 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>

## APPENDIX 1

<p>Service performance and quality</p>	<p>Ensuring the high levels of performance and outputs are maintained by the Medway delivery team and valued front line services are not compromised</p>	<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>
<p>Investment into health and wellbeing market</p>	<p>Ensuring sufficient contracts exist and are available on the market, allowing the service to reach its financial targets</p>	<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>
<p>Financial implications for council back office</p>	<p>Implications for current SLA costs for other services</p>	<p>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.</p>

Redundancy	Potential redundancy costs for staff from external contracts	Negotiate contract terms with commissioners, which shares the redundancy risks
------------	--	--

## 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**

Scott Elliott (Head of Health and Wellbeing Services). [scott.elliott@medway.gov.uk](mailto:scott.elliott@medway.gov.uk), 01634 333012

Aeilish Geldenhuys (Head of Public Health Programmes). [aeilish.geldenhuys@medway.gov.uk](mailto:aeilish.geldenhuys@medway.gov.uk), 01634 333147

**Appendices**

Exempt Appendix

**Background papers**

None