



BUSINESS SUPPORT OVERVIEW & SCRUTINY COMMITTEE

4 JULY 2019

SCRUTINY OF RISK AND COMMERCIALISATION

Report from: Perry Holmes, Chief Legal Officer

Summary

At a meeting of this Committee held on 31 January 2019, Members asked for a report to the July meeting setting out which Council services have been transferred to Medway Commercial Group and Medway Norse and which then came back to the Council, together with details of what action the Council subsequently took.

This report provides the information requested together with a wider overview of the key themes in a recently published Guide for Local Scrutiny Councillors on Risk and Commercialisation.

The Committee is recommended to request a Member Development Session to provide a briefing for Overview and Scrutiny Members on the Council's current approach to commercialisation and a facilitated discussion on the emerging role for Scrutiny.

1. Budget and Policy Framework

- 1.1 Each Overview and Scrutiny (O&S) Committee has a remit to scrutinise the operation and effectiveness of alternative models of service delivery. This Committee is responsible for scrutinising Medway Norse (currently via a six monthly update report) and also has a role to provide guidance and leadership on the development and coordination of the scrutiny function for all Overview and Scrutiny Committees.
- 1.2 The scrutiny of commercialisation is an emerging area of focus for Overview and Scrutiny Committees. The Centre for Public Scrutiny (CfPS) has recently written a Guide for Local Scrutiny Councillors on Risk and Commercialisation based on research, including interviews with Officers and Councillors in Councils which have put in place plans to operate more commercially and entrepreneurially and a review of publicly available information about the work that scrutiny has done in those Councils, and other Authorities.

2. Background

- 2.1 Increasingly councils, including Medway, are engaging in commercial activity usually, but not exclusively, to generate additional income, including better use of fees and charges, better use of investments (including investment in property), saving money through internal transformation, sharing services and alternative delivery models, including trading.
- 2.2 There are a wide variety of vehicles and models councils can use to trade, manage and deliver services. In recent years there has been a significant increase in councils setting up trading companies, which can include setting up Teckal companies wholly owned by the council which as a consequence are exempt from certain formal procurement requirements when delivering services for the Council.
- 2.3 A March 2015 report report¹ found:
- 94% of authorities shared some services with another council.
 - More than half of councils (58%) owned a trading company, and at the rate it is increasing, full coverage by 2020 is a possibility.
 - A majority of councils (57%) operated a joint venture with the private sector.
 - Over a third of councils were using entrepreneurial methods in areas such as waste (46%), leisure and tourism (38%), IT/back office (38%) and housing (36%).
 - Without these entrepreneurial activities, eight out of ten councils said they would have to cut services and raise taxes.
- 2.4 According to research by Grant Thornton² in 2018 there were 743 trading companies in England, Scotland and Wales. Of 380 local authorities in England, Scotland and Wales, 59.2% have at least one trading company. The most prevalent type of trading company is property and investment, with 23.5% of trading companies falling into this category.

3. Alternative models of service delivery set up by Medway

a) Medway Norse

- 3.1 In March 2013 Cabinet established a joint venture (JV) “teckal” company, Medway Norse, to provide facilities management services from 1 June 2013. The rationale was that the JV could provide services to the Council more efficiently, giving better value for money; grow the business through taking on external contracts and increase employment opportunities for local people.
- 3.2 In 2014 the joint venture also took on responsibility for the grounds maintenance contract and for an initial phase of school transport for children with special educational needs attending three schools (now five).

¹ Localis - Commercial Councils

² In Good Company

- 3.3 In March 2018 Cabinet agreed to transfer the waste collection and street cleansing activities to Medway Norse from October 2019. This will take the joint venture's gross turnover up to over £25million per annum.

Governance

- 3.4 The Company's Board of Directors comprises three representatives from Norse Commercial Services and two from the Council. The Council has two representatives, an elected member and Chair of the Board (Councillor Turpin) and Ruth Du-Lieu, Assistant Director Frontline Services. The Board is responsible for the overall performance of the joint venture.

b) Medway Commercial Group

- 3.5 In 2012, the Council facilitated the creation of a partnership with three other local authorities (Maidstone Borough Council, Gravesham Borough Council and Swale Borough Council) who delegated their CCTV function to Medway Council. The Partnership was launched in December 2012.
- 3.6 By 2015 it was felt that the Medway Control Centre (MCC) delivery model had reached its maximum potential and Cabinet agreed an Alternative Delivery Model i.e. the setup of a commercial Local Authority Trading Company named Medway Commercial Group (MCG), with Medway Council being the Majority Shareholder.
- 3.7 The entire MCC service was transferred to the new company, including CCTV Partnership, out-of-hours and associated personal safety services such as Telehealthcare and lone-working.
- 3.8 The new company commenced trading from 1 April 2016.
- 3.9 MCG is now responsible for delivering:
- CCTV
 - Telecare
 - Out-of-Hours Call Centre
 - Lone Worker Solutions and other Personal Alarm Services
 - Schools Traded Services (Energy, Health and Safety, GDPR and ICT)
 - Schools Traded Services (Cleaning, Catering and Waste Management
 - Compliance)
 - Temporary, Contract and Interim staffing.

Governance

- 3.10 Medway Commercial Group Limited has two subsidiaries:
- Medway Public Services Limited – to trade with the Public Sector; and
 - Medway Commercial Services Limited – to trade with the Private Sector.
- 3.11 The Company's Board of Directors comprises one Executive Director of MCG and two Non-Executive Directors. The Council's representatives are:

- Councillor Howard Doe and Councillor Rupert Turpin
- Carrie McKenzie, Assistant Director, Transformation.

3.12 The board structure and representation is currently under review.

c) Medway Development Company

3.13 In September 2017 the Cabinet approved the Business Case for a new housing company, called Medway Development Company Limited, to invest in or develop property within and outside Medway and in the first instance to enable the development of a number of Council owned sites. The Council is the sole shareholder,

Governance

3.14 The Cabinet (representing the Council Shareholder) is responsible for holding the Board of Directors to account for company performance. Its responsibilities include:

- Receiving and reviewing the company's Business Plan
- Receiving any proposed variations to the Business Plan
- Receiving periodic reports on performance
- Appointing and removing the Managing Director of the Company

3.15 The Executive Board of Directors has oversight of the company's trading activities, including signing off the company Business Plan. It is responsible for reporting to the Shareholder on company performance. Two Cabinet Members (Councillors Doe and Gulvin) have been appointed as Directors. Two Non-Executive Directors (Barbara Richardson and Jonathan Sadler) have been appointed to offer wider expertise to the company. The Chair of the Executive Board is Councillor Doe.

3.16 The Management Board is responsible for developing the strategic plans for the company, considering all potential trading activities, operating, managing and growing the company through the development of existing and new commercial opportunities. It is also responsible for implementing the company Business Plan, including day to day management of the company's trading activities.

3.17 In April 2018 Cabinet agreed to amend the governance arrangements for Medway Development Company Ltd in order to take advantage of tax efficiencies in the development of property.

3.18 MDC is currently delivering 354 residential units, having obtained planning permission for four schemes at Chatham Waterfront, Whiffens Avenue, Britton Farm and White Road. An update on this will be reported to Cabinet in due course.

d) Shared Services

3.19 In recent years the Council has also entered into a number of shared services arrangements with neighbouring authorities:

- Building Control (with Canterbury City Council, Gravesham BC and Swale BC) – 1 October 2007
- Internal Audit and Counter Fraud (with Gravesham BC) – 1 December 2015
- Legal Services (with Gravesham BC) – 1 April 2017
- HR (with Gravesham BC) – 1 April 2018. (NB Medway Payroll team provide a payroll service to Gravesham Borough Council under a paid-for service arrangement.)
- Licensing (with Gravesham BC) – 1 November 2018

4. Services transferred back to the Council

4.1 As requested by this Committee at its meeting in January 2019, Appendix 1 sets out details of services transferred back to the Council from MCG and Medway Norse, together with what actions the Council then took.

5. Risk and Commercialisation – the role of Overview and Scrutiny

5.1 As set out above, each Overview and Scrutiny Committee has a remit to scrutinise the operation and effectiveness of alternative models of service delivery. This Committee is specifically responsible for scrutinising Medway Norse and receives a six monthly update report which is also considered by the Cabinet. The Cabinet also receives a six monthly progress report on Medway Commercial Group.

5.2 Appendix 2 lists all of the services provided by these alternative models of service delivery agreed by the Council and maps these against the terms of reference of the four Overview and Scrutiny (O&S) Committees.

5.3 The recently published CfPS/APSE guidance on Scrutiny of Risk and Commercialisation recognises that democratic scrutiny is a vital part of commercial activity for Councils but that scrutinising “commercialisation” is by no means easy considering its complex landscape. This is echoed in the new Statutory Guidance for Councils and Combined Authorities which states that Overview and Scrutiny Committees will often have a keen interest in “following the Council pound” i.e. scrutinising organisations that receive public funding to deliver goods and services.

5.4 The Committee is recommended to request a Member Development Session to provide a briefing for Overview and Scrutiny Members on the Council’s current approach to commercialisation and a facilitated discussion on the emerging role for Scrutiny. The guide on scrutiny of risk and commercialisation produced by CfPS/APSE provides a framework that could be used for this session as follows:

Five key areas in which scrutiny can make a difference:

1. Helping drive forward cultural transformation
2. Helping to make judgements about the rationale underpinning commercial activity
3. A focus on risks
4. Oversight of governance itself- executive side management and the relationships between partners
5. Oversight of performance monitoring (rather than performance monitoring itself, which will largely be managed by traditional means, and within contract)

Seven scrutiny question that can kick start scrutiny activity

1. Does the Council have a Commercialisation Strategy?
2. Is the Council's approach to commercialisation a piecemeal one or a more strategic one?
3. What is the risk appetite in the Council?
4. Are proposed or existing commercial activities viable?
5. What is the governance structure of commercial activities?
6. Is the rationale and purpose of commercial activity mainstreamed within how the Council works day to day?
7. How has the Council considered ethical issues that might arise from commercialisation/

Three main principles of involving scrutiny

1. Early engagement
2. Streamlining scrutiny
3. Having a strategic approach

6. Risk management

- 6.1 Development of the role of Overview and Scrutiny in relation to commercialisation will build on the work already undertaken by this Committee to regularly review the Councils Corporate Risk Register.

7. Financial implications

- 7.1 There are no financial implications arising from this report. Any Member Development activity on scrutiny of risk and commercialisation will be met from within existing budgets.

8. Legal implications

- 8.1 Local authorities have always had the legal power to make use of different forms of service delivery.
- 8.2 Section 113 of the Local Government Act 1972 allows a Local authority to enter into an agreement with another Authority to place its officers at the disposal of the other Authority. Section 1 of the Local Authorities (Goods and Services) Act 1970 enables a Local Authority to enter into an agreement to provide another Local Authority with goods and services including administrative, professional or technical services. Outsourcing provision of

Local Authority services to private or third sector organisations is permitted under Section 135 of the Local Government Act 1972.

- 8.3 Local Authorities must establish a company if they wish to carry on trading activities for profit. They may also use powers to trade in the Local Government Act 2003 or under the general power of competence in the Localism Act 2011.
- 8.4 A “teckal” company must provide 80% of its services back to the Council. The remaining 20% of its income can be derived from external work,

9. Recommendation

- 9.1 The Committee is asked to note the information provided in the report and to agree request a Member Development Session to provide a briefing for Overview and Scrutiny Members on the Council’s current approach to commercialisation and a facilitated discussion on the emerging role for Scrutiny.

Lead officer contacts

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Appendices

Appendix 1 - Services transferred back to the Council from Medway Norse and Medway Commercial Group

Appendix 2 - Services provided by alternative models mapped against the terms of reference of the 4 O&S Committees.

Background papers

Risk and Commercialisation – A Guide for Local Scrutiny Councillors
Produced and published by CfPS/APSE January 2019:

<https://www.apse.org.uk/apse/assets/File/Risk%20and%20commercialisation%20pdf.pdf>

Overview and Scrutiny: Statutory Guidance for Councils and Combined Authorities
From Ministry of Housing, Communities and Local Government May 2019:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800048/Statutory_Guidance_on_Overview_and_Scrutiny_in_Local_and_Combined_Authorities.pdf