



Meeting: Adjourned Annual Council

Date: 1 May 2014

Wards Affected: All Wards

Report Title: Careers South West – Changes to Ownership Arrangements

Is the decision a key decision? No

When does the decision need to be implemented? 14 May 2015

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1. Purpose and Introduction

1.1 This report sets out a proposal to change the legal arrangements for the operation of Careers South West (CSW). Careers South West Ltd is a company limited by guarantee and is wholly owned and controlled by four local authority corporate Members (referred to as the 'Owners'):

- Cornwall Council
- Devon County Council
- Plymouth City Council
- Torbay Council.

1.2 The success of the company has meant the company is no longer able to work under the Teckal exemption and a review by the owner authorities was required to ensure the appropriate basis for its future working.

2. Proposed Decision

2.1 that the Mayor be recommended to approve the changes to the legal arrangements around the ownership of Careers South West (as set out in paragraph 4.6 to 4.9 of this report) to enable the company to operate more commercially and autonomously on a day to day basis, whilst Cornwall, Devon County, Plymouth City and Torbay Councils continue to retain ownership and authority over the business.

2.2 Reason for Decision

2.2 To enable the Owners to retain authority over the company, as they remain its ongoing guarantors, whilst enabling the Company to operate commercially on a day to day basis. The above recommendation requires approval by the four owners to enable the proposal to proceed.

Supporting Information

4. Position

- 4.1 Careers South West Ltd has over 300 employees and £12.5 million turnover in 2013/14.
- 4.2 The Company manages the delivery and provision of government funded services, primarily in the areas of skills and careers related information, advice and guidance (IAG) services, to young people aged 13-19 and persons of all ages through National Careers Service contracts with the Skills Funding Agency.
- 4.3 The Company was established in 2008 as a Local Authority Controlled Company, awarded work under the Teckal exemption by its owner Local Authorities, but is also capable of bidding for and delivering work for other local and national organisations. The owning Authorities remain guarantors of the company, including guarantee of the company's LGPS pension fund.
- 4.4 Since 2008, the Company has grown and expanded its services, and has won business with a number of new customers. This success means that the company no longer qualifies for Teckal exemption. This situation prompted a review of the Company by the owners to determine the most appropriate basis for its future working.
- 4.5 An options analysis for the Company was carried out from October to December 2013. The analysis proposes that the Company is retained by the owners, but that the operation is commercialised, with terms of the Members Agreement being updated to reflect the ending of the Teckal exemption, and to clarify the ongoing involvement of the Owners and the future working of the Career South West Board.
- 4.6 Commercialising the organisation will require the following actions and changes:
1. Changes to the Company Board structure and operation, to retain an Owners Group of the owning Local Authorities, but make it distinct from the General Board of the company which will run the day to day business;
 2. Review of the operation and reporting of the business to ensure efficiency, and provide accurate and relevant metrics for General Board and Owner Group review; and
 3. Succession planning and management in respect of the CEO and Company Secretary, both of whom are due to retire in 2014-15.
- 4.7 Going forwards, the current Board will be divided into an Owners Group, meeting annually, which retains overall control of the company, and is responsible for:

- Appointing/dismissing the General Board
- Providing strategic leadership
- Approving the annual business plan and budget

4.8 The Owners Group will consist of senior legal advisors or nominated senior managers of the four Owner Authorities, with meetings chaired on their behalf by the Company Chair. The Owner Group will retain step-in power over the Company.

4.9 There would then be a General Board, made up of three Career South West Senior Managers, four observers from Local Authority Owners and four Non-Executive Directors, one of whom will be the Chair. This General Board would meet quarterly, and oversee the day to day business of the company, chaired by the CSW Chairman.

4.10 **Financial Considerations**

4.10.1 Implementation of the Commercialise option will carry the following costs:

Costs to Careers South West:

CSW - one-off £99,113

CSW - on-going £13,220

Costs to the Councils

Cornwall - one-off £5,136

Devon - one-off £5,136

Plymouth - one-off £2,996

Torbay - one-off £1,708

4.10.2 CSW one off costs are for their Transition Project, including a review of the company organisational structure and working and managing succession. CSW costs are already allocated within the Company's 2013-14 operating budget. The ongoing costs are for maintenance of the new CRM system for the company, and have CSW Board approval, subject to business case.

4.10.3 Costs to Local Authorities are costs for management and governance of the project to implement the legal changes within CSW, and run up to end of June 2014.

4.11 **Legal Considerations**

4.11.1 The legal status of the company will remain a company limited by guarantee, wholly owned by the four Local Authorities. However it will not be considered as Teckal exempt and will need to tender for all Authority business.

- 4.11.2 Changes will be required to the current legal documentation and agreements to establish and manage the Owners Group and General Board. These changes will need approval by each of the owner Councils.
- 4.11.3 There are five main legal documents to be reviewed to implement the changes set out above.

The Members Agreement will be amended to update the Definitions to include the Owners Group and General Board, and to include the Scottish Widows Pension scheme alongside the LGPS already referenced. The population counts defined in Agreed Proportions also require updating.

Throughout the document, amendments will be needed to distinguish the operation of the Owner Group from that of the General Board, now that the single body is divided into two distinct groups.

Provision in the Members Agreement for a new member to appointed will be removed.

The Memorandum of Association does not require any changes.

The Articles of Association will require updates to introduce the division of ownership and management into the Owner Group and General Board. Most of the provisions in the current Articles can be retained but amended to refer to the General Board. The exceptions to this are the clauses detailing the appointment and dismissal of Directors and the Deadlock provisions, which are powers retained by the Owner Group. New clauses will be inserted to set out the membership, working and authority of the Owner Group, including General Board Director appointment, dismissal and actions to manage deadlock. The authority of the Owner Group to approval the annual Business Plan and Budget, and the responsibility incumbent on the General Board to provide these to the Owners will also be documented.

The Deed of Guarantee does not require any changes.

The Admission Agreement to participate in the Cornwall Local Government Pension Scheme does not require any changes.

5. Possibilities and Options

- 5.1 The alternatives to commercialising the company's operating basis are to sell or dissolve the company.
- 5.2 Sale or dissolution of the company would present an immediate cost to the Councils in terms of procurement and service transfer (including TUPE) either in-house or to a third party organisation. It could also trigger crystallisation of the pension liability in respect of past service, for which the owning Councils are co-guarantors. 5.3 For reasons of cost, and owing to the impact sale or dissolution would have on service provision and the current employees of the company, these options were rejected under analysis.

5.4 Details of the analysis and basis for these costs are in the Options Analysis Presentation.

6. Fair Decision Making

6.1 Career South West have undertaken an Impact Assessment which is attached at Appendix 1. An Impact Assessment for the changes being proposed has been undertaken, and has found no impact or requirement to address equality issues. The assessment will be reviewed as the proposed project is implemented.

7. Public Services (Social Value) Act 2012

7.1 Career South West will need to tender for all Local Authority business in the future.

8. Risks

If the proposed decision is not implemented, then the alternative is to sell or dissolve the company. Sale or dissolution would present an immediate cost to the Councils in terms of procurement and service transfer (including TUPE). It could also trigger crystallisation of the pension liability of past service, for which the owning Councils are co-guarantors. The Pension Fund would claim against the CSW guarantors, for Torbay this is estimated to be in the region of £855,000.

Appendices

Appendix 1 – Comprehensive Impact Assessment prepared by Careers South West

Additional Information

Devon County Council Report CS/14/10 to its Cabinet
Options Analysis Presentation slides