

TORBAY COUNCIL

Report No: **SS/27/04**

Title: Transfer of Industrial Services Group to a Local Authority Controlled Company

To: Executive on 14th September 2004

1. Purpose

- 1.1 This report is to seek the in principle approval of the Executive to the transfer of the Industrial Services Group (ISG), of which Torbay Industrial Services is a part, to a Not for Profit Company
- 1.2 Supported Employment for people with disabilities is currently provided within the Authority through a formal Joint Arrangement with Devon and Plymouth Councils via the Industrial Services Group. This provision is overseen by a Joint Management Committee of which a number of councillors of this authority participate. Following a period of review the Joint Management Board has given the Group approval to seek to transfer ISG to a Not for Profit Local Authority Controlled Company.
- 1.3 Legal advice has been sought and a transfer under the Wellbeing Powers of the Local Government Act 2000 recommended.
- 1.4 This report outlines the background to this recommendation; the reasons for seeking approval for this transfer and the advantages an integrated organisation will give both the group and service users in supported employment. It discusses:
- the need for change
 - the potential impacts on service users
 - legal issues
 - finance issues
 - human resources issues
- 1.5 ISG has registered a potential new company in the name of PLUSS. This name was chosen by the group. PLUSS will be owned by the three Local Authorities and be overseen by a Board of Directors appointed by them. The details of this arrangement are currently being clarified. Approval is sought to transfer ISG to PLUSS with effect from 1 January 2005.

2. Relationship to Corporate Priorities

- 2.1 This report relates to the Social Care and Health Priority and also to the Jobs and Economy priority since

3. Recommendation(s)

- 3.1 That Torbay Council, in exercise of its powers under Section 2 (1) of the Local Government Act 2000 to promote the economic, social and environmental well being of its area including the power in Section 2 (5) of that Act, agrees in principle to enter into such arrangements or agreements with Devon County Council and Plymouth City Council ("the Councils") for the purposes of:
- (a) Torbay Council and the Councils becoming members of a company limited by guarantee known (or to be known) as PLUSS;
 - (b) constituting PLUSS as a local authority controlled non profit distributing company with the object or objects of delivering employment, training, development and other related services for the benefit of persons with disabilities; and

- (c) transferring to PLUSS the undertaking of and the responsibility for managing, delivering and developing the services of The Industrial Services Group which is the subject of Agreements dated 31 March 1998 and 15 August 2001 made between Torbay Council and the Councils,

such arrangements or agreements to be on the terms and in the form approved by the councils and to include arrangements for varying or bringing to an end the Agreements dated 31 March 1998 and 15 August 2001.

- 3.2 That delegated authority be given to officers to draw up the necessary contracts and legal agreements (including the constitution of PLUSS) between Torbay Council and PLUSS for the provision of services described above.

4. Reason for Recommendation(s)

- 4.1 This report is to seek the in principle approval of the Executive to the transfer of the Industrial Services Group (ISG), of which Torbay Industrial Services is a part, to a Not for Profit Company.

- 4.2 The ISG is currently managed by a Joint Committee with membership from all three Local Authorities, but requires the approval of each individual Local Authority.

5. Key Risks associated with the Recommendation(s)

- 5.1 The risks will be identified at a meeting on 7th September and the information will be made available to the Executive Meeting

Likelihood	6	6	12	18	24
	5	5	10	15	20
	4	4	8	12	16
	3	3	6	9	12
	2	2	4	6	8
	1	1	2	3	4
		1	2	3	4
		Impact			

Low risk

Intermediate risk

High risk

The "x" in the above matrix denotes where the author has assessed the level of final risk to fall

6. Alternative Options (if any)

- 6.1 Alternative actions would include:

1. Torbay withdrawing from the Partnership Arrangement
2. Status Quo.

Neither option is in the best interests of providing effective services to people with disabilities and fulfilling the Council's inclusion agenda.

7. Background

- 7.1 The Industrial Services group is a partnership between Devon County Council, Plymouth City Council and Torbay Council. The group's objective is:

'to enable the maximum number of people with disabilities to gain and sustain paid employment in the most cost effective manner possible'.

- 7.2 It has been the Group's view for some time that significant structural change is needed to fully meet the objective identified above. Following authority from the Group's Joint Management Board, Horwood International Limited were commissioned to examine the current structure and operation of the Group. They reported back in August 2002 and concluded that 'ISG is exceptionally difficult to manage its present form.' '....ISG might ultimately operate more efficiently outside the departmental structure of a council[s].'
- 7.3 At this point the Group received approval from Joint Management Board to take initial steps to move towards a new form of organisational structure by:
- creating a Functional Management Structure, with three functions, Employment, Equipment and Industries
 - developing a 'brand' name for the potential new organisation
 - seeking advice on appropriate types of structure
 - developing a project plan to move to an appropriate new structure
- 7.4 All of these tasks have been completed and the Group is now being managed on a cross-geographical, functional basis. The Group worked together to develop the new 'brand' name of PLUSS. This has been registered as a potential new company and website development and limited marketing is taking place. Following a tender process Veale Wasbrough Solicitors were commissioned to submit a report outlining the practical considerations for determining a preferred legal model of a new organisation. Their recommendation was to transfer ISG to a Local Authority Controlled Company.
- 7.5 This recommendation has been considered and accepted by the Group's Joint Management Board which has given authority to move forward with the process of transferring ISG into such a company, named PLUSS, with effect from 1 January 2005. A project plan has been completed which maps out the transfer process.

8. Why Change is Necessary

- 8.1 ISG is currently overseen by a joint social services sub-committee of the three Local Authorities. Delegation to this sub committee is limited, many activities and responsibilities remain the responsibility of each (geographic) Local Authority. ISG is therefore neither an independent entity nor a wholly integrated one. ISG has a complex organisational structure which impacts on its ability to respond to changes and challenges not only in the market in which its factories trade but in the provision of Workstep and other grant aided supported employment programmes.
- 8.4 Transferring ISG to a Not for Profit Local Authority Controlled Company, PLUSS, will provide significant benefits to the organisation and the people to whom it is committed to providing services for. The company will be owned and controlled by the three Local Authorities who will appoint a Board of Directors to oversee its running (see 3, Legal Considerations, below for details). Benefits to ISG and service users are set out below:

8.4.1 Workstep (supported employment)

The Workstep programme replaced previous programmes for supported employment and reduced the funding available. Despite this, ISG has remained one of the largest organisations delivering the programme. Greater organisational flexibility and freedom will ensure the sustainability of ISG as one of the expert organisations in this field, providing the best services to people with disabilities across its area of influence. As PLUSS the Group will have clear, integrated strategies and direction and the ability to move quickly and decisively in this area of ever increasing competition.

8.4.2 Funding and Tendering

Through rationalisation of job functions, improvements to financial systems and a better understanding of Group costs, PLUSS will have enhanced ability to secure funding and submit tenders for other provision (such as the Somerset Sheltered Employment Contract). This will be achieved by:

- removal of duplication of effort across geographical boundaries in securing funding applications
- the ability to appoint dedicated funding workers if appropriate
- functional budget preparation, monitoring and management
- business planning for the organisation as a whole

8.4.3 Advantages to Employees with Disabilities and Supported Employment Service Users

Delivering service and support through a single integrated organisation will:

- enable clarity about the client base of PLUSS and thus further the ability to seek innovative solutions to their needs
- allow the training needs of service users where appropriate to be addressed across the whole group as opposed to geographically and by employment scheme
- give the ability to set pay rates and terms and conditions to encourage and facilitate progression away from supported employment
- facilitate movement between schemes across the groups range of functions as appropriate
- ability to work more cohesively to find a range of work options to fulfil Social Services Departments requirements, for example under the Valuing People agenda

8.4.4 Efficiency and Effectiveness

It is the Group's view that it will be able to function more efficiently and effectively as PLUSS, improving services to people with disabilities for and on behalf of the partner Local Authorities. This will be possible in a number of areas:

- Rationalisation of terms and conditions of employment of employees of ISG. The three Local Authorities have different policies, procedures and pay scales. Employees within the group undertaking similar roles may be paid on different salary grades and covered by for example one of a number of different disciplinary procedures. This has a significant impact on the ability of the group to work as an integrated organisation with a Group culture and identity
- Economies of scale in the Group's purchasing arrangements will be facilitated, particularly for retail outlets
- Appointment of specialist staff to work across the Group will be possible. An example of this would be the appointment of a Contracts Officer to set up and monitor contracts
- Equipment contracts may be able to be rationalized across the three geographical areas
- Development of a Group wide business plan to assess and then maximise the commercial viability of its operations (and if required to give commercial operations some distance from other aspects of the Group's activities)
- Finance and management data for the whole Group will be easily accessible and benchmarking between sites facilitated
- Marketing of PLUSS's services will be enabled

8.4.5 Reinvesting of Surpluses and Development of Services

As a Not for Profit Local Authority Controlled Company any surpluses PLUSS may acquire will be reinvested in the organisation to ensure the continued development of high quality services for people with disabilities within the remit of the three Local Authorities concerned.

9. Financial Considerations

- 9.1 The Group is currently in the process of undertaking a variety of necessary financial tasks such as:
- clarifying the position of PLUSS with respect to tax and value added tax
 - listing assets and stocks for potential transfer
 - agreeing conditions of properties and vehicles and considering potential sublets or assignments
 - reviewing current contracts
 - investigating audit, banking, insurance and other such requirements
- 9.2 Detailed work will be required following committee approval to clarify and agree all financial issues prior to the transfer.
- 9.3 It is not the intention that the transfer to PLUSS will necessitate additional investment on the part of the Authority; the contribution will be contained within existing revenue budgets. The position regarding Local Authority guarantees has yet to be finalised. Some support from the three Local Authorities will be sought to guarantee against the financial vulnerability of PLUSS for its first three trading years. As the group has not been allowed to roll forward under spends for the last 4 years it does not currently hold reserves of its own.

10. Human Resources Considerations

- 10.1 The Group has clarified that the transfer will be covered by TUPE legislation. A single JCC, with regional trade union representation has been set up to enable consultation to be undertaken effectively. The Group is at present finalising a revised organisational structure which will be the subject of consultation.
- 10.2 It is envisaged that appointments to the revised structure will be made in tiers or groups of tiers within a procedure and programme agreed with the JCC. The use of 'slotting in' mechanisms will be agreed with the trade unions wherever appropriate. Appointment of the Chief Executive and Senior Management Team (S.M.T) will, where necessary, normally involve the Chair and representative(s) (two for Chief Executive and one for S.M.T.) of the Board
- 10.3 Early discussions with the Devon County Council Local Government Pension Scheme manager have indicated that, subject to actuarial valuations, PLUSS would be entitled to be considered an admitted body of the scheme.
- 10.4 Details of all pensionable employees have already been provided to the Pensions Manager and following finalisation of actuarial work delegated approval for admitted body status will be sought from the Pensions and Investment Committee Chair in September and ratified at their meeting in November.
- 10.5 The Group is also discussing with the three Local Authorities the possibility of agreeing Service Level Agreements for the provision of services such as Payroll.

11. Legal Considerations

- 11.1 Veale Wasbrough has advised that PLUSS can be set up as a Not For Profit Local Authority

Controlled Company. The three Local authorities will then contract with PLUSS to deliver employment services to people with disabilities.

- 11.2 They advise that section 2 (1) of the Local Government Act 2000 enables a Local Authority to use a power to promote wellbeing. Final guidance on the Act issued in May 2001 makes it clear that Local Authorities can form or participate in a company provided that the authority is satisfied that such action is likely to achieve the promotion or improvement of the economic, social or environmental wellbeing of the area.

- 11.3 PLUSS will be wholly owned by the three Local Authorities who will appoint a Board of Directors. Further advice is currently being sought on the profile of the Board and on Director's liabilities.

NB Please see Appendix 3 for the proposed profile of the Board of Directors. Once appointed the Board would take responsibility for the strategic direction of PLUSS, determining key issues by majority decision (proportion to be determined).

- 11.4 Further legal advice is being sought on the precise requirements should any Authority wish to cease being part of the company (in circumstances where there are no contract failings). It is expected that the exit strategy currently contained within the Joint Management Committee Agreement will be replicated. It is the intention that this possibility is reduced as much as possible and it is planned to carry out a risk audit to determine areas of risks, minimisation factors and amelioration strategies.
- 11.5 Executive Committee approval to setting up PLUSS is required. Following this the legal departments of the three Local Authorities will be required to draw up Transfer of Undertakings documentation and Service Contracts.

12 Information Technology Issues

- 12.1 Negotiation on a range of issues is currently taking place between ISG and the I.T. sections of the Authority. Preliminary discussions have taken place regarding transfer of hardware and the issue of software licensing. The group has a network of its own partially in place and will extend this to cover all areas. It is the intention that this will be ready for the launch of PLUSS but in the case of delays in installation on going use of the Authorities systems will be required, this will include all necessary telephone systems.

13 Property Issues

Torbay Industrial Services operates out of four locations. Work is currently underway to determine the ownership and condition of these properties. Detailed work will be required following agreement to set up PLUSS to finalise ownership, sub leasing, dilapidation and other pertinent issues.

Jain Wood
Director of Social Services

Contact Officer: Bill Hande – General Manager, Industrial Service Group DCC
Telephone no

IMPLICATIONS, CONSULTATION AND OTHER INFORMATION

Part 1

These sections may have been completed by the Report author but must have been agreed by the named officers in the Legal, Finance, Human Resources and Property Divisions.

Does the proposal have implications for the following issues? If "Yes" - give details. <i>delete as appropriate</i>		Name of responsible officer
Legal	Yes – as in body of report	Bill Norman
Financial – Revenue	Yes - as in body of report	Richard Thorpe
Financial – Capital Plan	Yes - potential IT issues as in body of report	Richard Thorpe
Human resources	Yes – as in body of report	Sally Simpson
Property	Yes - as in body of report	Sam Partridge

Part 2

The author of the report must complete these sections.

Could this proposal realistically be achieved in a manner that would more effectively: <i>delete as appropriate</i>		
(i)	<p>promote environmental sustainability?</p> <p>The contents of this report support the vision of Torbay in terms of promoting opportunities and independence for all. An improved ISG will ensure the maximisation of employment opportunities for people with disabilities across Torbay and the ability to develop innovative services to meet their needs. PLUSS will promote a healthy and caring Torbay and one in which the promotion of achievement through learning is available to as wide a section of the community as possible.</p>	No
(ii)	<p>reduce crime and disorder?</p> <p>No material effect upon Crime and Disorder</p>	No
(iii)	<p>promote good community relations?</p> <p>No material effect upon community relations</p>	No
(iv)	<p>promote equality of opportunity on grounds of race, gender, disability, age, sexual orientation, religion or belief?</p> <p>These proposals and the continued employment of people with disabilities promotes opportunities for people who would otherwise be excluded</p>	No
(v)	<p>reduce (or eliminate) unlawful discrimination (including indirect discrimination)?</p> <p>Work opportunities for people with disabilities reduces discrimination and promotes independence</p>	No

If the answer to any of the above questions is "Yes" the author must have addressed the relevant issue/s in the main report and have included a full justification and, where appropriate, an impact assessment.

Part 3

The author of the report must complete this section.

	<i>delete as appropriate</i>	If "Yes", give details
Does the proposal have implications for any other Directorates?	No	

Part 4

Is this proposal in accordance with (i.e. not contrary to) the Council's budget or its Policy Framework?		<i>delete as appropriate</i>
		No
1.	If "No" - give details of the nature and extent of consultation with stakeholders and the relevant overview and scrutiny body.	
	Consultation has taken place with employees of ISG – who support the proposals	
2.	If "Yes" - details and outcome of consultation, if appropriate.	

Part 5

Is the proposal a Key Decision in relation to an Executive function? (i.e. would generate expenditure or savings in excess of £100,000 or 20% of an approved budget OR affect more than 2,000 residents of the Borough.)	<i>delete as appropriate</i>	If "Yes" - give Reference Number
	No	

Wards

All

Appendices

- Appendix 1 Summary of Veale Wasbrough Legal Report
- Appendix 2 Financial Statement
- Appendix 3 Proposed Profile of the Board of Directors

Documents available in Members' Room

Background Papers:

The following documents/files were used to compile this report:

- 1 Horwood International Limited Review Report August 2002
- 2 Veale Wasbrough Legal report
- 3 ISG to PLUSS Project Plan
- 4 PLUSS Business Plan
- 5 Understanding TUPE paper
- 6 Draft Organisation Structure

Summary of Veale Wasbrough Legal Report (19 May 2004)

1. Introduction

Veale Wasbrough was commissioned to provide a report identifying the possible legal models for PLUSS and to make a clear recommendation about the preferred model.

2. Alternative Legal Models

The choice of legal models for the organisation is as follows:

- Local Authority controlled company
- not-for-profit company limited by guarantee
- company limited by shares
- registered charitable company limited by guarantee
- various contractual structures such as Local Authority Joint Board
- to continue as a Joint Social Services Sub-Committee

3. Recommendation

If ISG is to be incorporated as a separate legal body, then the clear recommendation is that this should be as a Local Authority controlled company, in all probability as a non-profit distributing organisation limited by guarantee'. The reasons for this are:

- The Group would achieve a significant level of independence, whilst remaining in the ownership and control of the Local Authorities. Control would be exercised by the appointment of directors.
- The organisation and its assets would remain in the ownership of the 3 Local Authorities.
- The Local Authorities' liability would be limited to the value of the guarantee.
- The Group, providing it was a not-for-profit organisation, would be eligible to apply for a range of grants and for reduced tax liabilities.

4. Alternative Legal Models

4.1 Local Authority Controlled Company

These are defined in Section 68 of the Local Government and Housing Act 1989 (1989 Act). There are a number of different categories:

- controlled companies
- influenced companies
- regulated companies
- non-regulated influenced and minority interest companies

These largely relate to the amount of control which the Local Authority retains over the new organisation. Incorporation as a Local Authority controlled company (LACC) will provide:

- limited liability to the partner Authorities, as members of the company
- limited liability to the partner Authorities, as directors of the company
- separate legal personality for the company which would be able to enter into contracts in its own name rather than those of the partner Authorities

A LACC can be formed as a company limited either by guarantee or by shares.

4.2 Not for Profit Company Limited by Guarantee

If a LACC is incorporated as a guarantee company, it can also be a not-for-profit company, limited by guarantee. Key elements of a not for profit LACC are as follows:

- The constitution of a not for profit company's memorandum and articles of association stipulates that it shall be a non-profit distributing organisation. The company is formed for community interests, social wellbeing or other benevolent purposes. As there are no shareholders, a not for profit company is limited by guarantee and the memorandum will contain regulations directing re-investment of surplus back into the company and prohibiting payments of substantial services to third parties. Whilst the focus of a guarantee company is upon re-investment of surpluses within the company, in effect such surpluses can be enjoyed by the partner Authorities indirectly, by way of downward adjustments of grant year-on-year and, additionally, the partner Authorities will have a substantial say in the deployment of the surpluses as directors of the company.
- It may be eligible for 80% business rate relief, as its general terms as a not-for-profit company are broadly charitable. This would be at the discretion of the billing and charging Authority. If the objectives of a guarantee company are broadly charitable and the majority of the surpluses re-invested in the company, it will also be eligible for grants both from public bodies and some charities.
- The constitution will be relatively flexible to amend by voting of the partner authorities by way of special resolution and requires no formal approval of any other outside regulatory bodies, such as the Charity Commission.

4.3 Company Limited by Share

This is the model most usually associated with a commercial company. Surpluses can be paid to shareholders, as the prime aim of a company limited by shares is to pay surpluses to its investors. Members' liability is limited to the nominal value of the paid-up share capital and members may be voting or non-voting, voting members determine Board composition and alterations to the constitution. Key elements are

- Control, the same considerations apply to control as to a company limited by guarantee.
- If it is a company limited by shares, the usual model for payment of surpluses to a third party, this structure will not be an acceptable recipient for grants from registered charities or trusts and it is unlikely to be eligible to receive funds from public bodies, as a company limited by shares is regarded primarily as a commercial model and not an appropriate constitution for the delivery of social and public services.

4.4 Registered Charitable Company Limited by Guarantee

A registered charity is normally incorporated first as a guarantee company and then registered with the Charity Commission as a charity. Key elements of a registered charitable company are:

- The Charity Commission will require the charity to demonstrate autonomy and independence. In practice, the Charity Commission is likely to insist upon the appointment of an equivalent number of non-partner trustees to the Board of the charity. This is likely to dilute the degree of control desired by the partner Authorities.
- It is intended that ISG continues its trading operations. Such trading is unlikely to be regarded as tax exempt, however widely the objectives of the charity are drawn. The trading of ISG would, in consequence, have to be conducted within a trading subsidiary wholly owned by the charity in order to recover tax on trading profits through gift aid. ISG is too substantial a trading organisation to make charitable status viable.

4.5. Contractual Structures

Various contractual structures were considered, such as joint ventures, service contract for joint committees, service contracts – non-statutory partnership boards. However, none of these would give ISG the operational integration or independence that an LACC would provide for example:

- The development of the group through a shared and collectively-managed business plan could be severely hindered without a clearly accountable separate legal entity.
- Potential funders, whether by way of grant or loan finance, may be more reluctant to finance a non-incorporated organisation, owing to the lack of a cohesive legally separate and accountable body

Financial Summary

1 Summary of Trading 2004/5 – 2006/7

- 1.1 The forecast surpluses are as follows:

Surplus for the Year

2004/5	123,000
2005/6	168,000
2006/7	205,000

- 1.2 The projections, which are pre-inflation, show a small increase in the level of surplus each year. This would be retained within PLUSS to build reserves against any unexpected contingencies.

The number of supported employees and service users in training is forecast to increase as follows:

Supported Employees Service Users in Training

2004/5	502	800
2005/6	531	819
2006/7	540	850

It should be noted that the level of support from the three Local Authorities remains static over the three years. Workstep grants increase in line with growth in supported employees.

2 Divisional Plans

ISG is currently managed on a functional basis with three divisions, Industries, Employment and Equipment and these projections are prepared on this basis. Records continue to be retained for each Local Authority in order to identify the support needed from each Authority.

3 Income

- 3.1 Income is summarised as follows:

	£000's		
	<u>2004/5</u>	<u>2005/6</u>	<u>2006/7</u>
Industries	3834	4078	4289
Equipment	5334	5476	5697
Employment	631	611	591
Training	678	878	978
European Social Fund	247	247	247
Workstep Grant	2329	2478	2520
Local Authority Support	2693	2700	2700
Total	<u>15746</u>	<u>16468</u>	<u>17022</u>

- 3.2 All divisions are expecting some growth despite continuing competition from the United Kingdom and overseas, particularly the Far East. As sales of some products decline in quantity or value so others continue to be developed with some limited investment in machinery to maintain competitiveness.

4 Working Capital

At 1st April 2004 ISG had stocks of £1,003,000 financed by the three Local Authorities. Details of debtors and creditors were also held in Local Authority books.

5 Cash Flow

The opening working capital of PLUS would need to be funded by Local Authority loans or bank overdrafts. Cash flow will be positive on an annual basis. PLUS could not however sustain its solvency without payments in advance of Local Authority grants, either on a monthly or quarterly basis.

The Workstep grant is currently paid from Job Centre Plus on a monthly basis, three months in arrears, PLUS will need to fund this three-month delay.

Proposed Profile of the Board of Directors

Further legal advice is being sought on this issue. The current proposal is as follows:

Principles

- A Board of Directors no greater than 15 to ensure meaningful, effective decision making
- Elected representation from each Local Authority
- Substitution for elected member directors only
- A number of independent, jointly appointed, directors. These directors will be appointed following an application and interview process in line with the recommendations of the Nolan Committee on Standards in Public Appointments.
- A limited number of executive directors

Profile

<i>Background of Board Member</i>	<i>Number</i>
1 elected member from each Local Authority	3
*1 other nominated by each Local Authority	3
4 independent, jointly appointed	4
Chief Executive of PLUSS	1
Head of Finance of PLUSS	1
Total number	12

* The total number may be open to negotiation. This nominee does not have to be an elected member but could for example be an officer, Trade Union representative or other interested party.

Notes

- Legal advice has been sought and a paper will be available on indemnification issues for elected members.
- Conflict of interest issues need to be given careful consideration and legal advice suggests that the Social Services and Education Portfolio holders would not be appropriate Directors.
- Training for members who are elected to the Board of Directors is currently being considered in order to clarify their role and responsibilities as Directors rather than elected members in relation to the Board.