

**Joint Report of the Assistant Director - Corporate and Business Services
(Solicitor and Monitoring Officer) and the Section 151 Officer**

Please note that the following recommendations are subject to consideration and determination by the other Local Authority Owners (Devon County Council, Plymouth City Council and Somerset County Council) before taking effect.

Recommendation: that Council:-

- a) gives approval to the Council relinquishing its ownership of PLUSS and PLUSS converting to a Community Interest Company as more particularly outlined in this report;
- b) notes that its approval is subject to the other three local authority owners approving a report in the same terms as this report; and
- c) authorises the Council's Solicitor to sign all documents necessary in order to facilitate the process of the Council relinquishing its ownership of PLUSS and PLUSS converting to a Community Interest Company.

1. Introduction

- 1.1 Council members will recall receiving a report at the 5th December 2013 meeting at which it was agreed to dispose of PLUSS to Turning Point on the terms as outlined in that report. In the event, the transaction with Turning Point did not proceed as Turning Point withdrew from negotiations in February 2014. Since that time there has been further discussions with the Board of PLUSS (which contains directors appointed by the local authority owners) about its future and this report seeks to update members on the current position and asks for approval for the Council to relinquish ownership of PLUSS so that it may become a Community Interest Company.
- 1.2 The decision to relinquish ownership of PLUSS is dependant on the other three local authority owners also agreeing and reports will be taken to the respective decision making forums of Plymouth, Somerset and Devon Councils during October 2015.

2. Background

- 2.1 Before explaining the current proposal it may be helpful to repeat a little of the history of PLUSS in order to set the situation in context. Prior to August 2005, Devon, Plymouth and Torbay Councils provided a range of employment and training programmes for people with disabilities and operated an equipment store. Known as the Industrial Services Group (ISG) this service was overseen by a Joint Social Services Committee but the management of the service was unwieldy. Following a review it was concluded that there was a need for change to ensure that the service could be delivered in a more cohesive and efficient manner.
- 2.2 The upshot of the review process was that in August 2005, Devon, Plymouth and Torbay Councils formed PLUSS, a local authority controlled company, limited by guarantee. PLUSS effectively took over what had hitherto been undertaken by ISG. It delivered services to the three member Councils through a series of service contracts as well as providing services to other external organisations, including the Department for Work and Pensions (DWP).

- 2.3 In June 2006, Somerset County Council transferred like services to PLUSS and became a member alongside the three existing member authorities.
- 2.4 PLUSS has since established itself as one of the leading organisations of its type in the country. Over the years the value of its contracts with the four local authorities has reduced such that it no longer carries out the bulk of its work for the four member Councils. It does, however, have a number of significant contracts with other public sector bodies.

3. Developments post November 2013

- 3.1 When PLUSS initially mooted the idea of becoming independent, soundings from within the four member Councils elicited a favourable response, although there was a concern to ensure that any transfer of ownership should be to new owners driven by a sound social purpose thereby enabling the continuation of services of value to local communities.
- 3.2 This led PLUSS to exploring which organisations would best meet its long term needs and aspirations whilst keeping in mind the concerns expressed by the owners. Turning Point emerged as the best suited, primarily because their core values and vision aligned with those of PLUSS, although in the event Turning Point subsequently withdrew.

4. Post Turning Point developments

- 4.1 Since the withdrawal of Turning Point there has been regular contact between the Council's representatives being four senior finance officers and the PLUSS Board. The role of the finance officers is to act as a conduit between PLUSS and its owners, deal with any issues that may arise for the owners in relation to PLUSS' activities and ensure by such communication that the interests of the Councils, as owners, are protected.
- 4.2 The continuing view of both sides is that it would be better for the long term for PLUSS to become independent of the four Councils. The means to achieve this has been discussed between the representatives of both parties and at a meeting held in December 2014 (which involved the local authority appointed directors) the following options were considered. PLUSS was asked to develop the proposal at option 5, whilst the owners would give more consideration to each option:-
- Option 1 – the Councils as owners market PLUSS;
 - Option 2 – PLUSS identifies a number of suitable interested parties for the owners to consider;
 - Option 3 – the Councils as owners identify one or more parties interested in acquiring PLUSS;
 - Option 4 – PLUSS identifies an appropriate organisation; or
 - Option 5 – PLUSS moves directly to become an independent entity.
- 4.3 After further discussion it was agreed that option 5 represented the best of the options and this option is dealt with in more detail in section 5 below.

5. Community Interest Company (CIC)

- 5.1 The proposal is for PLUSS to convert from its existing legal status as a company limited by guarantee and owned by the four member Councils to a CIC limited by guarantee, based on what is termed a "foundation" structure. The "foundation" structure involves the board of directors being the only members of the company and so membership of the company derives solely from directorship.
- 5.2 The main benefits/implications of CIC status are summarised below:-
- The conversion to a CIC is a relatively straightforward process that could be achieved in a much shorter timescale than the other options;

- Enhanced external credentials as a social enterprise and a clearer community interest “badge”. CICs need to be able to demonstrate that their objectives and activities are for the benefit of the community. This, of course, aligns with and would answer the concerns referred to in section 3.1;
- The assets of the CIC would be asset locked. This means that where assets are sold at full market value the funds raised must go into the CIC. Alternatively, any assets sold at below market value could only be transferred to other bodies that operate with an asset lock;
- CICs are regulated and albeit that the regulatory regime is fairly light touch the Regulator has powers to intervene if there has been a complaint about the operation of the CIC.
- Funders and other stakeholders are likely to be reassured by the fact that a CIC is subject to greater regulation/scrutiny and operates within an asset lock;
- Remuneration for Directors must never be more than what is reasonable and should be transparent. The Regulator may take action if a Directors remuneration appears too high;
- The primary purpose of a CIC is to provide benefits to the community, rather than the individuals who own, run or work for it. Thus there is limited scope for the funds of the CIC to be used for employee benefits.

5.3 The owner representatives are of the view that the option to convert to a CIC is preferable because it will ensure that the community based ethos of PLUSS will be maintained and protected whilst achieving the objective favoured by both owners and PLUSS of independence for the Company.

6. Financial and Commercial Issues

6.1 The conversion of PLUSS into a CIC would not result in the four member Councils obtaining a financial receipt. The last exercise involving the sale of PLUSS would have involved a small cash sum shared across the four members. Given the nature of PLUSS as a local authority controlled company limited by guarantee the owner representatives are of the view that seeking to obtain value for the company is not a key requirement and would be in keeping with the current Memorandum of Association of PLUSS. Rather it is more important to enable the company to pursue independence with a clear community focus whilst at the same time relieving the owners from certain liabilities.

6.2 A valuation of the company has been prepared but is reported as a Part 2 item given its commercial sensitivity. It should, however, be remembered that a company having a certain book value is one thing but actually obtaining a buyer willing to pay that price can be difficult to achieve. Further, seeking out those interested in acquiring ownership of the Company would require a high level of resourcing and be both time consuming and costly.

6.3 PLUSS is no longer a member of the Devon LGPS and, therefore, there are no longer any issues regarding the owners' liability to the pension fund as there were when Turning Point was considering acquiring the Company. In terms of other potential liabilities the owner representatives have made it clear to PLUSS that it would be a pre-requisite of any conversion to a CIC that the owners would no longer act as guarantors in respect of the PLUSS overdraft facility of £650,000. In addition PLUSS has agreed to repay the existing loans provided by the owners at the inception of PLUSS. For Torbay this will secure a repayment of £115,500 and will relieve it of a potential liability of up to £200k in respect of the bank guarantee.

6.4 PLUSS currently occupies one of the Devon County Council's properties and this will continue to be leased on market terms. Existing contracts with PLUSS will continue although in due course such contracts will need to be re-procured. Staff employed by PLUSS would continue to be employed by the Company with its CIC status.

7. Legal Considerations

7.1 If the owners approve this proposal and PLUSS proceeds to convert to a CIC, it would mean that the four local authority members of PLUSS (i.e. the four owners) would resign their

membership and the four owner appointed directors would likewise resign their directorship. PLUSS would continue as a company but would be classified as a CIC and be under the ownership of the new members, with new directors appointed under revised articles of association for the company.

- 7.2 The local authorities as current owners have been involved in reviewing and approving the CIC statement which is a pre-requisite for obtaining CIC status and also the proposed new articles which have been drafted to reflect the proposed revised membership and board structure as well as the specific CIC legal requirements such as asset lock provisions. An asset lock means that the assets of the company are locked in permanently for the community benefit purposes for which the CIC is established and the asset value cannot be turned over to private gain.
- 7.3 PLUSS was established as a not for profit company and as such when it was set up it is unlikely that the owners anticipated securing a value for the company in the event of a future disposal. Owner representatives have expressed the view that maintaining a social purpose which enhances community benefit is very important and, as indicated above, believe that it would not be appropriate in the circumstances and the way in which PLUSS is established to seek to obtain some value from the company.
- 7.4 Clearly, local authorities have a general fiduciary duty in relation to their assets but taking into account general powers of competence under the Localism Act 2011 that does not necessarily mean that the owners have to seek to obtain value.
- 7.5 State Aid is unlikely to be an issue because the proposed transaction does not inject any more support for PLUSS than currently exists. In fact the proposed transaction would lead to less support being provided by the four owners as the bank guarantees would cease and the current loans would be re-paid.

8. Equality Issues

An equality impact assessment has been prepared on behalf of the four member Councils and is attached at Appendix 1.

9. Conclusions

- 9.1 The creation of PLUSS as a local authority controlled company in 2005 was the right move at that time. Since then with social, political and economic change the need to re-evaluate PLUSS and its future led to the conclusion that the future for PLUSS was more likely to be secured if it moved away from being a local authority company.
- 9.2 The option proposed by the PLUSS Board represents the best and quickest way forward of allowing PLUSS to become independent of local authority control, with the added advantage to the owners of the release of their present liabilities to the Company. In summary what is being proposed now represents a good opportunity to secure the long term viability of PLUSS, without prejudicing its aims and ethos. From the Councils perspective the liability and risk is removed.
- 9.3 Accordingly, the proposal for PLUSS to convert to a CIC is being recommended. Assuming everything proceeds smoothly, in particular, that there are no problems with PLUSS' application for CIC status it is anticipated that the formal change in ownership could be effected by the end of this year.

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Electoral Divisions: All

Local Government Act 1972: List of Background Papers

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