

# ANNEX I

## Business Case for Creation of a Local Authority Trading Company for Care Services



### Contents

EXECUTIVE SUMMARY .....	2
PURPOSE OF THIS BUSINESS CASE.....	2
BACKGROUND .....	2
STRATEGIC OBJECTIVES.....	3
PROPOSAL AND ALTERNATIVES.....	3
Option 1 - Recommended Option:.....	3
Option 2 - Alternative Delivery Vehicles.....	3
Option 3 - Do nothing .....	4
PURPOSE AND SCOPE OF THE PROPOSED LATC .....	4
LATC CREATION .....	5
Branding and Company Registration.....	5
Governance.....	5
Staffing.....	6
Accommodation .....	6
Support functions .....	7
Care Quality Commission.....	7
VALUE ANALYSIS – COST, BENEFITS & RISKS .....	8
Company Set Up Costs.....	8
Set up cost estimation .....	8
These costs would be met from within existing ASC budgets. ....	
BENEFITS OF THE LATC OPTION.....	8
KEY RISKS.....	10
IMPLEMENTATION .....	11
Appendix I – Alternative Delivery Vehicles (ADV) .....	12

## **EXECUTIVE SUMMARY**

This Business Case assesses the business and financial basis for the setting up of a Local Authority Trading Company (LATC) to deliver home care services in Plymouth.

It outlines the vision for a LATC to be established by Plymouth City Council, and seeks to demonstrate that the company could provide a new option to be assessed when responding to events that involve the withdrawal, cessation, failure, or likely failure of external adult care services.

This business case proposes that an LATC could offer a suitable alternative to the existing in-house and other market solutions, and importantly it would provide an option that could be assessed on a case-by-case basis as the need arises.

Services will be considered for delivery through the company on a case-by case basis but the LATC will be able to grow and develop if required, as well as undertaking services on a temporary basis where this is necessary to stabilise a service. While being in a position to pursue further commercial opportunities the company's primary focus will be on responding to the need to have in place the option of taking on adult care services where it is considered that there are no viable alternative options. For any service undertaken by the LATC the approach will involve: partnership working, service-user involvement, promotion of ethical employment methods and adding value to other existing services provided by external providers, rather than competing to win business from them.

In order to perform this function the LATC would need to directly employ care staff and would provide unregulated and regulated care services. This would include managing services through a service level agreement with the Council in the short and medium term. Based on the experience of the past few years there is likely to be a range of services that need solutions where the Council is in the position of having to secure an alternative provider. It is envisaged that the LATC would undertake a range of services but the scale, frequency, and extent of this is difficult to predict at this stage for the purposes of accurate business modelling.

## **PURPOSE OF THIS BUSINESS CASE**

The purpose of this Business Case is to assess the case for setting up a LATC, wholly owned by Plymouth City Council. The company would be used initially to focus on services that are handed back by other providers or where there are no other feasible options (due to timing and/or absence of an alternative provider) other than the existing in-house service.

## **BACKGROUND**

There is growing evidence that care providers are facing significant challenges, and for some services the care provider market is precarious. Social care pressures have a direct impact on the health service with people having to stay in hospital longer than necessary where social care cannot be provided. The government has responded to these concerns by introducing mostly time-limited funding measures intended to ensure local authorities work in a more joined up way with the NHS to reduce the impact of social care shortages on the health service.

Recent provider failures in the homecare and residential care sectors locally have highlighted the need for innovative solutions so that the council has a range of responses available to it where providers' services are failing or where providers face financial difficulties. There have been occasions when providers cannot be sourced in sufficient time (or at all) to take on a service and where the quality of care and safety of those receiving care needs to be protected while alternatives

are explored.

Where the council is required to act it needs a wider range of options to intervene, stabilise, and ensure continuity of care in order to safeguard services that would otherwise cease and/or have to be re-provided at a higher cost.

## **STRATEGIC OBJECTIVES**

The strategic objectives of the proposals in this business case are:

1. To provide high quality care services that promote independent living.
2. To increase the options available to the council in order that it can support the care market and mitigate risks of market failure.
3. To be in a position to respond to provider failure if asked to do so, including developing short-notice response and “turnaround” services.

## **PROPOSAL AND ALTERNATIVES**

### **Option 1 - Recommended Option:**

Create a Local Authority Trading Company (LATC) owned by Plymouth City Council to respond to events that involve the withdrawal, cessation, failure, or likely failure of an adult care service.

A LATC would provide the option of transferring services to a trading company owned by the council, and while this would enable the service to continue to deliver care services it would operate under a different cost-benefit model using different assumptions about staffing costs, overheads, management etc. than an in-house service could, whilst still following and promoting ethical employment practices

The main focus of a new LATC would be on undertaking activity in order to safeguard services that would otherwise cease and/or have to be re-provided at a higher cost.

Given the nature of the services being delivered, the LATC would be a “not for profit” company. As such, it has been determined that the LATC would be a company limited by guarantee rather than a company limited by shares.

### **Option 2 - Alternative Delivery Vehicles**

Other options available would be to establish one of the following vehicles.

- Company Limited by Shares
- Mutual
- Charity
- Social Enterprise
- Limited Liability Partnership

Each of these forms has its own merits, advantages and disadvantages. A detailed examination of the characteristics of each of these type of entities is set out in Appendix I. However In this case these alternative delivery vehicles are not favoured for the following reasons:

- There are already a wide variety of existing and potential external providers (charities, mutual and private companies) in the care market in Plymouth so to avoid duplication an option that retains direct influence over activities would be preferable given the need to ensure the “provider of last resort” responsibility can be fulfilled through the LATC if necessary.
- The services do not involve stewardship of community assets, such as land and buildings.
- Any “new entrant” to the local care market will have to ensure it does not operate at the detriment of existing satisfactory providers (in many sectors these are private providers).
- There is the potential to grow and develop services in the future so any vehicle must be flexible enough to adapt and change at speed.
- It is not intended that the company would be profit driven.

### **Option 3 - Do nothing**

#### Current situation

At the moment there are a number of established processes that give rise to the need to intervene in the local care market. The three most common areas are set out below.

1. Concerns identified through the ACS commissioning, market resilience and monitoring processes.
2. Concerns relating to care quality (including safeguarding).
3. Best value and financial appraisals of services and service providers.
4. Financial failure or a provider withdrawing from the market.

Depending on the urgency the current approach entails a cost-benefit and appraisal of the options available to the council to re-provide the service or maintain the service and replace the service provider. This can entail complex contractual and regulatory issues as well as all the practical matters related to the service quality and safety of those receiving care.

Where no external provider is available, or where there is insufficient time to source an alternative provider, the Council currently has no other option other than to take over the delivery of the service itself. For a large service this would put existing Council resources under additional strain and is unlikely to provide a value for money solution due to additional overheads, TUPE and pension liabilities.

### **PURPOSE AND SCOPE OF THE PROPOSED LATC**

Over the past two years Strategic Commissioning adult care services have been faced with having to source alternative provision – sometimes at very short notice – for home care. The LATC will offer a potential alternative to existing in-house solutions which is currently the only option available when time and other constraints mean it is not possible to source a replacement external provider. Once a service has transferred to the LATC, and had time to settle in and stabilise, a full options appraisal will be carried out to consider long term future solutions for the service and the financial cost-benefit of continued use of the LATC compared to other market options.

Initially, the company would be formed with a view to being ready to quickly take over the delivery of services where the existing provider is unable or unwilling to continue delivering the service (this may be for financial reasons, concerns around quality of care, or because a provider is withdrawing from the market or service area). However, the LATC will be established in such a way as to enable further services to be included in the future. For example in the future it is anticipated that the LATC could look at opportunities to create a staff bank/locum service, – including supporting the Personal Assistant market – if it can be demonstrated that this would help support the council’s wider initiatives to attract local residents into the care workforce and retain and develop existing care workers.

The company will be focused on ensuring the council can fulfil its requirement to ensure safe care can continue to be provided when a provider is in difficulties or is no longer able to provide a service. The company will work to ensure that residents who need care and support are able to have the same choices and opportunities as everyone else.

The LATC will need to develop a strong values-based approach to the work and it would offer the same opportunities for co-production, involvement and engagement with staff, service users and residents as other options. Perhaps most importantly is the need to keep the initial approach as straightforward as possible to allow for a high degree of adaptability to absorb and/or develop new services. To allow for this flexibility a LATC is considered a good model for intervention.

## **LATC CREATION**

### **Branding and Company Registration**

A name and brand will be created for the company, as well as a communications plan. This will need to be subject to a formal check at Companies House to ensure it is available for use at the time the LATC is formed.

### **Governance**

This Business Case assumes that the Council will use the provisions of section 1 of the Localism Act 2011 to establish the LATC as a wholly owned subsidiary company. The LATC’s Articles of Association will be prepared in accordance with this section and the general legal requirements. The LATC will be a separate legal entity from the Council and would be established in such a way as it would have the freedom and ability to pursue adult social care trading opportunities as necessary.

The LATC will be a company limited by guarantee and will be a wholly owned company of the Council.

The company shall be ‘teckal compliant’ meaning that the council can award contracts directly to the company without the council having to undertake a procurement exercise.

In the case of *Teckal* (C-107/98) the ECJ established an exemption from public procurement for the award of contracts by a public authority to a separate entity provided certain requirements were met. Those requirements were that:

- The contracting authority must exercise sufficient control over the separate entity (with the test applied being that the control should be similar to that which the contracting authority exercises over its own departments); and
- The separate legal entity must carry out the essential part of its activities for its owner authority/ies ("the essential activity test").

This exemption, widely known as the "Teckal exemption", was formally codified into the 2014 EU Procurement Directive (Article 12), and thereafter in UK law under the Public Contracts Regulations 2015 (Regulation 12), which also clarified that the requirement that the separate entity carried out the essential part of its activities for the owner authority meant that at least 80% of its activity must be for that authority. Regulation 12 also confirmed the principle established in case law that there can be more than one contracting authority owner.

The company's day to day governance will be managed by a Board of Directors. The Board of Directors is likely to consist of council officers who can bring commercial and other expertise to the company.

As the Council will be the sole member of the company it will have the ability to direct the directors to take or refrain from taking specified action. Furthermore, in order to comply with the 'teckal criteria' certain key matters will be reserved for consideration by the Council/its nominated representative.

A decision will be required by Cabinet or the Leader to appoint Directors to the company; and for an individual to act as member representative for the purpose of attendance at general meetings and dealing with reserved matters.

## **Staffing**

The initial creation of the LATC will not involve the employment of staff, and will not require resource associated with terms and condition of employees and systems to support them. Services transferred or undertaken by the company will need staff and the associated office systems and infrastructure, and resource will be required to accommodate this and future requirements

It is assumed that TUPE (Transfer of Undertakings, Protection of Employment) regulations will apply to staff transferring from existing providers. In addition to any posts transferring to the LATC in the future, the recruitment of additional staff directly by the LATC is also envisaged; for example, if staff leave a service prior to, or after, it being transferred to the LATC.

It is assumed that the company's terms and conditions of employment may have to broadly reflect other private companies (save for staff protected by TUPE) operating in the home care sector. This is so that it would not undermine existing providers to the extent they are unable to provide adequate services. However the Company will promote Ethical Employment practices and look to act as an exemplar across the sector.

The LATC will not need to have admitted body status within the Local Government Pension Scheme (LGPS) as long as no PCC staff are TUPE'd into the company. However, a separate pension arrangement may need to be made for future employees and this will need to comply with pension regulations.

## **Accommodation**

Additional office accommodation will not be required during company set up stage. On mobilization the LATC would either operate from a Plymouth City Council-owned property or rent its own premises, or a combination of both. The LATC would need to review its use of office accommodation on an ongoing basis to ensure premises are fit for purpose and cost-effective. The cost of office accommodation will need to be accounted for on the same basis as any other supplier even where this is within premises owned by the Council. It is not envisaged that the LATC would seek to acquire land or buildings.

### Support functions

To minimize overheads the LATC would need to access the support functions listed below which would be provided under Services Level Agreements (SLA) with Plymouth City Council, DELT Shared Services Ltd. and Devon Audit Partnership. The provision of these functions will need to remain under review as scale of the LATC, whilst currently unknown, will be a factor.

Support Function	SLA includes
Operational	CQC registration and business processes
HR	CoreHR / Payroll / Recruitment / Travel & expenses / Staff Training e.g. induction, H&S, safeguarding / Pensions
ICT	Provision of ICT equipment and services and ICT support / Website / CoreHR
Finance	Transactional finance functions and financial controller activities / Funding and recharging / Tax / Bank account investment/working capital / Creating the budget / finance SLA processes / payment schedules
Legal Services	Legal advice and Support
Estates/Facilities Management	Accommodation & Facilities management
Audit	Audit advice and support
Communications	Marketing, website, stakeholder comms
Procurement	Procurement Advice & support, management of procurement activities
H&S	H&S Advice and support,
Risk	Insurance

### Care Quality Commission

The LATC would need to register as a provider if it were to undertake regulated services and pay the necessary fees.

## VALUE ANALYSIS – COST, BENEFITS & RISKS

### Company Set Up Costs

In order to establish a LATC the Council would need to provide working capital, in a manner consistent with state-aid rules, in order for the LATC to commence trading. This would need to be in the form of share value and/or a loan on terms that comply with state aid rules to the LATC.

The initial set-up costs are estimated to be in the range of £88K and are detailed below. This is principally related to costs of ensuring the LATC has access to the necessary systems and other arrangements to be provided via a series of service level agreements with the council. The areas where costs will be incurred by the LATC are listed below.

#### Set up cost estimation

	£'s
Company Setup, Branding, Infrastructure and preparedness costs	62,999
Resources to implement business case	25,000
	<b>87,999</b>

### BENEFITS OF THE LATC OPTION

The main rationale for pursuing the LATC model is driven by the need to have a cost effective model for practical service intervention and delivery that would not undermine existing providers or destabilise an already fragile care market. The following benefits of an LATC would be:

1. The creation of a LATC and its future development could help the Council respond to the challenges facing adult care services in a number of ways. These are set out below.
2. Demand for adult care services is forecast to rise considerably and the LATC will be able to be considered where there are gaps in market; the LATC will be a **“third option”** in addition to existing in-house provision and external providers.
3. A LATC will be able to offer the **option of responding to service failure** where existing providers withdraw services or are unable to continue provision due to care quality and/or financial issues, and where a practical option of enabling services to continue with staff transferring is needed.
4. A LATC will offer the **potential to attract future business** through purchasing via personal budgets including individual service funds (this is something not possible with existing in-house services).
5. The cost of care is an important consideration for local authorities and a LATC will enable the council to **compare market solutions** against the LATC and the cost of providing services in-house.
6. The LATC will have the potential to **offer an alternative route to respond to provider failure** and being Council-owned it will help meet the statutory responsibilities the council has



under the Care Act 2014.

7. Creation of a LATC will offer the council a wider range of options to intervene in the adult social care market to **achieve market stability** (this could be both short-term or for longer periods of time depending on the service) where providers withdraw or where the cost of care services is not felt to be good value for money; for example, following a formal best value assessment, or where services are not safe.
8. An LATC owned and largely controlled by the Council would be suited to take advantage of the Teckal exemption to the Public Procurement Regulation. Teckal removes the legal requirement for a public procurement to be carried out. This will save the time and costs associated with a procurement exercise and will give the Council greater control over service transfer so that **service continuity and services standards are maintained with as little disruption as possible.**
9. The LATC will act as an **exemplar care agency**, promoting ethical and inclusive employment practices, promoting cooperative principles and acting in the public interest.

## KEY RISKS

Summary of Key Risks	Risk Description	Likelihood Score (1-5)	Impact Score (1-5)	Overall Risk Score	Mitigation
LATC is unable to offer cost-effective alternative.	Services likely to transfer to the LATC on an 'as-is' basis. Additional costs in the short term likely whilst the service is stabilised and a full commercial review is completed. Risk level will vary depending on the size of the service being transferred. Staff would TUPE, risk is back office costs.	3	3	9	Due diligence will be carried out to assess viability of delivery by the LATC. Commercial review of the service will be carried out soon after transfer to review options and identify the best vfm solution for the service moving forwards
LATC undermines existing provider market.	Existing providers may view the LATC as a competitor for new business	2	2	4	The LATC will not seek to compete against existing providers. Other market options considered before LATC transfer decision made.  Good communication strategy to manage messages to the market.
LATC will not achieve service targets and outcomes.	Staff may choose to not TUPE over to the LATC, this will hinder ability to deliver services in the short term	3	3	9	SLA between PCC and the LATC and the LATC to be regulated and monitored in the same way as any other provider. Individual packages of care could be sourced with alternative providers who may not be able to take over the whole service but can pick up some care packages. Active intervention if service areas not performing.
LATC is unable to safeguard service users	To protect service users, there will need to be a rapid respond to market failure.	1	5	5	The LATC will be regulated by the CQC for any regulated activities it undertakes. PCC is already a CQC provider and will draw on this experience and expertise. Compliance with Plymouth City Council care standards will be a requirement set out in the SLA with the LATC
LATC runs at a loss	The LATC may be unable to deliver the service to the required level / standards within the available budget.	3	4	12	Due diligence will be carried out to assess viability of longer term delivery by the LATC where applicable. Full commercial review and forward planning once service transferred.

## IMPLEMENTATION

### Project Timeline

Business Case	
Scope requirements	Jan 21
Finalise business case	Jan 21
Formal Approval of Business Case	Mar21
Phase 1 – Establish Shell Company	
Set up Governance and company structure	Mar-May 21
Prepare operational facilities ICT and Support Function SLAs	Mar-May 21
Agree and set up HR processes	Mar-May 21
Agree and set up Finance processes	Mar-May 21
Set up communication channels and prepare marketing material	Mar-May 21
Design process for appraising and approving business transfer	Mar-May 21
Shell ready for mobilisation	Jun-2021
Phase 2 – Mobilisation – NB. Mobilisation will only commence if / when a need for the LATC arises.	
Gather information and assess case for business transfer into the LATC	Unknown
Case for business transfer agreed	TBA
Activate HR and Finance protocols	TBA
Recruit / TUPE staff	TBA
Staff induction & training	TBA
Distribute ICT, uniforms, ID passes etc	TBA
Commence delivery	TBA

## Appendix I – Alternative Delivery Vehicles (ADV)

Entity	Legal Identity Separate from its members	Limited liability of members	Scope to obtain charitable status/tax benefits as a charity	Main potential sources of funding/income	Can it distribute profits?	Asset lock	Minimum number directors/ members or equivalent	Typical use	Issues	Can it be a Co-operative?
<b>Company Limited by Shares</b>	Yes	yes - limited to unpaid amount on share (including premium)	No, but can be a trading subsidiary of a charity which covenants profits to parent trust/charity to obtain maximum tax advantage	Generating surpluses from trading activities or sale of assets or other income. Members own shares which they either purchase or may be given (eg through an employee share scheme). If the company is wound up, liability is for the amount unpaid on the shares.	Yes	No - but subject to maintenance of capital restrictions	At least 1 director (a natural person at least 16 years old) who may be the sole member. Members will decide the most important decisions regarding the company. Directors will carry out the day-to-day business.	Most common business structure and well recognised by banks and other commercial organisations as a trading vehicle.	Query use of vehicle for collaborative Teckal type venture or for social enterprise given it is set up to generate and distribute profits to investors. Permitted under trading powers and wellbeing/localism powers.	Yes
<b>Private company limited by guarantee</b>	Yes	yes - limited to the amount of their guarantee	yes, if it has charitable objects satisfactory to the Charity Commission	Fund raising/ grants/donations. Trading or other income-generating activities if permitted by its objects. Borrowing if income sufficient and constitution permits.	In principle yes, but companies limited by guarantee often have a prohibition on distributing profits in the articles of association	No specific requirement but provisions with such an effect could be included in memorandum and/or articles of association.	At least 1 director (a natural person at least 16 years old) who may be the sole member. A registered trust will usually have a number of trustee directors.	Proposals requiring the body to own land or other assets, enter into contracts, employ staff, hold a bank account and/or borrow money.	Recognised entity for a not for profit distributing enterprise where asset ownership and contracting envisaged, a degree of continuity is sought and/or there are benefits in limiting liability. Permitted under trading powers and	Yes

									localism/wellbeing etc.	
<b>Community interest company (CIC)</b>	Yes	yes - may either be limited by shares or guarantee	No	Similar to company limited by guarantee or other private company, but scope for raising equity and debt capital is restricted by their community interest objectives and limitations on dividends and interest payments.	Dividends paid by CICs are subject to limits set by the Secretary of State.	Articles must include an 'Asset Lock' as set out in the CIC Regulations 2005. Assets can only be transferred at full market value. Assets remaining on dissolution protected for the community	As for company limited by guarantee, shares or any other private company.	Intended for social enterprises that wish to use assets and profits for public benefits, with mandatory asset lock and controls on dividends to reassure potential participants, donors or investors.	Basically a limited company with an added 'overlay'. Doubtful whether additional costs and complexity justified by benefits over other forms. Permitted under trading powers but unlikely to be suited to public/public collaborative ventures.	Yes
<b>Industrial &amp; provident Society (IPS) for Community Benefit (BenCom)</b>	Yes	yes - members' liability limited to the amount unpaid on shares	Cannot register as a charity but if meets charitable criteria it may benefit from 'exempt charity' status and obtain tax benefits	Equity investment, grants, fundraising, trade or other income-generating activities and borrowing dependent on constitution.	Generally it is a requirement of registration with the FSA that a BenCom should not distribute profits to members but retain them for the benefit of the community	Such provisions could be included in the BenCom's constitution.	Every IPS/BenCom must have a committee of management (sometimes called 'directors') and a secretary. Generally a minimum of three individuals plus a secretary.	BenComs are one of the two forms of IPS which can be registered under the 1965 Act and are organisations with social objects to run a trade or business for the benefit of	Organisations which conduct an industry, business or trade for the benefit of the community. There must be special reasons why they cannot register as a company. In practice they are used less frequently than companies though permitted under trading powers.	Yes

								the community.		
<b>Limited Liability Partnership (LLP)</b>	Yes	yes - limited to capital treatment	No	Generating surpluses from trading activities or sale of assets or other income.	Yes	No	The LLP owns the business and is liable for its own liabilities. Each member acts as an agent for the LL which will be responsible for all its members' actions. Members not liable (except where negligent) beyond the amount they have committed to contribute to the LLP.	Increasingly common business structure recognised by banks and other commercial organisations as a trading vehicle.	LLPs are first choice for professional partnerships elsewhere.	Yes