

STRATEGIC BUSINESS CASE

LEISURE MANAGEMENT CONTRACT



Executive Summary

SLM (Everyone Active) has operated the following Council leisure facilities since 2012: Brickfields Sports Centre, Mount Wise Pools, Plympton Swimming Pool, Plymouth Life Centre, and Tinside Lido.

The leisure management contract is due to expire at the end of March 2022 and the Council needs to determine how the leisure facilities will be operated from April 2022.

Options that have been considered are:

- To do nothing
- To extend the contract with SLM
- To retender the contract
- To transfer facilities to community-based organisation(s) under community asset transfer (CAT) arrangements
- To run and maintain facilities in-house and transfer all staff to the Council
- To transfer facilities and staff to a new Local Authority Trading Company, owned and controlled by the Council

The Council have undertaken a full options appraisal to ascertain the 'best value operating model' and have engaged sector specialist Fathom Consultancy Solutions to review the work of officers and to provide input into this Business Case.

The Business Case concludes with a recommendation to establish a Local Authority Trading Company (LATC) for the provision of Leisure Management Services within the city of Plymouth, with effect from 1 April 2022.

In recommending a LATC:

- We have carried out a detailed appraisal of all options for managing our leisure facilities when the current contract ends in Spring 2022
- The leisure sector has been seriously impacted by COVID-19 and it is highly unlikely that a tender would deliver a best value outcome in the current market
- We need to realign the way we run our leisure facilities to our new strategic priorities, defined in the Plymouth Plan 2014 to 2034 and Active Devon's 'Towards an Active Plymouth' report
- Our aim is for Plymouth to be the most active coastal city in England by 2034
- The LATC will assist with tackling health inequalities in the city and support our most vulnerable residents
- A LATC will unlock the true potential of our green, blue and built assets – which means making the most of our natural environment as well as our buildings. The future use of Tinside Lido will be an integral part of our National Marine Park vision for the waterfront.

- We need to address operational challenges, including ageing stock (Plympton Swimming Pool) and a core offer (Brickfields) that no longer meets the physical activity needs of the community
- Moving to a Local Authority Trading Company (LATC) model will enable the service more flexibility to meet the city's strategic needs. It also provides a longer-term solution than a short-term extension to the current contract.
- We estimate moving to an LATC would bring a small net benefit of £12,000 over a five-year period (including start-up costs of approximately £514k) but there is potential to generate a further saving of around £382,000 through service transformation and investment in facilities – which also means an improved service to customers.

Background Information

In 2011, the Authority awarded a 10-year (2012-2022) Leisure Management Contract (LMC) to Sports and Leisure Management Ltd (SLM – Everyone Active) to operate: The Plymouth Life Centre (PLC), Mount Wise Pools, Brickfields Sports Centre, Plympton Swimming Pool (PSP) and the Tinside Lido.

This followed a realignment of the Council's leisure stock, an investment of circa £40m to build the PLC (2012) and an options review for the future management of the service (2011). Prior to 2011, the leisure facilities had been operated by a mix of service providers; Mayflower Leisure Trust, PCC, Plymouth Pavilions, Plymouth Diving and Devonport Community Leisure Ltd.

The leisure facilities are a high-profile front facing public service, which help to deliver wellbeing outcomes; particularly in relation to physical activity. Approximately 1.8m attendances are recorded across the 5 facilities annually, with 1.4m of these attendances attributed to the PLC, making it one of the busiest leisure facilities in the UK. The current contract value is £615,164 per annum.

The leisure management contract is due to expire at the end of March 2022 and the Council needs to determine how the leisure facilities will be operated from April 2022.

Impact of COVID-19

Covid-19 has had a major impact on the sector, with facilities been closed for much of the period since March 2020. When facilities have re-opened, they have had restricted capacity due to the Covid-19 measures put into place (social distancing etc.). Some costs have also increased, including sanitization and cleaning regimes. Income has been restricted, but operators such as SLM have benefitted from government funding for furlough and from the National Leisure Recovery Fund.

Sport England are completing a national data gathering exercise on a weekly basis, and the return of demand has exceeded most observers' expectations. Use of outdoor and digital facilities will increase in 2022 and beyond, and many operators are forecasting a return to "business as usual" by April 2022.

The impact of Covid-19 on the marketplace is covered in detail in the independent market assessment provided by Fathom. In summary, there is very little competitive tension in the market for leisure operators at present. Operators are currently risk averse and generally offering terms that are less attractive than in previous years. The independent market assessment concludes with the view that it is highly probable that there is insufficient market tension to secure a Best Value outcome from outsourcing at present, and possibly for a period of 24 -36 months.

Strategic Vision

“Plymouth to be the most active coastal city by 2034”

Evidence for the contribution of physical activity, sport, and leisure on healthy and thriving communities is overwhelming. This is due to the established synergy between physical movement, social connection, educational attainment, economic growth, community resilience and disease prevention.

Plymouth is generally an active city, but it has an underlying challenge: inactivity levels are higher than the Devon and national averages with more than one in four adults not active at all (i.e. sedentary). While this is a stark challenge, the city has good foundations from which to ‘level the playing field’. It has an established commitment to tackling inequality, some of the best green, blue and built assets in the UK, and the intent to ‘unlock’ them.

One of the main drivers for changing to an LATC model elsewhere in the UK¹ has been the requirement to completely redesign and realign the operation of the leisure centres to the new strategic priorities of the Council; including addressing health inequalities and targeting the most vulnerable members of the community.

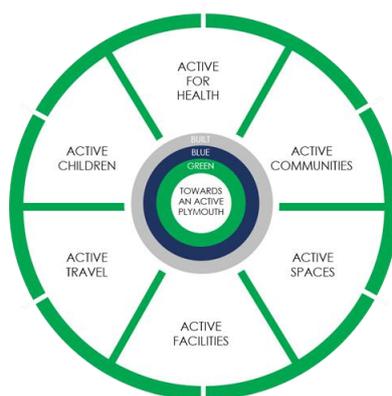
The Plymouth Plan 2014-34 remains the overarching plan for the City and the effective operation of the leisure centres will make major contributions to the following strategic outcomes;

Policy HEA3 Supporting adults with health and social care needs.	Policy HEA4 Playing an active role in the community.	Policy HEA5 Delivering strong and safe communities and good quality neighbourhoods.
Policy HEA6 Delivering a safe, efficient, accessible, sustainable and health-enabling transport system.	Policy HEA7 Optimising the health and wellbeing benefits of the natural environment.	
Policy GRO1 Creating the conditions for economic growth.	Policy GRO5 Enhancing Plymouth's sporting facilities.	

In November 2020, Plymouth City Council (PCC) approached partner Active Devon (AD) to help facilitate a clearer vision and strategic direction for the provision of physical activity, sport and leisure through a discussion report and recommendations.

The strategic objectives are defined in the illustration below:

¹ According to feedback received during research into the development of the LGA guide to leisure insourcing



Case for Change

The Council's goal is for Plymouth to be the most active coastal city in England by 2034.

The current contractual arrangements require the Council to pay an annual contract price to the current provider; the Council will challenge itself to achieve best value from the service from April 2022 onwards. Achieving savings in the current climate will be difficult.

There are a range of investment opportunities available to the Council, the current provider, or other parties (or a combination of these). Whether through a revenue charge / fee or capital sum, the Council will be the main funder and should ensure that it generates the best return on investment (ROI).

Additionally, a core number of operational challenges have been identified by the existing service provision, which should be addressed through the provision of an options appraisal:

- Ageing facility stock, in particular Plympton Swimming Pool
- Core facility offer which no longer meets the physical activity needs of the community i.e. Brickfields Sports Hall / stand-alone pool at Plympton; under-utilization of green spaces at Brickfields
- Profit share arrangement (has not been triggered during the current Contract term), despite some of the highest throughput figures of any leisure centre in the Country (pre-covid) at PLC
- The current provider has provided transparency on the financial challenges it faces.
- An injection of capital has been identified to support business growth and promote physical activity at Brickfields and Plympton Swimming Pool

The Council's aims include;

- improving the quality of leisure facilities and services by delivering better social outcomes, e.g. to meet new policies in the Plymouth Plan and Towards an Active Plymouth (effectiveness);
- improving the delivery of leisure facilities and services through better use of inputs and outputs (efficiency);
- reducing the costs of providing the leisure facilities and services (economy);
- ensuring the Council is able to meet legal, regulatory or organisational requirements and accepted best-practice (compliance and conformance);
- averting service failure and partial service failure and providing business continuity (replacement).

Scope

The initial scope includes the occupancy, operation and maintenance of the following facilities;

- a. Plympton Swimming Pool
- b. Tinside Lido
- c. Mount Wise Outdoor Pools
- d. Brickfields Sports Centre and recreation Ground
- e. Plymouth Life Centre (PLC).

In the work to date, the inclusion of the Sports Development functions has not been considered, but this is an option that may be considered at a future stage.

Constraints

Limited time available to decide on the best option and to implement in time to achieve an effective transfer by no later than 1st April 2022.

Limited time available to deliver the LATC's Proposal and Business Plan by October 2021.

Lack of certainty around the market conditions for outsourcing – validated by the independent view obtained from Fathom Consultancy Solutions.

Dependence upon data and financial information provided by the current provider.

Caveats stated in the Financial Impact Assessment, including the assumption that the LATC is able to generate the same levels of income as the current provider, at a similar cost of operation.

A degree of uncertainty around the true net benefit of NNDR relief to the Council.

Availability of the Council to carry the burden of the non-recurring costs in year one and the costs of developing and executing the deployment of the LATC in the current year budget.

Officer time and resource required to implement any of the options.

The ability of the LATC to meet the income and expenditure projections will be largely determined by the quality of management and leadership of the LATC and its board of directors. In particular, the LATC will need expert sales and marketing and multimedia platform support to replace these business critical support functions previously provided by the current provider's head office functions.

Options Appraisal

The critical success factors are the attributes essential for successful delivery, against which the options have been appraised.

Criteria	Weighting
Ability to secure VAT concessions and innovate to deliver efficiency savings - over the longer term	20%
Ability to determine and adopt the Council's preferred pricing and programming policy	20%
Ability to secure new income streams including health and wellbeing and to deliver investment plans with good ROI	20%
Ability to secure high quality jobs and work related training for local people	15%
Ability to change direction and priorities to align to the changing priorities of the Council and the Plymouth community	25%

OPTION 1	Do nothing
Description	Allow contract with the current provider reach expiration
Net Costs	N/A
Advantages	Savings on process costs and of opportunity cost for officer time
Disadvantages	High probability of closure / service continuity failure (partial failure) or increased costs through last minute negotiation with limited options.
Conclusion	Not viable
OPTION 2	Extend with the current provider
Description	Agree terms with the current provider for three-year extension
Net Costs	Assumed to be on the same basis as year ten of the contract.
Advantages	Some savings on process costs and of opportunity cost for officer time
Disadvantages	Would be very much an 'interim holding position' not addressing the long-term strategic vision of the service. Due to market uncertainty operator unlikely to be able to fund any capital improvements
Conclusion	Not preferred strategically.
OPTION 3	Outsource
Description	This would involve the completion of a tendering event compliant with the Public Contract Regulations 2015 (or equivalent for Concession).
Net Costs	Independent advice has been taken from Fathom Consultancy Solutions that there is unlikely to be competitive tension in the market for between 18 -36 months and that it is therefore highly unlikely that this could result in the Best Value outcome. To support Local Authorities the LGA has provided

	recent guidance : A guide to the emergency insourcing of leisure services Local Government Association
Advantages	Can secure a degree of contractual cost certainty in normal market conditions.
Disadvantages	The contract will need to allow changes to the Specification to meet the Council's changing priorities. Lowest cost option will generally provide a lot of discretion for the operator to set pricing and programming policy (commercial liberties). No guarantee that the process would result in an award of any kind
Conclusion	There is compelling evidence that there is unlikely to be a 'competitive leisure market' during the Covid Pandemic impact period.
OPTION 4	Alliance based contract or community asset transfer (CAT)
Description	This would involve the transfer of assets to a community-based organisation through a process known as Community Asset Transfer (CAT). Fathom Consultancy Solutions suggest that it is almost inconceivable that a qualifying community-based organisation will have the capacity and financial resources to take on the occupancy of the range of facilities within scope. It is possible that some of the smaller assets could be suitable for CAT. Transfer of the service to a LATC, will allow time to explore management options for smaller assets.
Net Costs	Unknown, without completion of a process.
Advantages	Maybe suitable for smaller facilities that require long-term capital investment through a long-term lease.
Disadvantages	Will require a complex contract
Conclusion	Not viable within the timescale available, but the benefits can still be secured in options 5 and 6
OPTION 5	In-house provision
Description	This would involve the transfer of staff to the Council. The Council would take on all trading risks and the cost of running and maintain the facilities.
Net Costs	Financial Impact Assessment suggests an annual cost of approximately £2.074m (an increase of more than £1.465m per annum based on the existing costs with the current provider. This is mainly due to harmonisation workforce costs, pensions, loss of NNDR and VAT).
Advantages	Direct control and ability to change policies to reflect Council strategic aims without complex third party interests. Secures long term service continuity
Disadvantages	Loss of degree of cost certainty. Council would retain the full trading risk. Does not benefit from VAT concessions.
Conclusion	Not affordable
OPTION 6	Local authority trading company (LATC)

Description	This would involve the transfer of staff to a company owned and controlled by the Council (a Local Authority Trading Company LATC).
Net Costs	The LATC would show a small net revenue benefit of £12k over the five-year period (when bench marked against existing contract costs and after start-up costs). With transformation and investment, the operation by the LATC has the potential to generate a further saving of approximately £382k over the initial five year term.
Advantages	Capable of being delivered outside of public procurement regulations, subject to compliance with the exemptions provided to a Council. Indirect control and ability to change policies to reflect Council strategic aims in agreement with the LATC. Benefits from VAT and NNDR concessions. High quality jobs can be secured by a local employer (the LATC). Provides latitude for staff cost reductions not available with the Council in-house (LGPS pensions scheme closed etc.) /Secures long term service continuity/Can facilitate the types of investment included within the Option 4 proposals (including future CAT transfers and investment schemes for developing the facilities and products). The LATC can trade 20% of its services outside of the Council (if benefits can accrue to the Council). /Presents an opportunity to align the service with the strategic vision of the Council.
Disadvantages	Cost of establishment (advisors and officer time) Ultimate trading risk remains with the Council. Does not afford the degree of contractual cost certainty for the Council available with outsourcing
Conclusion	LATC Best fit option

Preferred Option

Option 6 – Local Authority Trading Company is the preferred option as the best fit option.

The commissioning outcomes of a LATC will reflect the 'Towards An Active Plymouth Strategy' to

- Encourage family and multi-generational participation
- Develop more grassroots sessions
- Create social networks and opportunities
- Target local communities
- Support the provision of free events
- Work with partners
- Ensure all activities are accessible and affordable
- Support vulnerable / low-income families to become active
- Encourage the use of cycles

- Support Disability Training opportunities
- Help reduce carbon impact
- Promote innovation and maximize assets

A core consideration of a LATC option is the ability to more closely align the Council's changing priorities with the way the leisure centres are operated and delivered.

The Council will gain benefits from VAT and NNDR concessions and the LATC will be able to secure high quality local jobs. This option secures long-term service continuity and the LATC can trade 20% of its services outside of the Council.

Financial modelling is contained under the Part II paper.

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 is a need to maintain control over the company so as to be able to award contracts directly to it, and influence its strategic objective thus a Mutual/Social Enterprise or Trust would not be appropriate.
- It is not intended that the company would be profit driven thus a company limited by shares would not be appropriate. A "not for profit" company would be able to avail business rates relief.

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 I 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 "not for profit" 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.

Finances

In addition to the costs of running a leisure company, start-up costs of approximately £0.514m have been identified which includes, amongst other areas, computer systems and equipment, branding and website costs, and support costs to help set up the company.

If the Council choose not to deploy the LATC, there would be a cost of procurement estimated at around £200,000. In addition to the costs of procurement, other costs would have to be met by the Council through the contract as they will be reflected in the operators' bids for the non-recurring costs associated with a range of expenditure similar to the start-up costs.

Other Developments

A number of developments have been identified that could derive further benefits. These include-

Plympton Gym Investment- The scheme would involve enhancements generally and new gym capacity, and energy efficiency improvements.

- 270 square metre gym & store
- Fitness assessment room
- 2 x 75 square metre studios

Brickfields Investment - Approval to make the proposed alterations would require consent from Sport England and DCLL leisure trust, but could include:

- Convert the sports hall to a dedicated adventure play facility
- Convert the back store to a dedicated party area
- Create a café that serves into the play area and reception foyer
- Convert the current spin room to a power assisted gym
- Refurbish ground floor changing rooms to fitness changing
- Review options for an additional studio on floor one.

Tinside - There is an opportunity to align both Tinside and Mount Wise to the development of the National Marine Park in order to derive further investment, innovation and use.

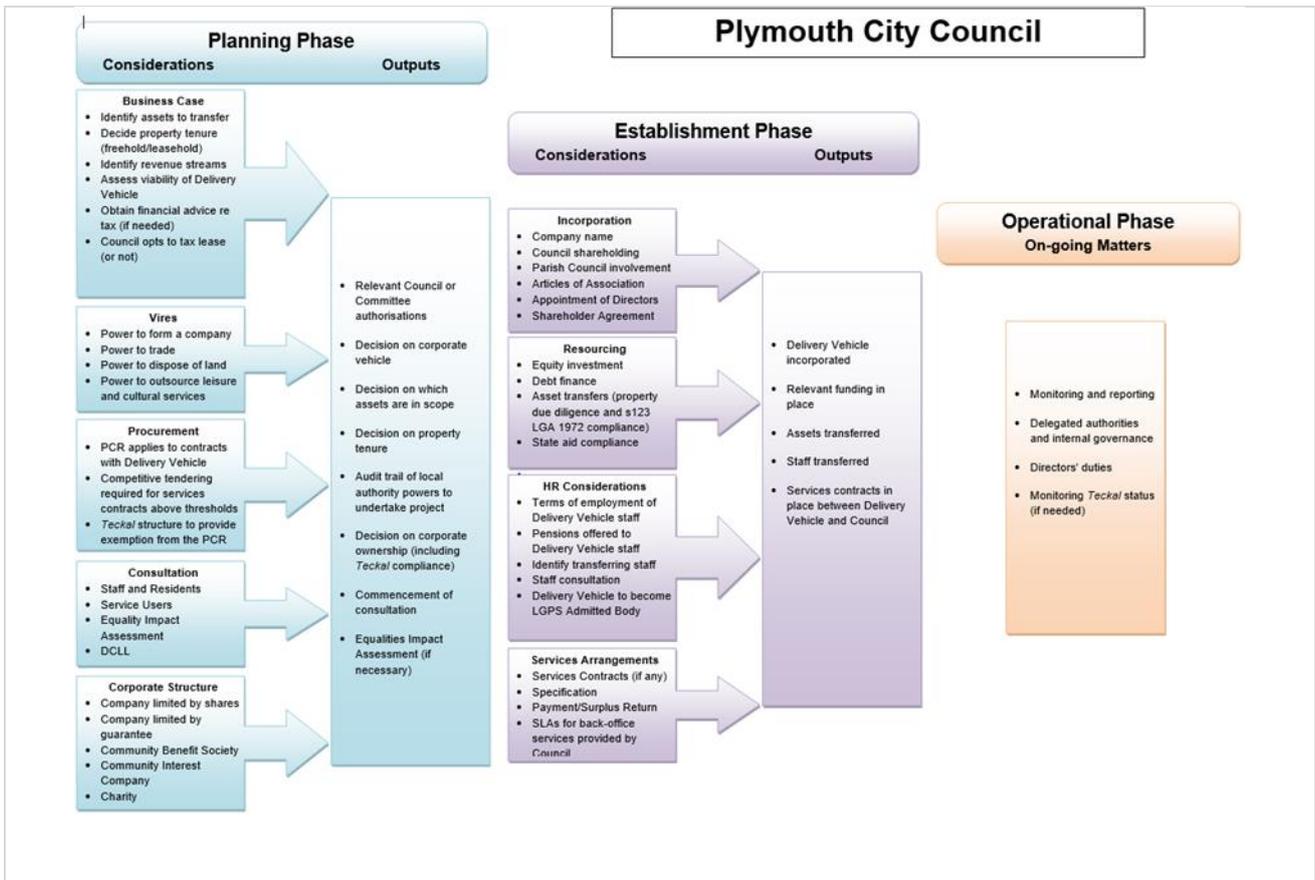
Each of these initiatives be subject to a separate Business Case.

Delivery

The following arrangements will need to be put into place to ensure the successful delivery of the proposals.

- a. Project management arrangements, including;
 - standards,
 - governance arrangements
 - roles and responsibilities
 - delivery plans
- b. Project assurance (independent and impartial reviews) at different stages of the project lifespan.
- c. Change management arrangements, if required.
- d. Benefits realisation and plans, including benefits register.
- e. Risk management arrangements and plans, including risk register.
- f. Contract management arrangements and plans, if required.
- g. Post evaluation arrangements
- h. Contingency Plan (if applicable)

Approvals by Council – Target Date	Planning Phase – 20 weeks	Operational Phase – 12 weeks required
August 2021	September 2021 – December 2021	January 2022 – March 2022



Recommended Decision

It is recommended that Plymouth City Council establishes a Local Authority Trading Company for the delivery of Leisure Services from 2022/23.

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?
Company Limited by Shares	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	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

							business.			
Private company limited by guarantee	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 localism/wellbeing etc.	Yes

<p>Community interest company (CIC)</p>	<p>Yes</p>	<p>yes - may either be limited by shares or guarantee</p>	<p>No</p>	<p>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.</p>	<p>Dividends paid by CICs are subject to limits set by the Secretary of State.</p>	<p>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</p>	<p>As for company limited by guarantee, shares or any other private company.</p>	<p>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.</p>	<p>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.</p>	<p>Yes</p>
<p>Industrial & provident Society (IPS) for Community Benefit (BenCom)</p>	<p>Yes</p>	<p>yes - members' liability limited to the amount unpaid on shares</p>	<p>Cannot register as a charity but if meets charitable criteria it may benefit from 'exempt charity' status and obtain tax benefits</p>	<p>Equity investment, grants, fundraising, trade or other income-generating activities and borrowing dependent on constitution.</p>	<p>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</p>	<p>Such provisions could be included in the BenCom's constitution.</p>	<p>Every IPS/BenCom must have a committee of management (sometimes called 'directors') and a secretary. Generally a minimum of three individuals</p>	<p>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</p>	<p>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</p>	<p>Yes</p>

					y		plus a secretary.	benefit of the community	permitted under trading powers.	
Limited Liability Partnership (LLP)	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