

MUNICIPAL YEAR 2010/2011 REPORT NO. **227**

MEETING TITLE AND DATE:
Council 6th April 2011

REPORT OF:
Director of Finance and
Corporate Resources

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Agenda – Part: 1

Item: 8

Subject: Setting Up the Council's Trading Company

Wards: All

Cabinet Member consulted: Cllr Andrew Stafford

1. EXECUTIVE SUMMARY

The London Borough of Enfield (LBE) provides a range of high quality services with a reputation for excellence in the public and private sectors. As such, LBE services such as Community Alarm and Enfield Public Safety Centre have been actively approached by other public and private sector organisations interested in buying those services from us. However, within the local authority regulatory framework, the Council has been unable to exploit these opportunities. Section 95 of the Local Government Act 2003 permits local authorities to trade commercially in their normal functions, enabling LBE to take advantage of such opportunities but which it is unable to fully exploit without the mechanism of a trading company.

This report proposes the establishment of the Council's trading company, wholly owned by LBE, to commence trading in April 2011. Other vehicles, such as social enterprises, may also be established in due course, depending on the particular needs of customers and staff, and the Trading Company does not prevent that happening.

A report on this matter was considered at Cabinet 9th March and the recommendations were agreed.

2. RECOMMENDATIONS

1. That the Council's Trading Company is established following Full Council approval.
2. That the Trading Company is registered under the name New River Services Ltd. (see section 3.3)
3. That the transfer of services to the Trading Company is agreed by the Trading Company's board of directors and the relevant Cabinet members, in accordance with the Council's Scheme of Delegation.

4. That the governance and legal structures of the Trading Company - including the day to day management of performance and budgets and the structure and membership of the Board of Directors - are established as outlined in the body of the report (paragraph 3.3).

3. BACKGROUND

3.1. The 2003 Local Government Act

Since 1970, local authorities have traded with each other and other public bodies utilising the powers within the Local Authorities (Goods and Services) Act 1970 and the Local Government Act 2000 with the main intent to either save money or achieve efficiency through economies of scale. The power to trade was enhanced by section 95 of the Local Government Act 2003 where authorities were given the power to trade anything deemed as a public function with the private or public sector as long as it did so through a limited trading company.

Section 93 of the Local Government Act 2003 enables authorities to charge for discretionary services, including services provided on the basis of the well-being power. It is proposed that LBE establishes a trading company limited by shares to trade under section 95 of the Local Government Act 2003.

A number of other local authorities have made use of the powers under section 95 of the Local Government Act 2003 to much success, notably NORSE which is wholly owned by Norfolk County Council; Solutions SK, wholly owned by Stockport Council and; Essex Cares, wholly owned by Essex County Council. (See appendix 1 for case studies.) Other London boroughs are also considering setting up trading companies.

3.2. Rationale for setting up a trading company

A trading company wholly owned by the London Borough of Enfield (LBE) presents an opportunity to raise Enfield's profile, provide development opportunities for staff, protect jobs and increase resilience, as well as raise income for the Council. It may also provide the basis in due course for the development of social enterprises and a vehicle for sharing services with other Boroughs.

The London Borough of Enfield provides a range of high quality services with a reputation for excellence in the public and private sectors. As such, LBE services such as Community Alarm and Enfield Public Safety Centre have been actively approached by other public and private sector organisations interested in buying those services from us. However, within the local authority regulatory framework, the Council has been unable to exploit these opportunities. Section 95 of the Local Government Act 2003 permits local authorities to trade commercially in their normal functions, enabling LBE to take advantage of such opportunities but which it is unable to fully exploit without the mechanism of a trading company.

Local authorities are permitted to charge for discretionary services provided charges do not exceed the costs of provision under section 93 of the Local Government Act 2003. This can prevent local authorities from maximising the market potential for

some services. If a local authority transfers services to a trading company, however, that company would be able to provide services to other organisations with the purpose of making a profit.

The Company would be managed by a board of directors who may (subject to the Company's constitution) delegate certain functions to management. Its establishment not only provides the opportunity to generate income for the Authority, but also to:

- Exploit knowledge, skills and expertise
- Realise efficiency gains
- Develop shared services more easily
- Further improve services and develop staff, and provide greater opportunities for career development and job security than, potentially, might otherwise be the case.
- Reduce service delivery costs

As sole shareholder of the Company, LBE would be paid the dividends from any profits and as agreed by the Company's Board, therefore generating income that the Authority would not gain within the existing framework.

Decisions on services to be traded must also take into consideration the financial viability of the service within a trading market and whether the service culture is open to change in order to avoid commercial failure.

It is proposed that initially the Community Alarm Service and Enfield Public Safety Centre are considered for transfer to the Trading Company, subject to viability. Final decisions will be made, as appropriate, by the Board of Directors and appropriate Cabinet member. Details of progress to date on these services are set out in appendices 2 and 3.

3.3. What the proposed trading company would look like

Taking into account the national legislation, guidance, case studies and the expertise of the trading company project board, a proposal for the short-term development of the trading company has been developed below. It is noted that the structure, governance and resources of the Company are likely to develop and change over time according to decisions made by Cabinet and the Company's Board of Directors, as services are added to it.

A separate name and brand will be created for the Company and a marketing strategy developed accordingly. It is recommended that these are approved by the Company's Board of Directors. The proposed name for the Company is New River Services Ltd. as this provides a clear link to Enfield and north London for local customers whilst being broad enough for customers wanting to procure services from a non-council organisation.

3.3.1 Governance

The Authority, as initial shareholder will nominate suitable persons to become the first Directors of the Company. It is proposed that initially the Board will comprise a

small number of directors, drawn from the Authority's members and senior officers.. Further Directors, possibly including non-Executive Directors, may be appointed in the future if it is believed they may benefit the business of the Company, not least by maintaining or improving corporate governance standards.

It is proposed that the Board of Directors should consist of both LBE elected members and LBE officers, guided by the Company's Terms of Reference, which would provide the Directors with a framework in which to operate, and Articles of Association. These positions will not be remunerated.

The directors are responsible for the management and direction of the company. They must act as and for the company and they must ensure that the company does everything that it is legally obliged to do, such as ensuring compliance with laws (such as filing annual accounts) and entering in to and performing contracts..

Although not legally required under Companies Act 2006 for a private limited company, the Company will also appoint a Company Secretary. The main functions of the company secretary are to facilitate record keeping, ensure compliance with all relevant statutory and regulatory requirements and ensure that the specific business interests of the company are taken into account, liaising with the shareholders as appropriate.

It is recommended that the Board consists of three elected members from the Administration (to be appointed by Cabinet) and two officers. The Board may invite other officers to brief and/or attend Board meetings as necessary for issues relevant to their service areas.

It is recommended that in the first instance the Company's Board of Directors consists of:

- Board Chair: Cllr Doug Taylor (Leader)
- Elected member: Cllr Andrew Stafford (Cabinet member)
- Elected member: to be appointed by Cabinet
- Managing Director: James Rolfe (Director for Finance & Corporate Resources)
- Company Secretary: John Austin (AD for Corporate Governance)

In addition, the LBE Directors of the services in the company will also be in attendance as required, so that any decisions taken are made in the full light of all relevant issues that relate to that service.

A report will be presented to Cabinet on a six monthly basis providing a briefing on the trading company's progress.

3.3.2 Services

The initial services to be considered to start trading in April 2011 have been identified as Community Alarm and Enfield Public Safety Centre, subject to the viability of the services' business plans. It is proposed that these initial services' business cases and business plans are approved by the Trading Company's Board of Directors and relevant Cabinet member.

It is proposed that the authority to approve business cases for trading opportunities is delegated to the relevant portfolio holder in accordance with the Council's Scheme of Delegation. When business cases for trading opportunities are approved by the Authority's delegated decision maker, more detailed business plans should be produced and be approved by the Company's Board of Directors. The business plans should produce a detailed account of how the opportunity will be viable within a trading company.

3.3.3 Staff

It is proposed that in the initial stages of the Company's operation, Council employees in trading services will be seconded to the Company to carry out the Company's activity for a defined period, which may be the subject of an extension.

Secondment is proposed in the initial stages as it is not yet known which services will transfer to the Company, when or how, and therefore it is not possible to identify those staff or group of staff that form part of an organised grouping who have as their principal purpose the carrying out of the activities which form the subject of a relevant transfer. Seconding staff will also enable the Council to review the viability of the services being transferred to the Company in whole or in part before committing to a transfer of staff to the Company under TUPE.

Secondment may not be on a full-time basis, depending on how much of the individual's role has been transferred to the trading company.

Should there subsequently be a relevant transfer of staff under TUPE, then the possibility of employee ownership of a percentage of the Company's shares is an option to explore further. This would be part of a broader strategy to develop social enterprises within the Council. Other vehicles for social enterprises may also be used depending on what is best for that particular service.

3.3.4 Legal

It is proposed that the Company will adopt the model Articles of Association provided by the Companies Act 2006 as amended to fit in with the nature and requirements of the Company. This document has a similar function to the Council's Constitution, in that it sets out the governance arrangements for the company. It sets out provisions dealing with, among other matters, how meetings of shareholders and directors are conducted, the procedures for dealing with conflicts of interests of directors, the circumstances under which a director should vacate office, and the issue and transfer of shares. These Articles will be amended from the outset based on legal advice and may be further amended as necessary as the Company develops.

3.3.5 SLAs

The Authority will provide a number of Service Level Agreements (SLAs) to the Trading Company in the initial stages to ensure that the company is properly supported and financially viable. The costs of any support provided to the Company by the Authority must be recovered. Initially these agreements will include human

resources, payroll and pensions, internal audit, insurance, IT and procurement. Others are likely to be added as the Company develops.

4. ALTERNATIVE OPTIONS CONSIDERED

There are many options open to Councils to sell their services, develop staff and raise income. Thus, the trading company is one of a number of measures that are being brought forward as part of the Council's changing needs and priorities. Other options include increasing charges, reviewing services and seeking shared service opportunities with other Councils.

1. That staff are TUPE-ed to the Company in the first instance. It is not yet clear which services will transfer to the Company, how or when. This will be the subject of a review of the business plans for each service as outlined above. It is therefore unclear at this stage which staff, if any, are assigned to the services which are to be transferred to the Trading Company. Further, if staff were to be transferred immediately but the transfer of the service was unsuccessful this would lead to the staff being transferred back to the Council, thereby causing disruption and uncertainty for the staff.
2. That a Company is established in partnership with other authorities
As potential customers identified for services are neighbouring authorities, it is recommended that in order to maximise profit of the Company that the Company is wholly owned by LBE.
3. That a Trading Company is not established
In order to generate income and exploit existing opportunities, it is recommended that a trading company is established.

5. REASONS FOR RECOMMENDATIONS

1. That the Council's Trading Company is established following Full Council approval in April 2011

It is recommended that the proposal to establish a trading company is taken to Full Council 6th April. Provided Full Council approves this proposal, the Company will be set up to commence trading. A decision of this nature requires a decision by Full Council.

2. That the Trading Company is registered under the name New River Services Ltd. (see section 3.3)

As a separate legal entity, the Company will require its own branding and marketing. New River Services is an available name and there is a clear link to Enfield and north London for local customers whilst being broad enough for customers wanting to procure services from a non-council organisation.

3. That the transfer of services to the Trading Company is agreed by the Trading Company's board of directors and the relevant Cabinet members in accordance with the Council's Scheme of Delegation

Approval to investigate the full viability of transfer of a service to the Trading

Company and approval for the service to be transferred in principle should be delegated to the relevant Cabinet member in accordance with the Council's Scheme of Delegation. Approval of the transfer of a service based on the service's financial viability and full business plan should rest with the Company's Board of Directors. This mechanism will ensure all relevant issues are considered so decisions are robust, both for Enfield Council and New River Service Ltd.

4. That the governance and legal structures of the Trading Company - including the day to day management of performance and budgets and the structure and membership of the Board of Directors - are established as outlined in the body of the report (paragraph 3.3).

Taking into account the national legislation, guidance, case studies and the expertise of the trading company project board, a proposal for the short-term development of the trading company has been developed. It is noted that the structure of the Company may develop and change over time according to decisions made by Cabinet and the Company's Board of Directors.

Governance structures need to be effective and proportionate to the scale of risks and issues the Company faces. The proposals set out in paragraph 3.3. meet these twin aims.

6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS

6.1 Financial Implications

The costs of any support provided by LBE to the Company must be fully recovered at a market rate.

It is anticipated that the additional costs associated with setting up a new company will include approx. £1,000 for insurance, and approx. £15,000 for external audit. It is anticipated that there will be no additional licensing costs for the financial system (SAP) however some costs may be incurred in setting up the financial system for the Company of around £70,000. These costs will not be incurred until services are delivered by the Company and therefore will need to be considered as part of the assessment of the viability of each service, as explained in paragraph 3.3.2. Service Level Agreements will also be provided to the Company.

Any profit the Company makes will be liable for Corporation Tax (minimum 20%) and the Company will be VAT registered.

6.2 Legal Implications

Section 2 of The Local Government Act 2000 gives the Council the power to do anything to improve the social, economic and or environmental well being of the area.

The Local Government Act 2003 and The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 empower a best value authority (such as the Council) to do for a commercial purpose anything which it is authorised to do for the purpose of carrying on any of its ordinary functions. Prior to exercising this power a local authority must prepare a business case in support of the proposed exercise. The business case must demonstrate the following:-

- ❖ The objective of the business
- ❖ The investment and other resources required to achieve those objectives
- ❖ Any risk the business might face and how significant these are and,
- ❖ The expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.

Section 95 of the Local Government Act 2003, enables authorities to provide on a commercial basis, anything that is related to a function of the authority or is ancillary, conducive or facilitative to the exercise of that power. The power is widely drawn to include all functions whether express or implied or incidental.

Whilst there are provisions in the regulations for the Council to assist the Local Authority Trading Company to be set up, the Council must be fully reimbursed for any costs incurred.

Paragraph 3.3.3. of the report highlights the reasons for initially seconding staff into the trading company. However, it is advisable to undertake consultation with staff affected to safeguard both the Council and staff under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE).

6.3 Property Implications

Traded services will continue to operate out of existing Council buildings, with costs recovered by LBE at a market rate to avoid implications around state aid. As the Company grows, the Company may need additional premises. That will be subject to a full business case and, for now, separate premises are not necessary.

7. KEY RISKS

See appendix 4.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

A successful trading company will enable the Council to continue to provide high quality, accessible services to all in a challenging financial environment.

8.2 Growth and Sustainability

Forming a trading company will assist with the retention of Council staff in the areas selected for trading, and will, if successful, provide sustainable employment opportunities. As 60% of the Council's staff live in the Borough, potentially 60% of staff who transfer to the Trading Company are subsequently likely to live and work in the Borough.

8.3 Strong Communities

None identified

9. PERFORMANCE MANAGEMENT IMPLICATIONS

Forming a trading company has the potential for improving performance of the selected services through a greater focus on efficient effective service delivery and providing improved value for money.

10. HEALTH AND SAFETY IMPLICATIONS

The management agreement between the Council and the Trading Company will require the company to comply with all Health and Safety regulations.

Background Papers

Central Government guidance: General Power for Local Authorities to Trade in Function Related Activities Through a Company: Guidance on the Power in the Local Government Act 2003 (ISBN 1851127232)

Appendix 1: Case studies of trading companies set up by local authorities

Norse Group

Norse Group is a holding company created in 2006 to bring together two companies, both owned by Norfolk County Council, which were already trading successfully: facilities management provider Norse (formerly Norfolk County Services) and property consultant NPS Property Consultants. In 2008 Norfolk Environmental Waste Services (NEWS) joined the group, expanding the range of services. The group turns over in excess of £150 million and employs over 5,000. Jointly-owned operating subsidiaries provide services around the country.

SK Solutions

SK Solutions is wholly-owned by Stockport Council. It provides a wide range of services ranging from facilities management, including catering, to highways and waste management. It was formed in 2006 from the council's direct services department when some 1,000 staff transferred. Today, turnover is around £40 million.

Swindon Commercial Services

Swindon Commercial Services has followed a similar path and provides a parallel range of services. It was established as a trading company early in 2010 with 800 staff and a turnover in excess of £70 million.

Essex Cares

Essex Cares is the name of a group of local authority trading companies providing adult community support, equipment and employment and inclusion services. In 2009 some 850 county staff were transferred to this business which currently has a turnover of over £30 million.

Chelsea Care

Chelsea Care, which provides brokerage and domiciliary care services, was formed as a business start-up in 2009 aiming for an initial £1 million turnover. Croydon Council is among other councils currently considering a trading company model for adult social care.

Kent Top Temps

Kent Top Temps started out in 2003 as an agency within Kent County Council's Commercial Services. In 2005, in order to take on work in the private sector, it was transferred to a trading company. It is a recruitment agency, recruiting to permanent, temporary and contract jobs throughout the county. Currently, turnover is in excess of £22 million and there are 26 permanent staff. Trading as Kent Top Travel, the company also operates one of the largest commercial bus and coach fleets in the county, providing vehicles for private hire, public service routes and Park and Ride services in process. Today, this operation has an annual turnover of nearly £6 million and employs 125 staff

Appendix 2 Community Alarm Service – Business Case for Transfer to Trading Company (Overview)

LBE's Community Alarm Service is a partnership between Customer Services and Health and Adult Social Care (H&ASC) that provides a 24-hour emergency service for the vulnerable and elderly. Customer Services manages the call handling aspects of the service and H&ASC manages the mobile response.

LBE's control centre is a Telecare Services Association (TSA) 2009 Code of Practice Accredited Control Centre and will thus be automatically passported through to Level C of the Supporting People Main Quality Assessment Framework.

LBE is one of two London Boroughs out of the 33 that have the 2009 accreditation and the only North London Borough accredited to this new standard and in 4 modules of the TSA code of practice which includes Service set up, Installation, Monitoring and Response providing a strong marketing opportunity for the service.

The demand for the Community Alarm Service is set to increase with a quarter of the national population expected to be over the age of 65 by 2020. A third of people over 65 are likely to have a fall and 39% of those over 65 are likely to have a long term illness. A cost effective and high quality care package, including Telecare and Telehealth monitoring equipment, will be required by the more vulnerable to support them to live independently.

The Community Alarm Telecare call handling software is fully scalable with no practical limit to the number of clients being monitored or number of users, lines or call handling stations. The current staff rota has been reviewed with flexibility built in to enable a 100% increase in call volume with no increase in resources.

The Pan-London Out of Hours contract has no plans to extend their business to offer monitoring of Telecare services, providing LBE with an opportunity to provide out of hours Telecare monitoring to other London boroughs. LBE has received expressions of interest from other organisations enquiring into procuring LBE's Telecare monitoring services.

Appendix 3 Enfield Public Safety Centre – Business Case for Transfer to Trading Company (Overview)

The Enfield Public Safety Centre (EPSC) is well respected, and, with its experience and extensive client base, is in a strong marketable position to provide an attractive service to support the enhancement of public safety. The purpose-built high-security multi-million pound control centre where EPSC is based was designed for expansion and there is only one other centre with such capability in the London area. Other authority control rooms are not built to this standard nor have the expansion capacity of the EPSC facility.

EPSC currently provides services to a number of external clients – the London Borough of Waltham Forest, First Capital Connect and Transport for London. The centre has also been approached and has tendered several times for other authorities' CCTV services but regulatory restrictions on partnering technical private sector companies and the format of such tenders to provide the technical integrated solution required of such tenders has prevented LBE from winning these bids. Bexley Council has partnered such a technical supplier – Siemens – and will be in a position to corner the market in London and surrounding areas unless EPSC is transferred to a trading company to allow it to compete.

There are currently several key services within the EPSC which are marketable from a trading company. EPSC's marketability is in offering premium services that other organisations cannot afford to provide themselves or where organisations cannot afford the capital investment to upgrade their old legacy systems and facilities. There are also some risks, as there is likely to be rationalisation in this market in the foreseeable future. These issues need to be evaluated more closely before final decisions are made.

Appendix 4: Risk Analysis

Setting Up a Trading Company: Risk Analysis											
Gross or Inherent Risk					Risk Action					Net or Residual Risk	
Risk Identification	Risk	Like-lihood	Impact	Risk Score	Existing Controls	Action to Improve Controls	Like-lihood	Impact	Risk Score	Target Date	
	Identify and list the relevant risks and the potential impact / consequence of each. Types of risk may include Strategic, People, Operational, Financial, Reputational, Information, Regulatory, and Other.	1=Remote 2=unlikely 3=possible 4=probable 5=highly probable	1=insignificant, 2=minor, 3=moderate 4=major, 5=catastrophic, systemic failure	Like-lihood x Impact (Red Amber Green)	What existing processes / mitigations are in place to manage the risk? Actual Controls.	What further action (if deemed necessary) is planned to treat the risk to "Green" status?	1=Remotely 2=unlikely 3=possible 4=probable 5=highly probable	1=insignificant, 2=minor, 3=moderate 4=major, 5=catastrophic, systemic failure	Like-lihood x Impact	Who is responsible for the action?	What is the target completion date for this action?
	Financial and Legal										
FLR1	Failure of company and services to be competitive, leading to existing operating losses, bankruptcy.	3	4	12	Viability of initial services to be transferred being carefully considered through business cases and business plans including financial viability as a service and as part of the Company	Consider services' business cases subject to due diligence. Monitor to undertake effective financial and performance monitoring.	2	4	8	Company Board of Directors	Ongoing
FLR2	Consequences of adverse financial impact on general fund and hence taxpayer	3	3	9	Viability of initial services to be transferred being carefully considered through business cases and financial viability as a service and as part of the Company	Robust contract and governance arrangements i.e. contract monitoring, budget monitoring, contract administration procedures.	1	3	3	Company Board of Directors	Ongoing
FLR3	Failure to follow the statutory guidance on the trading power issued by the DCLG (actual guidance is ODPM)	2	4	8	Legal and Corporate Finance included in the setting up of the company. External legal and financial advice being sought.		1	4	4	Project Board	Feb-11
FLR4	Challenge from external auditors re financial model and group accounts.	2	4	8	Internal audit advice sought in setting up of financial systems	Consider seeking advice and support from the Council's external auditors.	1	4	4	Project Board	Feb-11
FLR5	Failure to set up trading arrangement in strict compliance with legislation and taxation laws	3	4	12	Legal and Corporate Finance included in the setting up of the company. External legal advice on governance arrangements and external advice on financial systems being sought		1	4	4	Project Board	Feb-11

OR1	Operational Lack of capacity to manage additional work due to expansion and/or increased responsibilities	3	4	12	Business plans of potential services to be transferred to demonstrate increase of work possible without increasing resources and potential resource increase required for expansion.	Business plans to demonstrate increase of work possible without increasing resources and potential resource increase required for expansion. Board of Company Directors to consider resources required for additional work when approving services' business plans.	2	4	3	Board of Directors	Ongoing
PR1	People Staff in services not on board/demotivated	3	4	12	Corporate Communications involved in setting up company. Communications plan drawn up. Staff concerns addressed through business cases.	Meeting with all staff in services following approval of business cases to communicate plans.	2	4	3	Project Board	Ongoing
RR1	Reputational Risks relating to Council's reputation and public perception of its efficiency and effectiveness in the event of trading company's failure	3	3	9	Viability of initial services to be transferred being carefully considered through business cases and business plans including financial viability as a service and as part of the Company	Need to ensure due diligence is undertaken to minimise this risk. Ensure risk assessment is kept up to date. Need to undertake effective financial and performance monitoring.	1	3	3	Company Board of Directors	Ongoing
SR1	Strategic Potential for lack of long-term vision if there is no five year business plan for the services and the company overall	3	4	12	Company viability considered on a service by service basis. LBE officers and members represented on the Company's Board of Directors	Consider developing five year business plans for services and company overall	1	4	4	Project Board/ Board of Directors	Ongoing
SR2	Other Local Authorities set up trading companies with services LBE wishes to trade- prior to LBE- taking LBE's potential customers	3	3	9	Director of Finance and Corporate Resources communicating broad intentions to other boroughs. Communications plan being drawn up with Corporate Communications represented on the project board.	Communicate intentions to potential customers before start trading, provided service is definitely due to be transferred. Services transferred to be competitive in trading market (outlined in business plans).	2	3	6	Project Board	Mar-11