

SURREY COUNTY COUNCIL

CABINET

DATE: 26 MARCH 2013

REPORT OF: MR DAVID HODGE, LEADER OF THE COUNCIL

LEAD OFFICER: JULIE FISHER, STRATEGIC DIRECTOR FOR CHANGE AND EFFICIENCY

SUBJECT: STRENGTHENING THE COUNCIL'S APPROACH TO INNOVATION: MODELS OF DELIVERY



SUMMARY OF ISSUE:

Surrey County Council places a relentless focus on delivering public value. The council has a successful track record of finding new and innovative ways of delivering services, in the interests of the residents of Surrey.

During the next few years many councils will respond to the challenges they face by reducing their capacity and capability. Surrey County Council is taking a different approach adopting a strategy of strengthening its ability to deliver services and investing in staff, so enabling it to continue to protect vulnerable residents and secure economic growth and a prosperous future for Surrey.

Recognising the scale of the challenge ahead and anticipating the needs of the future, this report focuses on how the council proposes to use the most effective delivery model to provide services for residents while ensuring public value. The report describes the different delivery models already being used by the council; examples of successes it has achieved so far; and makes recommendations to provide the foundations for the council to develop its approach to trading.

RECOMMENDATIONS:

It is recommended that:

1. The Cabinet acknowledges the progress and achievements delivered to date through a range of existing delivery models.
2. The Cabinet confirms that the primary objective the council seeks to achieve by developing its approach to trading is to deliver public value for Surrey residents and businesses.
3. The Cabinet agrees to the creation of a Surrey County Council Shareholder Board ('the Board') with responsibility for exercising 'shareholder control' over any limited ('trading') companies established by the council and asks the Strategic Director for Change and Efficiency, in consultation with the Leader of the Council, Cabinet Member for Change and Efficiency and Chief Executive, to establish the Board.
4. The Cabinet delegates authority to the Strategic Director for Change and Efficiency, in consultation with the Leader of the Council and Cabinet Member for Change and Efficiency, to establish a trading company that will deliver in the first instance 'business services' and in order to do so:
 - a. to consider and approve a business case, which must satisfy the statutory

requirements and the criteria set out in paragraph 28 and 29; and

- b. to approve the Articles of Association including the naming of Directors of the company.
5. The Cabinet acknowledges the opportunities that a range of delivery models provides and welcomes future proposals (expressed as options appraisals and business cases) from services across the council over the three-year period 2013 – 2016 and asks the Strategic Director for Change and Efficiency to lead a programme of work that will review service delivery models including currently traded activity.

REASON FOR RECOMMENDATIONS:

In the current financial and funding climate for local government it is essential that the council continues to focus on delivering public value to the residents of Surrey.

The council recognises that a range of delivery models are already and should continue to be used to provide services that best meet the needs of Surrey residents and businesses. Building on existing successes, the recommendations set out in this report will enable the council to continue to anticipate and respond to the challenges it faces and represent the next phase of its approach to ensure Surrey residents receive good quality public services.

DETAILS:

INTRODUCTION

1. The way that council services are delivered in Surrey continually evolves. Changes to legislation; developments in government policy; new funding arrangements; and, most importantly, the changing needs and aspirations of Surrey residents and businesses have helped to shape various models of delivery.
2. Surrey County Council has a successful track record of finding innovative ways of delivering services recognising that there is no 'one size fits all' model for the vast range of services it provides. Taking a proactive and longer term view has helped the council to prepare for the challenges it faces and has supported the delivery of £200m¹ of efficiency savings over the last three years. The budget assumptions for the Council's Medium Term Financial Plan (2013-18) include further savings requirements of £240m resulting from increased demands on council services and reductions in the grant received from central government.
3. This report recognises the importance of a pragmatic approach and the role different delivery models can play in delivering good quality public services and value for money to residents and businesses while helping the council to meet its financial targets.
4. The report describes at a headline level the range of delivery models currently being used by Surrey County Council and examples of the success it has

¹ £68m in 2010/11, £61m in 2011/12, £66m forecast for 2012/13

achieved. The report also sets out recommendations for the council to further develop its trading delivery models.

5. All delivery models that the council uses and develops will operate with the same public sector ethos and values that define the fundamental character and spirit of Surrey County Council.

MODELS OF DELIVERY

6. Council services are currently delivered via three delivery models:
 - Services delivered directly by the council
 - Services delivered by the council with a partner(s)
 - Services delivered by other organisations, commissioned / funded by the council (including organisations from the voluntary, community and faith sector)
7. Proposals for enhancing the council's ability to deliver services through a fourth model, through a trading company, are set out below.

Services delivered directly by the Council

8. A significant proportion of council services are delivered directly by the council. Over recent years the council has transferred key services (e.g. property maintenance, IT data services) back into the council from external providers, resulting in higher quality, better value for money services.
9. The recently completed [Public Value Review programme](#), where a systematic and robust review of all services and functions was undertaken, has helped to ensure that all council services and functions are being delivered efficiently and effectively with improved outcomes for residents. Overall the review programme identified cumulative savings of almost £280m to be delivered over a six year period.

Services delivered by the Council with a partner(s)

10. Notable progress has been made across all areas of the council in delivering services successfully in partnership. The partnership arrangements are varied in both scope and scale and have helped to deliver improvements in service quality and efficiencies. Examples of the successes the council has achieved through partnership working include:
 - The **SE7 Councils** (Surrey County Council, Brighton & Hove City Council, East Sussex County Council, Hampshire County Council, Kent County Council; Medway Council, West Sussex County Council) have been working together across a range of workstreams and have identified potential savings / avoided costs of £73.25m across the Partnership by the end of 2014/15. Longer term savings projections across the SE7 Partnership include a savings estimate of £600m by 2020/21 through maximising the value derived from waste, and a potential savings figure of £1bn over 25 years through the property workstream (based on extrapolated savings being delivered by Hampshire County Council).

- Other SE7 workstreams that have delivered improvements include: the joint programme office created by Surrey County Council and Hampshire County Council which has enabled the delivery of 570 new permanent school places this year and aims to deliver 40% reduction in the cost of new school places over the next four years; and the UK's first master's degree course to train the next generation of public sector highways managers which was launched last year by the SE7 group of councils with Brighton University.
- In Adult Social Care the 'prevention through partnership' programme has had a significant positive impact. Stronger partnership working, close engagement with residents, and the launch of a £10m preventative services fund which is enabling 11 local plans to be developed which will stimulate a range of innovative and sustainable services and joint approaches which are supporting local residents to access community support mechanisms and maintain their independence. In addition, in driving forward the Prevention through Partnership Programme the first Wellbeing Centre including a Telecare Demonstrator Site opened in Egham. A further four centres will be opened over the next six months in Caterham, Epsom, Walton-on-Thames and Shepperton. The innovative new facilities developed within Borough and District Council Centres using capital funding from Surrey are currently being developed across Surrey with over 150 partners currently engaged in the programme. Key partners are the Alzheimers Society, Surrey and Borders, Age Concern, Age UK, ADL Smartcare, Telecare service providers with key links with reablement services, virtual awards, ensuring there are robust partnerships as Centres are opened in each Borough or District.
- A partnership has been established with East Sussex County Council to **share procurement arrangements**, which will initially deliver £2.5m savings and better value for taxpayers. This partnership arrangement is being further extended with Surrey County Council delivering transactional and IT Data Centre support services with effect from April 2013.
- The council also continues to work with **Isle of Wight Fire and Rescue Service** by providing their emergency control centre operation delivering economies of scale to both parties
- Through the **Surrey Families Support Programme** we have started to implement new coordinated arrangements with partners to provide better support to families that have multiple and complex needs. Learning from the pilot in Waverley the new approaches are initially being implemented in Elmbridge, Guildford, Reigate and Banstead, Spelthorne, Woking, and Waverley. The programme will then be rolled out to the rest of the county from October 2013. Surrey is recognised as leading the way on implementing the Government's Troubled Families programme in a two tier area.

Services delivered by other organisations, commissioned / funded by the Council

11. The council continues to strengthen its approach to commissioning and procuring goods and services from suppliers, and is on track to deliver its target procurement savings of £25m in 2012/13. This will bring the total

savings delivered since 2009/10 to over £90m, with a further forecast of £28m for 2013/14. These savings have been achieved through a combination of applying a Category Management approach, closer management of major suppliers and working with other local authorities to increase our leverage.

12. This model of delivery can be through a contractual arrangement, grants or other funding mechanisms. Examples in Surrey where this type of delivery model has delivered improved services and / or efficiencies include:
 - The **highways contractual arrangements** - through robust management of the contract the Council has worked with May Gurney, the supplier responsible for maintaining Surrey's roads, to identify an additional £10m savings from the £60m, six-year agreement through long term planned resurfacing programme. In the first year of the new highways contract 300 miles of road were resurfaced or repaired; fourteen pedestrian crossings and 19 traffic light junctions were refurbished; capacity to grit roads in the snow increased by 110 miles, 98% of potholes were fixed or made safe with a temporary repair within 24 hours; and there was a 15% increase in resident satisfaction.
 - Identifying and working with our key suppliers in the complex area of **Adults with Learning Disabilities**, an additional £3m savings have been achieved to date, whilst maintaining standards of care and strengthening the relationship between the Council and suppliers.
 - In **Waste Management** the Council has worked closely with SITA to review supply chain arrangements with sub contractors which has resulted in savings of £400k to date.
 - On 12 September 2012 the Council signed a £33m superfast broadband deal with BT to provide high speed connections for more than 90,000 business and household premises in the county that are not included in the commercial roll-out nationally (equating to 99.7% coverage of all households and businesses). This will make **Surrey the best connected county in the country** and could boost the economy by around £28m a year.
13. The Council has continued to focus on strengthening the local economy, working towards the target of 60% spend with local suppliers, and ensuring that those suppliers who deliver services on our behalf maximise the use of local apprenticeships.

Developing the Council's approach to trading

14. The power to trade allows a local authority to offer its services on a commercial basis (i.e. make a surplus) - in order to pursue a strategy of risked based commercial trading the council could make use of powers granted by section 95 of the Local Government Act 2003 and the Local Government (Best Value Authorities)(Power to Trade) (England) Order 2009.). The powers provided by the Localism Act 2011 through the general power of competence also broaden the scope of activities upon which the council could trade. The council is already using powers to charge for its services (limited to recovery of the cost of providing those services) and is sharing services with other public sector partners.
15. In order to use those powers the council must set up a company, for the purposes of trading without subsidy. This, by its nature, will be a new legal

entity created under the council's ownership, but with the ability to trade commercially with the private sector.

16. Trading can also be undertaken by the council with a private sector partner. Through the joint venture Babcock 4S, Surrey County Council already has experience of successfully operating in a trading environment. The joint venture is a public private partnership between Surrey County Council and Babcock International Group PLC, and is one of the largest providers of school support services in the country. The arrangement has delivered dividend payments to the County Council of £1.6m over the last three years.
17. The council's **primary objective in relation to developing its approach to trading is to deliver public value for Surrey residents and businesses.**
18. In addition, trading would give the council a range of new opportunities including:
 - Delivering services differently by creating a dynamic and entrepreneurial environment that will increase the range, choice and delivery of public services, and will help to drive service improvements as the need to compete in the market place necessitates competitive, high quality services;
 - Profits generated for the council through its trading operations will be available to support the delivery of the council's medium term financial plan. In some authorities this surplus has been used to support other services within the authority, invest in new commercial ventures via the company, or to help to keep increases in Council Tax to a minimum; and
 - A trading company will create new opportunities for staff to expand their learning base (e.g. customer services, commercial awareness and risk management skills).
19. The attached paper (Annex A) summarises the key legal and procurement issues relating to local authority trading considered by the council.

Governance

20. A trading company must be in one of the forms prescribed by law. For the current proposals a company limited by shares wholly owned by Surrey County Council, is the most appropriate form. In developing its governance mechanisms and arrangements the council is and will continue to use learning from other local authorities and organisations to achieve best practice.
21. In order to safeguard the council's interests as shareholder and to influence and inform the development and implementation of its approach to trading, the **first proposed step is to establish a Surrey County Council Shareholder Board ('the Board')** with responsibility for exercising 'shareholder control' over any companies established and owned by the council.
22. When establishing a trading company a shareholder agreement will be established between the sole shareholder (the council) and the trading company setting out in detail the powers and responsibilities of the council

(i.e. 'shareholder control' exercised through the Board). The **Board's authority and powers** will include:

- **appointing and removing directors** to the trading company;
 - **signing off the business plan and financial dividend forecast** (annually); and
 - reviewing the **financial and overall performance** of the trading company.
23. The Board would initially be made up of up to eight individuals from both the Cabinet and senior management from Surrey County Council. The Board membership would include the Leader of the Council and Chief Executive and they would agree the remaining members of the Board. It is recommended that this arrangement should be reviewed by Cabinet annually to ensure that it continued to provide a robust governance framework for all ongoing trading activity, to effectively manage associated risks and to operate without any conflict of interests.
24. Once established, wider Member involvement and scrutiny of the arrangements and ongoing activity will include engagement with the Audit and Governance Committee, the Council Overview and Scrutiny Committee and other relevant Select Committees.
25. This report recommends that the Strategic Director for Change and Efficiency, in consultation with the Leader of the Council, Cabinet Member for Change and Efficiency and Chief Executive, be asked to establish the Board. This will include specifically:
- developing its terms of reference; and
 - agreeing who will sign off the shareholder agreement on behalf of the council.

Establishing a trading company

26. The council has already undertaken initial analysis (Part Two Annex - item 24) to establish the feasibility of setting up a trading company which would in the first instance deliver 'business services'.
27. A business case is currently being developed to enable the council to capitalise on opportunities that are currently available for the delivery of 'business services' to private sector organisations. The opportunities currently being evaluated include the delivery of IT services, including data hosting, helpdesk and application support, and the provision of procurement services. This may lead to further opportunities, for example HR support and other associated professional services. The delivery of 'business services' through a trading company would not involve the transfer of any staff to the trading company at this stage.
28. This report recommends that the Cabinet delegates authority to the Strategic Director for Change and Efficiency, in consultation with the Leader of the Council and Cabinet Member for Change and Efficiency, to set up a 'business services' trading company subject to the business case satisfying the following criteria:

- Demonstration of value for money for the council (including a dividend payment);
 - Quality service to all its customers;
 - Financial and legal risk analysis;
 - Equality impact assessment;
 - Governance and management arrangements (which will follow the principles outlined in this report).
29. The business case will also require approval of the Section 151 Officer and the council's Monitoring Officer who will ensure that all business risks and financial implications are fully considered.

Identifying and assessing opportunities

30. As the council strengthens the range of options available for the delivery of services, further options and businesses case will be presented to the Cabinet for consideration and approval.
31. To facilitate this process and help to ensure a strategic approach is taken across the council, the Strategic Director for Change and Efficiency will establish a working group, supported by a framework and set of tools to enable and assist services to develop options and business cases.
32. This approach and the supporting framework which will be developed will set out a pathway for services considering their service delivery model through:
- Initial analysis / needs assessment
 - Options appraisal
 - Business case
 - Implementation and governance
33. The pathway described above follows a standard commissioning cycle. The council is currently reviewing its Commissioning Framework to ensure clarity and consistency of approach and raise awareness of associated requirements. The revised Framework will come to the Cabinet later in the year.
34. This report asks the Cabinet to acknowledge the opportunities that a range of delivery models provide and welcome future proposals (expressed as options appraisals and business cases) from services across the council over the three-year period 2013 – 2016.

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| <u>CONSULTATION:</u> |
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35. A range of stakeholders have been consulted in the development of the approach described in this report. This has included elected Members, the Corporate Leadership Team and the Council Performance Team.

36. As any delivery model options are being developed in the future, consultation and engagement of residents, services users, staff and other relevant key stakeholders will be an integral part of the council's approach.

RISK MANAGEMENT AND IMPLICATIONS:

37. Effective risk analysis and risk management form a vital part of the council assessing options for delivery models. In choosing to establish a council trading company, the council is making a decision to undertake activities in order to generate income - commercial activities always carry an element of risk which will require management.
38. As part of any decision to proceed, a comprehensive business case will need to be prepared and agreed which, as detailed earlier, has identified:
- the objectives of the business;
 - investment and other resources needed; and
 - the risks and how significant they are.
39. When establishing a trading company the council will also need to give consideration to developing an 'exit strategy' in order to protect the council's investment - the 'exit strategy' (i.e. what happens to assets and liabilities if the trading company should fail) can be written into the company's constitution.

Financial and Value for Money Implications

40. The establishment of a trading company will be subject to Cabinet approval upon the basis of a business case which will articulate the financial implications for the County Council. The development of a business case for a trading company must however be preceded by a full evaluation of the various options available to deliver the service/s under consideration. In evaluating these options, it will be important to clearly state the relative merits of different delivery models and to ensure that the option being proposed for further consideration is the most financially beneficial to the council in the longer term.
41. The trading company arrangements will need to comply with the appropriate financial and legal requirements as set out in the Companies Act 2006 and will be subject to the specific codes governing local authority controlled companies contained in the Local Government and Housing Act 2003.
42. The council must recover the full cost of any accommodation, goods, services and employees supplied to a trading company. The council is able to provide financial assistance to a company for a limited period. The provision of financial assistance must be provided under a formal agreement and provided in the expectation of returns in the future. All arrangements made in terms of supplies to and from a trading company, and any financial assistance would be expected to be of a transparent nature and will need to ensure that the company is operating on an equal footing with competitors.
43. The Surrey County Council Shareholder Board will be responsible for ensuring the trading company has a robust business plan in place. The business plan will need to incorporate consideration of the following:

- Market analysis (product, customer and competition)
- Risk analysis
- Financial plan including cash flow analysis

Section 151 Officer Commentary

44. The Section 151 Officer recommends that in consideration of proposals to establish a trading company that due consideration is given to the implications of the independent nature of the company being created. There may be potential conflicts between the interests of the company and the interests of the council, for example a trading company may wish to retain profit for future growth rather than pay an annual dividend to the County Council. The issues potentially resulting from the independent nature of a trading company can be mitigated by careful consideration of the shareholder agreements.
45. Existing delivery models may be more financially appropriate depending upon the nature of the proposition however the governance structure laid out in this report requires that all options are fully considered before proceeding to the business case stage.
46. The business case for the establishment of a trading company will need to ensure that adequate consideration is given to the set-up costs of the company, for example, to include all necessary legal fees and expert tax and financial advice required. The business case will also be required to make adequate provision in the financial plans for new incremental costs, for example, separate external audit if required, directors insurance and so forth.

Legal Implications – Monitoring Officer

47. The council may establish a wholly owned company and through it provide supplies and services and/or carry out other commercial activities. As with all other decisions that it takes, the Cabinet must balance the risks against the potential rewards and pay due regard to its other fiduciary, best value, equalities and other relevant duties. Before setting up a company to trade the Council should prepare and approve a business case. That business case must be a “comprehensive statement” which includes details about:
- the objectives of the business,
 - the investment and other resources required to achieve those objectives,
 - any risks the business might face and how significant these risks are, and
 - the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.
48. Any company established will be subject to the controls contained in Part V of the Local Government and Housing Act 2003, so for example any directors appointed cannot receive remuneration or expenses that exceed levels the council can pay and (if required) information must be provided to the council’s auditor.
49. Any directors appointed to the company must exercise their own judgment and will have statutory duties which they owe to the company rather than the council. Potentials for conflict of interests will need to be carefully managed

50. The council must recover the costs of any accommodation, goods, services, staff or anything else it supplies to the company and cannot provide the company with a subsidy.

Equalities and Diversity

51. A full equality impact assessment will be undertaken as part of the business case being developed for the 'business services' trading company.

52. Equality impact assessments will form a standard part of all trading company business cases prepared as described in paragraph 28 above.

Other Implications:

53. The potential implications for the following council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

| Area assessed: | Direct Implications: |
|--|---|
| Corporate Parenting/Looked After Children | No significant implications arising from this report. |
| Safeguarding responsibilities for vulnerable children and adults | No significant implications arising from this report. |
| Public Health | No significant implications arising from this report. |
| Climate change | No significant implications arising from this report. |
| Carbon emissions | No significant implications arising from this report. |

54. Whilst there are no direct implications arising from this report, the Cabinet may in the future be asked to consider options for models of delivery and business cases which do impact on the above areas.

WHAT HAPPENS NEXT:

- The Strategic Director for Change and Efficiency will:
 - implement the recommendations as stated above; and
 - establish a working group, supported by a framework and set of tools to enable and assist services to develop options and business cases.

Contact Officer:

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Consulted:

Denise le Gal, Cabinet Member for Change and Efficiency
Elected Members
The Corporate Leadership Team
The Council Performance Team

Annexes:

Annex A – Local authority trading companies legal /procurement considerations

Part two Annex (item 24) – Trading company (business services) initial analysis

Sources/background papers:

Local Government Act 2003 and Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009.

Companies Act 2006

Localism Act 2011

Report to the Cabinet 18 December 2012 - Surrey County Council and East Sussex County Council Partnership – Shared Services

Annex A

Local Authority Companies

1. Councils may create and own companies to provide services to the council, or to trade commercially in the public and/or private sector for profit, or a combination of any of these. A company is a legal entity in its own right and a company created by the Council to trade commercially would need to comply with public procurement laws if it wished to provide supplies services or works to public bodies, including potentially Surrey County Council itself.
2. Creating a company to deliver a function will change the Council's relationship between its leadership and the operational areas of that function.
3. Companies offer the advantage of a freedom to trade and allow for the employment of staff on different terms and conditions to those of local government employees. Issues arising from creating a company, and which would need careful consideration in any options appraisal, include
 - The complication and potential additional cost of tax and regulatory requirements that apply to companies and do not apply to a local authority. A separate legal entity will potentially have a different and more onerous Corporation tax and VAT regime than the County Council.
 - Separate governance and tensions around control, with decisions needed about how key stakeholders will be involved, who will be directors of the company and how the council will retain responsibility and accountability for its involvement. The Council may retain control of a company through its shareholding, but it cannot mandate the directors of it, even those it appoints. Directors must exercise their own judgement and whilst they can take into account the interests of SCC they cannot be required to follow its requirements. Once appointed, they would have separate statutory duties to their company.
 - Employment/pensions issues, which would arise if staff were to be transferred or TUPEd across into a new entity.
 - Last but not least, once a company is providing, or has been set up to provide services to a range of clients the Council may not be able to commission services from it direct, but may have to go through the Official Journal of the European Union (OJEU) or local tender processes and let a contract for those services to the successful bidder.

Background law

4. There are a range of powers to charge for services, one of the key powers to trade within the public sector is the Local Authorities (Goods and Services) Act 1970, but there are other specific powers in different legislation. The Local Government Act 2003 introduced powers to trade in the wider market, where that trading related to the local authority's functions.
5. The Localism Act 2011 introduced wider commercial powers, within provisions referred to as the general power of competence or "GPOC". Provided that what it plans to do it is not prohibited in other legislation, the Council may do things for a commercial purpose, with or without a charge. However it must only carry out any of those commercial activities through a company.

6. Where a company is set up to trade under the 2003 Act, a council must comply with the Local Authorities (Best Value Authorities) (Power to Trade) (England) Order 2009. This requires local authorities to consider and approve a suitable business case for establishing a company. That business case must include details about:
 - the objectives of the business;
 - the investment and other resources required to achieve those objectives;
 - any risks the business might face and how significant these risks are; and
 - the expected financial results of the business, together with any relevant outcomes that the business is expected to achieve.
7. Any accommodation, services, staff or other support provided by a council must be charged for by the council, at least covering full costs, but potentially at a market rate, to demonstrate that the company is not being subsidised by the council. This is important in the context of competition law and state aid. Similarly, any financial assistance, for example in the form of grants, loans or guarantees, should be provided for a limited period and provided under a formal agreement entered into for a commercial purpose. Trading Guidance issued by the government reminds local authorities of the risk of on-going liabilities and warns "the authority should ensure that it takes appropriate steps to avoid automatically assuming responsibility for any aspect of an unsuccessful company"
8. Part V of the Local Government and Housing Act 1989 introduced controls on local authority involvement in companies. Today only propriety controls remain, which require local authorities to ensure for example that any directors appointed to a company that it controls would not be disqualified from being a local authority member; remuneration and expenses do not exceed levels that the local authority could pay, information must be provided to the local authority's auditor (controlled companies must obtain the consent of the Audit Commission to the appointment of an auditor); and letterheads must show the relationship with the company.

Procurement Issues

9. Public procurement legislation applies whenever a local authority awards a contract for supplies, services or works. Depending upon the precise nature and value of an arrangement there are different rules that might apply. Priority services require advertisement through a contract notice in OJEU and may involve a restricted, competitive dialogue, negotiated or some form of E-tender process, following the full requirements of the Public Contract Regulations 2006. Some services, however, only require a lighter touch regime, covering services such as "care", "recreational and cultural services", "educational and vocational educational services" or "legal services" for example. These are still covered by the Treaty obligations which require transparency, fairness and non-discrimination. Whilst not covered by the full requirements of the regulations, for high value contracts the European Commission and the Courts take the view that there should be an 'appropriate' degree of advertisement and competitive process to the circumstances, even where a full procurement process is not required through OJEU. Additionally, local authorities need to follow their own procurement standing orders.

10. Generally speaking local authority trading companies (LATCs) are treated as private sector companies. This means that, when a local authority wishes to procure any goods, services or works, an LATC would need to tender alongside other private sector entities.

Teckal

11. The lack of flexibility inherent in the public procurement regime has led to local authorities' interest in the Teckal case. According to the 1999 *Teckal* judgment, the public procurement directives do not apply to contracts if the control exercised by the contracting authority over the entity awarded the contract is similar to that which it exercises over its own departments and, if, at the same time, that entity carries out the essential part of its activities with the controlling authority, so the two principal tests for a Teckal company are:
 - The control test, requiring the parent authority(ies) to exercise control similar to that exercised over its own departments; and
 - Carrying out the essential part of its activities for the parent(s).

The case law has developed and clarified these conditions further and made it clear that they should be interpreted narrowly. So, for example, to fall within the Teckal exemption, the company's articles should not permit wide scale trading activity with third parties and shareholding should be limited to avoid third party involvement.

Surrey County Council (SCC) Options

12. The council has been considering different ways of structuring any proposed delivery vehicles. The options considered include:
 - A holding company, which has as its core purpose holding shares in trading and non-trading subsidiaries and exercising shareholder controls;
 - A single, wholly SCC owned company, limited by shares, with divisions for the different functions of the company; and
 - A number of different limited companies, with an SCC board exercising shareholder control.

These are in addition to models already being used successfully, such as joint venture companies, in which the Council has a percentage of the shareholding but does not wholly own the company.

13. Any decision on the models to be adopted will need to take into consideration the objectives behind creating the model and the considerations outlined above, which would need to be thoroughly understood and researched to avoid any unintended consequences.
14. Key considerations include:
 - i) Tax and VAT implications, needing further analysis.
 - ii) The Teckal test relies upon control and so the interjection of a parent company can weaken control – this was a feature of a European procurement case (Coditel). Therefore, generally it is not advisable to establish a Teckal company as a subsidiary of another.

15. **Advantages of having a number of separate companies** include:
- The use of separate LATCs will increase the financial transparency of separate projects and in particular assist each project to be accounted for separately.
 - To the extent that it is likely that each project will have differing commercial and/or social objectives, this approach will allow an authority to pursue distinct strategies.
 - The legal form and governance of the company can be tailored to the particular requirements of the project and the business which is to be operated out of it.
 - Using independent LATCs will create a structure in which the financial risk and assets/liabilities associated with each project can be isolated from one another and the financial failure of a project need not therefore entail the financial failure of another.
 - The structure can be tailored so that it is the most financially beneficial in the context of tax and VAT implications, in so much as these differ between different business activities.
 - Pooling similar assets into a separate LATC will enable each project to have separate credit/risk profiles in relation to the obtaining of external finance.
 - Separate vehicles will provide an authority with separate exit strategies and/or joint venture opportunities in respect of each project.
 - It may be possible to develop tax efficient employee share ownership options, relevant to each business and develop salary structures that reflect individual employment markets.
16. **Disadvantages** include:
- Channelling business through separate entities will result in an increased administrative burden for the authority. For example, each LATC is likely to need to file separate accounts and returns and keep separate registers of information up to date.
 - Adds an additional tier of complexity and a need for the vehicles to establish contracting arrangements (e.g. leases/service agreements) with the authority (and potentially each other).