

CABINET REPORT – 3 DECEMBER 2014

EXECUTIVE SUMMARY

Title of Report:

Proposal to set up a Community Interest Company as an alternative business model for the Tyne and Wear Care Alliance (TWCA) and to arrange for the novation to the new company of existing contracts for training currently being delivered by TWCA.

Author(s):

Executive Director of People Services.

Purpose of Report:

The purpose of this report is to set out the proposal to establish a new structure and business model for the Tyne and Wear Care Alliance which includes the novation of existing training contracts currently being delivered by TWCA. The report recommends Cabinet approval to take this forward.

Description of Decision:

That Cabinet be recommended to:

- i. consider the information provided in the Cabinet Report and, subject to the final approval of the Company's 3 year business plan by the Deputy Chief Executive, Director of Finance and the Executive Director of People Services, in consultation with the Leader and Cabinet Secretary, agree to the establishment of a new Community Interest Company in order to operate the existing business of the Tyne and Wear Care Alliance on the terms set out in this report;
- ii. authorise the Deputy Chief Executive, Director of Finance and the Executive Director of People Services to take all necessary steps to secure the establishment of the TWCA CIC, including appropriate pension arrangements, in consultation with the Cabinet Secretary.
- iii. approve the award of a contract and/or the novation of current and ongoing funding between the Council and TWCA for the delivery of Health and Social Care training throughout Tyne and Wear from the 1st January 2015, subject to TWCA being accepted onto the Skills Funding Agency's Register of Training Organisations and on terms to be determined by the Deputy Chief Executive, Director of Finance and the Executive Director of People Services.

Is the decision consistent with the Budget/Policy Framework? Yes

If not, Council approval is required to change the Budget/Policy Framework

Suggested reason(s) for Decision:

Approval of the proposals contained within this report would afford the opportunity for Sunderland City Council to support the establishment of a successful social enterprise which will be cost-effective in assisting the Council to meet the operational challenges it currently faces in delivering the training and workforce development contracts it holds with various funding agencies for the delivery of Apprenticeships, Diplomas and other education and skills training in Health and Social Care.

The setting up of a CIC will enable a more flexible and responsive approach to meeting the workforce development needs of the adult social care sector. There is a strong case for setting up the new arrangements which will assist in the establishment of an appropriately-skilled social care workforce, and improved standards in the quality of care services.

There are many advantages for care providers accessing training services delivered by the proposed CIC including:

- More effective and efficient services resulting from the need to make rapid responses to demand and to be competitive, flexible and innovative.
- Increased potential for opportunities in the local economy, which could lead to greater job creation and employment prospects.
- It will create new opportunities for subcontracted training provider services from local companies, especially smaller businesses.
- It has the potential for working regionally to support relationships between local government, the NHS and the independent, voluntary and community sectors.

Alternative options to be considered and recommended to be rejected:

There is a clear need to ensure that TWCA is sustained going forward so that the uniquely successful partnership working and training achievements attained over the last eleven years continue to be highly beneficial to the provision of local care services.

The proposal to establish a new Community Interest Company was only taken after completing a detailed options appraisal that involved input from Law and Governance and consultancy advice from Social Enterprise Sunderland.

The four options considered are detailed below:-

- Do nothing and continue with current funding and trading arrangements
- Establish a Local Authority Trading Company
- Set up a Charity with a Trading Arm to deliver training

- Establish a Community Interest Company

Option 1 - Continue with current funding and delivery arrangements

Tyne and Wear Care Alliance is currently led by Sunderland City Council within the People Services Directorate. The Tyne and Wear Care Alliance Team play an important role in the overall promotion and delivery of social care education and skills training across the sub-region.

- This option would be detrimental to SCC's need to streamline its workforce while still being obliged to find capacity to deliver the training contracts.
- It would prevent TWCA from having increased freedom to operate with greater flexibility which underpins its future prospects for growth.
- This approach would be detrimental to the development of effective regional strategic partnerships and opportunities for regional funding. It would not maximise the potential to attract new revenue streams and enable timely responses to the changing demands within social ,care workforce development.

Option 2 – Establish a Local Authority Trading Company

This option was considered but discounted as Tyne and Wear Care Alliance has a sub-regional remit, with aspirations to operate regionally and there was a real concern that if the LATC was seen to be too closely affiliated to one local authority, this could impact on gaining new business going forward.

It would also fail to maximise the potential of creating a new fit for purpose delivery model for social care training delivery and thereby not deliver the required outcomes.

Option 3 – Set up a Charity with a Trading Arm to deliver training

Applying for Charitable Status would affect Tyne and Wear Care Alliance's ability to apply for certain funding and its operational remit would be constrained through regulation by the Charity Commission. In addition, certain providers have expressed a nervousness about a charity delivering their services, and how sustainable this model would be.

Option 4 – Set up a Community Interest Company

This is the preferred model. The CIC business model would afford TWCA the potential not only to continue delivering its services in a wider area but also provide increased opportunities for business improvement arising from new operating freedom.

Therefore it is recommended that option 4 described here is approved.

Impacts analysed:			
Equality	Privacy	Sustainability	Crime and Disorder
Is this a “Key Decision” as defined in the Constitution?		Yes	Scrutiny Committee
Is it included in the 28 Day Notice of Decisions?		Yes	

REPORT OF THE EXECUTIVE DIRECTOR OF PEOPLE SERVICES

1. PURPOSE OF THE REPORT

- 1.1** The purpose of this report is to set out the proposal to establish a new structure and business model for the Tyne and Wear Care Alliance which includes the novation of existing training contracts currently being delivered by TWCA. The report recommends Cabinet approval to take this forward.

2. DESCRIPTION OF DECISION

- 2.1** That Cabinet be recommended to:

- (a) consider the information provided in the Cabinet Report and, subject to the final approval of the Company's 3 year business plan by the Deputy Chief Executive, Director of Finance and the Executive Director of People Services, in consultation with the Leader and Cabinet Secretary, agree to the establishment of a new Community Interest Company in order to operate the existing business of TWCA on the terms set out in this report;
- (b) authorise the Deputy Chief Executive, Director of Finance and the Executive Director of People Services to take all necessary steps to secure the establishment of the TWCA CIC
- (c) approve the award of a contract and/or the novation of current and future funding between the Council and TWCA for the delivery of Health and Social Care training throughout Tyne and Wear from the 1st January 2015 on terms to be determined by the Deputy Chief Executive, Director of Finance and the Executive Director of People Services.

3. BACKGROUND

- 3.1** The Tyne and Wear Care Alliance works in partnership with independent care sector employers in Tyne and Wear to support workforce development. Sunderland City Council hosts TWCA and provides its legal framework.

TWCA works in line with Sunderland City Council's strategies around increasing prosperity, wellbeing and economic development by addressing individual skills needs and the recruitment and workforce development needs of local employers. Its main aim is to help to raise standards of care accessed by vulnerable service-users by providing education and skills training, enabling people to enter learning and career pathways in social care.

TWCA has developed 5 Employer Network Boards covering Sunderland, Gateshead, Newcastle, South Tyneside and North Tyneside, along with a learning disabilities Network (known as ACE). The Boards meet regularly with local authority representatives to discuss TWCA activities and sector issues, often sharing training plans and vacancies on training courses.

- 3.2** Since it was established in 2003, TWCA has delivered a wide range of qualifications at all levels in Health and Social Care to meet the demand identified by care employers and their workforce. Funding streams include European Social Fund, Adult Skills Budget, Skills For Care Workforce Development Fund and funding from Health Education North East, the local CCGs and ADASS; this funding has been provided via contractual agreements between Sunderland City Council and the funding agencies i.e. the Skills Funding Agency and Skills For Care.

Through successful partnership working, TWCA has also been able to secure places for learners on courses provided by the local authorities and the NHS which has helped to strengthen relationships between the private and public sectors.

- 3.3** Under the proposed arrangements, during year 1 (i.e. from the 1st January 2015 to the end of the SFA contract year, the 31st July 2015), the Council would novate the training contracts described above to TWCA. This would be carried out in accordance with the legal requirements of Sunderland City Council and the funding agencies involved.

- 3.4** TWCA has begun to work in partnership with Durham County Council regarding taking over the work of the Durham Care Alliance (DECHA) which no longer operates. This will provide a unique opportunity for the new CIC to expand its operating base and attract substantial further funding, both from existing and new funders. There is an additional opportunity to extend operations into Tees Valley, continuing and further developing the excellent work carried out so far by the Tees Valley Alliance which, like DECHA, is no longer operating.

- 3.5** Although TWCA plays a significant role in the provision of training to the care sector in the subregion, it has become necessary to consider future alternative operating models that could enhance and better sustain TWCA's operations and provide a means for potential expansion into a regional entity. Existing arrangements do not assist TWCA to maximise outputs and seek new commercial opportunities necessary to deliver the maximum benefit for the care sector, so the decision was taken that TWCA should be given the opportunity to explore alternative business models. After consultation with staff and TWCA's strategic partners, it was agreed there would be substantial benefits in transforming TWCA's current legal framework and hosted status into a social enterprise model with an

'asset lock' which is considered to be the most sustainable service delivery model. Clarification has also been received from the Skills Funding Agency and other funders regarding the process for applying directly for funding.

3.6 The social enterprise business model would afford TWCA the potential not only to continue delivering its services in a wider area but also provide increased opportunities for business improvement arising from new operating freedom. It would enable TWCA to:

- (a) Improve efficiency and value for money
- (b) Further improve outcomes and benefits on a wider community basis, expanding from sub-regional to regional working
- (c) Respond more flexibly to local area employer and business needs
- (f) Provide the training and skills required by the social care workforce in the region to raise care standards and better serve the needs of vulnerable adults accessing care services
- (g) Continue to play a part in addressing the requirements of the Local Authority's Economic Strategic Plans
- (h) Offer specialist provision, including pre-employment routeways into care to engage people disadvantaged in the labour market
- (i) Increase the number of people in the region who are in employment, education and training.

4 THE BUSINESS CASE FOR A TWCA COMMUNITY INTEREST COMPANY

4.1 In-depth financial analysis of TWCA's current and projected business activities has been undertaken and a detailed 3 year Business Plan has been developed taking into account:

- a) efficiency savings that can be realised through the new arrangements
- b) increased income through increased commercial opportunities and freedom to expand TWCA's operating base within the region
- c) operational costs of the proposed company
- d) tax position

4.2 Analysis of current and projected income, costs, savings and opportunities for growth indicate the establishment of a sustainable business for TWCA over the next 3 years as demonstrated in the financial forecast below:

Financial Years January to December			
	2015/16	2016/17	2017/18
	£'m	£'m	£'m
Expenditure	1.934	2.093	2.107
Income	(2.048)	(2.215)	(2.215)
Net (Profit) / Loss before Tax	(0.114)	(0.122)	(0.108)
Corporation Tax 20%	0.023	0.024	0.022
Net (Profit) / Loss after Tax	(0.091)	(0.098)	(0.087)

4.3 The CIC Articles prevent any distribution of profit. Any surplus arising from its training and educational activities will be ring-fenced so as to be used for the continuance or improvement of such activities.

4.4 The financial position set out at 4.2 takes into account the following:

4.5.1 Efficiencies

Efficiency savings are included in the business plan in respect of workforce and service improvement savings through new ways of working, streamlined structures, pension arrangements for new employees and other operational savings.

4.5.2 Income Opportunities

The TWCA business plan identifies avenues for generating additional income which will largely utilize existing capacity to improve the trading position. Where a need has been identified for increased capacity, this has been included in the financial forecasts. Some of the areas of potential growth include taking over responsibility for a wider geographical area, delivering a wider range of training and managing regional funding. This would become increasingly difficult within the current hosting arrangements as success will be dependent on rapid response to the demands of the market and the funders, as well as flexibility in terms of, for example, service procurement and recruitment of staff.

4.5.3 Board / Governance Costs

In considering the financial implications of the new business model, the following have been taken into account:

- (a) Costs associated with operating the business in a more commercial and flexible environment.
- (b) Additional operational costs as a result of operating a separate company, for example governance arrangements through the operation of the board, financial reporting arrangements and associated company arrangements.

4.5.4 Taxation

- (a) Corporation Tax

As a separate legal entity to the Council, the company will be subject to tax, including corporation tax on chargeable profits and gains arising to the company, whereas the Council is not liable for corporation tax. The Council will charge market value for any goods and services which it will provide to the Company. Similarly, the Company should charge full market value for goods or services it provides to the Council.

- (b) VAT

The Council is a section 33 body within the VAT act 1994, and this allows the Council to recover all the VAT it incurs, including VAT related to non-business and VAT-exempt activities, subject to a 5 per cent de minimis limit. This benefit will not be available to the new CIC. Advice has been sought in order to ensure the most tax efficient approach and inform costs to be included in the business plan.

4.5.5 Pensions

TWCA is seeking admitted body status in respect of the Local Government Pension Scheme (LGPS) so that the Council staff who will TUPE transfer will be eligible to remain part of the LGPS. In order to ensure this route is affordable, this admission will take the form of a closed scheme for the transferring employees only and will not be open to new employees recruited by TWCA in the future. New employees will be offered the option of entering into the Government's NEST scheme.

At this stage the financial implications for the potential admission of TWCA into the LGPS is still to be finalised, however allowance has been included within the business plan based on best information available.

It is envisaged that appropriate pension arrangements will be confirmed in due course in consultation with the Cabinet Secretary and Director of Resources and the final business plan updated to include the financial implications.

In the event that the application for admission to the LGPS is unsuccessful and/or the pension costs are unaffordable, a further report would be submitted to Cabinet prior to the proposed transfer date.

5. CURRENT POSITION AND PROPOSED NEXT STEPS

- 5.1** In light of the financial position set out at section 4 it is proposed to establish the TWCA as a CIC.
- 5.2** The Skills Funding Agency and Skills For Care have been notified of this proposal and advice has been received from them regarding the processes required to take this forward and to novate existing contracts to the new Company. Approval in principle has been indicated. The Skills Funding Agency has indicated that the new company is required to be accepted onto their Register of Training Organisations; this application has been made and the results are awaited.
- 5.3** In view of the above, it is therefore proposed to progress the establishment of TWCA at the earliest opportunity as a Community Interest Company for the delivery of the training services. The target (subject to TWCA securing admitted body status for the LGPS and on affordable terms) is for the new CIC to become operational at the beginning of January 2015.
- 5.4** The detailed proposals for the creation of the new business model are summarised in Section 6 below.

6 PROPOSAL

- 6.1** In summary, the proposals for the new business model for TWCA involve the following:-
 - (a) The establishment of a CIC, following consultation with the existing staff team and TWCA's Strategic Partnership Board. This company will be limited by guarantee. TWCA will be a CIC in order to enshrine its social and community objectives and to create an asset lock in respect of any assets that are subsequently acquired by TWCA that may only be used for these social/community objectives
 - (b) TWCA will be managed and overseen by the Board of Directors. It is proposed that the Board of Directors will consist of 2 executive directors and 3 non-executive directors. The 2 executive directors will be TWCA's current Manager and TWCA's current Quality and Governance Manager. The 3 non-executive directors will consist of individuals who can provide strategic direction and advantage for the new company.

- (c) There will be a transfer of the relevant existing TWCA employees to the new company by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") when TWCA CIC becomes operational (i.e. 1st January 2015).
- (d) As detailed at paragraph 4.5.5, TWCA is seeking admitted body status in respect of the Local Government Pension Scheme (LGPS) so that the Council staff who will TUPE transfer will be eligible to remain part of the LGPS.
- (e) TWCA having been accepted onto the SFA's Register of Training Organisations, the Council will novate the contract to TWCA for the period 1st January to 31st July 2015. The same arrangement will be undertaken for all other contracts delivered by TWCA and currently held by SCC.

7 Impact on the Council of developing TWCA into a CIC

7.1 Financial impact

The proposal has no on-going financial impact for the Council as both the costs of the service and the external funding received by the service will transfer to the new company.

Estimated one-off set up costs of £0.060m are anticipated which can be met from uncommitted TWCA funding available at the point of transfer on 1st January 2015.

7.2 Other benefits to the Council for supporting the establishment of the new CIC include:

- (a) The Council is released from any risk of liability pertaining to, for example, failure to fulfil contracts, other business failure, client and employee grievances and damage to leased properties
- (b) The Council will have the opportunity to establish a successful and fast-growing social enterprise, set up to address the needs of communities, businesses and individuals in terms of improved social care services through the promotion of value-based recruitment and skills development.

8 Risk Analysis

Risk Management Issues and mitigating actions are detailed in the Business Plan and include:

- (a) Commercial risk such as failure of the company to secure training

contracts, resulting in financial loss. The business plan demonstrates TWCA's understanding of the changing demands of the sector in terms of skill needs and how the services delivered may need to change and adapt to meet these needs. The business plan identifies areas of growth which will mitigate against such a commercial risk.

- (b) Failure to fulfil contracts which have been awarded. TWCA already has in place robust contract monitoring and performance management systems. These systems will be adopted by the new company, as will a culture of continuous improvement.
- (c) Failure to manage finances effectively. The company will establish robust financial managements arrangements with regular reporting for scrutiny by the directors.

7 LEGAL CONSIDERATIONS

Legal Issues considered include:

(a) Company Set Up

The TWCA CIC is required to be set up at Companies House which involves the appointment of directors and the drafting of Memorandum and Articles of Association. This has been completed.

(c) TUPE, Pensions and Transfer of Assets

The intention regarding TUPE has been stated in 6.1c. The Council will enter into a Transfer Agreement with TWCA to set out the terms on which staff shall transfer, including provision for pensions. This Transfer Agreement will also set out which assets that the parties have agreed should transfer to TWCA and on what terms.

8. REASONS FOR DECISION

These are set out in detail in the Executive Summary Sheet of this report.

9. ALTERNATIVE OPTIONS

The proposal to establish a new Community Interest Company was only taken after completing a detailed options appraisal that involved input from Law and Governance and consultancy advice from Social Enterprise Sunderland.

The four options considered are detailed below:-

- Do nothing and continue with current funding and trading arrangements

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This option was considered but discounted as Tyne and Wear Care Alliance has a sub-regional remit, with aspirations to operate regionally and there was a real concern that if the LATC was seen to be too closely affiliated to one local authority, this could impact on gaining new business going forward.

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Option 4 – Set up a Community Interest Company

This is the preferred model. The CIC business model would afford TWCA the potential not only to continue delivering its services in a wider area but also provide increased opportunities for business improvement arising

from new operating freedom.

Therefore it is recommended that option 4 described here is approved.

10. RELEVANT CONSIDERATIONS/CONSULTATION

10.1 Financial Implications

The financial implications for the CIC are set out in the report at section 4 based on the detailed 3 year Business Plan.

The financial implications for the Council are set out at section 7.

10.2 General Consultation

An in-depth process of consultation with TWCA staff and strategic partners has been underway for some time covering each stage of development leading to the creation of the new CIC.

10.3 Sustainability

Considerations pertaining to the company's sustainability have been described in the main body of this report and form an integral part of the company's business planning.

10.5 Health and Safety Implications

Sunderland City Council will not assume Health and Safety responsibilities for any aspect of the services offered by TWCA once the CIC is in operation.

10.6 Risk Analysis

Information regarding risk analysis is included in the main body of this report and is set out in detail in the 3 Year Business Plan.

10.7 Policy Implications

Several key national policy documents relating to social care contain a vision for a skilled workforce which has influenced the thinking behind this proposal. These include:

- 1 Department of Health: *A Vision for Adult Social Care: Capable Communities and Active Citizens* (2010)
- 2 Department of Health: *Putting People First 'Think Local, Act Personal: Next Steps for Transforming Adult Social Care'* (2007)
- 3 Department of Health: (LAC (DH) (2008) 1, 17 January 2008)

Transforming Social Care

4 Health and Social Care Act, 2012

In terms of local strategy and policy, this proposal seeks to support delivery of Sunderland's Economic Masterplan, specifically the following strands:

(a) People and Economy

People:

Contributing to high levels of skills and educational attainment and participation

Economy:

Developing pre-employment routeways for unemployed people, making them job-ready for the care sector and matching them to job vacancies

Upskilling the existing workforce in collaboration with employers to suit their business development needs

(b) Disadvantaged and Vulnerable People

Providing training and employment opportunities for longterm unemployed and other people disadvantaged in the job market e.g. people aged 50+, people seeking a return to work after years of caring for family members and people with low skills

11. Equality Impact Assessment

The impact on equality arising from this proposal has been considered and it has been identified that positive impacts will be created for those accessing TWCA's services as a result of adopting this alternative model of service delivery. The positive impact will be due largely to TWCA's increased freedom and flexibility to respond quickly to the workforce development and skills needs of the sector. However, this will continue to be monitored by the company and, where necessary, the company will conduct further Equality Impact Assessments, as part of any proposed change, in order to mitigate any potential risk of inequality.

12. Background Papers

TWCA Business Plan September 2014

