



Report to the Health and Adult Social Care Select Committee

Title:	Local Authority Trading Company (LATC) Part 1 - LATC
Committee date:	April 2015
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Report signed off by Cabinet Member:	Patricia Birchley
Electoral divisions affected:	[Electoral divisions]

Purpose of Agenda Item:

This paper is to inform HASC members of the setup of the Local Authority Trading Company (LATC) and to give an overview of the governance around this, its financial performance and the lessons learnt over the last eighteen months.

Background:

The LATC was set up in October 2013 with the headline aims of :

- Creating a mechanism for MTP savings predominately through day services
- Establishing the Council as a commissioning body as opposed to one involved in the direct delivery of Adult Social care services
- Creating a vehicle that could charge for services that the Council is unable to do so
- Creating a delivery vehicle that is able to deliver services funded by direct payments
- Create a profitable commercial vehicle that is able to submit dividends to BCC

The LATC has been operating for 18 months under the trading name of Buckinghamshire Care Ltd and is responsible for :

- Day Opportunities services at 11 locations
- Supported Employment Services
 - Thrift Farm
 - Back to base



- Missenden Abbey
- Food4Thought
- Reablement service
- Laundry Service
- Learning Disability Respite at Seeleys House
- Provider of Last Resort

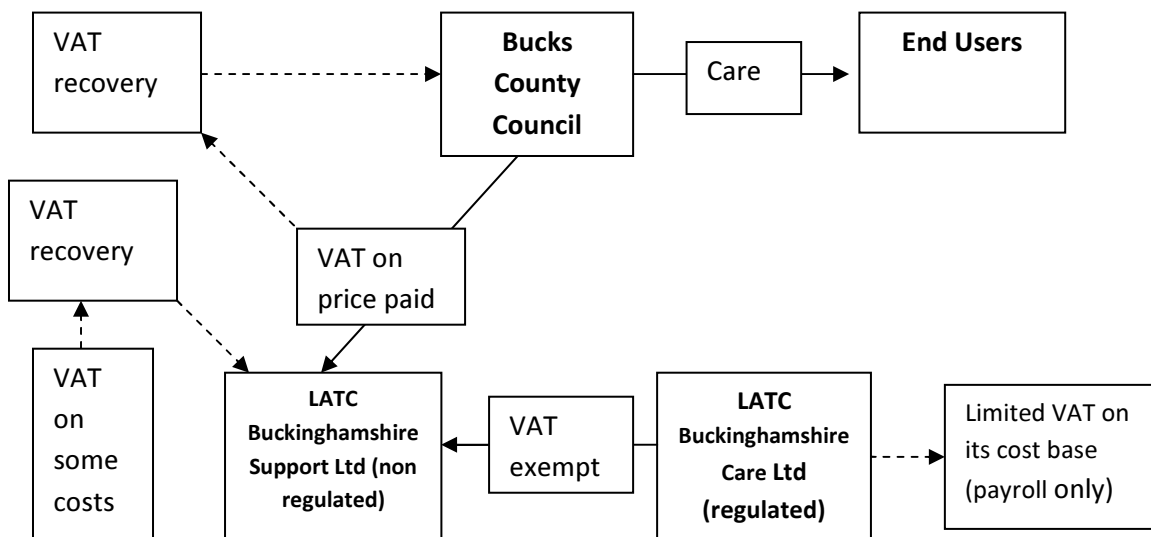
Moving these services to the LATC has achieved the aim of the Council not being a direct deliverer of Adult Social Care Services.

Structure

The LATC is set up as two companies as indicated in the diagram below. The LATC is referred to as 'Buckinghamshire Care' which is the trading name of both companies, Buckinghamshire Support Ltd and Buckinghamshire Care Ltd, which constitute the LATC.

Adult Social Care has a 5 year delivery contract with Buckinghamshire Support Ltd. Back office support services for HR, ICT, Accounts and Legal are provided through a service contract to Buckinghamshire Support Ltd by BCC and until at least October 2015. Buckinghamshire Care Ltd supplies services to Buckinghamshire Support Ltd and is primarily a staff company.

The Council provides care services to its users as Principal which is regarded as non-business for VAT purposes. The reason for this structure has the purpose of maximising the VAT recovery position on expenditure for the Council under section 33, VAT Act 1994 for the provision of care services after the transfer of operations to a separate wholly owned LATC and to maximise the flexibility of the operation for future potential development.



More recently, the company has moved to having a group VAT registration to minimise the impact of charging VAT for all services to service users which would be otherwise be the case, as some of these are VAT Exempt eg Respite care.

Governance

The LATC is set up as an independent limited trading company with its own board of directors who, like any legal entity, form the governance structure of the company. The board of directors is made up of the CEO, the Operations Director, the Finance Director, an non-executive director and a non-executive Chairman. There is no representation of the Council on the Board of Directors.

Within the Council there is a Shareholder Commissioning Group (SCG) which meets on a quarterly basis and whose fundamental purpose of the SCG is to act on behalf of the shareholder in scrutinising performance against the contract and Business Plan, review investment plans and review risks. This SCG is an advisory body operating under the Terms of Reference in Appendix A. Furthermore, the SCG is not empowered to act as a director of Buckinghamshire Care Limited and the board of directors of Buckinghamshire Care Limited shall not seek or accept instruction from the SCG as a director or quasi-director. The recommendations of the SCG shall be advisory only and shall not obligate the board to act in accordance therewith.

Should a point be reached where the Board of the LATC fail to listen to the advice of the SCG then an ultimate sanction would be for BCC, as the 100% shareholder, to dissolve the company, to not renew their contract with the LATC or to sell the LATC on a going concern basis.

Contract Management

Another significant element of Council governance is the level of contract management that is associated with the LATC. Contract monitoring visits to all service areas take place a minimum of twice per annum and there are monthly contract meetings with the Executive board to make sure that there is accurate knowledge and significant dialogue to understand the operational aspects of the LATC business and its day to day challenges.

Should anything of concern be discovered then there is a normal escalation route through to Service Managers, Service Director and Managing Director of the CHASC business unit.

Teckal Exemption

One of the characteristics of the LATC is that it has Teckal status provided the following conditions are met:

- 1 The turnover of the company has a maximum income of 20% of turnover that is derived through non- council funded activities.
- 2 Shareholder governance exists as an essential component for Buckinghamshire Care in order to ensure that the requirements of the Teckal Exemption are satisfied (i.e. the need for the Council to exert control and influence over the Company).

There is a need however, to achieve a balance between the Council's 'control and influence' and the space the Company needs to be able to develop. It is possible that too close control and influence will create the risk of recreating a Council Directorate and not enough may mean that the Council cannot demonstrate the control required.

Both of these requirements are in place and it is not anticipated that the 20% turnover threshold will be exceeded within the current 5 year planning cycle.

The advantage of Teckal status is that the Council does not need to go through a formal tender process (as would be required under EU legislation) for the supply of services and can award business to the LATC without going through an expensive and time consuming procurement process.

As a commercial trading company the LATC does not have to conform to EU procurement legislation as it goes about its own duties. In this way it can compete favourably with its private sector competitors.

Recouping Implementation Costs

Through the generation of surplus by Buckinghamshire Care, BCC will endeavour to recoup the investment costs associated with the implementation of the LATC, to date funded by the Adults and Family Wellbeing department. This cost is estimated to be £400k.

There is an expectation that, where possible, BCC will look to recoup the investment cost through the payment of dividend by Buckinghamshire Care over a period of 5 years. The payment will start no earlier than in year 2 and will be dependent on the profitability of the enterprise and its ability to support dividend payments taking into account its own cash flow demands. The treatment of any profit arising from Buckinghamshire Care's activities, i.e. whether they should be reinvested in the business or paid out as dividend, shall be determined through the joint quarterly SCG and Executive Board meetings.

Performance

Although very much still in its infancy the LATC is generally performing in line with the original business plan although this plan has been revised during 2014-15 to reflect changes in the market place and the developments that have taken place since the original business case which is now three years old.

During the course of 2014-15 the company decided that it needed to change some of its 'inherited' practices and embarked on a restructuring plan (Better Futures) to address this and to also create a management structure and skillset that will reach to potential expected. This restructuring has now taken place and the impacts of this will be seen in 2015-16.

Overall the profitability target has remained unchanged although this is now expected to materialise in years 4 and 5 rather than a steady progress from year 2. This business plan change was discussed with the SCG and reflects the need to invest in a higher skilled management structure to realise the ambitions of the LATC. Another significant difference is that the original business plan had significant additional income generation through sales of services to other Local Authorities whereas reality has proven this to be a slow burn and there has been more opportunity to develop services to meet the growing demands of the social care self-funder market in Buckinghamshire.

Financial Reports

The LATC (Buckinghamshire Care Ltd) is a separate legal entity to the Council and files financial records in its own right at Companies House.

The most recently filed accounts cover the period to March 31st 2014. Accounts for the 2014-15 year are now in progress and are expected to be filed by December 31st 2015. The results of the LATC are also incorporated into BCC Consolidated Annual accounts as the LATC is a wholly owned company.

Lessons Learnt

The formation of the LATC and its subsequent operation has involved the Council in some significant learning as shown below:

- Outsourcing the work of writing the business case and setting up the LATC structure to an external consultancy has resulted in some of the detail knowledge being 'lost' on an ongoing basis
- The start-up was slower than envisaged in the original business case and more recognition of this in any future start-up needs to be recognised
- The impact and time taken for cultural change is significantly more than was thought particularly with a high number of staff TUPEing from the Local Authority to a new commercial enterprise
- The importance of strong and regular internal communication is needed to assist with cultural change and understanding the change in relationship
- The difficulty of internal BCC staff in shared services in understanding the LATC as an external customer rather than an internal customer which requires a different approach in customer service/support
- Transferring good managers from within the Council does not necessarily mean that they will be equally good managers in a different, and smaller, commercial enterprise.

Summary

The LATC continues to operate within the funding contract and has returned annual results slightly better than the original business plan although it is not yet in a position to pay any dividends back to its 100% shareholder, the Council.

The LATC has largely achieved the aims it set out to although the operation is still in its infancy and the financial benefits have still to materialise. It continues to make good progress with non-council income generation ahead of target and is expected to meet the financial targets for profitability set out in the original business case.

Additionally, through a pattern of reduced contract funding, Adult Social care will meet the MTP targets that were embodied in the original business plan.

Next steps

To consider how the structure of the LATC can impact and be utilised in creating a sustainable adult social care model in the future.

Appendix A Shareholders' Commissioning Group Terms of Reference (TORs)

Purpose

1. Buckinghamshire County Council owns the share capital of Buckinghamshire Care Limited¹ and wishes to be kept informed by the board of directors in respect of the following matters and to offer non-binding advice and scrutiny on the same as shareholder:
 - (a) Progress against the business plan and associated budgets for the current year on a quarterly basis;
 - (b) Proposed and adopted business plans and budgets for future years to be presented in draft as they are developed;
 - (c) The annual report and accounts in draft before these are submitted to the general meeting of the company;
 - (d) Compliance with relevant legislation;
 - (e) Events and reputational damage likely to have a significant impact on operations or financial outcomes as they occur; and

The mechanism for facilitating this will be a Shareholder Commissioning Group ("SCG"), as detailed below.

Membership

2. The membership of the SCG shall consist of elected members of the Council, selected in proportions which preserve political balance, and key senior officers. Membership of the SCG will cease with membership of the Council.
3. The members of the SCG shall be appointed and removed by the Leader.
4. One of the members may be nominated by the Leader to act as Chairperson of the SCG. In default of nomination, the SCG shall itself nominate a Chairperson, who will hold office until the SCG or the Leader nominates a successor.
5. The Leader may appoint and remove himself or herself as a member of the SCG and/or as the Chairperson of the SCG. Any member of the SCG may at any time resign such membership and/or any appointment as Chairperson.

¹ The LATC will be referred to throughout the ToRs as 'Buckinghamshire Care Ltd'. This is the trading name of both companies, Buckinghamshire Support Ltd and Buckinghamshire Care Ltd, which constitute the LATC. The service contract will be held between BCC and Buckinghamshire Support Ltd.

Proceedings

6. Meetings shall be called at approximately three-month intervals but may be called at other times on the requisition of any two members. Notice of not less than ten working days must be given of any meeting unless at least three members entitled to attend waive this requirement. The notice shall specify the nature of the business to be discussed.
7. The quorum shall be any three members (one of which shall be the Chairperson or his nominated representative). Substitutes can be nominated in place of a member.
8. Any member may participate in a meeting of the SCG by means of conference, telephone or similar communications equipment whereby all participating in the meeting can hear each other and participation in such a meeting in this manner shall be deemed to constitute presence in person at such meeting.
9. Any member may participate in a meeting of the SCG and be reckoned in estimating a quorum notwithstanding any other responsibilities of that member within the Council.
10. The Chairperson shall within fifteen working days of each meeting of the SCG furnish to the member of the Council having responsibility for the council's holding in the company a copy of the written summary of the SCG's proceedings at that meeting together with any recommendations (including minority recommendations) of the SCG as to action by the Council as shareholder.

Support

11. The Council will provide all necessary administrative and secretarial support for the SCG.
12. The Chairperson may invite such advisers or other contributors to its proceedings as it thinks fit.

Relationship with LATC Limited

13. The SCG is not empowered to act as a director of Buckinghamshire Care Limited and the board of directors of Buckinghamshire Care Limited shall not seek or accept instruction from the SCG as a director or quasi-director. The recommendations of the SCG shall be advisory only and shall not obligate the board to act in accordance therewith.
14. The SCG is empowered to consider the options available to the company for improving its performance or mitigating adverse consequences in the light of actual or reasonably anticipated circumstances and offer non-binding proposals, recommendations and opinions (all of which the company accepts shall be without liability on the part of the Council or any individual member) as a representative of Buckinghamshire County Council on any matter affecting the Council as a shareholder in Buckinghamshire Care Limited and/or the ultimate owner in whole or part of any subsidiary of the company. Neither the members of the SCG nor the Council shall owe any duties (fiduciary or otherwise) under these Terms of Reference or at law or in equity to the company or any

subsidiary. The company acknowledges that the SCG may take into consideration solely the interests of the Council in giving any proposal, recommendation or opinion.

15. The determination of the number of Buckinghamshire Care Limited Board members, their appointment and dismissal is made by the SCG. Elected members are not permitted to be appointed as Chair of the Board, given the potential conflict of interest this may cause.
16. The SCG is also empowered to make reports and recommendations for action to the Leader of the Council, the Deputy Leader and/or the Shareholder Representative, if this is another identified person, and shall make such reports and recommendations where the conduct of the business or the circumstances affecting it give reasonable cause for concern. Any of the aforesaid receiving such reports and recommendations shall nevertheless effect his or her own decision thereon.
17. Buckinghamshire Care Limited shall provide to the SCG upon request the agendas and support papers provided to the board of Buckinghamshire Care Limited and/or the board of any subsidiary company of Buckinghamshire Care Limited and shall do so at the same time, as far as possible, as the relevant board receives those agendas and papers (except for minutes, which need only be supplied after signature). The company shall in addition supply the SCG with all information and data reasonably requested by the SCG to enable it to reach an informed judgment on any matter within its purview under these Terms of Reference.
18. The SCG shall provide Buckinghamshire Care with details of SCG/ Buckinghamshire Care meetings, agenda and any papers.
19. Buckinghamshire Care Limited shall provide for each meeting of the SCG at least one representative who shall be a director of the company and qualified to address the issues indicated by the SCG for discussion