

# EXECUTIVE BOARD

22<sup>nd</sup> January 2018

## SUBJECT:

THE ESTABLISHMENT OF A LOCAL AUTHORITY TRADING COMPANY KNOWN AS  
'LLESIANT DELTA WELLBEING' FOR CARELINE

### Recommendations / key decisions required:

1. That a Local Authority Trading Company (LATC) for Careline known as 'Llesiant Delta Wellbeing' is established to generate additional income for the Authority and safeguard the existing service.
2. Give the Director of Community Services and Director of Corporate Services the delegated authority to establish the LATC, its governance structures and develop a detailed business plan.
3. That the Company is incorporated as a limited company with the Council as the sole shareholder.
4. That the Company's Business Plan is prepared and agreed by the Board of the Company and submitted for formal approval to the Executive Board of the Authority prior to its implementation.
5. That the set up costs of the Company (on agreement by Executive Board to form company) be recovered by way of loan arrangements at a commercial rate of interest to be approved by Full Council, with the duration to be agreed within the detailed business plan. In the event that the Company is not established, then the costs of implementation will be met from reserves.
6. That agreement is sought from Full Council to guarantee the pension liabilities of staff employed by the Company

### Reasons:

1. To ensure the long term financial sustainability of the Careline service by developing new sources of income
2. To safeguard existing jobs and create new employment opportunities
3. To improve availability and access to new forms of Technology Enabled Care (TEC) that enable the residents of Carmarthenshire to live independently in their own homes for longer
4. To become a centre of excellence for TEC across Wales
5. To support wider Council objectives in terms of health and well-being.

**Relevant scrutiny committee to be consulted:** YES – Social Care & Health –  
23<sup>rd</sup> November, 2017

Members of the Social Care & Health Scrutiny Committee received a presentation on the proposals and were given the opportunity to comment.

Exec Board Decision Required YES 22<sup>nd</sup> January 2018

Council Decision Required YES 14<sup>th</sup> February 2018

**EXECUTIVE BOARD MEMBER PORTFOLIO HOLDER:-**

Cllr Jane Tremlett- Social Care & Health Portfolio Holder

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**EXECUTIVE SUMMARY**  
**EXECUTIVE BOARD**  
**22<sup>ND</sup> JANUARY 2018**

**SUBJECT:**

**THE ESTABLISHMENT OF A LOCAL AUTHORITY TRADING COMPANY CALLED 'LLESIANT DELTA WELLBEING LTD' FOR CARELINE**

**The Purpose**

1. This Executive Summary sets out the reasoning behind, and practicalities of, setting up a wholly owned Local Authority Trading Company (LATC) for Careline known as 'Llesiant Delta Wellbeing Ltd'. The summary report can be found in Appendix 1.

**The Context**

2. Careline, based within the Communities Department, is the Authority's established 24/7 response service for vulnerable and elderly residents across Carmarthenshire. In addition to this, it also forms a single point of access for the public and professionals for all matters in relation to social care and delivers the Authority's out of hours call handling and lone working services. The Careline service has a whole time equivalent staffing complement of 49 staff.
3. Whilst being a prominent in-house service it also contracts with numerous other corporate customers including other Local Authorities, Housing Associations, Swansea University, Pembrokeshire National Park and Welsh Government. The result being that work outside of the Authority equates to approximately **86%** of its business.
4. The service's current business model is facing significant challenges. This is due to changes in strategic direction by corporate customers and restrictions on the Authority's ability to expand its client base through trading with private individuals and organisations. Some Local Authorities we contract with are decommissioning their current Technology Enabled Care services and moving towards a direct payment route for service users rather than providing these services in-house. Our current business model does not allow us to deal with residents of other counties directly.
5. The service currently provides telecare services to 27,000 homes across 8 Local Authority areas. Carmarthenshire represents 3,853 homes, with numbers on the decline. With the whole Hywel Dda region equating to 6,776 homes. As a general rule a monitoring centre of this type would require a minimum of 10,000 connections to be viable. Whilst the service currently comfortably meets this threshold a number of the contracts are due to expire in March 2019 and will need to be re-tendered. If we are not able to change the business model, we anticipate that next year the service will reduce by a minimum of 5 staff.

**Development of a Local Authority Trading Company**

6. To address this challenge, the service has developed a detailed business case for a Local Authority Trading Company (LATC). This would essentially mean that a company would be set up that is wholly owned by the Local Authority but would have the ability to access far wider markets and income streams than the current Careline service is able to do. (Appendix 1)
7. The business case outlines what the drivers for change are and what alternative service delivery models have been considered before deciding on the LATC option.
8. Specifically the rationale for the development of an LATC was on the basis that it could be 100% owned and controlled by the Local Authority with any surpluses generated being reinvested into Social Care services. The Council will also be responsible for managing any financial liabilities that the LATC incurs.

### Teckal Compliance\*

There are legal implications in relation to the development of a Local Authority Trading Company. These are in relation to the ability to trade and 'Teckal' compliance which grants the LATC exemption from competitive tendering as long as it delivers the same service and has at least 80% of its income generated from the provision of its services to the Council.

This exemption enables a public body (typically a Council) to award a contract to provide services directly to another legal entity without any need for a formal procurement process - provided the new body is 'Teckal compliant'. To be 'Teckal compliant', that other legal entity must be subject to a level of control by the Council (similar to the control the Council holds over its own departments) and the entity must also derive at least 80% of its work streams from the Council.

If Careline is transformed into a single Company, therefore, the Council will be able to award contracts directly to that body without any formal procurement process - provided it is formed to be, and remains, 'Teckal compliant'. Put simply, this means the body will be subject to significant degree of control by the Council, but will be a separate legal entity. Importantly, the Company will be free to trade externally - securing up to 20% of its income from external sources.

The Company (Llesiant Delta Wellbeing Ltd) would:

- Employ all the TUPE'd staff
- Have a contract with the Council for the delivery of services
- Be controlled by the Council through the Llesiant Delta Wellbeing Governance Group (see Figure 1 below)

\* 'Teckal' is a piece of European Union law allowing Councils to deliver services through externally managed entities without having to follow competitive tendering rules and procedures. To qualify for "Teckal exemption" two conditions must be met:

- the control condition - the local authorities must control the entity, and;
- The economic dependence condition - case law has stated the condition is met if the activities of the entity are devoted principally to the local authority with any other activities being only of 'marginal significance' which means the Company must have at least 80% of its income derived from the provision of services to the Council.

### Governance arrangements

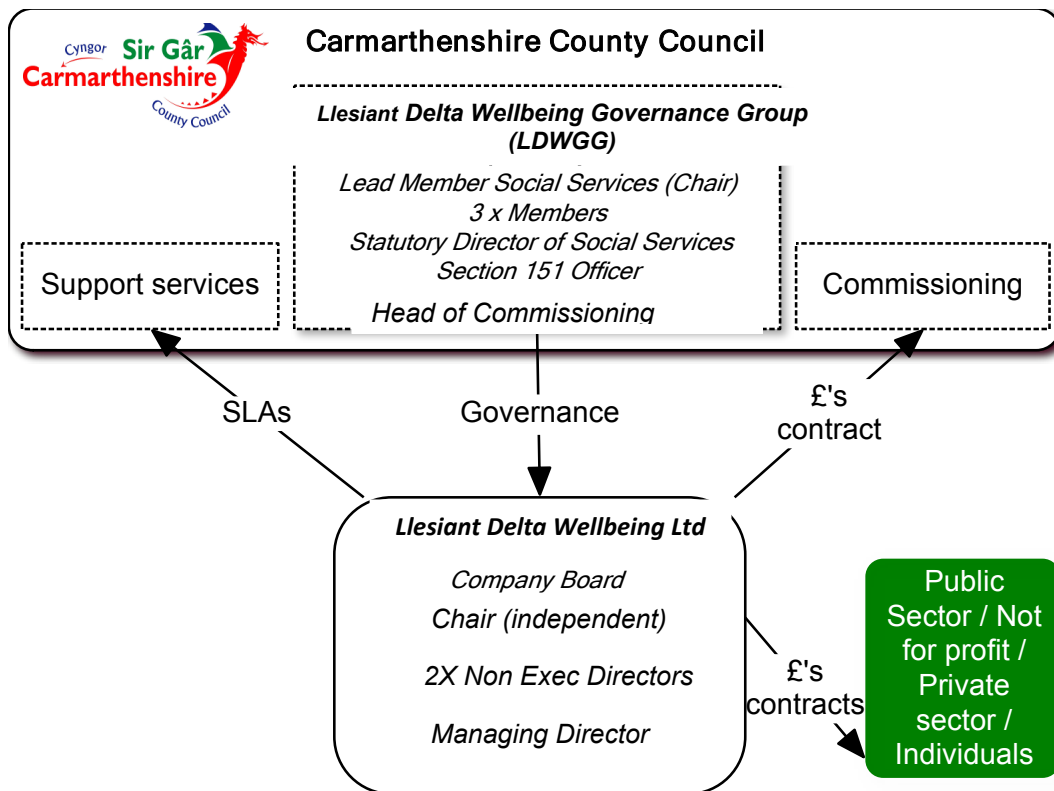
9. The structure of 'Llesiant Delta Wellbeing' LATC will reflect a number of key relationships, governance and contractual arrangements for the Council and the new company. There are four main relationships that the Council will have with the Company:

- As the 100% owner with monitoring arrangements via the Llesiant Delta Wellbeing Governance Group (LDWGG)
- As the commissioner with a contract for service delivery by Llesiant Delta Wellbeing Ltd
- As an operational partner with Llesiant Delta Wellbeing Ltd in the delivery of strategically important services that form part of the Council's access pathway
- As a contract holder for delivering business support services to the company

10. The LATC would include a governance structure to meet legal and financial compliance. (see Figure 1 LATC Structure below) The structure would be overseen by a 'Llesiant Delta Wellbeing' Governance Group (LDWGG), which would be chaired by the Executive Board Member (EBM) for Social Care and include 3 elected members, the Statutory Director for Social Services, Section 151 Officer and Head of Commissioning.

11. The LDWGG has the responsibility for setting out the expectations and ambitions of the Council as owners of 'Llesiant Delta Wellbeing Ltd' at a strategic level e.g., for ensuring performance is in line with the agreed business plan for the company and that the provisions of the Shareholder's Agreement are observed by the LATC.

**Figure 1 (LATC Structure)**



12. The Shareholder/Membership Agreement is a legal document allowing the shareholder/owner, in this instance the Council, to restrict what shareholders/owners and Directors can do on behalf of 'Llesiant Delta Wellbeing Ltd.' As there is only one shareholder/owner, the aims of this agreement are to restrict the abilities and

authorities of the Company Directors, so that the Council and Members are satisfied that the assets and employees of the Company are adequately protected.

13. There is the opportunity in this agreement to add further “Restricted Matters” that prevent Directors from making and implementing specific decisions or policies, without the explicit consent of the LDWGG. For example:
  - Directors cannot give themselves any form of payment or benefit outside that agreed in the ratified Business Plans
  - Directors cannot commit the Company to any form of loan or credit agreement without express approval from the LDWGG
14. The summary business case (Appendix 1) sets out the boundaries of decision making for the company and when it should defer to the Council.
15. The ‘Llesiant Delta Wellbeing Ltd’ LATC is managed by a Company Board which is made up of an Independent Chair, a Managing Director and 2 Non-Executive Directors. This Board is the executive board of the company and responsible for:
  - a. Day to day management of the business
  - b. Making strategic and operational decisions
  - c. Ensuring that the company meets its statutory obligations

### **Staffing Implications**

16. The setting up of the Company will involve the transfer of the existing 49 staff into the new organisation under Transfer of Undertakings (Protection of Employment) TUPE regulations with all existing terms and conditions being maintained and protected at transfer. These terms and conditions will include:
  - Pay
  - Sickness
  - Holiday entitlement
  - Other time off provision
  - Continuity of employment
  - Pension
  - Grievance
  - Disciplinary
  - Behavioural Standards
  - Code of Conduct etc.,
17. The company will be applying for admitted body status into the Local Government Pension Scheme and will also recognise trade unions. The company will not operate a two-tier system and new staff employees taken on by the company will be on the same terms and conditions as the former Carmarthenshire County Council staff in the company (including pensions) which are listed above.
18. The company, will have its registered office address as County Hall to keep costs down and utilise existing council support (although over time the company could choose to procure support services from elsewhere)

### **Financial Implications**

19. The company’s initial start-up costs will be funded via a loan from the Authority, which will be repaid over an agreed timeframe with appropriate interest charges.

20. It is anticipated that the Llesiant Delta Wellbeing Ltd LATC will generate a trading surplus over a 5 year period.

21. A detailed 5-year business plan will be completed and agreed by the LDWGG group and then receive formal approval from the Council's Executive Board before the new company is formed.

### Consultation

A consultation programme is underway with service users and staff. This is included in the project plan (Appendix 2) attached with this report.

Preliminary feedback from the service user consultation indicated that the majority of service users agreed with the option to create a company wholly owned and controlled by the Council (LATC).

Initial feedback from the ongoing dialogue from staff indicate that they accept the need to change the current business model in order to further develop future business opportunities.

### Next steps

A project plan outlining the next steps in the establishment of the 'Llesiant Delta Wellbeing Ltd' LATC has been attached for information. (Appendix 2).

### Recommendations

That a Local Authority Trading Company for Careline called 'Llesiant Delta Wellbeing Ltd' be established.

**DETAILED REPORT ATTACHED?**

Yes. A summary business case is attached at Appendix 1 together with a Project Plan at Appendix 2



# IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Rhian Dawson

Head of Integrated Services

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>

## 1. Policy, Crime & Disorder and Equalities

A full Equalities Impact Assessment (EIA) has been developed which outlines the potential impact of the LATC on the protected characteristics. Risk levels identified remain low and there is no negative impact identified that would adversely affect the service delivered to clients.

## 2. Legal

There are legal implications in relation to the development of a Local Authority Trading Company. These are in relation to the ability to trade and “Teckal” compliance which grants the LATC exemption from competitive tendering as long as it delivers the same service and has at least 80% of its income generated from the provision of its services to the Council. There are also “contractual” issues that will need to be considered in relation to the support services provided to the company on behalf of the Council. These are covered in the business case and legal services have been involved in the development of the document.

It should be noted, however, that Teckal companies may offer different models of delivery and governance arrangements to reflect the key drivers in setting up and establishing the company.

## 3. Finance

The company will require a loan facility from the Authority of up to £250k to meet initial cash flow requirements and setup costs. The loan will be at a commercial rate of interest to be approved by Full Council, with the duration to be agreed within the detailed business plan. In the event that the Company is not established, then the costs of implementation will be met from reserves.

The current pension liabilities for staff employed by the company will be underwritten by the Authority.

The Council will provide a guarantee to the Dyfed Pension Fund that it will meet any outstanding pension scheme liabilities should it be liabilities will not revert to the fund.

The five year financial model contained within the business plan has been developed in conjunction with the consultants, and current projections indicate that the LATC will realise a net surplus of £824,754 over the first 5 years. This surplus will be returned to the Council in the form of a rebate or a reduced contract price, thus leaving the Company with no retained reserves.

## 4. ICT

There are ICT implications in relation to the development of an LATC. The company would be provided with ICT support by the Council in the same way that this is currently provided



to departments across the authority now. The company would have access to the same hardware which would be replaced as per the Council's refresh programme. The company would also have access to its own website which would be hosted by the Council as well as existing software file directories.

### **5. Risk Management Issues**

The business case has identified risks associated with its development as well as those in relation to implementation and trading. Each risk has been categorised as being either high, medium or low and all have mitigating action identified in order to control and where appropriate reduce the risk. These risks will be monitored throughout the project and will be reported to Project Board.

### **6. Staffing Implications**

There are staffing implications in relation to staff that would TUPE across to the LATC from the Council. There would be an estimated 49 FTE's (full time equivalent) staff who would transfer across. Assurances have been included in the business case to guarantee that in accordance with TUPE regulations, staff terms and conditions will be protected at transfer, and that the company will be applying for admitted body status for into the Local Government Pension Scheme. The company will also recognise trade unions and new staff employees taken on by the company will be on the same terms and conditions as the former CCC staff in the company (including pensions). These issues are covered in the business case and HR advice has been sought in the development of the document.

### **7. Physical Assets**

Llesiant Delta Wellbeing Ltd will continue to utilise the office accommodation currently utilised, with the future arrangements being formalised by Property Services. There should not be any additional costs incurred in this arrangement.

# CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: Rhian Dawson

Head of Integrated Services

## 1. Scrutiny Committee

Social Care & Health – 23<sup>rd</sup> November, 2017 - Members of Scrutiny Committee received a presentation on the proposals and were given the opportunity to comment.

**2. Local Member(s)** N/A at present time, but will be consulted as part of the political approval process

**3. Community / Town Council** N/A

**4. Relevant Partners** N/A

## 5. Staff Side Representatives and other Organisations

Discussions have taken place at the Departmental Trade Union representatives on 9<sup>th</sup> October 2017 and with staff and their Trade Union representatives on 10<sup>th</sup> October 2017. “Drop-in” sessions have been held with staff, HR and Trade Unions on 17<sup>th</sup> & 19<sup>th</sup> October and 5<sup>th</sup> and 6<sup>th</sup> December 2017. A meeting has been held with the unions for initial feedback on the business case on 27<sup>th</sup> November and a further meeting has been arranged for 26<sup>th</sup> January. Further dialogue with staff and trades union will continue throughout the implementation process should political approval be granted to establish an LATC.

Formal consultation on the business case with stakeholders has taken place and was concluded at the beginning of January 2018.

## Section 100D Local Government Act, 1972 – Access to Information

### List of Background Papers used in the preparation of this report:

A copy of the following documentation can be obtained from the Project and Programmes Team in 3 Spilman Street:

- Full Business Case
- Service User Feedback Report
- Staff Feedback Report
- Equality Impact Assessment