

Report for: ACTION



Contains Confidential or Exempt Information	Yes – Appendix 1 only - Not for publication by virtue of paragraph 2 of Part 1 of Schedule 12A of the Local Government Act 1972.
Title	Delivery of Adult Services
Responsible Officer(s)	Alison Alexander, Managing Director/Strategic Director Adults, Children and Health Services
Contact officer, job title and phone number	Hilary Hall. Head of Commissioning – Adults, Children and Health
Member reporting	Cllr David Coppinger, Lead Member for Adult Services, Health and Sustainability
For Consideration By	Cabinet
Date to be Considered	15 December 2016
Implementation date if not called In	29 December 2016
Affected Wards	All

REPORT SUMMARY

1. Following Cabinet approval in October 2016, a full business case for the delivery of the Royal Borough's Adult Services in partnership with Wokingham Borough Council through Optalis Limited, has been developed, see appendix 1.
2. This report summarises the business case, the progress on implementation and the identification of the level of support services functions that should transfer to Optalis by April 2018.

If recommendations are adopted, how will residents benefit?	
Benefits to residents and reasons why they will benefit	Dates residents can expect to notice a difference
Residents should receive a higher quality service with few delays, delivered for the same investment.	April 2017

1. DETAILS OF RECOMMENDATIONS

RECOMMENDATION: That Cabinet:

- i. Notes the content of the full business case and implementation timelines to enable safe transfer of adult social care services to Optalis Limited on 1 April 2017.**
- ii. Approves the Council representatives on the Optalis Holding Limited Board as Cllr Quick, Cllr Saunders and Cllr Story.**
- iii. Notes the progress on identification of the level of resource required for support functions to support Adult Services within Optalis Limited.**

2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Background

- 2.1 In October 2016, Cabinet approved the Royal Borough becoming an owner and shareholder in Optalis with an initial 45% ownership share at a cost of £771,302. Providing the partnership proves successful, the Shareholder Reference Group will broker a move towards an equal 50% shareholding within two years.

Business case and implementation

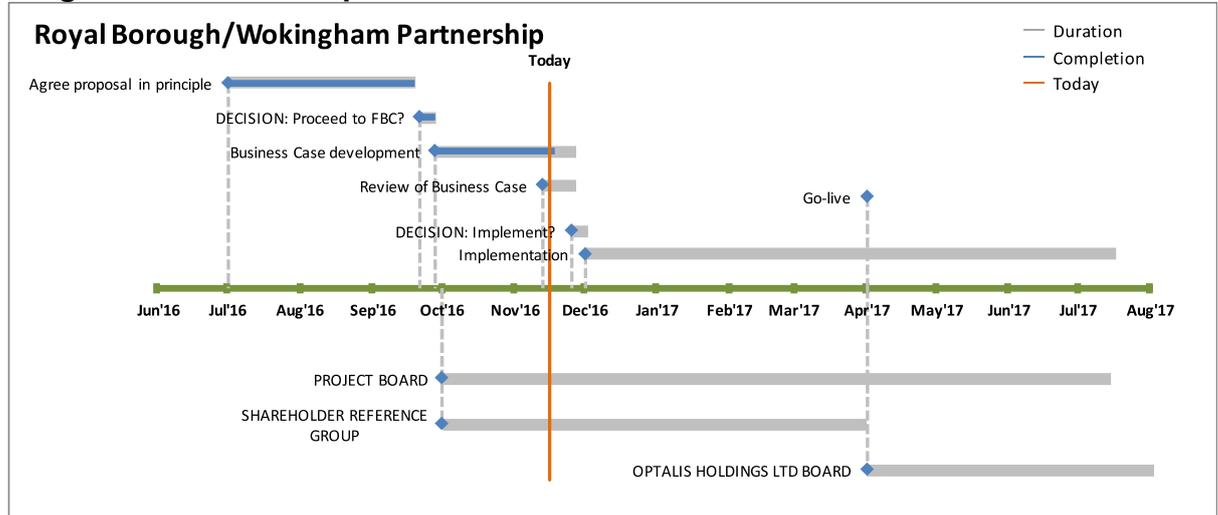
- 2.2 The full business case has been drawn up in partnership with Wokingham Borough Council, see Appendix 1. It will be implemented between December 2016 and April 2017 with the transfer completed by the end of the first quarter of 2017-2018. The business case covers:
- Strategic rationale.
 - The Optalis Partnership.
 - Governance.
 - Financial appraisal.
 - Due diligence.
 - Future business opportunities.
 - Risks and risk management.
 - Implementation.

Partnership and implementation process

- 2.3 The timeline for the formation of the partnership and implementation is October 2016 and continues beyond April 2017, see diagram 1. The partnership is governed by the Shareholder Reference Group comprising Members and officers from both councils who have knowledge and experience in adult social care and finance. The Group are and will continue to drive implementation, provide guidance and advice and ratify decisions on behalf of each council.
- 2.4 The Reference group is supported by an Implementation Board. The board is made up of senior officers with specialist knowledge in adult social care, finance, human resources and governance, together with the Lead Member for Adult Services, Health and Sustainability. It meets regularly and is responsible for the successful delivery of the partnership and the enlarged Optalis.
- 2.5 The implementation board is supported through a workstream projects. The workstreams are lead by officers undertaking the work required for the safe and

successful implementation of the partnership. The workstreams leads meet together regularly to inform of progress, risks, interdependencies and highlight decisions requiring ratification, they are responsible to the Implementation Board and ultimately the Shareholder Reference Group.

Diagram 1: Partnership timeline



Governance

- 2.6 The Royal Borough services will be transferred to Optalis Ltd under the Teckal exemption rules. The rules require a significant degree of control by the owning authorities. This will be exercised through a Group Holding Board structure. The Optalis Holding Ltd company, the holding company, will be owned by the two Councils in the agreed proportions of 45/55 on go-live, moving towards 50/50 ownership within two years or when another partner joins. Each council will have three Members on the holding company Board as directors and it is proposed that Cllrs Quick, Saunders and Story are the Royal Borough’s representatives.

Progress on identification of the level of resource required for support functions to support Adult Services in Optalis.

- 2.7 Heads of Service for support functions have applied the methodology developed by the Head of Finance, Section 151 Officer. The methodology identifies time spent by officers supporting Children’s Services and the associated cost, see section 11.
- 2.8 Optalis has requested to buy back some support services for a period of up to 12 months, including parts of finance and human resources; therefore TUPE transfers for these services will not be fully implemented until April 2018.

Table 1: Options

Option	Comments
Note the business case and progress on support staff resource being identified for transfer. RECOMMENDED	The business case builds on the merger model provided in October 2016 and further details the governance, operational and strategic elements of the partnership with Wokingham Borough Council for delivering the Royal Borough’s Adult services through Optalis Limited.
Not to support the	Without the business case, the transfer to Optalis

Option	Comments
business case.	cannot take place.

3. KEY IMPLICATIONS

3.1 The key implications of the recommendations are detailed in table 2.

Table 2: Defined outcomes

Defined outcomes	Unmet	Met	Exceeded	Significantly exceeded	Date they should be delivered by
Full implementation complete	July 2017	30 June 2017	31 May 2017	N/A	30 June 2017

4. FINANCIAL DETAILS

Financial impact of the recommendations on the budget

4.1 There are no specific financial implications attached to this report.

Efficiencies

4.2 The Council has identified a required to reduce spend in the wider adult services by £2m over the next three years, 2017-2020, which will need to be met regardless of the delivery model. Indicative saving areas for the next three years have been identified and discussed and agreed with Wokingham Borough Council and Optalis. The savings areas for the next two years are set out in the business case. Optalis has the opportunity, if managed effectively, to deliver efficiencies in excess of those expected should the service remain 'in-house'. This is due to economies of scale, the sharing of best practice and expertise between the partner authorities whilst increasing resilience.

5. LEGAL IMPLICATIONS

5.1. The recommendations in this report are in line with The Care Act 2014 which sets out how:

- People's care and support needs should be met.
- The right to an assessment for anyone, including carers and self-funders, in need of support.
- Eligibility for services will be the same across England.
- The 'wellbeing principle' puts a duty on local authorities to ensure people's wellbeing is at the centre of all it does. The focus of service has to be on residents' outcomes and helping people to connect with their local community.

5.2. Section 79 of the Care Act 2014 enables councils to delegate and contract out any Care and Support care functions in Part 1 of the Act and the degree of delegation. Any action delegated to Optalis will be treated to be the action of the Royal Borough as if the Borough had performed that action. . This means that the Borough isn't absolved from ultimate responsibility for ensuring the function is

carried out properly and in accordance with its obligations. This does not prevent the Borough from performing that action itself.

- 5.3. Local authority trading companies must be 'Teckal' compliant which allows councils to transfer services to the company without having to comply with the Public Contract Rules (PCR) 2015. The Contract Rules state that a council must exercise control over the local authority trading company which is similar to that which they exercise over their own departments: more than 80% of activities must be supplied to the Council, or jointly to one or more councils, and there must not be any private sector involvement that exerts any influence or control on the company. Control means influence over the strategic and significant decisions.
- 5.4. There is no requirement to comply with procurement regulations, other than Regulation 12 of the PCR, where services are commissioned through a local authority trading company. It is a flexible method of delivering services and the structure and governance arrangements can be tailored to suit the council. The company is governed by normal company law and must pay tax in usual way. The Council must produce a business case before setting up a local authority trading company (under Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009).
- 5.5. The cost of providing any services to the local authority trading company by the Council, such as accommodation, staff etc., must be recovered in full.
- 5.6. The Best Value Duty requires the Royal Borough to undertake a consultation exercise with service users and residents on any impacts of changes to delivery of services. This requirement is concerned with residents having an opportunity to comment on the services they use, want or need.

Director of Adult Social Services

- 5.7. Guidance issued by the Department for Health in 2006 makes it clear that the Director of Adult Social Services is accountable for the delivery of the local authority's social services functions, as listed in Schedule 1 of the Local Authority Social Services Act 1970 (other than those for which the Director of Children's Services is responsible). The guidance also provides that the Director of Adult Social Services should be directly accountable to the Chief Executive of the Local Authority.
- 5.8. Where the delivery of adult social care services is to be undertaken through a local authority trading company, the Director of Adult Social Services must remain an employee of a local authority for the full range of social services responsibilities. This is because the local authority needs to be able to discharge its statutory duty as a 'provider of last resort', and to do so needs to retain effective control over key adult social care provider services.

6. VALUE FOR MONEY

- 6.1. The full business case has used best value considerations to ensure the partnership secures the best value for the council

7. SUSTAINABILITY IMPACT APPRAISAL

- 7.1. Not applicable.

8. RISK MANAGEMENT

8.1. Risk associated with the recommendations have been identified, see table 3.

Table 3: Risks and controls

Risks	Uncontrolled Risk	Controls	Controlled Risk
Decline in service performance and resident outcomes during phases 2 and 3.	Medium	Focus of senior managers on service performance and support of dedicated project team to oversee the project.	Low
Failure to secure wider stakeholder agreement and risk of challenge under best value.	High	Implement a stakeholder engagement plan throughout the process. Focus of senior managers and elected Members on securing stakeholder agreement.	Low
Loss of staff during the implementation.	High	Robust communications and engagement plan involving Royal Borough managers and Optalis. Clear communications throughout the process.	Medium

9. LINKS TO STRATEGIC OBJECTIVES

9.1. The recommended approach, if adopted, strongly supports all four of the council's strategic objectives; putting residents' first, value for money, delivering together and equipping ourselves for the future. Focusing on the need to sustain improved outcomes puts residents first, and collaborating with another borough to deliver services through a new model demonstrates commitment to deliver with others and enable staff and key partners to deliver more innovative and integrated services to residents.

10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION

10.1. An Equality Impact Assessment has been completed.

11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS

11.1. Total staffing numbers directly affected by the proposal are around 270 headcount (230FTE). A formal programme of staff engagement has commenced and will continue through to April 2017 and beyond.

11.2. Legal opinion has been received regarding the transfer of staff under Transfer of Undertakings (Protection of Employment) regulations (TUPE), in relation to those directly employed within the service and also those employed in a support service function, providing a support service to Adult services.

Box 1: Staff employed in a support function, not within Adult Services:

Those staff employed in a central support function and not directly within Adult Services are not generally in scope to transfer as they are not there primarily to provide the services which will be transferring. An example would be finance staff. However, where a central support employee can be directly linked to the services being carried out, in this case a Finance Partner solely supporting Adult Services, it is likely the employee will be in scope for transferring to the new employer. In such situations, a detailed analysis of each specific role, and a decision on each individual case, will need to be undertaken.

- 11.3. Accordingly, dependent on the scope of activity/duties of each employee within support function, will determine whether the employee would transfer to the company. Where TUPE does not apply, then an equivalent budget transfer could occur or transfer can occur with agreement of the parties. Principles have been developed on qualifying criteria for TUPE transfers and Employment Panel will consider on 29 November 2016. The principles are:
- Do they spend the majority of their time (75% or more) carrying out the work or supporting the work that will be transferring and are they organised in such a way that they are deliberately assigned to the grouping of employees carrying out the work for that service? If yes, they are in scope, subject to final confirmation from the Head of Service and HR.
 - Where a number of employees spend some of their time (less than 75%) carrying out the work or supporting work that will be transferring volunteers will be sought to combine duties to make up the required FTE to transfer. Transfer will be subject to agreement with the receiving organisation and final confirmation from the Head of Service and HR.
 - If suitable arrangements cannot be agreed the equivalent budget will be transferred and the remaining team reduced accordingly which may result in redundancies although every effort will be made to keep these to a minimum.
- 11.4. Given the new delivery model, the Royal Borough will continue to develop the remaining workforce's capability in strong contract management as part of the annual organisational development programme and calendar.

12. PROPERTY AND ASSETS

- 12.1. Given the outline indications regarding the workforce as well as the frontline nature of some of the services being considered, impacts on the Royal Borough's property and assets could include:
- Changes in the patterns of static/non-static staff working bases and the effects on existing council offices.
 - Negotiation of lease agreements with Optalis on existing council properties where Adult Services are currently delivered.

13. ANY OTHER IMPLICATIONS

- 13.1. None.

14. CONSULTATION

14.1. Consultation has taken place with:

- The Lead Member for Adult Services, Health and Sustainability weekly.
- The working group comprising senior managers in Adult, Children and Health Services, finance, HR with meetings held fortnightly Wednesday since May 2016.

15. TIMETABLE FOR IMPLEMENTATION

Date	Details
December to March 2016	Implementation
1 April 2017	Adult Services delivered through Optalis
30 June 2017	Full implementation completed

16. APPENDICES

- Appendix 1: Optalis/RBWM Business Case

17. BACKGROUND INFORMATION

- Delivery of Improved Adult Services, RBWM Cabinet Paper, May 2016.
- Delivery of Improved Adult Services, RBWM Cabinet Paper, October 2016.

18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	Comments
Internal				
Cllr Coppinger	Lead Member for Adult services, Health and Sustainability	16/11/16	17/11/16	
Russell O'Keefe	Strategic Director Corporate and Community Services	16/11/16		
Alison Alexander	Managing Director/ Strategic Director Adults, Children and Health services	16/11/16	17/11/16	
Simon Fletcher	Strategic Director Operations and Customer Services	16/11/16		
Sean O'Connor	Shared Legal Solutions	16/11/16	17/11/16	
Terry Baldwin	Head of HR	16/11/16		
Rob Stubbs	Head of Finance	16/11/16	17/11/16	

Name of consultee	Post held and Department	Date sent	Date received	Comments
External				
Andy Couldrick	Chief Executive, Wokingham Borough Council	17/11/16		

REPORT HISTORY

Decision type:	Urgency item
Key decision 26 October 2016	No

Full name of report author	Job title	Full contact no:
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