

Report for: *ACTION*

Contains Confidential or Exempt Information	YES – Not for publication by virtue of paragraph 2 of Part 1 of Schedule 12A of the Local Government Act 1972.
Title	Delivering 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	27 October 2016
Implementation date if not called In	7 November 2016
Affected Wards	All

REPORT SUMMARY

1. Following research and investigation into a variety of delivery models, on 26 May 2016, Cabinet agreed to explore delivering adult services in partnership with Wokingham Borough Council through their Adult Services provider, Optalis Limited.
2. Care and Health Solutions, a consultancy firm, were contracted to facilitate negotiations between the Royal Borough and Wokingham Borough Council to secure the Royal Borough as an owner and shareholder in Optalis. These negotiations have concluded successfully, see Appendix 1 for full merger model proposal.
3. This report seeks approval to undertake due diligence and progress development of a full business case and implementation plan with a view to securing transfer of the relevant Royal Borough's adult services staff and resources to Optalis, effective 1 April 2017. Total gross budget in scope is £30m, with a staffing resource of around 234FTE based on current figures. The consideration for purchase of shareholdings in Optalis is £771,302.

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. **Delegates authority to the Managing Director/Strategic Director Adult, Children and Health Services, in consultation with the Leader of the Council and the Lead Member Adult Services, Health and Sustainability, to proceed to a full business case and broker an Inter Authority Agreement with Wokingham Borough Council and Optalis, for approval by Cabinet in December 2016.**
- ii. **Approves the consideration for purchase of shareholdings of £771,302, to secure a 45% stake in Optalis Limited, payable on 31 March 2017 and recommends to Council that this is funded from the 2016-2017 capital programme.**
- iii. **Confirms that the current Strategic Director of Adult, Children and Health Services will continue to deliver the statutory function of Director of Adult Social Services, see points 5.7-5.8, and will continue to manage the Deputy Director Health and Adult Social Care in order to oversee the transfer of services up to 30 June 2017 with line management responsibility then transferring to Optalis.**
- iv. **Delegates authority to the Lead Member for Finance and the Strategic Director Adult, Children and Health Services to agree the level of resource required for support functions that should transfer to Optalis.**
- v. **Requests £200K from the Development Fund to support the safe transfer of staff and services to Optalis on 1 April 2017 through to 30 June 2017, see point 4.3.**

2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Background

- 2.1 At Cabinet on 26 May 2016, delegated authority was given to the Managing Director/Strategic Director Adult, Children and Health Services, in consultation with the Leader of the Council and the Lead Member Adult Services, Health and Sustainability to further explore delivery of Adult Services through Wokingham Borough Council's provider, Optalis Limited. Optalis Limited was established in 2012; it delivers £9.6m of adult social care services for the borough, with an annual turnover of £11.8m, and has a workforce of 291FTE.
- 2.2 The Royal Borough and Wokingham Borough Council commissioned Care and Health Solutions to undertake exploratory work with both councils on a possible merger. The initial discussion covered:
 - Shareholding arrangements and associated "charge".
 - Proposals on third and further potential partner local authorities to have their services delivered through the vehicle.
 - Board representation.
 - Key principles and elements of shareholding.

- 2.3 The work during July and August with the two councils has enabled agreement on key areas which now need to be ratified before proceeding to full business case and implementation, see Appendix 1 for merger model proposal.

Shareholding

- 2.4 The Royal Borough sought to join Optalis as an owner and shareholder. Agreement has been reached for the Royal Borough to secure an initial 45% stakeholder share in Optalis; this is based on the current owner's desire to see a partnership build. Through the first two years, progress will be formally reviewed by the Shareholder Reference Group and, provided it has gone well, the Group will then broker a move towards an equal shareholding of 50%. The price of the additional shares will be based on the same initial share price and will cost the Royal Borough a further £85,700.
- 2.5 A consideration to purchase shareholdings in Optalis of £771,302 has been identified. In arriving at the buy-in price, recognition has been made of:
- The expertise that Optalis has built up and its significant brand value.
 - The work that Optalis will have to undertake to ensure the successful formation of the new enlarged company.
 - The ability to develop and compete with bigger players in a wider market to attract the best staff, delivering the highest quality of service to our residents.
 - The opportunity for the Royal Borough to share in current and future additional profits and savings.
 - The time, cost and risks avoided by Royal Borough compared to setting up its own local authority traded company.

Business case

- 2.6 Subject to Cabinet agreement, the process for developing the full business case will follow a similar process adopted by Tricuro Ltd¹ another jointly owned local authority trading company. This includes a shareholding reference group and project board, responsible for the development of the full business case and implementation plan. The development of the business case will take two months, October and November, with implementation starting in December and a 'go live' date of 1 April 2017, with the transfer completed by the end of the first quarter of 2017-2018.
- 2.7 The substantive business case and implementation plan will build upon the initial merger model document and include due diligence.
- 2.8 The business case will be predicated on the clear belief that the potential risks of delivering differently are outweighed by the benefits, in particular:
- Scope for more integrated, cross-organisational – private, public and voluntary – delivery of services tailored to residents.
 - An ability to operate in a competitive market, with less rigid procurement frameworks.
 - Scope to drive innovation and sustain and improve services through improved staff recruitment and retention.

¹ Tricuro Ltd is a provider of health and social care across Dorset, wholly owned by Dorset, Bournemouth and Poole Councils.

- An opportunity to secure resources to meet residents’ needs through having access to different income streams, thereby reducing the call on the taxpayer and achieve financial savings of £1.8m over three years to 2020.

Scope

2.9 The total annual budget in scope of the new delivery model for Adult services would be £30m gross initially. There is currently a further £9.6m in commissioned services and the intention is that when these contracts come to an end, future delivery through Optalis is explored, see appendix 1: Merger Model. An adult services staffing resource of around 234FTE based on current figures would also transfer. In addition, professional staff delivering support functions for these services, including finance, HR, procurement, ICT, data and communications, will need to be valued and an agreed percentage transferred. A methodology for allocating support services across all Council services is currently being developed to ensure consistency. Applying this methodology will then determine the level of support services FTE to transfer.

Stakeholder engagement

- 2.10 Subject to Cabinet approval, engagement with customers and stakeholders, internally and externally, will be crucial to the success of the transfer. It will require significant investment of time from senior managers and elected Members of the Royal Borough to deliver a wide range of messages for different audiences – elected members, residents, staff, partners and providers, see Appendix 2 for a communications plan.
- 2.11 The fundamental issue underpinning this transfer is to assure all stakeholders that the services they currently receive will remain local, accessible and of high quality. Elected members, residents and the workforce will also have a key role to play in shaping and further improving services through Optalis.

Table 1: Options

Option	Comments
Deliver Adult Services through Optalis with the council becoming a shareholder RECOMMENDED	<p>Objective: maintain all the functions of Adult Services with increased demand on resources, whilst securing high quality services that improve residents’ outcomes.</p> <p>Benefits: larger organisation, serving a combined population of up to 308,117 adults (age 19-90 years)², with opportunities for efficiencies in service provision and support functions, less constrained procurement, access to alternative income streams, increased resilience with staff and services and more integration of services.</p> <p>Capacity: delivered by the Head of Commissioning, supported by a project team, with oversight from the Strategic Director and the Lead Member.</p> <p>Additional costs: the buy-in price will be lower than establishing a new company. The company will be functioning on day 1, has an established brand and the</p>

² Office for National Statistics, mid-2015 population estimates.

Option	Comments
	<p>Royal Borough will be collaborating in Optalis rather than Optalis being a competitor.</p> <p>Assurance: The identified partner has a track record of delivery; the management team transferring are delivering against the key performance indicators; the Lead Member has a track record of delivering as has the strategic commissioning function retained in the local authority.</p>
<p>Do nothing differently – maintain delivery of services through existing council structures</p>	<p>Objective: Maintain all Adult Services within the local authority.</p> <p>The costs and existing budget remain the same, although opportunities to secure maximum value for money are reduced due to the constraints of local authority procurement rules and lack of access to alternative income streams.</p> <p>There are significantly reduced opportunities for the services to meet demand by making use of increasing freedoms and flexibilities, thus resulting in a greater risk of needing to reduce services.</p>

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
<p>Full business case and implementation plan approved by Cabinet</p>	<p>January 2017</p>	<p>15 December 2016</p>	<p>November 2016</p>	<p>N/A</p>	<p>15 December 2016</p>

4. FINANCIAL DETAILS

Financial impact of the recommendations on the budget

4.1 The transfer of Adults Services to Optalis will require an associated transfer of funding under contract. This contract will stipulate how the funds will be used for services with an annual gross current value estimated at £30m, plus support services. There is currently a further £9.6m in commissioned services and the intention is that when these contracts come to an end, future delivery through

Optalis is explored, see appendix 1: Merger Model. During the pre-contract period, the figures will be updated to reflect the 2017-2018 budget position. The contract sum will be subject to annual review.

- 4.2 The consideration for purchase of shareholdings in Optalis has been agreed at £771,302 which will be funded through 2016-2017 capital programme, subject to full Council approval.
- 4.3 In addition, the financial implication of the recommendations is a requirement for development funding of £200k. The resource will assist in delivering phase 2, business case, and phase 3, implementation, of the project, specifically:
- The support from Care and Health Solutions to develop the full business case and implementation plan.
 - Releasing half of the time of the Deputy Director Health and Adult Social Care into the project to ensure that it is properly managed from a service perspective, including liaison with Optalis around service design, with some acting up for the service managers beneath the Deputy Director.
 - A senior project manager to coordinate the whole project so that it is delivered on time.
 - A part time dedicated administrator to support the team.
 - A part time systems support manager to ensure the safe transfer of the case management system and data, particularly given that the system supports both children's and adults.

Table 3: Finance – Revenue

Finance	2016/17	2017/18	2018/19
	Revenue	Revenue	Revenue
Addition	£200,000	£0	£0
Reduction	£0	£0	£0

Table 4: Finance – Capital

Finance	2016/17	2017/18	2018/19
	Capital	Capital	Capital
Addition	£771,302	£0	£0
Reduction	£0	£0	£0

- 4.4 A methodology for allocating support services is in development to enable consistency across all services. An analysis of the services such as finance, HR, premises, ICT, data and communications that are currently budgeted for within the corporate budget and recharged to Adult Services will be undertaken using this methodology. Following this analysis for each support service, a staff resource or a financial resource will transfer to Optalis.

Efficiencies

- 4.5 The Council has identified a savings target for Adults Services of £2m over the next three years which will need to be met regardless of the delivery model. Indicative saving areas for the next three years have been identified and discussed with Wokingham Borough Council and Optalis.
- 4.6 The potential savings areas for the next two years will be 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.

Pension

- 4.7 Cabinet should note that further work will be explored as part of the negotiations to determine whether or not a pension bond would be necessary as there are a variety of options relating to pensions, including consideration of the Royal Borough's previous approach to pension liabilities. It should be noted that Optalis is already an admitted body of the Berkshire Pension Fund.
- 4.8 To protect the pension fund against the early termination of the service contract and any other associated costs that may arise throughout the contract, actuary advice will determine the level of bond or indemnity to be put in place, although the Royal Borough, as the transferring employer, can act as a guarantor to the pension fund. The council may decide not to take out a bond but to own the risk on the basis that there would be mitigations that would reduce any potential impact on it. This was the approach adopted through the transfer of leisure services.

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. The legislative change enables councils to contract out social work functions such as assessment etc.
- 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 the 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 will use best value considerations to ensure the option recommended provides 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 5.

Table 5: Risks and controls

Risks	Uncontrolled Risk	Controls	Controlled Risk
Failure to reach a negotiated Inter-Authority Agreement and business case by December.	Medium	Project team managing phase 2 securing focus and control to deliver. Senior leader and Member commitment to prioritise.	Low

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 234FTE. A formal programme of staff engagement will commence from publication of this report.

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.

- **Staff directly employed within the service to be transferred:** all employees who are directly employed within the service that is being transferred will be in scope to transfer to Optalis, assuming that they were

part of the organised grouping carrying out those activities as their principal purpose.

- **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. 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

ICT and information governance

13.1. Delivering through Optalis will require ICT systems, governance and information assurance to comply with the current and future RBWM Information Governance Framework.

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
October-November 2016	Development of full business case
October 2016	Residents, staff and partner engagement.

Date	Details
onwards	
15 December 2016	Formal approval of full business case
December to March 2016	Implementation
1 April 2017	Adult Services delivered through Optalis

16. APPENDICES

- Appendix 1: Optalis/RBWM merger model proposal.
- Appendix 2: Communications plan

17. BACKGROUND INFORMATION

- Delivery of Improved Adult Services, RBWM Cabinet Paper, May 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	25/09/16	26/09/16	Throughout
Russell O'Keefe	Strategic Director Corporate and Community Services	25/09/16		
Alison Alexander	Managing Director/ Strategic Director Adults, Children and Health services	25/09/16	25/09/16	Throughout
Simon Fletcher	Strategic Director Operations and Customer Services	25/09/16		
Sean O'Connor	Shared Legal Solutions	25/09/16	28/09/16	Throughout
Terry Baldwin	Head of HR	25/09/16	28/09/16	Throughout
Rob Stubbs	Head of Finance	25/09/16	29/09/16	Throughout
External				
Andy Couldrick	Chief Executive, Wokingham Borough Council	26/09/16	29/09/16	Approved.

REPORT HISTORY

Decision	Urgency item

Cabinet Briefing

type:	
Key decision 26 May 2016	No

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