

<b>MEETING:</b>	<b>CABINET</b>
<b>MEETING DATE:</b>	<b>31 July 2014</b>
<b>TITLE OF REPORT:</b>	<b>HOOPLE</b>
<b>REPORT BY:</b>	<b>ASSISTANT DIRECTOR PLACE BASED COMMISSIONING</b>

## **Classification**

Open

## **Key Decision**

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates.

NOTICE has been served in accordance with Part 3, Section 9 (Publicity in Connection With Key Decisions) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

## **Wards Affected**

County-wide.

## **Purpose**

To consider the future approach to the commissioning of services provided by Hoople

## **Recommendation(s)**

**THAT:**

- (a) In considering the need to put in place arrangements for the period beyond the end of the current contract in 2016, the preferred approach to the commissioning of support services be via a Teckal compliant entity operating under control of the council and other shareholders and it's board, subject to these services offering value for money;**
- (b) A business case and implementation plan be developed, in partnership with Hoople and its board, for the establishment of appropriate legal entities to ensure that the council can continue to procure support services through a company with Teckal status and that a commercial trading company is able to continue to develop wider commercial benefits; and,**
- (c) The business case and implementation plan required under recommendation (b) be the subject of a further report for consideration and approval by the Cabinet Member Corporate Services.**

## Alternative Options

- 1 A review of potential commissioning options has been undertaken jointly with Hoople. This identified a wide range of alternative options which are outlined within this report. They have been assessed against the key criteria outlined below to determine the recommended approach. Whilst other options could be adopted, they are not recommended as they are not considered to meet the commissioning objectives to the same extent as the recommended option and would lead to higher costs of implementation, which would not represent value for money.

## Reasons for Recommendations

- 2 Firstly, the recommended approach ensures continued compliance with the European Union (EU) procurement regulations without the costs associated with a major re-procurement exercise. Secondly, the Teckal compliant entity would continue to have its primary focus as providing support services to the shareholders. This will help to ensure that these areas of service are in line with future needs and continue to provide value for money. This is crucial as the council will continue to transform itself and will have constant pressure on resources. Finally, the recommended approach will ensure Hoople continues its commercial development in line with the council's aspiration to support the economic development of Herefordshire.

## Key Considerations

### Introduction

- 3 Since Hoople was established in 2011, the landscape within which the public sector and local government has to operate has changed radically. Government funding for local authorities across the country has been reduced substantially over recent years. These reductions have led the council to make savings of £34m in the three years since April 2011. Financial pressure on the council will continue with a further £33m savings needed by 2016/17 to ensure that the council stays within its budget. These pressures come at a time when the council is serving more and more people, particularly in essential areas such as children's safeguarding and adult social care. As the range of services provided directly by the council, and the size of its core body reduces, so the scale of the support service requirement reduces.
- 4 The NHS nationally has also undergone significant restructuring which has had consequential impacts on the requirement for and commissioning of support services for NHS bodies in Herefordshire.
- 5 Hoople was established in April 2011 to provide a range of "back office" services as set out in the Cabinet report of 21 October 2010 and cabinet member report of 30 March 2011. Hoople was set up as a joint venture company with Wye Valley NHS Trust and the then Primary Care Trust (PCT) to provide shared services initially across the three public sector bodies. The remaining shareholders are now the council and Wye Valley NHS Trust. Although the council contract with Hoople is not exclusive, the partnership aims for the company assumed that Hoople would be the shareholders' provider of choice for back office services.
- 6 Since it was established Hoople has delivered significant savings to the council and has secured business from a range of customers. Training and its employment

agency have been particularly successful although it has a number of contracts for other services, as well as schools. Hoople has successfully developed a positive and customer focused staff culture which has contributed to the company's success. An update on the company was presented to the General Overview and Scrutiny Committee at the meeting on the 12 May 2014.

- 7 During 2013/14, the council and Hoople negotiated variations to the current contract which secured, by agreement, savings in excess of £1.2m in the current financial year.
- 8 In confirming this contract variation, the cabinet member also asked that a strategy be developed to determine the future commissioning of services beyond the period of the current contract with Hoople which ends in 2016.
- 9 Hoople currently provides services to the council in relation to human resources, finance, revenues and benefits and ICT at a cost of over £4m per annum.

Service	£'000
HR	419
Finance	1,381
Revenues & Benefits	1,596
ICT	1,383
Training	71
<b>Total</b>	<b>4,850</b>

- 10 The recent contract variations have changed the way of working in a number of areas to remove duplication and improve efficiency. For example, an integrated management structure is now in place with the council's Chief Finance Officer providing management control over the strategic financial services (management and technical accounting) provided to the council. A similar model has also been put in place in relation to Human Resources.
- 11 The modernisation of council business areas over the coming years will require a strong and clear ICT resource to help deliver improved systems and infrastructure to improve efficiency and reduce cost. It will be important to ensure that the service is agile and able to effectively ensure the council makes best use of new and emerging technology.
- 12 When reviewing future commissioning strategies it is important to recognise that in future the council will continue to need:
  - Back office services with the right level of expertise and flexibility;
  - Good relationships with back office services with the ability to plan for future needs and exercise the necessary control over what is delivered;
  - Clear value for money, the ability to reduce costs; and the flexibility to respond to changing needs and opportunities.

## Joint review

- 12 The council's current contract with Hoople comes to an end on 31<sup>st</sup> March 2016. Given that certain options could require a significant period of time to put in place, now is the right time to determine the approach to commissioning the services that would need to be in place from April 2016.
- 13 As a shareholder as well as a client, the council has a particular relationship with Hoople. Therefore a joint review was considered appropriate and has been carried out by a joint project team comprising representatives from the council's commissioning and commercial teams alongside representatives from the Hoople management team. This has identified and examined the options available to the council for future service delivery arrangements. The results of this review have been shared with the Hoople Board and this report takes account of these results in recommending to Cabinet the approach to future commissioning of services.
- 14 In considering the potential future commissioning options, it is important to be aware of the Teckal exemption to EU procurement requirements, (under which Hoople was originally established) which currently allows the council to purchase services from Hoople without the need for an open procurement process.
- 15 The requirements for a Teckal exemption have recently been clarified and are described in the 2014 EU Directive Procurement Directives: DIRECTIVE 2014/24/EU, Article 12:

*"A public contract awarded by a contracting authority to a legal person governed by private or public law shall fall outside the scope of this Directive where all of the following conditions are fulfilled:*

*(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;*

*(b) more than 80 % of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and*

*(c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.*

*A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. Such control may also be exercised by another legal person, which is itself controlled in the same way by the contracting authority."*

- 16 The 2014 EU Procurement Directives have been adopted by the EU institutions and were published in the Official Journal of the EU on 28 March 2014. They came into force on 17 April 2014. EU member states now have 2 years to implement them in national legislation. The UK government is aiming to implement these directives quickly as they offer improved flexibility. The detailed UK legislation has yet to be published but is expected in October 2014.

- 17 Hoople was established with the remit to grow non-partner business. The directive has recently given increased clarity to the Teckal exemption. This review has provided an opportunity to look forward and effectively plan well in advance of the end of the current contract to enable this new directive to be taken into account. Given the success of Hoople in delivering savings to the council and securing commercial business, it is likely that beyond April 2016 Hoople would not be compliant with this directive without some form of restructuring of the business. This has been taken into account when considering the range of options outlined below.

### **Approach to review of future commissioning options**

- 18 The first stage in the review was to define a set of criteria used to ensure a consistent approach to assessing the options. The criteria were developed jointly with Hoople and were based on the council's Commissioning and Commercial Strategy and previous major commissioning exercises such as the procurement of public realm services. Draft criteria were developed in discussion with Cabinet and presented to the General Overview and Scrutiny Committee at their meeting on 12<sup>th</sup> May 2014.
- 19 The General Overview and Scrutiny Committee noted the approach to the joint review of the future approach to commissioning services currently being delivered by Hoople. In particular, it was noted that criteria should not undervalue the relationships between the council and Hoople and the benefits to the local economy. Also that, value for money criteria should not be defined too narrowly and should reflect the council's positions as both shareholder and customer.
- 20 These comments were taken into account when finalising and using the criteria listed below. These were divided into primary and secondary criteria with the primary criteria being given more weight in the assessment.

### ***Primary Criteria***

Value for money:

- Delivery of further savings and demonstration of value for money

Improved service delivery:

- Improved service delivery and efficiency
- Future flexibility in service delivery
- More resilient service delivery

Legal and deliverable

### ***Secondary Criteria***

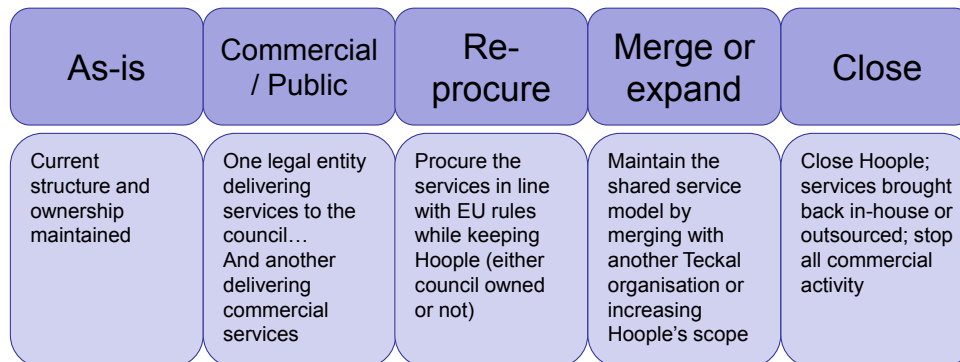
Economic impact:

- Support for local economy, jobs , training and income generation
- Value of Council shareholding

Cost of implementation:

- One off project costs
- On-going management costs

21 Five broad options were considered by the review, are summarised in the following diagram and the key characteristics described below:



22 '**As-is**' model could include: **Do nothing** – continue service delivery as-is; **short term contract extension** – extend the current contract for a fixed period to allow other arrangements to be put in place. Continuing with the current arrangements beyond the current contract term is potentially unlawful if Teckal exemption is not maintained and there is a risk of procurement challenge. The risk might be reduced if a contract extension were only to be short term to enable alternative arrangements.

23 **Commercial / Public – Create separate trading arm** – services provided commercially by Hoople – excluding council support services – would be structured into a separate corporate entity: a trading company. A council support organisation would maintain its Teckal status. The council could put additional services into the Teckal company as part of a transformation. The trading company's aim would be profitable growth. Splitting the organisation, if done in the right way, could ensure the Teckal status of the company delivering services to the council leaving the trading company free to pursue its corporate aims.

24 **Re-procure – council services competitively tendered** – re-procure council services from:

- Strategic partner – open procurement of council services putting in place a strategic partner
- Tactical procurements – procure from existing framework (where they exist); obtain from public sector, or open tendering for individual services according to the needs of their users.

Hoople would continue to exist as a company and is likely to bid for some or all of the council's support services. Procuring services in line with EU rules removes need for Teckal immunity. Service cost and quality would be competitively tested, however, procurement would be costly and the outcome is uncertain. The council's shares in Hoople could either be retained or divested – transfer of Hoople Ltd into an employee owned mutual/social enterprise, management buy-out, or private market sale.

- 25 **Merge or expand** – assure Teckal status by increasing the services delivered by Hoople or by collaborating with one of the other shared service organisations that exist across local government. A best value appraisal would be required in place of market testing.
- 26 **Close** – close the Hoople organisation and either re-procure the services that it currently delivers or council internalise all Hoople service delivery and staff. Hoople’s commercial contracts would need to be dealt with on a case by case basis.

**Evaluation and recommendation**

27 The five high level approaches led to 10 delivery options. These were scored by the project team against the primary and secondary criteria. The highest scoring option was: **Commercial / Public – Create separate trading arm**: which would involve restructuring Hoople to ensure a trading company and a Teckal compliant public service company.

	Rank	Cost
1	Trading Co / Teckal Co	Low
2	Trading Co / in-house services	Low
3	Strategic partner	High
4	Tactical procurement	High
5	Expand scope of Hoople	Low
6	Short term contract extension	Low
7	Merge with shared services	High
8	Do nothing	Low
9	Close Hoople - outsource	High
10	Close Hoople – in house	Low

28 The highest scoring option would enable the council to continue to obtain services without the significant costs associated with a major procurement exercise. It is proposed that a business case and implementation plan be developed in partnership with Hoople. This would be the subject of a further report for consideration by the Cabinet Member Corporate Services.

30 In simple terms this would mean that, from the current Hoople, two companies would be created:

- i. Commercial trading company; and,
- ii. Public sector (Teckal) company.

31 The key characteristics and advantages of establishing these two legal entities would be as follows:

Commercial:

This entity would be owned by the existing shareholders and be overseen and led by an independent Board with a continued focus on securing commercial business. Advantages include:

- Safeguards existing Hoople commercial activity with other customers and captures value of this for the shareholders
- Commercial entity would focus on growth and securing new business and shareholder benefits
- Board focus for this entity would be focused on commercial activity
- Council could retain shareholding and receive dividends or potentially realise it as an asset in the future
- Provides a flexible vehicle for other commercial services if required in future
- Opportunity to re-focus and rationalise senior management input to improve competitiveness.

Public (Teckal):

This entity would be owned by the current shareholders and operate under the control of it's board focusing on those services provided to the shareholders. Existing management capacity within the council would be used to provide management control to guide and support the operational management of this entity, as currently occurs in relation to the council's financial services. Advantages include:

- Teckal legal status allows the council as a shareholder to exercise controls over service delivery in line with the EU Directive outlined in paragraph 16 above.
- Direct control over service delivery would ensure a strong focus on services to the council and the ability to react to changing requirements
- Avoids the potential disruption to front line services that reintegration could cause
- Continues to provide a flexible vehicle to allow the sale of existing or new services and to work in partnership with other public agencies if required in the future

32 It is considered that the proposals may allow for the reduction in management overheads for services directly managed by the council this will be verified by the



business case. If successful, the commercial trading company could generate new jobs in the county and any dividends from the company would provide a financial return to the council which could be invested in other services.

## **Conclusion**

- 33 Since being established, Hoople has delivered the savings in accordance with the original business plan; it has also secured business from other customers and developed a positive staff culture. This joint review has been carried out to inform the future commissioning of the council's back office services whilst recognising the specific relationship with Hoople which results from the council shareholding. In considering the need to put in place arrangements for the period beyond the end of the current contract in 2016, Cabinet is asked to approve the recommendation that the preferred approach to the commissioning of support services be via a Teckal compliant company under the control of the shareholders and its board, subject to these services offering value for money. In order to take this forward, it is recommended that a business case and implementation plan be developed, in partnership with Hoople and its Board, for the establishment of appropriate legal entities to ensure that the council can continue to procure support services through a company with Teckal status and that a commercial trading company is able to continue to develop wider commercial benefits.
- 34 Whilst this review has outlined a strategic approach for future commissioning, the delivery of back office services will need to demonstrate value for money. Going forward, service leads will need to regularly review the approach to delivering their services to ensure that the council continues to get value for money in an environment where the pressure on resources will continue.

## **Community Impact**

- 35 The services delivered by Hoople underpin the delivery of the range of services provided by the council, and ensuring these services are provided in the most efficient and cost effective way supports the council's corporate plan aim of making the best use of the resources available to meet the council's priorities.
- 36 In addition, Hoople has become a provider to a range of community focussed organisations, offering the back office support that enables them to continue to provide services. As a local employer, the successful growth of Hoople could make a contribution to the local economy and employment opportunities within the County.

## **Equality and Human Rights**

- 37 Equalities and diversity requirements will be considered as part of the joint review and an equality impact assessment will be carried out, if necessary, before any new arrangements are put in place.

## **Financial Implications**

- 38 The Medium Term Financial Strategy sets out ongoing savings for the next three years, to be delivered through efficiencies and change, this strategy applies both in-house and to those organisations providing key services. The business case will establish what will be accomplished from the proposed changes both in terms of savings and service delivery approaches.

## **Legal Implications**

- 39 Detailed legal advice will be required in relation to the development of the business case to ensure that the status of the entity providing services to the council is Teckal compliant. Legal services will be involved in the development of the business case and implementation plan.

## **Risk Management**

- 40 The current contract arrangements with Hoople are based on an agreed service level which is managed in accordance with contract procedures with risks identified and escalated where appropriate. Given that the current contract with Hoople comes to an end on 31 March 2016 and the core nature of the services provided, it is important to consider the Council's future approach to commissioning such services well in advance. This is important to mitigate any risks associated with service continuity and value for money and enable effective planning and delivery of any changes that might be necessary in advance of the end of the current contract.

## **Consultees**

- 41 Hoople was consulted during the review and has indicated that the company is willing to work with the council in taking a joint approach to the development of the proposed business case and implementation plan. General Overview & Scrutiny received a report on Hoople at the meeting of the 12 May 2014 and their comments upon the draft commissioning criteria as outlined in paragraph 14 above were taken into account in finalising the criteria and applying them through the review.

## **Appendices**

- None

## **Background Papers**

- None identified