Arms Length Delivery Vehicles – Opportunity or Costs?

APSE – Full Association Meeting

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Drivers for Change – the 'Enabling Agenda'

- The Corporate drive to the 'Enabling Agenda', prioritising the commissioner and intelligent client role above direct service provision.
- A potential danger is the marginalisation of frontline services and how they can be used to have an immediate impact if directly controlled.
- The hard client/contractor split has been proven not to work particularly for customer facing services.
- The diluting of Member interface with services can undermine the accountability of services to residents.
- APSE's position has consistently been that service integration vertically and horizontally delivers quality services.
- The Enabling Agenda is creating a split between the Corporate centre and the services.
- If you are a deliverer of high quality and value for money services that residents rate highly how do you deal with the charge to commissioning?

Drivers for Change - Economic

- The impact of the credit crunch and reality of reducing settlements; decreasing third party income, and reduced capital receipts.
- Unrealistic budgets that are not sustainable/significant levels of overspend/Reserves reduced to an unacceptable level.
- The need to sharpen and transform service delivery to the customer (internal and external) within an environment of drastic budget reductions.
- Reconciling increasing demand/expectations for frontline services with externally validated VFM appraisals.

Vehicles Created by Councils (1)

- **Trusts:** usually established as charitable companies to run cultural facilities under a grant and lease. They are eligible for NNDR relief which can be a substantial saving. The grant and lease is not a service contract and is therefore outside of EU rules.
- **Wholly Owned Trading Companies:** can trade in the public and private sectors. It may provide services to its parent authority but contracts have to be won in competition. Procurement and state aid regimes largely outlaw the granting of 'soft contracts'. 'Advantageous treatment' is likely to be unlawful. Profits are paid out as dividend payments but the company makes its own decisions about reinvestment.
- **Partly or Jointly Owned Companies:** as above, but jointly owned with on or more public or private sector partner. Often the authority is the minority share holder, sometimes may have a golden share for veto over a certain key decision. Contracts with the authority have to won in competition.

Vehicles Created by Councils (2)

- **Wholly Owned Service Delivery Companies:** the authority sets up a company to provide services to itself (sometimes known as Teckal company). In some circumstances contracts can be awarded without competition, when the company does not seek to trade more widely and is subject to the same degree of control as the authority exercises over is own services. This position will continue to be monitored by the EU Commission.
- **Partly or Jointly Service Delivery Companies:** authorities can set up shared arrangements through a jointly owned company (Teckal company). Provided there is no private sector involvement and the company does not seek to trade more widely contracts may be let in some circumstances without competition.
- Such companies can take on a number of different legal forms:
  - Companies limited by shares or guarantee;
  - Not for profit organisations;
  - Limited Liability Partnerships;
  - Charitable body;
  - Unincorporated association.

Competition Issues

- European and domestic competition law large outlaw the granting of soft contracts or advantages to arms length entities.
- The majority of public contracts are now within the competition framework.
- The Teckal Case provides limited exception to the competition regime. This allows the granting of contracts without competition where the local authority exercises over the person concerned a control which is similar to that which it exercises over its own departments and, at the same time, that person carries out the essential part of its activities with the Controlling authority.
- Each case (company) and its ability to externally trade has to be considered individually. If the externally trading exceeds circa 20% it could potentially loose its Teckal status, (Legal opinion on the tipping point differs)!

Potential Benefits of an Arms Length Entity (the 'WOC')

- **Freedom from Council financial and other regulations:** This is potentially useful if the Wholly Owned Company (WOC) intends to trade externally. Freedom from regulations will be diluted if the WOC works predominantly for its parent authority.
- **Tax advantages:** Rebate arrangements can minimise taxable profits from trading with the host authority. However most trading vehicles will be liable to pay tax on at least a proportion of their profits (corporation tax). This may make them less tax effective than direct trading.
- **Teckal Exemptions:** There are in certain defined circumstances the opportunity to give work to the WOC without competition but case law could change this position.
- **Protection form Risk:** All companies protect their investors from risk but the purpose of local authorities is not to actively seek out high risk based trading opportunities which are often part of the business models of competitors.
- **Avoidance of Liabilities:** The potential to avoid liabilities arising from requirements such as equal pay. Such matters evolve and get defined through case law with the ability to avoid liabilities potentially reducing,

The Starting Point - A Robust Options Appraisal

- Clarification of Corporate priorities against which services must be aligned going forward within the Medium Financial Strategy.
- Understanding the cost and baseline performance of each service and its relationship to other services in terms of performance and cost.
- Understanding the cost and baseline performance of each support service and there relationship to frontline services.
- Understanding planned improvements to services and the opportunities out of reconfiguration while maintaining the integration of the services.
- Establishing the clarity of service specifications; availability criteria; and performance standards.
- Developing a risk allocation matrix as the basis for competitive dialogue.

The Options Appraisal for Wolverhampton

- Current operating costs and potential for savings with different remuneration packages.
- Responsiveness and current support services costs and potential for savings
- Protection of the economies of scale of a high performing multi-functional service delivery entity.
- Through a joint subsidiary the potential for economies of scale through partnership working (external to the Council, both support services and extended markets).
- Future risks associated with delivery of improvements or commercial factors around services better managed through the WOC.
- Value placed on services by a Corporate centre committed to the Enabling Agenda.

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Wholly Owned Company = A Teckal Company

Council

Wholly Owned Company (WOC):
Allows the ring fencing of work to a local authority without competition;
The company must predominantly work for the local authority;
The company must be owned by the local authority and controlled by it.

Trading Subsidiary for Tendered Works (JV):
Joint Venture with a private sector partner.

Structural Relationship and Benefits

Council

Wholly Owned Company (WOC):
Retained Services;
Tendered Services, (after 2 year period).

Trading Subsidiary for Tendered Works (JV):
Joint Venture with a private sector partner.

Benefits

Benefits of the WOC:
Continued efficient savings from existing improvement initiatives;
Continued control over key frontline services;
Cultural change;
Increased productivity (related to revised T&C's);
Reduced support services costs;
Economies of scale savings through cross Council strategic sourcing;
Expanded external trading opportunities;
Reallocation of decision making for selected commercial matters.

Benefits of JV:
Transfer of commercial risk for selected services;
Alternative supplier of support services.

Profile of Services for Initial Two Year Period

Council

Wholly Owned Company (WOC):
Retained Services: Schools Catering; Welfare Catering; Fleet Management; Passenger Transport; Markets; Pest Control; School Crossing Patrols; Parking Enforcement; & Highways Capital Works and Maintenance.
Tendered Services (after 2 year period): Street Scene; Gulley Cleansing; Arboricultural Works; Vehicle Maintenance; Cleaning Services; Landscape Design; Car Parks.

Trading Subsidiary for Tendered Works (JV):
Joint Venture with a private sector partner.

Profile of Services after Two Year Period

Council

Wholly Owned Company (WOC):
Retained Services: Schools Catering; Welfare Catering; Fleet Management; Passenger Transport; Markets; Pest Control; School Crossing Patrols; Parking Enforcement; & Highways Capital Works and Maintenance.

Trading Subsidiary for Tendered Works (JV):
Street Scene; Gulley Cleansing; Arboricultural Works; Vehicle Maintenance; Cleaning Services; Landscape Design; Car Parks.

Strategic Functions for the Wholly Owned Company

Council

Wholly Owned Company (WOC):
The MD of the Company retains Chief Officer responsibilities for the strategic direction of Waste Management; Transportation; Public Realm; and Markets;

Relationship Management of Waste Partnership; Transportation & Highways Partnership; Street Scene Partnership; and Markets Partnership.

Trading Subsidiary for Tendered Works (JV):
None.

Conclusion

'Local solutions to local problems'.