

APSE Strategic Policy Forum (Healthy Communities)

Future service delivery models in adult social care

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What powers do you have to deliver care? What forms can delivery take?

- What options for models of delivery?
- Teckal companies and trading models
- Are there barriers or opportunities to deliver differently?
- What about individual budget holders?

Powers

- Local authority has duties and powers to provide services
- Local authority has power to enter into contracts connected with the discharge of functions
- Local authority has powers to deliver functions through other vehicles
- Health and Social Care Bill
 - transfer of public health
 - Health & Wellbeing Boards

Options for service delivery

- Cessation or market takeover
- Re-configure in house or in sourcing
 - arms length company (in-house or trading)
- Partnership/collaboration with public sector, eg NHS
 - but not everyone can be a supplier
- Shared management/back office/front line
- Shared asset vehicles, shared premises
- Out-sourcing/Strategic Partnering
 - Mutuels or social enterprise

Partnering Arrangements with Health

- Part 3 sections 74-82 National Health Service Act 2006
- Duty to co-operate to secure and advance health & welfare of people (s82)
- LA must supply goods & services (s74) required under LA Social Services Act to NHS body
- s75 - NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000
 - Must be an agreement in writing

S75 Partnering Arrangements

- Agreement must specify:
 - Agreed aims and outcomes
 - Payments to be made and how these may be varied
 - Functions
 - Persons the services are for and the kinds of services
 - Staff/goods/services/accommodation provided
 - Duration
 - Monitoring arrangements
 - Charging arrangements

Options for Structures

Companies
(shares/guarantee)

Constitutional
Arrangements between
authorities

Contracts

Statutory
corporation

Charities

Trusts

Charitable
Incorporated
Organisations

Industrial &
Provident Societies

Partnerships
(Limited or Limited
Liability)

Community Interest
Companies

Options for legal status - types of structure

- Unincorporated association/partnership
- Limited Partnership/Limited Liability Partnership
- Share company
- Guarantee company
- Community Interest Company
- Industrial and provident society (Co-operative or charitable)
- Charitable company/Charitable Incorporated Organisation (to be introduced Spring 2012?)
- Trust

Options for legal status - corporate

Advantages

- Separate legal entity/identity – can contract, hold land, employ etc
- Can ring-fence risks /liabilities
- No personal liability except in limited circumstances – e.g. wrongful trading
- Arms length

Disadvantages

- Extra administration & Part V (if Local Authority led)
- May be tax and VAT issues
- Limits on delegation to a company
- Procurement, unless exemption, eg Teckal

EU Public Procurement Impact

- EC Treaty applies to all contracting by local authorities – no thresholds or exemptions except within Treaty itself
- Detailed rules for priority (Part A) services
 - Value - £173k (from 1 Jan 2012)
 - Part A includes procurement, finance and ICT
 - Care etc Part B
- Transparency, non-discrimination and equal treatment obligations
- Administrative arrangements generally outside procurement

Trading Company

- Power to establish a trading company for a **commercial purpose**:
 - Section 95 Local Government Act 2003
 - Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009
 - Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006
- Business case required
- Council must recover costs of anything supplied to a trading company

.....similar powers in Localism Act

Trading Company – Winning business

- Public procurement legislation applies to local authorities
- Cannot usually award contracts to trading companies without procurement
- Individual budget holders can purchase from trading companies

.....trading company itself may purchase outside of EU regime – to all intents it is the private sector

“Teckal” Company

- “Teckal” exemption from public procurement
- Formed for “social” purpose & is a contracting authority
- Teckal applies if:
 - Authority(ies) exercise control over the company as if an “in-house” department and
 - Company undertakes the essential part of its activities for the authority(ies)
- Not suitable if company likely to provide services over wide geographical area or trade generally

Local authority involvement in companies

- Part V Local Government and Housing Act 1989
- Local Authorities (Companies) Order 1995
- Propriety controls on companies controlled or influenced by local authorities
- Part 12 LGPIH Act 2007 & LDED&C Act 2009
- Local authority may need to include a company in group accounts
- Conflicts of Interest
 - Member split

Individual Budget Holders

- Obtain care services through direct payments
 - need to be transparent re calculations
- Not subject to public procurement legislation
- May join together to purchase collectively
- Local authorities may provide support for individual budget holders – to address social care needs and generally under well-being power whilst in force & general power of competence

Barriers/Opportunities

- Commissioning v providing
- Form follows function
 - What do you want to do and why?
- Who are your likely partners, if any?
- Consider staff, assets, finance and other implications
- Civil Society – social enterprises & mutuals, but procurement etc
- Options are not necessarily mutually exclusive

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