

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

6 NOVEMBER 2014

**REPORT OF CORPORATE
MANAGEMENT TEAM**

COUNCIL DECISION

Housing & Community Safety – Lead Cabinet Member - Councillor Steve Nelson

‘TRANSFORMING REHABILITATION’ – SUPPORT FOR THE LOCAL BID

1. Summary

This report updates Members on the position in respect of the local bid to deliver offender management services in relation to adult offenders assessed as medium and low risk, and seeks agreement to the Council acting as the main guarantor for the local bid.

2. Recommendations

That Cabinet recommend to Full Council that:-

1. The Council should agree to act as main guarantor for the local bid, subject to satisfactory subsidiary guarantees being provided to the Council by other partners in the bid (including other local authorities), and to the Council being satisfied on completion of an independent assessment of the financial viability of the bid, and
2. that a delegation to the Corporate Director of Development and Neighbourhood Services, in consultation with the Cabinet Member for Housing and Community Safety, Corporate Director of Resources and Director of Law and Democracy to finalise the Deed of Guarantee be agreed.

3. Reasons for the Recommendations/Decision(s)

To maximise the chance of success for the local bid.

4. Members’ Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council’s code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so

significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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SUMMARY

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RECOMMENDATIONS

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1. The Council should agree to act as main guarantor for the local bid, subject to satisfactory subsidiary guarantees being provided to the Council by other partners in the bid (including other local authorities), and to the Council being satisfied on completion of an independent assessment of the financial viability of the bid, and
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DETAIL

1. Members may recall a report on the Government's 'Transforming Rehabilitation' programme submitted to Cabinet on 5 September 2013. In brief, the report outlined the Government's intention to abolish the then system of 35 local Probation Trusts across England and Wales and to replace them with a single National Probation Service, remaining in the public sector and managing those adult offenders assessed as 'high risk', and 21 Community Rehabilitation Companies ('CRCs') dealing with the offenders assessed as 'medium and low risk', in which shareholdings were to be sold to interested bidders, with the emphasis in Government commentary on this process being on bidders from the private and voluntary sectors.
2. That report went on to explain that the then Durham Tees Valley Probation Trust occupied an enviable position as one of the top three performers among the 35 Trusts while also operating at some of the lowest unit costs.
3. There were significant concerns about the potential impact of the outsourcing process on local levels of reoffending, and therefore on crime levels, leading to increased budget pressures across a range of Council functions, and Cabinet agreed a series of recommendations, the most important of which was that the Council subject to a viable business plan should support the

proposal for a consortium of local organisations to bid to take over the Durham Tees Valley CRC.

4. In the intervening period the process has unfolded, with some minor changes to timetable. A Community Interest Company (CIC) without shareholdings, known as ARCC ('Achieving Real Change for Communities') has been established. The current partner organisations, in addition to this Council, are Darlington Borough Council; Tees, Esk and Wear Valleys NHS Trust; Thirteen Housing Group; the Wise Group (a social enterprise with significant experience of working with offenders in Scotland and main contractor to the Department of Work and Pensions for its Work Programme in the North East); Safe in Tees Valley; the Vardy Foundation (a registered charity); and Changing Lives in the North East, a CIC established to represent staff of Durham Tees Valley CRC. Redcar & Cleveland Borough Council has also been closely associated with and fully supportive of ARCC, and is anticipated to become a full formal member of the consortium prior to 'go live'.
5. A more detailed understanding of the requirements have been established and a bid and risk register developed. A high level summary of the bid is attached at **Appendix B**. The consortium submitted its bid in June and received feedback in August. Nineteen bidding organisations had submitted a total of 84 bids for the 21 CRCs. None of these bids were deemed to be fully compliant with the requirements of the Ministry of Justice (MoJ), but all bidders were provided with detailed feedback on 15 August and offered the opportunity to resubmit their bids by 5 September. The ARCC bid was deemed to be one of the stronger bids received. A revised bid was duly submitted, and a process of due diligence, including an independent external assessment of the financial viability of the bid and risks attached to it, is planned to take place immediately if and when ARCC is notified that it has achieved preferred bidder status, and this will inform the final delegated decision on whether to provide the Guarantee.
6. One of the requirements of the bidding process is for every bidding organisation to provide a Deed of Guarantee, attached as **Appendix A**, to the MoJ from an organisation which will guarantee to reimburse the MoJ for significant failures in performance up to and including catastrophic failure requiring a recommissioning process, which would involve significant costs to the MoJ. A value of Guarantee has been set for each CRC and for Durham Tees Valley it is approximately £13.8 million. In the case of commercial bids the guarantee would usually come from the Group concerned, to eliminate the risk to the MoJ that would otherwise exist of the liabilities being contained within a subsidiary operating company which may cease trading.
7. Discussions within the consortium established that this Council is the partner best placed to stand as Guarantor for the bid, but also that the potential risk, and the contingent liability on accounts, should be shared among consortium partners.
8. For the purposes of the original bid submission in June an in principle decision was made under the Council's Urgency Procedure to proceed on this basis, on the understanding that the decision would not come into effect until and unless a contract is concluded between ARCC and the MoJ.
9. The MoJ has not at the time of writing published a detailed timetable for the concluding stages of its procurement process, but the best current estimate is that preferred bidders may be announced at the end of October, with contracts to be signed shortly before Christmas, and the new arrangements to 'go live' from 1 February 2015. In view of this timetable it is now timely to seek a substantive decision in relation to the Deed of Guarantee.
10. Without such a Guarantee the ARCC bid would be disqualified and the Community Rehabilitation Company would almost certainly end up under the control of a commercially driven organisation, which is exactly the outcome that the Council's participation in the consortium was intended to avert. Members are reminded that the contract would be for at least 7 years, with options to extend up to 10 years, and that ARCC's status as a CIC without

shareholdings guarantees that any surpluses generated will be reinvested in social goods for Durham Tees Valley. Some further indications of the scale of the enterprise are given in **Appendix B**, which is confidential.

FINANCIAL IMPLICATIONS

11. The Guaranteed sum of approximately £13.8 million would be reduced to approximately £4.8 million, in terms of the maximum liability to this Council, by virtue of the subsidiary Guarantees to be provided to the Council by other partners in the consortium.

LEGAL IMPLICATIONS

12. The Council's involvement in the consortium and the provision of the guarantee is authorised pursuant to section 1 of the Localism Act 2011 "the power of general competence" and/or the "incidental" power under Section 111 of the Local Government Act 1972.
13. Using the Council's resources to provide assistance, including the giving of guarantees to an organisation in a way that gives an advantage over others may amount to state aid. The European Commission has published specific guidance in respect of the provision of guarantees and provided criteria under which guarantees may be given compliantly within the rules. If ARCC are successful in their bid, a state aid assessment will need to be carried out immediately before entering into the guarantee which will ensure that the provision of the guarantee is entered into on terms complying with guidance.

RISK ASSESSMENT

14. The risk of the Guarantee being invoked is considered to be very slight, given the historic performance of the Durham Tees Valley Probation Trust, combined with the additional skills and resources available through the new consortium and the close monitoring to be undertaken by both the ARCC Board and the MoJ, and the fact that both parties would have a strong interest in avoiding a recommissioning process.

COUNCIL PLAN THEMES

15. Economic Regeneration and Transport - securing employment is a major factor in reducing reoffending.
16. Safer Communities – the main rationale for supporting the local bid is to maintain and, if possible, improve upon the strong local track record in terms of reducing reoffending.
17. Children and Young People – success in reducing reoffending is likely to have a beneficial impact in terms of stabilising family life.
18. Healthier Communities and Adults – the health profile of habitual offenders is significantly worse than that of the population in general and closer involvement in offender management may lead to improved opportunities to engage with this section of the community from a health improvement perspective.
19. Environment and Housing - offenders on unpaid work schemes make a significant contribution to delivering basic environmental improvement schemes. Securing stable accommodation is a major factor in reducing reoffending.

Supporting Themes:-

20. Stronger Communities - reducing reoffending helps to improve community cohesion.
Older Adults }
Arts Leisure and Culture } no significant implications

EQUALITIES IMPACT ASSESSMENT

21. This report is not subject to an Equality Impact Assessment because it does not seek approval of a new policy, strategy or change in the delivery of a service.

CONSULTATION INCLUDING WARD/COUNCILLORS

22. None

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Education related? No

Background Papers Report to Cabinet 5 September 2013

Ward(s) and Ward Councillors: all Wards

Property No property implications.