



Meeting: Full Council – Mayoral decision

Date: 5 December 2013

Wards Affected: All

Report Title: PLUSS – Future Arrangements

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1. Purpose and Introduction

- 1.1 Prior to August 2005, Devon, Plymouth and Torbay Councils provided a range of employment and training programmes for people with disabilities and operated an equipment store. Known as the Industrial Services Group (ISG) this service was overseen by a Joint Social Services Committee but the management of the service was unwieldy. Following a review it was concluded that there was a need for change to ensure that the service could be delivered in a more cohesive and efficient manner.
- 1.2 The upshot of the review process was that in August 2005, Devon, Plymouth and Torbay Councils formed PLUSS, a local authority controlled company, limited by guarantee. PLUSS effectively took over what had hitherto been undertaken by ISG. It delivered services to the three member Councils through a series of service contracts as well as providing services to other external organisations, including the Department for Work and Pensions (DWP).
- 1.3 In June 2006, Somerset County Council transferred like services to PLUSS and became a member alongside the three existing member authorities. Each of the four Councils has representation on the Board.
- 1.4 PLUSS has since established itself as one of the leading organisation of its type in the country. Over the years the value of its contracts with the four local authorities has reduced such that it no longer carries out the bulk of its work for the four member Councils. It does, however, have a number of significant contracts with other public sector bodies.

2. Proposed Decision

That the Mayor be recommended:

- 2.1 That PLUSS is sold to Turning Point upon the terms as outlined in this report; and
- 2.2 That the Executive Head – Finance be delegated the authority to agree all necessary documentation to enable the sale of PLUSS to be completed.

3. Reason for Decision

- 3.1 PLUSS is now a well established company and operates as a national provider of services. Allied to the fact that the four member Councils are increasingly concentrating on core services the timing was right to review the Councils ownership of PLUSS and for PLUSS to focus on its future.
- 3.2 Initial soundings from within the four Councils elicited a favourable response to the idea of them relinquishing their ownership of PLUSS, although there was a concern to ensure that any transfer of ownership should be to new owners driven by a sound social purpose thereby enabling the continuation of services of value to local communities.
- 3.3 PLUSS' own business plan identified the need for significant growth for the company to be able to maintain its current market share, achieve growth and retain its financial viability. Given the limited opportunities for growth through traditional commissioning PLUSS' view was that it needed to "merge" with a partner that shared similar core values and vision.
- 3.4 As a result of these considerations the Board of PLUSS explored options with three organisations whom the PLUSS Board felt might best meet the long term needs and aspirations of PLUSS. Detailed discussions were held with each of the three organisations during the period September 2011 to October 2012 and updates on how these discussions were progressing were provided at Chief Executive level and through meetings with the four Councils via the owner representatives, being four senior finance officers who meet on a regular basis with the attendance of representatives of PLUSS (including some Board member representatives) as needed. Their role is to act as a conduit between PLUSS and its owners, deal with any issues that may arise for the owners in relation to PLUSS' activities and ensure by such communication that the interests of the Councils, as owners, are protected.
- 3.5 Following these discussions it emerged that one of the organisations, Turning Point, would be best suited as the preferred partner, primarily because their core values and vision aligned with those of PLUSS. Accordingly, as Turning Point, represented the best "fit" discussions continued with this organisation.

Supporting Information

4. Position

- 4.1 As a registered charity Turning Point operates as a social enterprise and is focused on improving lives and communities. In particular it provides a range of services for people with substance misuse issues, learning difficulties and mental health issues with employment for these people being its central focus. The prime interest in acquiring the ownership of PLUSS is the joint benefits this would bring to both organisations in terms of expanding services, particularly employment support services to a range of customers, thereby ensuring that they can deliver a strategic

ambition of being able to offer meaningful employment support to all of their customers.

4.2 Following a full options appraisal of Turning Point the PLUSS Board selected Turning Point as its preferred option subject to obtaining the consent of the four Councils as owners of the Company and to undertaking the necessary due diligence. In summary the sale of PLUSS to Turning Point provides these advantages:-

- it brings in additional specialist support services to disadvantaged groups in Devon and Somerset;
- it provides a mechanism for the Councils to remove themselves from the running of PLUSS; and
- it supports the broad move of local authorities towards commissioning core services.

In addition Turning Point becoming the owner of PLUSS will bolster PLUSS' resources in terms of bidding for national contracts and 'Prime' bidder status for Government procurement employment exercises with the potential for ensuring that these services continue to be delivered to local people by a local organisation familiar with their needs and local circumstances.

Commercial Negotiations

4.3 The principle of proceeding with negotiations with Turning Point was discussed with the relevant members of the executive at an early stage within each Council, and the consensus was that negotiations should go ahead to see if agreement could be reached with Turning Point on the terms of the sale.

4.4 The owner representatives referred to in paragraph 3.4 were asked to lead on the commercial negotiations of the sale of PLUSS from the four member Councils to Turning Point and these officers have been supported by their in-house lawyers. Further, to assist in the process a report was commissioned from an independent firm of accountants in order to gauge the value of PLUSS.

4.5 Following a series of discussions a position has been reached whereby the Councils will receive a payment for PLUSS. PLUSS is a member of the Devon Local Government Pension Scheme (LGPS) and once pension liabilities are factored in the value of the company is low.

4.6 The sale means that the Council will no longer have any liabilities towards the Devon LGPS and will cease to act as guarantors in respect of the PLUSS overdraft facility. Turning Point will also guarantee the loan that has been provided by each Council to PLUSS. This represents a better position than is currently the case as in effect the four Councils are guaranteeing the loan in the event of PLUSS defaulting. The properties occupied by PLUSS and currently leased or sub-let from the Councils will continue to be leased on market terms. Existing contracts with PLUSS will continue until such time as they need to be re-tendered. Aside from indemnities dealing with pension liabilities and warranties given by the Councils to PLUSS on inception the heads of terms provide that no warranties or indemnities will be given by the Councils in respect of the sale of PLUSS to Turning Point. The existing pension liability of the Councils would be dealt with if PLUSS ends its membership of the Devon LGPS. The

paragraphs below deal in more detail with the pension position. From the date of sale the Councils will no longer be represented on the Board of PLUSS

- 4.7 In summary the sale to Turning Point represents a good opportunity to secure the long term viability of PLUSS. From the Councils perspective the sale reduces liability and risk and it is generally considered that now represents the right time to dispose of PLUSS, especially as it is to an organisation which it can benefit from and hopefully prosper. It is hoped that the sale of the PLUSS will be concluded around July next year.

Pension Position

- 4.8 PLUSS is a member of the Devon LGPS but is presently consulting with the trade unions and its staff on closing the scheme. Subject to consultation PLUSS would then close the scheme next year ahead of its sale to Turning Point. It is estimated that there is a fund deficit on a full closure basis. PLUSS is not in a position to meet the entire full closure deficit and under the terms of the membership of the scheme the onus falls upon the four local authority owners to meet the shortfall because of the guarantee they provided in respect of the original staff group who transferred from the local authorities to PLUSS.
- 4.9 The liabilities and corresponding assets for the original staff will transfer back to the original employer on an ongoing funded basis. As there are different actuarial assumptions relating to local authorities and companies (even if a company is local authority owned) the fund assets to be transferred will be in excess of the liabilities, which will result in all four owners being in a surplus position. On closure PLUSS' remaining liabilities will be covered by a payment from PLUSS and from a proportion of the pension surplus from the four authorities remaining with PLUSS' section of the Devon LGPS fund. Thereafter, no further contributions will be required from any party in respect of the liabilities remaining with the PLUSS section of the Devon LGPS fund. Estimated figures regarding the options on closing the LGPS for PLUSS are subject to movements in market conditions. It has been made clear to all parties, and will be a condition of the sale, that the proposal to close the scheme may have to be postponed should a large adverse change in stock market conditions occur at any time prior to or on the closure date.

Financial, HR and Legal Considerations

- 4.10 In short the financial considerations are as follows. The pension surplus outlined in paragraph above will be apportioned across the four Councils and for the most part will be utilised to offset PLUSS' pension liabilities upon it ceasing to be a member of the Devon LGPS. The sale of PLUSS enables the Councils to relinquish certain financial liabilities that would otherwise have stayed with them had they remained the owners of PLUSS. Further, it enables the pension position to be dealt with at a time which is advantageous from the perspective of the four owners.
- 4.11 At the time of the original transfers the four owners entered into loan agreements with PLUSS. The loan repayments will continue to be paid by PLUSS and will not be affected by the sale of PLUSS.

- 4.12 The HR implications are that PLUSS will continue to operate and therefore there will be no staff transfer. PLUSS will be undertaking all necessary consultations with their staff and their respective unions regarding the closure of the LGPS scheme and the sale of PLUSS to Turning Point.
- 4.13 In terms of legal considerations the four Councils have been represented by their respective in-house lawyers and this team has been heavily involved in negotiating both heads of terms and the terms of the sale. Inevitably in a transaction of this type there is much legal work to be undertaken in order for the sale to proceed. Whilst good progress has been made to date final details still need to be negotiated and agreed with lawyers acting for Turning Point, hence the delegation to the Executive Head – Finance to agree the documentation.

5. Possibilities and Options

- 5.1 The Council could choose to not proceed with the sale of PLUSS to Turning Point and by doing so would mean the sale does not proceed as all 4 Councils must agree to its sale. Should the sale not proceed the owning Councils would need to address the future of PLUSS as due to the cuts all four councils are presently experiencing it is already the case that the income gained from local authorities by PLUSS has significantly reduced which will have an impact on the Company's future viability. The four councils could seek to develop the services provided by PLUSS, however officers do not believe that the necessary expertise is held within each Council to make this a realistic option.
- 5.2 The creation of PLUSS as a local authority controlled company in 2005 was the right move at that time. Since then with social, political and economic change the need to re-evaluate PLUSS and its future has led to the conclusion that the future for PLUSS is likely to be more secure if it moved away from being a local authority company and engaged with a new owner whose core values and vision aligned with those of PLUSS. Turning Point offers an ideal opportunity for PLUSS to achieve its aims and in turn affords the owners the opportunity to divest themselves of ownership of PLUSS, which removes long term risks and liabilities, but most importantly will help secure the long term future for PLUSS.

6. Equal Opportunities

An equality impact assessment has been prepared by Plymouth City Council on behalf of the four member Councils and is attached at Appendix 1.

7. Public Services (Social Value) Act 2012

Not applicable

8. Consultation

PLUSS has commenced and is continuing to carry out substantial consultation with its staff with regards to the closure of the pension scheme and the sale of the company to Turning Point. On the basis that the sale of the company does not impact significantly on parties outside of the company or each council as the company will continue to pursue its present objects no consultation has taken place beyond PLUSS' staff. Regard will be had to the outcome of PLUSS' consultation with its staff and each council is being kept up to date by PLUSS on how such consultation is going. Should the consultation mean a significant departure from the position explained in this report is necessary, an update will be provided to members and if necessary a further report will be prepared.

9. Risks

- 9.1 Should the Council not agree to the sale of PLUSS to Turning Point then the sale will not proceed as if any one of the owning authorities choose not to proceed then the sale cannot take place. As explained above should the sale not proceed the risk to the Council is primarily twofold:-
- 9.1.1 the pension continues for existing staff and the Council's guarantee of the pension liabilities remains extant. The Council would therefore remain liable for any shortfall in the pension. It is not possible to say what this shortfall could amount to however experience suggests from other wholly owned companies that the shortfall is likely to increase over the short to medium term.
- 9.1.2 should PLUSS be unable to proceed as a going concern and therefore have to be dissolved it would be likely that the Council's outstanding loan to PLUSS would have to be written off (the loan is for £189,000) and the pension liability would crystallise requiring payment from the Council to the Devon LGPS to make up the liability. What this payment would be would depend on the actuarial report commissioned by Devon LGPS on PLUSS being dissolved.
- 9.2 There is a risk that PLUSS' value could increase should it remain successful in delivering the services it delivers. What this increase in value might be is of course impossible to predict and would wholly depend on the performance of the company and the contracts it is successful in obtaining. Officers across all four authorities do not believe in the current financial climate that such success would likely be aided by the owning Councils continuing their involvement in the company as none of the four authorities have the resources to make the necessary investment and in the short to medium term at least it is expected that the contract values that PLUSS has with each authority will decrease therefore the company will become reliant on third party contracts for its continued success.

Appendices

Equality Impact Assessment