



<u>Committee and date</u>	<u>Item</u>
Cabinet 18 th May 2016 12.30pm	9 Exempt

Commissioning Out Adult Social Work Practice

Responsible Officer: Andy Begley, Interim Director of Adult Services

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1. Summary

- 1.1 Since February 2012 the delivery of a significant proportion Shropshire Council's Adult Social Care social work practice has been part of the Department of Health's Social Work Practice Pilot. This included the development of 'People2People' (a Community Interest Company - CIC) as its delivery vehicle for frontline social work practice (adults) with Council staff seconded to People2People (P2P) to deliver those services.
- 1.2 The statutory delegation powers given to Shropshire Council and 6 other local authorities taking part in the Department of Health SWP pilot (to delegate social work function to an external organisation) have been made available to all councils in England from 1st April 2015 as part of the Care Act.
- 1.3 The P2P localised model of delivering front line social work practice has proved extremely successful not only in developing a robust social work practice model but also as an intrinsic part of the transformation of overall adult social services. There is now a need to seek approval to establish a robust and longer term arrangement for the delivery of social work provision building upon the experience to date.
- 1.4 As part of the Council's 'Transitioning Out' process this paper sets the context for and the scope of the service model it is proposing is externalised, and the resources it will take to continue through to completion. This paper builds upon the previous presentation of the Business Case to Cabinet in October 2015 when it was agreed to progress with the process to transfer the service out of the Council. We have now reached the point where we are able to share the proposal and seek the necessary authority to take the next steps.
- 1.5 An Adult Services P2P Commissioning Group has operated for over a year within Adult Social Care chaired by Andy Begley, Interim Director of Adult Social Services and former Head of Operations which has shaped the Development of P2P throughout the pilot process.

- 1.6 This group has sought advice when necessary from legal, procurement, commissioning, finance, social care operations and HR.
- 1.7 The Commissioning Brief and an Options Appraisal as part of the Transitioning out of the Council process has been completed and signed off by Directors.
- 1.8 As part of the Transitioning Out process the Business Case was presented for consideration by Cabinet in October 2015.
- 1.9 P2P has indicated a continued willingness to further develop Social Work services on behalf of Shropshire Council and as a Community Interest Company would re-invest any profit into local communities and into the delivery of social care and wellbeing outcomes within Shropshire. This will enable Shropshire Council to deliver its responsibilities under the Care Act.
- 1.10 The Pilot, sponsored by the Cabinet office, has been a positive experience for the Council and the seconded employees who have worked and continue to work within P2P. Shropshire is recognised nationally as innovative and an exemplar of good practice. P2P has been contacted on many occasions by other local authorities to explain the process and benefits of this approach to social work.
- 1.11 The Council now wishes to engage further with, and develop services, with P2P. The Pilot arrangement involved the delivery of adult social care services by Council staff seconded to P2P and involved other Council support. In order to make a more permanent transition in a way that will enable the Council to have the necessary assurances whilst the new model of service delivery is established and staff are TUPE transferred, the recommendation is for the Council to become the sole shareholder of the P2P Company. This would also enable the Council to continue to work with the company and award a contract for the services in a manner compliant with the Public Contracts Regulations 2015, the details of which are set out later in this report.
- 1.12 The Council becoming the sole shareholder in the organisation could be seen as a step backwards from the original ethos of P2P as this proposal does not currently provide for any employee ownership. However such an approach does not prevent staff involvement in the development of P2P and it will allow further work to be undertaken through building on the innovative and steady progress made so far and provide P2P with ongoing financial support and assurance as the company prepares for any future competitive procurement process that the Council may decide to undertake at some point in the future, should an employee owned organisation become more attractive and beneficial to the Council and the development of the services. Having developed, during the pilot, a bespoke company specifically designed for the delivery of social work which has been proven and tested in Shropshire, by becoming the sole shareholder the Council has the ability to further develop the service and company through the direct award of a service contract and with the comfort and control of appropriate shareholder involvement.
- 1.13 P2P's current shareholders (who are 2 individuals) are supportive of this approach. The Company has revised its Articles of Association to allow the Council's ownership and have confirmed to our satisfaction that they will transfer

their shares to the Council to enable the Council to become the sole shareholder. This has been confirmed to the Council and will be confirmed by resolution at the P2P Board meeting on meeting on 20 May 2016

- 1.14 This paper sets out the two elements of the proposals for the transfer of Adult Social Care Social Work function and staff to a not for profit organisation – People2People (P2P). The services proposed for transfer include the statutory social work services that are community based for older adults, adults with disabilities and those with mental health needs and also the support services of Enable and Joint Training services. In the future there is the potential for other social work services across the wider health and social care economy to be included where appropriate.
- 1.15 Firstly, the paper sets out the proposal for the Council to become the sole shareholder in the organisation. Secondly, it sets out the proposal for the award of a services contract to People2People in a manner compliant with Regulation 12(i) of the Public Contracts Regulations 2015, should Cabinet decide the Council will become involved in the ownership of the company through adopting the recommendations set out in the part 1 recommendations. It is recommended that the final decision on the precise nature of that contract and the terms of the staff transfer and related matters should be determined following consideration by the interim Director of Adult Services in consultation with the Portfolio Holder for Adult Social Care of the finalised Business Case for the proposal. This will be completed following consultation with staff and service users and further financial analysis.

Recommendations – Part one

Cabinet are requested to:

- A) Agree to the Council becoming the sole shareholder in People2People Shropshire Community Interest Company (company number 07904106) on the terms set out in the company's Articles, as attached at Appendix A, by accepting the transfer of the shares in the company.
- B) Delegate authority to the Interim Director of Adult Services to take such steps as are necessary to implement the recommendation above, including authorising the execution of any documentation
- C) Delegate authority to the Interim Director of Adult Services in consultation with the Portfolio Holder for Adult Social Care to act as Shareholder on behalf of the Council which shall include exercising the Shareholder's powers in respect of the appointment and removal of company Directors;
- D) Appoint the Head of Legal & Democratic Services as signatory on behalf of the Shareholder

- E) Delegate authority to the Interim Director of Adult Services in consultation with the Portfolio Holder for Adult Social Care to agree the terms of a Shareholder Agreement between the Company and the Council to include a list of 'Reserved Decisions' to be made by the Council as shareholder to enable the appropriate levels of control over the company, including any limits on expenditure and the approval of contracts with third parties.

Recommendations – Part two

Where Recommendation A is approved, Cabinet are requested to:

- F) Delegate authority to the Interim Director of Adult Services in consultation with the Portfolio Holder for Adult Social Care to negotiate and award a contract for the provision of the social work services listed in paragraph 1.14 of this Report to People2People Shropshire Community Interest Company (P2P), subject to the formulation of an acceptable finalised Business Case. The exercise of such delegation to be conditional upon the prior implementation of Recommendation A above;
- G) Delegate authority to the Interim Director of Adult Services in consultation with the Portfolio Holder for Adult Social Care to transfer additional social work services across the wider health and social care economy to People2People Shropshire Community Interest Company;
- H) Delegate authority to the Interim Director of Services to transfer the employees engaged in the delivery of the transferring services to People2People Shropshire Community Interest Company.

REPORT

1. Risk Assessment and Opportunities Appraisal

There are a number of general risks associated with this proposal:

- 3.1 The transfer of the services to P2P following the pilot, sponsored by the Cabinet office, builds on the experience gained to date. In this ground breaking approach to social work delivery Shropshire has been seen very much as the innovative leader in developing P2P and it is a model currently being replicated and implemented by other local authority areas.
- 3.2 P2P has an established track record and is well placed to explore further development opportunities and with the assurance of being the sole shareholder, the Council will have the opportunity to work with the organisation in developing and shaping these.

- 3.3 P2P have discussed development and service growth ideas with the Council which will be further expanded upon in the development of a joint business plan for the organisation for the next 3 years. P2P will also be able to access grant and other external funding not available to the Council and to grow its business within the permitted allowances for a Council controlled company.
- 3.4 As part of the governance and due diligence arrangements, the Business Case completed to date will be reviewed and a final version prepared and further appraisal will be undertaken before the social work activity is transferred to People2People. This appraisal will include a further financial, legal, audit and risk assessment, consultation with staff and service users as well as future business planning with People2People.
- 3.5 The Articles of the company have been amended by P2P to enable the Council to be the sole shareholder in the organisation.
- 3.6 To ensure that the Council's statutory functions are met by P2P, the service contract will be the primary method under which the Council has control over the performance of the services and the Company's delivery of these. This will include a specification that will specify the outcomes to be achieved. As the Commissioner, as well as through being the owner/sole shareholder, the Council will also work with P2P to develop the business plan to ensure that the organisation is compliant with the contract. At the same time, of course, P2P will have the flexibility to develop its innovative approach to the delivery of social care in Shropshire and, we hope, elsewhere.

4 Equalities and Diversity Issues

- 4.1 The commissioning of Adult Social Work services will need to be the subject of an Equality and Social Inclusion Impact Assessment (ESIIA) which has commenced. See appendix B. These assessments will be concluded as part of the business appraisal and prior to the development of a detailed Service Contract and will include all the appropriate consultation. The ESIIA will be updated throughout the process.

1. Financial Implications

- 4.1 The annual value of the commissioned services from P2P will be approximately £6.7m made up of predominantly staffing costs. For the avoidance of doubt this sum excludes purchasing expenditure that is related to meeting the assessed eligible needs of individuals. The purchasing budget will continue to be held by the Council with the Interim Director of Adult Services retaining accountability and responsibility for this budget.
- 4.2 A final decision on the precise budget allocation (referred to in paragraph 5.1) for this proposal will be made by the Interim Director of Adult Services in consultation with the Portfolio Holder for Adult Social Care and the Council's section 151 Officer following completion of the final Business Case.

- 4.3 The protection of pension arrangements for TUPE transferring staff will be included in the service contract. There are likely to be financial implications for the Council in respect of the transferring employees, as P2P will be required to offer transferring employees continued membership of the Local Government Pension Scheme or membership of a broadly comparable pension scheme. An Actuary's report has been completed and this will inform the commercial arrangements to be included in the service contract. Any Pensions liabilities would however be recorded in P2P accounts which, depending on their value, may impact on the ability of the company to obtain grant funding or limit any opportunities for tendering for other work. However, the pension arrangement will be included in the contract which will be available to support P2P accounts.
- 4.4 Whilst there may not be any immediate staff cost savings on transfer of the service, it is expected that during the contract period, as a result of staff turnover, costs can be reduced through the appointment of new staff on P2P terms and conditions. However, it should be noted that this may be limited in the period up to 2020 as the National Living Wage is phased in. Additionally, the recruitment and retention of qualified social work staff will require a salary to be paid which is comparable to other Local Authorities as the main employer of social work professionals. This may also require a comparable benefits package and this is recognised as a challenge going forward for P2P
- 4.5 In respect of the Council becoming the sole shareholder there will be a cost of £2 to purchase the shares and a potential for liability of £2. As P2P is a company limited by shares, as shareholder, the Council's liability will be limited to the amount unpaid in respect of the value of each share held by the Council.
- 4.6 As a Community Interest Company any assets belonging to the company will be subject to an asset lock, which means that their assets can't be transferred at an undervalue (unless to another CIC or asset locked body) and the transfer must be for the benefit of the community. Consideration will need to be given to the ownership of assets to ensure continuity of service if there is a change of provider. Should P2P cease to exist any company assets could return to the Council as the public sector body responsible for the services.
- 4.7 P2P sought advice in regards to VAT when the pilot was set up. This advice will be revisited and the appropriate VAT arrangement will be considered as part of the final Business Case and appraisal before any service contract is finally awarded and future Business Plan that will be developed by P2P and the Council.

5 Consultation and engagement

- 5.1 Some consultation has occurred with staff as part of their initial secondment into People2People. Further formal consultation will be required and will be undertaken as part of the TUPE transfer process for staff. The outcome of this will be recorded in the ESIIA.

5.2 The current business model of People2People includes service user and carer groups and strong links with the Making it Real Board and their views will be sought and included in the ESIIA. Following Cabinet approval further consultation will be undertaken with service users on the proposal set out in this report and its outcome and the ESIIA will be taken into account by the Interim Director for Adult Social care when exercising his delegated decision making.

7. Staffing

7.1 P2P has been established as a pilot since 2012. During this time the majority of staff have been seconded to the organisation from the Council. P2P has also employed staff directly on its own different terms and conditions.

7.2 As the undertaking of provision is being transferred to the new provider TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended 2014) will apply to the approximately 230 Shropshire Council staff identified to transfer upon commencement of the service delivery by P2P. Consultation with staff and Unions will be required ahead of the transfer.

7.3 TUPE has impacts for the outgoing employer who is making the transfer (Shropshire Council) and the incoming employer (P2P) who is taking on the transfer. Time and resource for the consultation will be identified and built into the transfer plan giving consideration to both the commissioner and provider requirements. The outcomes of the consultation process will be included in the EIISA.

7.4 Mental health employees can be transferred to legally carry out duties under the Mental Health Act on behalf of the Council via an honorary contract.

7.5 As part of the transfer process the incoming employer will inherit the employment liabilities for the staff identified. Employer liability information will need to be provided by the Council as part of the full due diligence process in order to conclude the contract negotiations.

7.6 To summarise this means that staff currently employed on Council terms and conditions will be protected under the Transfer of Undertakings for the Protection of Employment (TUPE). This will mean a continuation of pension rights for the approximately 230 transferring staff and P2P will be required to become an admitted body to the Shropshire Council Local Government Pension Scheme (LGPS) or offer a broadly comparable pension scheme.

7.7 Throughout the pilot period, the delivery of social work in P2P has provided new opportunities for the staff that have not been easily possible to provide within the Council. These have included closer working with the voluntary sector, involvement in decision making and in shaping the future direction and development of the company, establishing and working with service user and care groups, developing peer support groups and contributing to new contract work awarded through a competitive procurement process all of which enhance and strengthen the community asset based approach of support provision.

- 7.8 Whilst it is clear that front line community social work staff, mental health social work staff, Enable staff and training and Professional Development Unit staff involved in the delivery of the contract to be awarded will transfer, further work will be required to explore the possible transfer in the future of social work staff employed in other community and health settings across the wider health and social care economy should further contracts for these service areas be awarded.
- 7.9 Additionally some support staff and senior management resource involved in the provision of the transferring services will also be required to transfer P2P. The detail of this is under consideration as there are some staffing arrangements and the Council-side structure to be resolved, however this work will be concluded and included in the final Business Case prior to the exercise of any delegated decision making in respect of the transfer of the services.
- 7.10 The final structure will need to allow adequate adult social care commissioning resource to remain within the Council, to provide effective contract monitoring of P2P, and under current arrangements includes the delivery of the safeguarding and DOLS requirements, finance and brokerage services and fairer charging assessments, all of which are independent to, but support, front line social work. The exact staffing structure and resource for transfer will be concluded as part of the final contract negotiations.

Additional Information

8. Business Plan

- 8.1 Following the Council becoming the sole shareholder in People2People a Business Plan will be prepared and agreed by both parties to inform the ongoing development of the company. This will be developed by People2People with the full engagement and involvement of the Interim Director of Adult Services.
- 8.2 This Business Plan will underpin any future commercial development of the activity, whilst ensuring that the appropriate resources and capability exist to meet the Council's requirements as defined in the Service Contract.
- 8.3 The Business Plan will set out the vision and demonstrate the potential of this venture ahead of the development of a full Service Contract award.

9. The Contract Award Process

- 9.1 The Council has chosen not to follow a formal procurement process at this stage but to award the contract further to an exemption under section 12(i) of the Public Contracts Regulations 2015 (which is a statutory enactment of a similar exemption referred to as the 'Teckal' exemption, previously established under case law), which allows for the direct award of a contract to a 'controlled body'.

The requirements in relation to this and the reasons why this approach has been taken are set out below.

- 9.2 Regulation 12(i) provides an exemption from the application of requirements to follow an EU compliant procurement process where the contracting authority awarding the contract has control and ownership of a separate legal entity to which it intends to award the contract. To benefit from the exemption, the 'controlled body' has to satisfy a three-part test:
- i. Control: the contracting authority has to exercise sufficient control over the controlled body similar to that which it exercises over its own departments; and
 - ii. Activity: the controlled body carries out more than 80% of its activity for the contracting authority; and
 - iii. Ownership: there is no private ownership of the controlled body.
- 9.3 The Council can obtain the relevant control of P2P to utilise the procurement exemption though the company amending its Articles of Association to allow for the Council to become a shareholder in the company and through the transfer of the existing shares to the Council, so that the Council is the sole shareholder and there is therefore no private participation in the company. The delivery of social work practice outside a local authority is relatively new and as set out earlier in this report has only been possible initially through participation in the cabinet office pilot and since April 2015 through the new legislation of the Care Act. For this reason, it is still appropriate for the Council to retain control of the organisation at this point of the development of the new model whilst at the same time recognising the progress made by P2P and the influence that Shropshire has had on the Care Act legislation through the cabinet office pilot.
- 9.4 To utilise the procurement exemption and make a direct award of a contract, there can be no private ownership of the controlled body and this therefore precludes employee ownership of P2P, at least for the period of the term of the contract that the Council directly awards. Any private ownership of the controlled body during the term of the contract awarded under the procurement exemption would likely trigger the need for the contract to be re-procured through a competitive procurement process.
- 9.5 It is therefore proposed that the contract duration is for a period that enables the further development of the model through a direct contract award, but allows for employee ownership in the future when the Council is comfortable in letting such a contract on the open market through a competitive process. To facilitate this, it is proposed that the contract award be for an initial period of 5 years, through a 3-year award with the option to award for an additional 2 years. A contract award of this period will enable P2P to establish and develop the company and business model whilst at the same time providing the Council with the corporate assurance and control of a new service delivery model for its statutory services and allowing the Council control over the development of the company as sole owner. During this period P2P will be able to prepare for a competitive procurement process at the end of the 3 or 5-year period should that be the commissioning decision of the Council at that time.
- 9.6 Further to the amended Articles of the company, the Shareholders have the power to approve the admission of any further shareholders, therefore should

the Council become the sole shareholder it will have control over when there is any change in the company ownership structure.

- 9.7 A disadvantage of the direct award under the procurement exemption is that staff cannot be shareholders or have any ownership of the Company. However, staff and service user involvement through support and advisory groups and through representation on the Board of Directors can continue to which will ensure their involvement in the development and shaping of the organisation and its direction.
- 9.9 As sole shareholder, under the Articles the Council would have the power to override any Board decision should it be necessary. However, part of the success of P2P to date has been the involvement of staff, service users and carers in shaping the organisation whilst maintaining a close relationship with the Council. Whilst maintaining the Council's ability for control over the company and assurance for service delivery, in order to pursue the model explored under the pilot period it is not envisaged that the proposed contractual arrangements and shareholding of the Council will impact adversely on this approach.
- 9.10 In reaching the decision to utilise the procurement exemption under Regulation 12(i) of the Public Contracts Regulations 2015, other procurement options were considered but none of the alternatives offered the ability to continue the work commenced with P2P through a direct award of a contract or otherwise limited the duration of the contract which was felt to be insufficient to enable the existing model to be fully developed before a competitive re-procurement would be required.
- 9.11 The award of the social work Contract will be actioned by progressing to the 'Contract & Specification Development' and the 'Due Diligence' stages of the 'Transitioning Services Out of the Council' process.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Cabinet 28 October 2015 – Commissioning out of Social Work practice

Cabinet Member (Portfolio Holder)
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Cllr Lee Chapman

Local Member

All – this is a countywide matter

Appendices

Appendix A (i) (ii) Articles of the Association Appendix B - EIIISA
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