

Transitioning Services Out of the Council – Our Approach


Guidance

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Draft for Review

GUIDANCE





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3.1	20.06.2016	Draft update following closure of ip&e	Neil Evans	N/A
3.2	21.07.2016	Updated draft review	Neil Evans	






Our Approach

for Transitioning Services Out Of Shropshire Council

This guidance is intended for Shropshire Council Service Managers, Commissioners and other staff involved in making decisions about and leading on the transfer of services out of the Council. Use of the words 'you' or 'yours' throughout this document indicate that the guidance is aimed at Shropshire Council officers.

This guidance provides a number of factsheets that can be used to help guide you through the process of how to transfer your service outside of the Council. The factsheets are broken down to cover how you can assess your options, how to use the guidance and checklists, understanding the process, managing the process, and background legal reading. You should also be aware of the content of a number of other documents outlined in the guidance to provide you with additional knowledge throughout the process.

This guidance has built on previous support documentation and has been developed in collaboration with operational teams and the key support areas of **Commissioning Support, Finance, Information Governance, Risk Management, ICT, Audit, Legal, Procurement, Employment Services** and **Human Resources**. You will need to work closely with these areas throughout the process. The guidance will be further developed as services use and test the approach and documentation. Scheduled review points will enable the continuous development of this document.





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Factsheet 1:

The Guidance

This guidance has been created to help support Directors, Commissioners and Service Managers to follow Shropshire Council's adopted process for transitioning services out of the Council and to ensure consistency of approach. The very nature of the process will challenge you to think about your service differently and whether it is possible for your service to operate more effectively and sustainably through a different delivery vehicle. You should also use this process as an opportunity to understand the value that your service creates and whether a commercial approach would benefit your customers and the Council and secure the long-term sustainability of your service. The process will be different depending on the choice of delivery model and vehicle, and will also vary in length of time and complexity depending on the service currently delivered.

As a service manager or commissioner, it is likely that you will be asked to manage the process. The guidance will give clarity on what process to follow and what work needs to be undertaken to ensure that the appropriate due-diligence has been undertaken when commissioning out a service area. You should seek specialist support at the outset, including business advice.

- **You should familiarise yourself with all of the guidance, templates and checklists to help you through the process.**
- **Factsheets and checklists have been created for each key stage. Each factsheet will include a full description of the stage and links to any further information**
- **Use the diagram outlining the process (Factsheet 2: The Process') which provides visual clarity on the recommended best practice for transitioning services out of the Council.**

- **You will need to consider the internal and external resources you will require throughout the process and also additionally speak to the support services identified in the guidance.**

Using the Transition Checklist

The transition checklist can be used to help Directors, Commissioners, Project Managers and Service Managers through the transition process. It is a point of reference to help you consider the information, evidence and challenges you will need to consider before undertaking the transitioning process. This list is not exhaustive and other considerations may need to be taken into account throughout the process. This is in particular the case when working with advice from **Human Resources, Employment Services, Finance, Legal** and **Information Governance**. These areas have their own processes & checklists to be followed. The checklist is aimed to be a useful summary document to demonstrate that progress has been considered against these factors

If you have further considerations that should be added to the checklist get in touch with Neil Evans at Neil.Evans@shropshire.gov.uk

Using the Templates

Both the Commissioning Brief and Business Case Templates will help you build the appropriate level of content and detail that will be needed at different stages of the process. The templates include guidance on what to include within each section. This should be developed closely with the Director Sponsor and Portfolio Holder to ensure that information provided gives Cabinet the appropriate amount of information to make a decision.

The key documents produced throughout the process will be:-

- **Commissioning Brief**
- **Decommissioning Brief**
- **Business Case**
- **Business Plan**



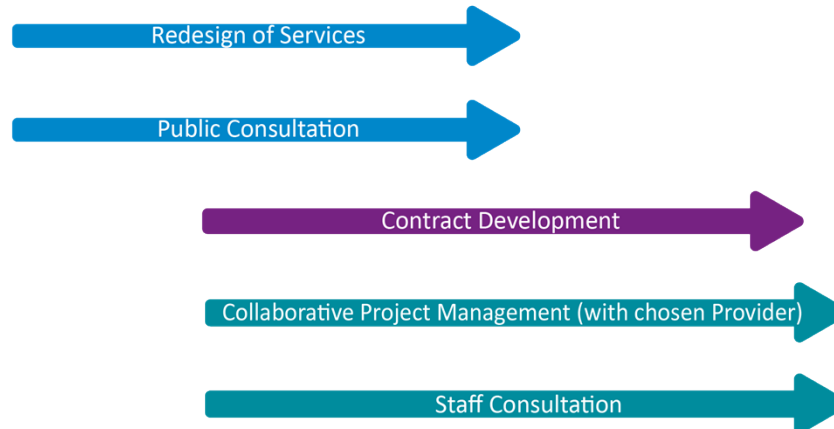
Factsheet 2: The Process

Shropshire Council – Service Transition Process



Key

- Cabinet Signoff
- Director Signoff
- Key Document
- Help – Checklist
- Help – Guidance



The Process (Summary)

- A Commissioning Brief will be developed that sets out the outcomes required from your service, the scope of the project, an outline options appraisal and a recommendation for next steps. The Commissioning Brief will be considered by Shropshire Council Directors.
- The process will require early clarification of who will be taking on the role of Commissioner and (where known) Provider
- The Business Case will need Cabinet approval via a Cabinet Report
- The Director Sponsor of the process may be responsible for making decisions outside of the two formal Cabinet decisions if they have delegated authority from Cabinet. Where Delegated Authority is granted throughout the process, it will be necessary to ensure that key decisions are documented appropriately. If the viability or scope of the process changes at any stage, then the Director Sponsor will again be responsible for deciding whether there is a need to review other options or stop the process.
- Appropriate due diligence will be undertaken throughout by both Shropshire Council and the potential delivery partner.
- Once due diligence has been completed, either as part of a procurement process or in preparation for a transfer which does not require a competitive process, Cabinet should give final approval for the transition to the new provider / delivery vehicle to begin.

Factsheet 3:

Service Manager's Role

As a service manager, you will be expected to take a lead role in driving this process forward. The knowledge that you have of your service area will make you the appropriate person to consider the work that needs to be undertaken to deliver the outcomes expected from each stage.

You will need to

- Ensure a Commissioner for your service area has been identified
- Ensure a project manager has been appointed – this may be you or the Commissioner or another suitable person
- Communicate progress to Director sponsor
- Identify support needed and membership of a project team
- Notify stakeholders at appropriate intervals
- Ensure decisions are documented appropriately
- Be clear on decision making processes and key documentation required

Factsheet 4:

Before Starting


The following factsheet outlines what you, as the Service Manager, may want to consider before starting the Commissioning Brief. Use the Commissioning Brief checklist to understand further some of the questions that you may need to answer throughout the process. The process of looking at externalisation of your service may have been started by yourself, your Director or your Service Commissioner.

As a starting point, you should use this factsheet to help you begin writing down what you know about your service at this moment in time and where the gaps in your knowledge are.

Understanding your market and your customer

It is important that you understand clearly who your customers are and who your competitors are before you start writing the Commissioning Brief. It will be important for you to undertake research and demonstrate that you have considered what your external competitors are doing and what the external market looks like. Whilst most of the detailed market analysis will be conducted during the Business Case stage it is important to have a view at this point in time as this will shape your next steps.

A market assessment will be conducted during the Business Case stage and will be developed further during the Business Plan. If your service is looking to trade externally, then you should have a clear idea of who your leading competitors are, what other companies in the market are doing and how this market could generate sources of income. Start thinking about this and begin researching this before you start the Commissioning Brief. This may be developed further as the externalisation process gets under way. If you have not done market research before then you may want to seek support to guide you through the process.




Before you start the Commissioning Brief you will want to consider what evidence you have available that can help you build a thorough market assessment in your Business Case and also help define your service's vision and customer base in the Commissioning Brief. You should find out what customer data you have available and whether you would be able to use customer insight evidence to help you build a profile of your customer. This may also require a thorough needs assessment.

For more information on what tools you may want to consider using when conducting your research and evidencing your results see Factsheet 6 'Building your Business Case'. As you develop your Business Plan, it is likely that there will be a need to further develop your marketing strategy. See Factsheet 8, 'Building your Business Plan' for more information.

As you develop your Business Plan, it is likely that there may be a need to further develop your 'Marketing Mix' (Product, Promotion, Place, Pricing and People). Your chosen delivery vehicle may have an influence on opportunities for further market development.

Understanding the data and intelligence you will need during the process

Building on your market analysis, you should also ask yourself what data is required to inform development of the Commissioning Brief. You should work closely with your Commissioner at this point to access available support from the **Commissioning Support Unit** or **Public Health** (if appropriate to service area) to help develop any commissioning intentions supported by any evidence available. There may also be a need to conduct a thorough needs assessment depending on the service being transitioned.



Understanding your processes, assets and systems

It will be important to identify your business processes, information assets and physical assets during the process. It is essential at the initiation of the project to involve the **Information Governance Team, Audit Services, ICT Services** and the **Commissioning Support Unit** to help you to identify these. Audit Services can support you with ensuring that appropriate controls are put in place when considering proposed treatment of these assets.

Audit Services should be kept informed throughout the Transition Process and in advance of the submission of any documentation to Cabinet. Additionally, **Audit Services** would be able to help as a critical friend in the preparation of your Business Case or any Business Plan. Where changes to ICT requirements are envisaged the **ICT Governance Board** must be kept informed throughout the process.


Assessing your options

There will be many factors that may influence your decision to give consideration as to whether your service could be delivered better outside of the Council. These may include a change in legislation or opportunities to deliver better outcomes, partner with another organisation which shares your vision, develop commercial opportunities or gain access to other funding which may not be available to the Council. You should understand all the influencing factors before writing the Commissioning Brief.

This commitment to explore the options available should be shared at both a strategic and political level. You will want to understand fully what position your service is currently in and where you want to be in the future. You may be considering different models or options such as those listed below; each option will have different implications and therefore legal and procurement advice should be sought immediately:

- “Arm’s Length” organisations



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- Social Enterprise
 - Staff Spin-Out
 - Joint Venture
 - Outsourcing to External Provider
 - Decommissioning


Seek procurement advice if the transfer is to one of these delivery vehicles as a formal procurement exercise may need to be undertaken. If the chosen structure and delivery vehicle is one which complies with the Teckal exemption (see factsheet 14 'Background Reading and Further Information') then it may be possible to complete the transfer without undertaking a full procurement exercise. If you are considering the decommissioning of a service, please read the decommissioning guidance notes and consider using decommissioning templates.


Seek business and legal advice around which legal structure(s) may suit your service's needs and which will maximise the likelihood that you will achieve the critical success factors for your customers and your service. Please see 'Legal Structures for Social Enterprise' documents for more details of your options, but it is also highly recommended legal

advice is considered before making a decision.

Beginning an options appraisal

An options appraisal will require you to consider the advantages and disadvantages of potential structures and delivery vehicles. You will want to consider:-

- Implications For Customers
 - Implications For Stakeholders
 - Implications For Staff
- 


- 
- Funding Opportunities
 - Commercial Opportunities
 - Future Business Development Options
 - Impact On Shropshire Council
 - Risks
 - Legal
 - Governance

The Options Appraisal will need to be developed and continually reviewed throughout the entire process as you learn more about your service and your market and is to be seen as a working document which will begin to crystallise at the time you are developing the Business Case.

Understanding how the service will be commissioned

You should be clear on who your Commissioner is at the very beginning of the process to ensure that any proposed outcomes developed are in line with the Council's future commissioning intentions. You should speak directly to your Director to understand further the commissioning intentions and to identify and agree who your Commissioner will be. Additionally, you should also consider contract management arrangements from the outset in order to make sure that any measures of success within any contract specification are relevant and fit with the Council's vision, priorities and outcomes. It is important the Commissioner is identified early and has the appropriate knowledge of the service area from a commissioning point of view. Further detail on how contract measures will be created can be found in the 'Building your Contract' checklist.

At this point you should also give consideration as to whether your service would benefit from a fresh look at how it is designed. If there is some likely benefit then often it is better to re-design prior to transferring the service out of the Council. Support is available from the Business Design Team to support this.



Understanding the support available throughout the process

A range of support exists to help guide you through the process. There are checklists available to help you build the required documentation at the appropriate stages. This guidance document can also be used to familiarise yourself with the key decision-making gateways and what you will need to consider throughout the process. There are a number of factsheets available that will give you more detail on the stages and documents. Use and read all of the documentation provided.

Contact details for available support can be found below. These named individuals have experience of supporting previous transitions.

Key support areas

Lindsey Blackall - **Legal Services & Contract Management**

Cheryl Sedgley - **Finance**

Sam Williams - **Human Resources**

Matt Powell – **ICT Governance Board / ICT**

Implementation

Jane Cooper - **Risk Management**

Angela Beechey - **Insurance**

Roy Morris - **Information Governance**

Nigel Denton - **Procurement**

Tom Dodds – **Commissioning Support**

Neil Evans – **Commissioning Support**

?? – **Business Enterprise & Commercial Services**

Ceri Pilawski - **Audit Services**

Julie Arrowsmith - **Employment Services**

John Skelton – **Workforce Development**

Steve Law – **Strategic Assets**

Neil Felton – **Business Design Team**

Comment [AB1]: Name needs to be inserted

Factsheet 5:

Building the Commissioning Brief

The Commissioning Brief sets out the intentions, rationale, scope and benefits of a potential transfer of your service out of the Council. The Commissioning Brief will require a formal decision at Directors' meeting. You will have already undertaken an Options Appraisal to define the most suitable option for your service. The decommissioning of a service area may also be considered at this point. If this is the case, the decommissioning guidance should be considered and decommissioning brief used.

The Commissioner should be identified and named at the beginning of the process, as should the Project Lead. The Commissioning Brief will be signed off by the Directors' Team. The purpose of the Commissioning Brief is to ensure that Directors have a strategic view of Commissioning intentions to externalise services and for them to give approval to proceed or to request a revision to plans based on the direction of the organisation as a whole.

The Commissioning Brief will:-

- Set out the current position, including national policy, current objectives and outcomes
- Describe the internal and external factors affecting the future
- Describe the benefits/opportunities of moving out of the council
- Provide a summary of the options appraisal and why a particular option has been selected
- Set out the proposal – including the scope (what's included and what isn't)
- Consider the potential impact on service users, customers, stakeholders and other services of transferring out and consider the risks related to these

- Describe and begin developing plans for the key systems and processes affected by this transfer which will include ICT requirements, data and information flows. These plans will be refined through the commissioning and transition process
- Set out the core support functions that will be required to facilitate the commissioning and transitioning out of the service(s). These will include ICT, HR, Legal, Information Governance, Commissioning Support
- Consider the financial impacts
- Consider the potential for taking a more commercial approach such as income generation through trading activity or other sources
- **Consider the liability and insurance implications**
- Provide a clear action plan and timeline

The Decision Making Process

1. The lead commissioning officer will be responsible for clarifying the decision making process and timetable, ensuring that the project is factored into wider organisational priorities, and taking steps to timetable formal decision-making at Cabinet
2. Lead commissioning officer to ensure the Commissioning Brief provides sufficient rigour, detail and information to enable Directors to make a decision.
3. Director Sponsor to sponsor the Commissioning Brief and communicate the scope of the brief to Directors at Director meeting
4. Directors will make a decision whether to approve the Commissioning Brief, ask for further information or reject the Commissioning Brief
5. Directors should discuss the proposed next steps within the Commissioning Brief and ensure any changes to these next steps are documented and agreed.



Links

[Building Your Commissioning Brief Checklist](#)

[Commissioning Brief Template](#)

[Decommissioning Brief Template](#)

[Options Matrix Template](#)




Factsheet 6:

Building the Business Case

The primary aim of the Business Case is to provide a detailed statement of the service's current position and to present a fully considered case as to why the proposed option will deliver better outcomes for the customer and the Council. The Business Case will include a breakdown of the current financial position along with a 3 year projection for future income and expenditure based on your externalised model. The recommendations in the Business Case will require a decision by Shropshire Council's Cabinet.

A lead officer, normally the Service Manager or Commissioner, will be responsible for driving forward the Business Case. Where available you should also identify project support. As always you will need expertise and ad-hoc support from the following areas:

- HR,
- Commissioning Support
- Finance
- ICT
- Legal
- Procurement
- Audit
- Risk Management and Insurance



The Business Case should build the case for your proposal from a financial, strategic and operational point of view, considering risks and opportunities and explaining clearly how and why your proposal will deliver better outcomes for your customers and the Council.

This is an opportunity for the service to critically assess the feasibility of operating through a different delivery model. Through understanding your service's market environment you should present a clear picture of your service's vision, customers and competitors. A communications plan will ensure that all key stakeholders are being kept informed throughout the process.


Before submitting any documentation to Cabinet, Audit Services will be able to provide support to act as a 'critical friend' to test the rigour of the Business Case.


The key sections of the Business Case will include:-

- service description and vision
- a full options appraisal (building on the Commissioning Brief Options Appraisal)
- a financial statement
- a market assessment
- commercial opportunities
- staff assessment
- summary of assets including ICT systems and infrastructure
- equality and social inclusion impact assessment
- a risk assessment including ICT systems and infrastructure
- timescales & timetable of activity

Conducting market research

As part of your Business Case you will want to be clear about who your customer is and what market you are operating in. In order to build a clear picture of this, you may, for example, want to consider conducting an





Industry Analysis which is a process by which you would assess the current business environment to help you understand various economic pieces of the marketplace and how these various pieces may be used to gain a competitive advantage.

The analysis may include using marketing tools such as a PESTLE Analysis (Political, Economic, Social, Technological, Legal and Environmental) or a SWOT Analysis (Strengths, Weaknesses, Opportunities and Threats) based on desktop research and other forms of research. You will also want to consider what customer data you have and whether you can create a clear picture of your customer based on customer insights. Importantly, you should be clear on what your market segment is.


Depending on the type of service transitioning, you may want to evidence this analysis through data and intelligence available through the Commissioning Support Unit in Shropshire Council. You should enhance your market assessment with countywide intelligence, local intelligence and commissioning intelligence. Additionally, there may also be a need to develop further commissioning evidence with the provider market or through soft-market testing.

It is important at all times to relate your intelligence and form your proposals in line with the Council's vision, priorities and outcomes. You should be familiar with these at all times. It is also recommended that you familiarise yourself with tools, guidance and reading provided by the Commissioning Support Unit in Shropshire Council.

Decision Making Process

1. Lead officer to ensure the Business Case covers all aspects detailed in this guidance and that any information provided is accurate & allows for the decision-making process to be followed.
2. Lead officer will be responsible for preparing the Business Case for consideration by Directors and ensuring that portfolio leads are updated regularly throughout the process in preparation for consideration by Cabinet.



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3. Lead officer to ensure that the Business Case and Cabinet Report is prepared and submitted for approval by Shropshire Council's cabinet
 4. Shropshire Council's Cabinet will then have an opportunity to accept the Business Case, ask for further information or reject the Business Case and recommendations within the Cabinet Report
 5. Lead officer will then be responsible for ensuring recommendations and next steps in the process are followed

Links

[Transition Checklist](#)

[Business Case Template](#)

[Opportunity Risk Management Strategy](#)



Factsheet 7:

Doing the Due Diligence

Due diligence is the process by which a comprehensive and detailed investigation of the financial and legal implications of the transfer of your service to a new model is undertaken. By undertaking thorough due diligence the risks associated with this process can be minimised. The principles of due-diligence will run throughout the whole process.


There are two strands to the due diligence process:

1. For the Council to understand in detail the financial and legal (including contractual) implications to the Council of a service transferring out, and
2. For the new delivery vehicle to understand and assure itself and the Council of its financial viability and ability to be able to operate externally whilst delivering better outcomes through a contractual arrangement

Depending on the method of externalisation the two strands above will either run concurrently (eg 'Teecal' transfers, Staff Mutuals, Arm's Length Organisations) or will run at different times (eg procurement of an external provider or Joint Venture partner).

Due diligence provides an opportunity to re-assess options or to stop the process altogether if any of the activities undertaken in due diligence highlight issues that make further development of a Business Plan unviable. The Director Sponsor will be responsible for any final decisions on whether the due diligence undertaken makes further development of the Business Plan unviable and what the appropriate decision making process should be. The evidence gathered during due diligence will help inform the Business Planning and viability of the model.

A significant aspect of due diligence will be to undertake a rigorous examination of the financial case for transfer. In particular, there will need to be a detailed breakdown of budgets pre- and post-transfer. For example, if only




part of a service is being transferred, then apportionment of overheads and staff costs will need to be undertaken in order to establish an accurate and robust financial forecast.


Activities that will happen in the due diligence stage will include understanding in more detail about the following:-

- Physical and information assets
- Information and data requirements of the Council
- Data protection and Information Governance requirements
- Future I.C.T requirements and investment needs
- Treatment of assets
- Financial analysis of income, support costs, overheads and future forecasting
- Accommodation requirements
- Business processes and opportunities for redesign
- Future income collection and finance processes
- Employment models, requirements and pensions needs
- Legal and contractual issues related to the transfer of business
- Suitability of the proposed business model
- Governance needs and requirements
- Insurance requirements and implications

The outcome of the due diligence process will inform the content of the contract for the externalised service.

The director sponsor/lead officer will be responsible for keeping other Directors informed of the process at Director's meetings.





Where and when appropriate information derived through the Council's due diligence should be shared with the potential provider, either as detailed information contained within an Invitation to Tender or through a Project Group set up to manage a transfer to a Staff Mutual, 'Teckal' company or Arm's Length Organisation.

Links

Finance Checklist

Business Case

[Data Migration Guidance](#)

Asset Transfer Guidance

Asset Register



Factsheet 8:

Building the Business Plan

Depending on the route for transferring the service out of the Council the development of a detailed Business Plan will be undertaken in one of two ways:


1. For transfers out which require a procurement exercise a detailed Business Plan will need to be prepared by each bidding organisation. The Business Plan will be evaluated as part of the procurement process.
2. For transfers to any new delivery models that include a Teckal company, Staff Mutual or Arm's Length Organisation the detailed Business Plan will be developed by the proposed delivery vehicle, and evaluated by the Commissioner and Project Group

In both cases final agreement will be made by Cabinet on recommendations following either of the two scenarios above.

Developing and finalising the Business Plan should be a process of confirming and tightening the proposals and plans that will have started to develop from the outset of the Commissioning and Transition process.

The Business Plan will:-

- describe how the service will be delivered over a given period of time
- define the service area's objectives outcomes and how these fit with those of the new organisation
- describe how the service specification will be delivered
- define the service's strategy

- 
- describes product / service development
 - sales and marketing forecasts

Much of the content needed for the Business Plan will have been conducted through the Business Case and Due Diligence stage. The content of the Business Plan may be commercially sensitive and therefore sharing of any content of the Business Plan will need to be considered carefully.

If the proposal is to transfer to a 'Teckal' company, Staff Mutual or Arm's Length Organisation, it is advised that a joint project group should be set up with the proposed provider to undertake work to develop the Business Plan and the business operating model.


During this stage you should ensure that those key support areas that will need to be involved in the 'Go-Live' stage of transitioning the service out of the Council (**Employment Services, ICT, Legal**) are regularly updated with any proposed dates for transition and changes to timescales to ensure that they can make appropriate support arrangements.

Whilst the scope of the contract should be developed throughout the process, Cabinet should be provided with a summary of the scope of the contract when they consider the recommendations to approve the Business Plan and, where applicable, procurement outcome.


Please read Factsheet 11 'Managing the Process' to see the recommended approach for managing the programme of work.



Decision Making Process (if 'Teckal', Staff Mutual or Arm's Length Organisation)



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1. Lead responsible officer/commissioner and provider lead (if developed together) must ensure the Business Plan is compliant with this guidance and the information provided is accurate & allows for robust decision-making. If the viability or scope of the process changes during this stage, then the Director Sponsor will be responsible for deciding whether there is a need to review other options or to stop the process.
 2. The lead responsible officer/commissioner will be responsible for ensuring that a summary of the scope of the contract is provided for Cabinet when they consider the recommendations to approve the Business Plan.
 3. The Provider Lead ensures that the Business Plan is approved through the decision-making processes applicable to the proposed delivery vehicle.
 4. Shropshire Council's Cabinet will then have an opportunity to approve the Business Plan, ask for further information or reject the Business Plan and recommendations within the Cabinet Report
 5. This is the final formal decision-making gateway.

Decision Making Process (if the transfer out is subject to a procurement exercise)

1. Lead responsible officer/commissioner together with the tender evaluation group will need to ensure that procurement requirements have been met, a comprehensive, clear and transparent evaluation process has been undertaken and the submitted Business Plan is thorough, comprehensive and clearly demonstrates viability. If the viability is in question, then the lead officer / commissioner in conjunction with the Director Sponsor will be responsible for deciding whether there is a need to review other options or to stop the process.
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2. The lead responsible officer/commissioner will be responsible for ensuring that a summary of the scope of contract is available for Cabinet when they consider the recommendations to approve the procurement outcome.
 3. Shropshire Council's Cabinet will consider the recommendations within the Cabinet Report to either accept the procurement outcome, ask for further information or reject the procurement outcome.
 4. This is the final formal decision making gateway.
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Factsheet 9:

Going Live

The practicalities of transfer will need to be considered and implemented once the procurement outcome or Business Plan and scope of the contract have been agreed. A joint project team should be set up. The project team will ensure that:

- All legal and contractual issues **including insurance obligations** are agreed and finalised. All agreements must be signed prior to the 'go-live' date
- All financial issues have been finalised including allocation of costs, payment schedules and payment mechanisms
- Staff are kept fully informed throughout the 'go-live' phase
- On the date of transfer, staff will have the support and infrastructure available to carry out their work
- Payroll and pensions systems have been set up
- Data migration has taken place and appropriate data safeguards are in place
- Internal and external communications have been undertaken with all stakeholders
- ICT is in place and working on the 'go-live' date

Use the 'Going Live' checklist to help you at this point.

Links

[Going Live Checklist](#)
[Developing the Contract Checklist](#)



Factsheet 10:

Developing the Contract

When a service is transferred out of the Council, arrangements will need to be confirmed in a legal agreement covering all aspects of the transfer and, where the new provider is delivering a service on behalf of the Council, a service contract, incorporating a service specification, will need to be put in place. The contract development and legal agreements should be primarily led by the Commissioner with appropriate support from **Legal Services** and contract specialists. Where external legal advice is required any costs and time involved should be factored into any resource planning.

The contract specification will include key areas such as:-

- outcome specifications
- service levels
- service quality measures
- service improvement
- pricing and payment mechanisms
- data & information access and reporting requirements
- handling of complaints & customer feedback and reporting requirements
- assets and intellectual property rights
- contract and dispute resolution
- exit management.

Use the Contract Checklist throughout along with your contract specialist and legal advisors to develop the contract.



Links

Developing the Contract Checklist



Factsheet 11:

Managing the Process

Programme and Project Management Approach

The size and type of service that you are looking to transition is likely to determine the type of approach you take to managing the development of the Business Case, Business Plan and also the mechanics of the transfer. If you are responsible for a broad service area with a number of different elements being transferred you may want to consider a programme management approach to ensure that different work streams are coordinated and provide appropriate levels of governance and assurance.

You should identify project management support early in the process to help manage the project. The project manager will be responsible for identifying and securing the appropriate support required for a successful transition. All decision making should be clearly documented.

Supporting documents developed should include:-

- **Project Brief**
- **Project Plan**
- **Opportunity Risk Register**

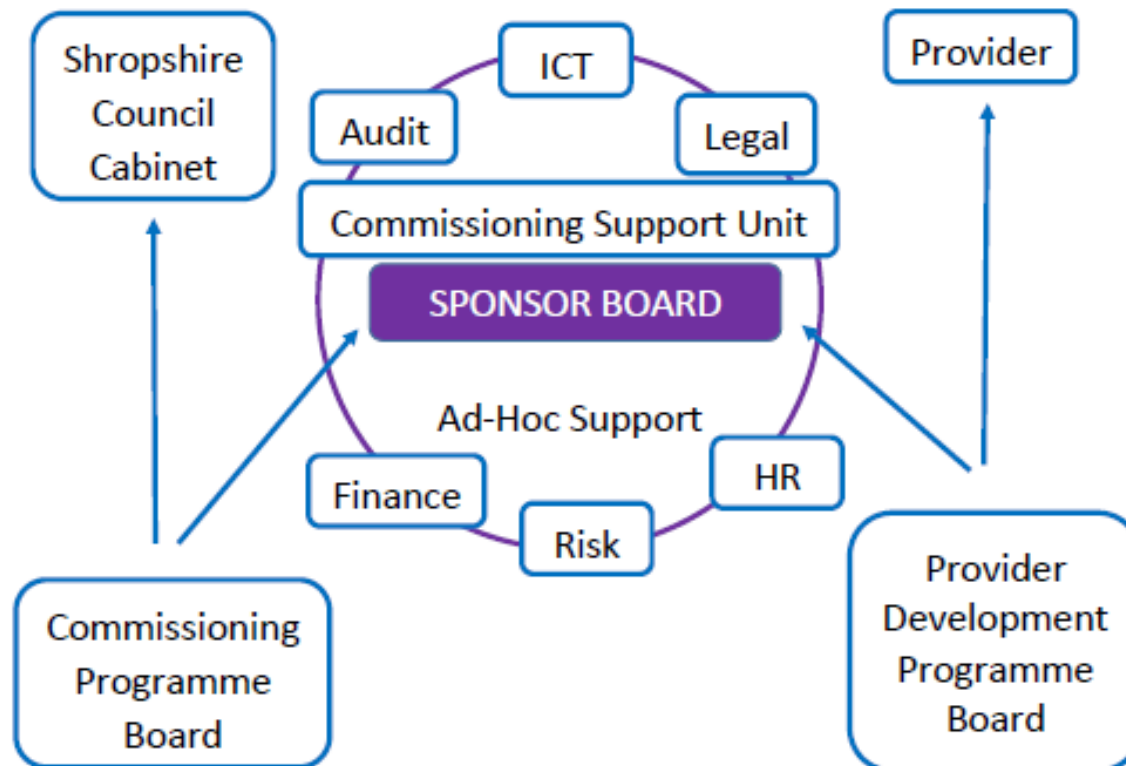
It will be necessary to split the programme between a commissioner workstream and a provider workstream. This will help to ensure that each workstream has a clear focus and the overall programme of transition to a new delivery model is delivered effectively.



A 'Sponsor Board' or similar should be established to ensure that the programme of work is being delivered and will include representation from both workstreams and relevant members of staff from **Human Resources, Legal, ICT, Audit, Information Governance, Finance and Risk Management**.

Figure 1 - Example of how information in programme of work may split between Commissioner and Provider

Comment [AB2]: Would be helpful if the diagram said risk and insurance





Factsheet 12:

Redesign and Restructure

As part of developing your Business Case, you may need to consider whether or how your service will need to be redesigned or restructured. You will then need to be clear as to whether any redesign will happen before any transition or as a result of any transition.

Please read the factsheet on Consultation (Factsheet 13) and work closely with your selected **HR** advisor to make sure that you have considered the impact of any redesign work that you are undertaking will have on the transition of your service outside of the Council.

Factsheet 13:

Consultation (Public and Staff)

Consulting with the public

It is crucial that you consider the need to consult with the public at the beginning of any project related to changes in service provision and in this case when considering the transfer of a service and also before a service is actually transferred. You should seek advice from **Legal Services** immediately as to the nature and extent of consultation and engagement required. In addition, the outcome of any consultation and Equality and Social Inclusion Impact Assessment needs to be analysed and factored in to the decision making process.

Consulting with your staff

You will need to consider how to consult with your staff throughout the process. It is advised that you contact a **HR** advisor when a service is being considered for transition to understand more about when you will need to begin to consider informally consulting with staff and when formal consultation will need to begin. The type of consultation you will need to consider will depend on whether the proposed transition will be subject to TUPE (Transfer of Undertakings Protection of Employment; Background – Factsheet 15). Your **HR** advisor will help you understand the need to be clear in communicating to staff around when a formal consultation will happen and how this consultation will be conducted. Additionally, you will need to conduct an Equality and Social Inclusion Impact Assessment that considers impact on staff (see below).

Conducting an Equality and Social Inclusion Impact Assessment (ESIIA)

The Equality and Social Inclusion Impact Assessment (ESIIA) is a tool to help to identify whether or not any new or significant changes to services, including policies, procedures, functions or projects, may have an adverse impact on a particular group of people, and whether the human rights of individuals may be affected.

Guidance is available from the **Commissioning Support Unit** on how your ESIIA is conducted. The ESIIA should be started as you begin your project and should continue to be updated as further information is collected. You should give consideration to the findings in your ESIIA as you progress and think about how they will have a bearing on the project.

The assessment comprises two parts: a screening part, and a full report part. Screening (Part One) enables energies to be focussed on the service changes for which there are potentially important equalities and human rights implications. If screening indicates that the impact is likely to be positive overall, or is likely to have a medium or low negative or positive impact on certain groups of people, a full report is not required. Energies should instead focus on review and monitoring, and ongoing evidence collection, enabling incremental improvements and adjustments that will lead to overall positive impacts for all groups in Shropshire.

A full report (Part Two) needs to be carried out where screening indicates that there are considered to be or likely to be significant negative impacts for certain groups of people, and/or where there are human rights implications. Where there's some uncertainty as to what decision to reach based on the evidence available, a full report is recommended, as it enables more evidence to be collected that will help the service area to reach an informed opinion.

For further details please see [https://www.shropshire.gov.uk/equality,-diversity-and-social-inclusion/equality-and-social-inclusion-impact-assessments-\(esiia\)/](https://www.shropshire.gov.uk/equality,-diversity-and-social-inclusion/equality-and-social-inclusion-impact-assessments-(esiia)/)



Factsheet 14:

Background Reading & Further Information


This section provides an overview of some of the key legal issues that you may want to familiarise yourself with. You will be provided with legal support throughout the process, however, knowledge of these areas will help you to consider the options available to you.

Can the Council's functions legally be delivered by someone other than the Council?

Local Authorities derive their ability to provide services to the public from legislation, which will also indicate whether such services are mandatory or discretionary. Those that are mandatory are generally where the Council has a 'statutory duty' to provide a service or achieve certain outcomes, whereas those that are discretionary are referred to as the Authority's 'powers' i.e. the ability to do something if it wishes. In either case the Authority can only act where it either has a statutory duty or the relevant power, and should an Authority act outside of these legislative provisions is referred to as acting 'ultra vires'. Where the Council has a statutory duty, and is considering whether that duty can be performed by another body consideration must be given to the relevant legislation imposing the duty to check whether the duties can be actually discharged by a body other than the Council.

Consideration also needs to be given to the Deregulation and Contracting Out Act 1994, and the various regulations made under it, which specifies where Local Authorities can arrange for other bodies to perform certain of the Council's statutory responsibilities. However it must be remembered that statutory duties are non-delegable and as such liability will remain with the authority. For this reason it is imperative that all contracts with third party providers have indemnity clauses within them.

Procurement



The Council is a 'Contracting Authority' under the Public Contracts Regulations 2015 (Procurement Regulations) which give effect to certain EU Directives in respect of public procurement. As a result Contracting Authorities are obliged to award contracts for goods works and services over specified values on an open, competitive and non-discriminatory basis following EU wide advertisement of the contract opportunity. Suppliers have rights under the Procurement Regulations to pursue public authorities where they believe that contracts are not being advertised and awarded on an open and fair basis.

Procurement issues need careful consideration and advice should always be sought from the **Procurement Team**.


Social Value


The Public Services (Social Value) Act 2012 places a requirement on all public sector contracting bodies to consider how their procurement activity might improve the social, economic and environmental wellbeing of the area in which they operate. The Council has developed a Social Value Commissioning and Procurement Framework which sets out ways in which Social Value can be generated.

You must consider, at the earliest possible stage, how your proposals can generate Social Value and then take steps to secure this through development of the business case, contract specification and proposals for monitoring.

'Teckal' exemption from the Procurement Regulations

In certain circumstances the Procurement Regulations will not apply. One such is the use of the 'Teckal' exemption. This may be used in the case of "in-house awards" (so-called 'Teckal' arrangements) where a contracting authority (the Council) awards a contract to an entity which it controls where (i) the authority exercises over that entity a control similar to that which it exercises over its own departments, (ii) the entity carries out more than 80% of its activities with the controlling authority, and (iii) there is no private sector capital participation in the controlled entity. This exemption is typically relied on by local authorities who set up wholly owned subsidiaries.





The use of the Teckal exemption is complex. Where this is a consideration you must seek legal advice before deciding on an option of awarding a contract directly to a wholly owned company of the Council, and before deciding to trade commercially.

State Aid

In principle State Aid is not allowed in the EU. State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU). The definition of state aid is very broad because 'an advantage' can take many forms. It is anything which an undertaking (an organisation engaged in economic activity) could not get on the open market. State aid rules can (among other things) apply to the following:


- grants
- loans
- tax breaks
- the use or sale of a state asset for free or at less than market price


The rules can apply to funding given to charities, public authorities and other non-profit making bodies where they are involved in commercial activities. Therefore care must be taken, advice sought from **Legal Services** in the first instance and risks assessed if there is any suggestion of state aid being a factor in the transfer of a service outside of the Council.

Reference: <https://www.gov.uk/guidance/state-aid>

The Transfer of Undertakings Protection of Employment (TUPE)

TUPE protects employees' terms and conditions of employment when an *undertaking* (i.e. business / service) is transferred from one owner to another.





When a business/service changes hands, employees of the previous owner can become employees of the new employer on the same terms and conditions at the date of transfer. It's as if their employment contracts had originally been made with the new employer. Their continuity of service and any other rights are all preserved.

Both old employer (transferor) and new employer (transferee) are required to inform and consult employees affected directly or indirectly by the transfer.

Employees must be given information about the fact that the transfer is taking place, the date of the proposed transfer and the reason for it and any envisaged measures that the transferee will be taking. Employees need to be consulted in clear and meaningful consultation period regarding any changes in proposed measures.


The transferor of a business must notify the transferee of certain specified items of employee liability information not less than 28 days before the transfer. Failure to do so can lead to a complaint to tribunal and a compensation award per employee in respect of whom the transferor has failed to provide the information.


If employees feel that they have been unfairly dismissed because of a transfer, they can raise this with the employer but if the issue is not resolved they have the right to complain to an employment tribunal.

Managers needing advice regarding TUPE transfers should contact their **HR Business Partner**. This is especially important where a service restructure may be required.

Commissioning Strategy

Shropshire Council continues to look to deliver better outcomes for customers through delivering and commissioning services in different ways. The Commissioning Strategy outlines the importance of delivering value for money for the customer through utilising community capacity and looking at new delivery models when commissioning services. A key aspect to the 'Commissioning Strategy' is that Shropshire Council aspires to be a 'Commissioner' and not a 'Deliverer' of services.





A number of linked resources and guidance notes are being developed to sit alongside the Commissioning Strategy.

Resources Link

- [Shropshire Council 'Commissioning for the Future' Strategy](#)
- [Transformation Data Migration Guidance](#)
- [Shropshire Compact](#)
- [Social Value](#)
- [Grant Thornton Report 'Spreading Their Wings - Deciding to Set Up a Local Authority Trading Company'](#)
- [State Aid](#)
- [Enterprising Councils](#)
- Opportunity Risk Management Strategy



Factsheet 15:

Eight Things We Have Learned From Other Transitions

1. Identify the lead commissioner at the earliest possible opportunity
2. Engage with and involve the key support functions (**ICT, HR, Audit, Finance, Information Governance, Commissioning Support**, Risk and Insurance) from the very start of the process, setting out timescales and plans which will be refined throughout the process
3. Have direct conversations, rather than emails, regarding complex and contentious issues
4. Ensure commissioners retained Shropshire Council side have knowledge of the service area & commissioning structures are considered early
5. Have transparent and open conversations when forming Commissioning outcomes, outputs or a specification
6. Ensure strategic sponsor's board is set up after any high-level Business Case is developed, to help reporting and make decisions.
7. Identify project management support early to manage the process
8. Ensure provider engages with staff early in the process to discuss the business vision, aims and objectives

