

**Name of meeting:** Cabinet

**Date:** 8 March 2016

**Title of report:** Charging Locala for the use of Council resources

<b>Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	No
<b>Is it in the <a href="#">Council's Forward Plan</a>?</b>	No
<b>Is it eligible for "call in" by <a href="#">Scrutiny</a>?</b>	Yes
<b>Date signed off by <a href="#">Director</a> &amp; name</b>	Richard Parry, Director for Commissioning, Public Health & Adult Social Care, 24 February 2016
<b>Is it signed off by the Director of Resources?</b>	David Smith, 18 February 2016
<b>Is it signed off by the Assistant Director – Legal, Governance &amp; Monitoring</b>	Julie Muscroft, 18 February 2016
<b>Cabinet member <a href="#">portfolio</a></b>	Prevention, Early Intervention & Vulnerable Adults

**Electoral [wards](#) affected:** All

**Ward councillors consulted:** Cllr Viv Kendrick

**Public or private:** Public

## 1. Purpose of report

This report seeks member approval for charging Locala Community Partnerships CIC ("**Locala**") for providing accommodation and the use of the Council's IT system.

## 2. Key points

- 2.1 In June/July 2015 Greater Huddersfield and North Kirklees CCGs awarded a contract for Care Closer to Home. Part of this contract was an expectation that the Single Point of Contact was managed by Locala.

This involved a change to the existing agreement, where the Council had previously managed the Single Point of Contact.

It was agreed however that there was much to be gained by continuing to locate the staff and that the most appropriate site was in a Council building. This has meant arranging for Locala staff to operate out of Flint Street and Civic Centre.

2.2 It has also meant that there is a cost incurred for Locala to use the following of our IT systems and/or services:

- Network infrastructure (including staff and public WIFI)
- Directory services, i.e. Active Directory
- Security – filtered internet, perimeter firewalls, access controls, data protection, scanning and monitoring systems and endpoints
- Voice system (including migration to Lync)
- Enterprise systems (email, Intranet, Sharepoint, Bring Your Own Device, Rostrvm Contact Centre, SAP)
- Access to support and development of Universal Housing including interface development
- Support and hosting of line of business applications/access to:
  - Rostrvm
  - System One (if utilised)
- Internet access and services, including hosting of domains (email and web)
- Centralised data storage and backup (SAN)
- Managed printing
- Incident and Problem Management access to a service desk for fault reporting and provisioning/change requests
- A full support service will be operated through the IT Service Desk. Hours of support are 07:15 – 18:00 Monday to Friday.
- An extended support service is available (excluding Bank Holidays):
  - 06:00 – 07:15 - Monday to Friday
  - 18:00 – 23:00 – Monday to Friday
  - 07:00 – 19:00 – Saturday and Sunday
- This extended service will offer targeted support dealing with a quick response to the most common IT issues, such as password or system resets. During the extended hours your call will be responded to by a colleague from IT working remotely.
- 1<sup>st</sup> and 2<sup>nd</sup> line support of all of the above
- Quarterly reporting and monitoring
- Proactive monitoring of network, systems and some devices
- Proactive support – license management, alerts and alarms
- Professional services (both from a design, development, project and problem management)
- IT disaster recovery and capacity management in order to support the business continuity strategy for the Single Point of Contact

2.3 In order to recoup the costs that the Council is likely to incur as a result of Locala using our IT systems and/or services, it is proposed that the Council would enter into a data processing agreement with Locala, whereby we (as the “Data Processor”) would make these IT systems

and/or services available to Locala (the “Data Controller”) for the storage of their data for a period of five (5) years, during which time the Council would charge Locala the costs related to their use of these IT systems and/or services.

### 3. Implications for the Council

#### Data Processing

- 3.1 It is the view of the Council’s Information Access and Security Officers that as the Council’s IT department will only potentially be accessing Locala’s data to provide technical support to Locala, the Council will not be using the information for its own purposes and therefore a data sharing agreement is not needed.
- 3.2 Further, the Council’s Information Access and Security Officers have concluded that the Council is essentially a **Data Processor** for Locala, who in this context will be the **Data Controller**.
- 3.3 In this context, the term **Data Controller** means the person (including a company) who determines the purposes for which, and the manner in which, any personal data is processed. In this context, **Personal Data** means that which relates to a living individual who can be identified from that data or from that data and other information which is in the possession of, or likely to be in the possession of, the data controller.
- 3.4 In this context, a **Data Processor** is simply someone any person (other than an employee of the data controller) who processes the data on behalf of the data controller. **Processing**, in relation to information or data means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including:
  - Organisation, adaptation or alteration of the information or data;
  - Retrieval, consultation or use of the information or data;
  - Disclosure of the information or data by transmission, dissemination or otherwise making available; or
  - Alignment, combination, blocking, erasure or destruction of the information or data.
- 3.5 Where a data processor is being used the data controller should ensure that there is a written contract between the parties that complies fully with the requirements of **Schedule 1, part II, para 12 of the Data Protection Act 1998** (i.e. that the data processor is to act only under the instructions of the data controller and must comply with obligations equivalent to those imposed on the data controller by the seventh data protection principle, which is about keeping personal data secure).
- 3.6 It is ultimately the data controller that must exercise control over the processing of the data and will bear ultimate responsibility for the data under the Data Protection Act 1998.

## **Financial Procedure Rules**

- 3.7 As the Council would in fact be charging Locala to provide this service, then **rules 20.5 and 20.6 of the Council's Financial Procedure Rules** need to be considered:

20.5 ***The Cabinet is responsible for approving any new contractual arrangements for any work for other organisations **expected to exceed £100,000**. The Director of Resources (i.e. Finance & Audit) may agree contractual arrangements below this level.***

20.6 ***Directors must ensure that any proposed arrangement to work for other organisations **does not impact adversely upon the Services provided to or by the Council**. All agreements, contracts or arrangements must be properly documented and appropriate information must be provided to the Director of Resources (i.e. Finance & Audit) to enable a note to be entered into the Council Statement of Accounts concerning material items.***

- 3.8 Given that the likely value of this proposed five (5) year contract will be above the one hundred thousand pound sterling threshold (£100,000), Cabinet approval is needed before negotiations are entered into with Locala and any contract is entered into, so that members may consider and satisfy themselves about the exposure of the Council to any risk, (e.g. from litigation, loss of contract, in this case data protection risks, etc.)
- 3.9 Subject to Cabinet approval, it is proposed that Legal Services will then draft and negotiate a formal contract/agreement between the Council and Locala to cover off any potential risks in relation to this proposed service and any responsibilities and obligations under the Data Protection Act 1998.

## **Impact on Contractual and Frontline Services**

- 3.10 Cabinet members also need to consider the likely impact upon the services provided to or by the Council.
- 3.11 The service will be an integrated arrangement for access to services that will have a positive effect on existing services being supplied by the council to members of the public.

## **Legal powers available to the Council to provide this service**

- 3.12 In terms of what legal powers the Council has to supply this proposed service to Locala:
- The Council has the power to sell **computer spare capacity** is to be found in **Section 38 of the Local Government (Miscellaneous Provisions) Act 1976**.

- However, in the event that the Council cannot rely on Section 38 of the Local Government (Miscellaneous Provisions) Act 1976, then given that the proposed service has been priced up on a **recovery of costs** basis, the Council may rely on its charging powers under **Section 3** of the **Localism Act 2011**, subject to fulfilling the following criteria:
  - The proposed service is not one that the Council is required to provide under an existing statute (**Section 3(2) (a) Localism Act 2011**). It has been confirmed that the Council would meet this heading in these circumstances.
  - The individual (i.e. Locala) has agreed to the service being provided (**Section 3(2) (b) Localism Act 2011**). Again, it has been confirmed that the Council would meet this heading in these circumstances.
  - If sub-section 3(2) of the Localism Act 2011 above is ignored, the Council does not already have the power to charge for providing the proposed service (therefore if the Council were to rely on Section 38 of the Local Government (Miscellaneous Provisions) Act 1976, it could **NOT** then also rely on Section 3 of the Localism Act 2011).
  - The charges for the proposed service must **NOT**, taking one financial year with another, exceed the Council's costs of providing the service. As the charges have been calculated on a recovery of costs basis, this criteria has also been met.

#### **4. Consultees and their opinions**

- 4.1 Partners within Locala have been consulted in order to establish and confirm the resources required to enable effective service delivery.
- 4.2 Officers within the Council's Legal services department have offered professional legal and contractual advice.
- 4.3 Officers within the Council's Physical Resources & Procurement and IT services have offered professional technical advice and verified costs incurred.

#### **5. Next steps**

- 5.1 If Cabinet supports the proposed arrangement with Locala outlined within this report, the Council will enter into the appropriate legal documentation to achieve this objective with a view to commence providing the proposed service to Locala from April 2016.
- 5.2 It is proposed that a data processing agreement between Locala (as the Data Controller) and the Council (as the Data Processor) will be drawn up and agreed with Locala by representatives from the Council's Legal Services department on behalf of the Council.

## **6. Officer recommendations and reasons**

6.1 In order to maintain the benefits of a single point of access to health and social care services it is recommended that Cabinet agrees to the proposals outlined in this report, and that Cabinet delegates authority to the Director of Commissioning, Public Health & Adult Social Care and the Assistant Director for Legal, Governance & Monitoring:

- to enter into negotiations with Locala to finalise the proposed data processing agreement; and
- to keep the agreement under review and to negotiate and agree any subsequent variations to the terms of the agreement with Locala as and when is necessary.

6.2 That the Cabinet delegates authority to the Assistant Director for Legal, Governance & Monitoring:

- to execute the final form of the data processing agreement on behalf of the Council, once agreed by the Director for Commissioning, Public Health & Adult Social Care and the Assistant Director for Legal, Governance & Monitoring; and
- to enter into any future variations to the terms of the agreement on behalf of the Council, once agreed by the Director for Commissioning, Public Health & Adult Social Care and the Assistant Director for Legal, Governance & Monitoring.

## **7. Cabinet portfolio holder recommendation**

7.1 Cllr Viv Kendrick has been fully briefed on the terms of the agreement and supports the proposals to proceed as outlined within this report.

## **8. Contact officer and relevant papers**

8.1 Dianne Green, Corporate Manager for Adult Social Care & Wellbeing.

## **9. Assistant Director responsible**

9.1 Sue Richards, Assistant Director for Adult Social Care & Wellbeing.