

**From:** Bryan Sweetland, Cabinet Member for Commercial & Traded Services  
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**To:** Policy and Resources Cabinet Committee, 20<sup>th</sup> June 2013

**Subject:** Commercial Services

**Classification:** Unrestricted

**Summary:** Following an independent review and consideration by the Shareholder Board for Commercial Services, a number of changes have been implemented in the management, operations and company structure of Commercial Services.

**Recommendation:** The Policy and Resources Cabinet Committee is asked to note the progress made following the changes to improve the management, governance and operations of Commercial Services.

## 1. Introduction

1.1 Commercial Services (CS) was a non-budget funded division of the County Council, which funded itself from the income generated by its own activities. It is largely, and increasingly, focused on trading outside Kent, and made a net return of £5.6m for the year 2012/2013.

1.2 The County Council's policy document Bold Steps for Kent set out the need for new approaches to meet the financial challenges facing local government. In this context the then Cabinet Member for Environment, Highways and Waste and Corporate Director Environment, Highways & Waste commissioned an external appraisal of the management, operations, governance and future business potential of Commercial Services.

1.3 This independent review recognised the value that Commercial Services added to the County Council and made a number of recommendations concerning changes and improvements to governance arrangements and clarification of the legal and governance relationship between KCC and Commercial Services. It has also provided valuable advice on areas of current and future business with the greatest potential profitability and sustainability, in order to underpin and strengthen future income returns to KCC.

1.4 The County Council meeting in December 2012 approved a proposal to establish a Board of Cabinet Members and senior officers to manage Commercial

Services, and to ensure a proper separation between 'decider' and 'provider' which had the potential to become blurred under the arrangements that were in place. This Shareholder Board has met a number of times and worked through the recommendations of the independent report all of which have now been implemented.

1.5 The objective was twofold. Firstly to make Commercial Services a more efficient business, better equipped to compete in challenging conditions. Secondly, to ensure that it operates properly at "arms length" from KCC with an appropriate company structure. Therefore to simplify its complex operating model of five companies it has restructured its primary activities into two specific company structures as set out below. A third company continues to carry some residual trade until its contracts expire in October 2013.

1.6 These company changes have pre-emptively addressed the risk of any challenge under current and forthcoming public sector trading regulations which the government has indicated it may introduce to ensure local authorities do not use their public status to gain commercial advantage over the private sector. It has also enabled the total transparency of business operations and the profit and loss of Commercial Services.

1.7 In September 2012, P&R Cabinet Committee invited CS to outline progress towards the new arrangements and future plans. That report was welcomed by the Committee and CS were asked to return to a later meeting with a progress report. This paper updates progress since September. Because the membership of the Committee has changed significantly since that time, the report summarises earlier progress as well as highlighting more recent changes.

## **2. Progress**

2.1 The transformation programme has reconfigured the 26 disparate business units into five client-facing divisions. These new business divisions act under the auspices of the two new legal entities, rather than the five limited company structure which existed.

2.2 The new business divisions cover the areas of Education Supplies, Energy, Care, Recruitment and Direct Services with the primary purpose of returning an income dividend to the Council at no cost.

2.3 "Driving Economic Prosperity" is a key theme of Bold Steps for Kent. The changes implemented enable Commercial Services be confident of, and to demonstrate, the existence of a level playing field with the private sector, and that it is operating on the same principles as its private sector competitors to deliver maximum benefit to its shareholder, Kent County Council, and the people of Kent.

2.4 The review confirmed the direction of travel for local authority trading, which will encourage a greater use of company vehicles than is common at present. It is considered likely that trading without using a company is probably only possible under government regulations in the short to medium term. The

transformation programme enables Commercial Services to be well placed to address any changes in legislation that may be applied.

2.5 All KCC staff employed by CS transferred to Commercial Services Kent Ltd (CSK Ltd - the 'Teckal' company) on their existing terms with no degradation to either working practice or pension. Non KCC staff and new joiners, including future appointments to the Executive Team, have and will continue to move to different, more private-sector orientated employment terms.

2.6 Private sector trading is focused more clearly on the Section 95 (non Teckal) company, named Commercial Services Trading Ltd, and the premises from which this arm operates allow such commercial activity to be undertaken.

2.7 To achieve this Commercial Services changed the name and the Articles of Association of the previously wholly-owned company Kent County Supplies Ltd to form the Teckal company, and changed the name of the previously wholly-owned company Kent County Facilities Ltd to form the Section 95 company. The other three companies will be dissolved as soon as is practicable. Simultaneously the relocation of headquarters functions to different premises took place allowing CS to operate more efficiently and effectively. A briefing note on the two types of company structure is attached at Appendix 1.

### **3. Highlights and future plans**

3.1 The new structure makes it possible to realistically pursue new investments, to allow growth by acquisition to be achieved alongside the steadier organic growth.

3.2 At the same time CS is planning to divest some parts of the business that have no sound commercial future under current ownership. The first of these is the bus and coach operation, which has exited less profitable contracts and is running profitable ones to completion.

3.3 CS has used the s95 company to successfully launch an exciting new venture, building on its expertise and credibility in the energy markets to offer a service matching SME's to the best possible energy deals for their particular situation.

3.4 The recruitment division is now free to expand significantly into provision outside KCC. It is focusing on niche markets to exploit current skills base and this is already showing good results. This area particularly will benefit from growth by acquisition.

3.5 The education supplies division is already actively pursuing growth by geographical expansion, and this would benefit from acquisition targets being actively sought.

### **4. Financial Implications**

4.1 This was a cost neutral action.

## **5. Staffing Implications**

5.1 A full staff consultation was undertaken on the TUPE transfer of the KCC staff employed by CS to the limited company. TUPE regulations ensure that the existing employment terms, and pension provision, of staff transferring to a new provider are protected and there was therefore no adverse impact on transferees. CSK Ltd has obtained admitted body status to the Local Government Pension Scheme in order to provide for the transferred-in pensions.

## **6. Equalities Impact Assessment**

6.1 No further action is required.

## **7. Legal Implications**

7.1 The specialist Articles of Association for the new “Teckal” company have been reviewed by the Director of Governance and Law and have been refined to fully meet KCC requirements.

## **8. Conclusion**

8.1 The establishment of the two new limited companies has met the aims of “Bold Steps for Kent”, protected KCC from the impact of anticipated legislation and has enabled Commercial Services to operate more effectively, efficiently and transparently creating a more viable and sustainable business platform as demonstrated by the success of the business over the last year and the positive business plans.

<p><b>9. Recommendation:</b> The Policy and Resources Cabinet Committee is asked to note the progress made following the changes to improve the management, governance and operations of Commercial Services.</p>
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## **Background Documents**

Appendix 1: Teckal vs S95 companies

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