

Heart of the South West local enterprise partnership

LEP Board Paper 5.1

January Board 2109

Next Steps on Legal Personality

Report theme: Company Status for HotSW LEP CIC

Author: David Ralph

Contact: david.ralph@heartofswlep.co.uk

Summary

Purpose of the report: To update on Legal Personality status for the LEP

Recommendations:

Agree to remain dormant to avoid significant financial implications of becoming a trading organisation

F&R to secure and agree equivalent 'annual accounts' from the Accountable Body for presentation at the AGM

Agree the revised Articles of Association in accordance with the decisions and the requirements of the National Assurance Framework

Background

LEP Board Members will recall that at the last meeting we agreed a number of key principles about our future legal personality and specifically:

We would continue to operate as an incorporated CIC to the same Geography

We would have 20 Board Directors which would also be the Members but we would retain the formal role of Stakeholders – a further paper would be brought back on this

The Local Authorities would bring forward proposals to create a single Accountable Body

We would adhere to the revised Assurance Framework once published underpinned by the Nolan Principles of Public life and a commitment to transparency and accountability

The guiding principle of the LEP should be affective Partnership working

Options Framework

At the meeting there was a discussion on the pros and cons of the company becoming active but Board Members whilst generally recognising the principles wanted greater understanding of the financial and other implications.

Working with the Accountable Body and through the management group a range of options were looked at set out in the table below.

Options Description	HR Implications	Financial Implications	Operational Risks	Reputation Risks	Does it meet the Independence Test	Does it meet Transparency Test
Remain dormant but publish more detailed information on line showing all spending through the LEP	none	none	None	LEP not seen to be either an independent voice or transparent	Independent secretariat - compliant	Depends on quality of information – last 2 years not been able to produce something suitable
Activate the CIC but only put Audit Costs through the accounts in the published account clearly explain costs of running LEP and put detailed spreadsheet on line	None	Approx £20,000 in audit costs	None	Not clear what this delivers	Independent secretariat - compliant	Compliant – but still requires AB to present most of the financial information

Is this possible? What does this achieve						
Activate the CIC continue with the current staffing arrangements	None	As above but upto £300k in VAT	None	Provides a more independent vehicle to build on and operational independence. Little added transparencyre other funding	Independent secretariat - compliant. Annual active accounts submitted to Companies House - compliant	Compliant – but still requires AB to present most of the financial information

Options Description	HR Implications	Financial Implications	Operational Risks	Reputation Risks	Does it meet the Independence Test	Does it meet Transparency Test
Activate CIC and employ current LEP core staff direct – SLA’s continue	Direct staffing and finance capability required at LEP	£200k plus costs of staffing capability and audit	Heavy staff transfer component – staff may not wish to transfer. TUPE.	Likely to take significant management time and resource	More independence of voice	Same as above
All core staff are employed by the University of Plymouth – SLA’s continue but 100% funded staff transfer to UoP	Management time required to transfer but no ongoing HR implications	£250,000 per annum	Low – pension liabilities and TUPE implications	Perceived as more independent	Perceived as more independent	Same as above
CIC activated Secondment agreements are used for all 100% funded staff.	Same as above	Similar as still likely to incur VAT		Added benefit		
LEP full time staff employed by LEP with renegotiated SLAs	Significant and ongoing	Possibly £100k in VAT but additional costs for HR in LEP		Weakens partnership approach partic with Local Authorities	Agency rather than Partnership approach – remains dependent on Accountable Body but LEP could do more direct delivery including becoming an (equity) investor	Gretaer transparency to public – less control by partners

Assumptions and Conclusions

Firstly, at the present time LEPs are only funded through to March 2020 – we are in the middle of a Comprehensive Spending Review - and the key tasks for LEPs as identified in the Strengthening LEPs paper is to bring forward Local Industrial Strategies by the same date.

Moreover, in the absence of a Combined Authority, we have agreed a Partnership with the HoTSW joint committee through that period to develop and implement the Productivity Plan and LIS and we have yet to see consultation on the UKSPF although it is anticipated that areas and LEPs will have a key role in its development and implementation.

Broadly, the Board has been very clear that Partnership working is at the heart of LEP working and that the LEP should be a strategic body not a delivery organisation.

Firstly, by becoming active the LEP would immediately become a trading organisation and all its services would be subject to VAT including its staffing (by others). This would be likely to provide an immediate VAT implication of close to £300k per annum returned to the Exchequer.

Whilst we have some reserves, without confirmation of funding beyond March 2020, this would actually mean that unless we made some cuts to our operational budget there would be real concerns about whether we would still be a going concern beyond March 2020. In time we could probably offset some of these VAT obligations (by employing more staff), reducing the SLA arrangements with Local Authorities etc but this would seem to work against the principles of effective Partnership working, would incur greater core costs and significant management time.

A second option would be to significantly change the operating model and for the LEP to employ most of the staff so reducing our trading costs but we would remain reliant on the Accountable Body to oversee our financial assurance. At a time of uncertainty this would seem to not align with our Partnership model, would introduce significant risk and management time.

However, future sustainability of LEPs is something we should consider in the future and we should not rule out the opportunities delivered through a trading organisation which may be helpful in the future particularly in the context of declining capacity to deliver in Local Authorities. Moreover, evidence on ability to deliver will be a key component of future funding and there may be

Therefore, I am suggesting that the LEP remains an undormant LEP but that the accounts refer to “Client Funds” and a financial summary of grant funding held on our behalf by the AB

However, we will look at whether we can illustrate greater independence of voice by looking to employ LEP core through a single 3rd party outside Local Government – initially the University of Plymouth. This will be reported back through the Operational Model at the March Board including TIPE and pension implications.