

<b>Title of Report:</b>	<b>Creating A Legal Entity to Deliver Consumer Direct</b>	<b>Item 13</b>
<b>Report to be considered by:</b>	<b>Executive</b>	
<b>Forward Plan</b>	N/A	

<b>Corporate Plan Priority:</b>	<b>D2: Building Capacity</b>
<p>The proposals contained in this report will help to achieve the above Corporate Plan priority by <i>allowing the Trading Standards Service to concentrate on the more complex enquiries and those received from the most vulnerable consumers. In conjunction Consumer Direct will deal with the more straightforward enquiries that can be dealt with by the provision of self-help advice.</i></p>	

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**Purpose of Report:**

To outline the proposal that West Berkshire District Council participate in a company limited by guarantee, along with potentially 19 other Local Authorities in the South East, to contract with the Department of Trade and Industry to deliver Consumer Direct.

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**Recommended Action:**

- (1) That the Council becomes a member (not a shareholder) of the proposed company limited by guarantee set up for the prime purpose of facilitating the Consumer Direct South East project
- (2) To nominate the Corporate Director for Environment and Public Protection or a person nominated by him to be a Director of the company subject to appointment by the Board.
- (3) To nominate the Portfolio Member in whose remit Trading Standards falls to represent the Council at Annual, Extraordinary and any other meetings of the company members.
- (4) To authorise the Food and Trading Standards Manager in consultation with the Executive Member for Community Safety and the Head of Legal and Electoral Services to approve the Memorandum and Articles of the proposed company.

**Reason for decision to be taken:**

The local authorities in the south-east responsible for trading standards need to form a legal entity if they are to be able to Contract with the DTI for the delivery of the

**List of other options considered:** Consumer Direct Project.  
Back to Back Agreement  
Joint Committee facilitated by S101 of Local Government Act 1972  
Formal Partnership under the Partnership Acts

**Key background documentation:** Report to Executive on Consumer Direct – July 2004

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## **Implications**

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**Policy:** DT2 – Building Capacity

**Financial:** The formation of the Company provides the ability for the council to limit its financial liability

**Legal:** The legal implications are summarised in the main body of the report. A copy of the comprehensive legal advice received is available.

**Equalities:** Access to high quality advice is consistent with the policies relating to equalities and empowerment as is the ability to further assist those more vulnerable in our community.

**Risk Management:** There are no additional insurance risks. Final consideration of other risks will be considered when finalising Memorandum and Articles.

## Supporting Information

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### 1. Background

- 1.1 At the Executive Meeting in July 2004 Members considered the background to Consumer Direct and agreed that the Council should support the initiative subject to certain provisos on any future regionalisation.
- 1.2 The July report also touched upon the likely delivery method for the CD initiative in this region which in summary would be the DTI contracting with a local authority limited liability company and that company in turn contracting with a provider from the region.
- 1.3 To facilitate this a project board was established and later a selection panel who were given the responsibility of selecting a provider for the Consumer Direct Contact Centre. Following a comprehensive selection process the Trading Standards Authorities in the South East have selected Kent County Council to deliver the service. The five-year contract with Kent will be awarded to coincide with a similar contract with the DTI.
- 1.4 In response to the DTI's requirement that the Trading Standards Authorities in the South East identify a legal entity to contract with the DTI, the Head of Trading Standards for Surrey County Council (on behalf of the other authorities and the project board) took the initiative in instructing a firm of external lawyers (Sharpe Pritchard & Co) the available options. The instructions were issued on the understanding that the legal fees would be wholly reimbursable by the DTI. Subsequently, agreement was sought and received from Sharpe Pritchard & Co that this Council may also draw on the advice they gave to Surrey County Council.
- 1.5 Sharpe Pritchard considered a number of options including Back to Back Agreements, Formal Partnerships, Joint Committees and the formation of a Company. They concluded that the preferred option was the formation of a local authority owned limited liability company. They advised that local authorities do have the power to participate in the proposed company and could do so in reliance on Section 2 of the Local Government Act 2000 (the Well-Being powers) as it is clearly an initiative to promote the social and economic well-being of the area. They also advised that:
  - A company limited by guarantee would satisfy the DTI requirement to have a distinct legal entity with whom to contract but at the same time would limit the Council's liability to a nominal amount in the event of failure.
  - All participating (up to nineteen) authorities should become Company Members.
  - Each Member should have representation on the Board of Directors and as a member (not a shareholder) would be entitled to attend all Company Members Meetings eg AGMs and Extraordinary Meetings.
  - The participating authorities should nominate one of their officers as a Director and one of their Councillors to represent the Council at Company Member Meetings.

- As all the members of the proposed company will be local authorities and the directors will be officers of those participating local authorities the company will undoubtedly be a Public Sector Regulated Company.

1.6 The financial consequences of participating in the company is that the company would be shown in the Councils accounts as a nominal investment although Councils participation will be at negligible cost to the Council and will not expose it to any substantial financial risk.

## **2. Appendices**

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None

### **Consultation Responses**

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**Local Stakeholders:** None

**Officers Consulted:** John Ashworth, Martin Cawte, Royston Peake, David Hollings

**Trade Union:** None