Appendix 2D

Exploring a Social Enterprise / Community Interest Company

Option Being Explored	**Social Enterprise / Community Interest Company**
Lead Project Member	Sue Green – Strategic Leader- Early Years, Families and Communities
Description of Model	Social enterprises are businesses driven by a social or environmental purpose, they can compete to deliver goods and services. With a social enterprise, social purpose is at the very heart of what they do, and the profits they make are reinvested towards achieving that purpose. The government defines social enterprises as "businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners. social enterprise is a concept, not an entity – you don't register as a 'social enterprise', instead you take whichever formal legal structure is best suited to you delivering your social enterprise aims. Many social enterprises have charitable status. It is only possible to gain this status if the purposes of your organisation are exclusively charitable and are for the public benefit. Charitable purposes include advancing education or religion, and relieving financial hardship. Over many years, a host of other charitable purposes that benefit the community have been recognised as charitable by the courts or the Charity Commission. A community interest company is a legal form that a social enterprise can take on and it is what the business does with its profits that determines whether it is a social enterprise that than its specific legal structure. Community Interest Companies (CICs) are limited companies that exist to provide benefits to a community, or a specific section of a community. The CIC has the flexibility of the familiar company form, and access to a range of financing options, so may be appropriate for those

Exploring a Social Enterprise / Community Interest Company

	working for a social purpose. Its key features include an asset lock and a community interest statement.
Legal Considerations	It is what a business does with its profits that determines whether it is a social enterprise, rather than its specific legal structure. The Charities Act 2006 defines a charity as a 'body or trust which is for a charitable purpose that provides benefit to the public'. It lists 13 charitable purposes, and any charity must have purposes falling within that list. The purposes (or aims) of a charity are usually set out in its own governing document. Before the Act, there were four types of charitable purpose (known as 'heads'). These were the relief of poverty; the advancement of education; the advancement of religion; and other purposes for the benefit of the community. Before the Act, charities relieving poverty or advancing education or religion were presumed to benefit the public. The Act removes that presumption and all charities will have to be able to demonstrate how their purposes benefit the public. The new organisation will be employing staff, raising finance and taking on leases and therefore must be an incorporated body. From this the options are as a company – such as a community interest company, or as an industrial & provident society such as a cooperative. **Benefits of incorporation** 1. Legal personality An incorporated business is a legal entity in its own right. This means that it can enter into contracts, employ staff, lease property and have its own obligations and liabilities. 2. Limitation of risk Incorporation limits the personal liability of its management committee, although it does not

Exploring a Social Enterprise / Community Interest Company

	remove it altogether. Incorporation is an important consideration if the social enterprise intends to employ more than a few staff, take on significant property interests or undertake major contractual obligations. 3. Clear ownership structure/governance Unincorporated organisations can operate relatively informally, being governed only by their constitutions. However, this means the powers and processes for decision making can be unclear. Incorporation involves the formalisation of governance structures within a legislative framework. 4. Developing a sense of ownership Incorporation provides an established formal structure for stakeholder membership. 5. Public accountability With limited liability comes regulation and disclosure requirements, which can increase public confidence in the company. Limited companies have to have a registered address, file their constitutions, annual accounts and prescribed details of their directors etc. 6. Recognition by financial institutions and investors Paying off a loan is a major obligation for any organisation. Many banks and financial institutions will insist on incorporation before providing loan finance. 7. Availability of equity finance Equity finance is only available to certain types of incorporated organisations. If you want to raise equity investment, your organisation will have to incorporate. All charities are subject to charity law regulation. The TUPE regulations will apply and therefore consultation with employees and trade unions will need to commence early as employees terms and conditions will be affected.

Exploring a Social Enterprise / Community Interest Company

Procurement Considerations	Guidance from Social Enterprise London cites the precedent set through the Department of Health's right to request, this indicates that as a local authority employee establishing a social enterprise in order to deliver a service currently provided by the council, the commissioning process should not be open to competition. Ideally the contract with the local authority should be guaranteed for at least three years. However it is worth noting that although the main contract with the local authority might not be competitive, under EU procurement regulations, any subsequent contract following the initial contract and any contract the organisation bids for outside the local authority is likely to be open to competitive tender.
Equality Considerations	The Charity Act 2006 allows a charity to restrict its benefits to people with a shared protected characteristic. It must be justified for either of the following reasons: it helps to tackle disadvantages that particularly affect someone with a protected characteristic; or it is for some other reason a fair, balanced and reasonable ('proportionate') way of achieving a legitimate aim. Once the model has been agreed then a full Equality Impact Assessment will be completed.
Initial Overview of costs to be considered	The main costs will be staff time and the registration costs which will vary depending on the type of organisation.
Comment on model for local authority	The ability to win contracts beyond the public sector and beyond borough boundaries could provide a sustainable model to secure the future delivery of services. The ability to develop the opportunity to build social capital – such as supporting vulnerable young people for example – alongside the development of a business model means that the benefits are much more than financial. The core purpose could be developed to address key priorities of the local authority as well as delivery the services being transferred.

Appendix 2D

Exploring a Social Enterprise / Community Interest Company

Comment on model for community	The opportunity to involve service users in the design and delivery of the service is a key benefit of the model and to the community. If we establish a social enterprise then we will be able to involve members of the community in the governance or ownership of the organisation. The key benefit of a social enterprise is that it can be community-led.
Can assets be protected	CICs must have an asset lock. This means that the company cannot generally transfer its profits or assets for less than their full market value except as permitted by regulation. It will also protect any remaining assets for the community if the CIC is dissolved.
Advantages	Community Interest Companies (CICs) are limited companies that exist to provide benefits to a community, or a specific section of a community. The CIC has the flexibility of the familiar company form, and access to a range of financing options, so may be appropriate for those working for a social purpose.
Disadvantages	A CIC limited by shares or guarantee will be able to accept grants and take out secured and unsecured loans in the same way as a normal company. A CIC limited by shares will also be able to obtain equity finance. However, there are limits on the return that may be paid to investors. In the case of a loan where the interest payable is performance related the interest cap is 4% above the Bank of England base rate. This ability to borrow money could present a risk, particularly in the initial stages where the local authority may retain some of the risk.