



Member Report

Proposed changes to Veritau Structure

Report to: Shareholder Committee
Report from: Finance Director and s151 Officer
Portfolio: Resources
Report Date: 7 May 2024
Decision Type: Committee
Council Priority: All

HEADLINE POSITION

1.0 Summary of report

1.1 This report seeks the committee's approval for the establishment of a new company limited by guarantee for the provision of internal audit and counter fraud services as set out in the attached business case. The committee is also asked to approve the payment of a dividend by Veritau Tees Valley Limited and for Veritau Tees Valley Limited to be wound up once the new company is established.

2.0 Recommendations

It is recommended that Shareholder Committee:

- approves the business case
- approves the council's membership of the new company limited by guarantee (to be called Veritau Public Sector Limited)
- approves the payment of a dividend from Veritau Tees Valley Limited sufficient to fund the Council's subscription to the new company
- approves a special resolution to wind up Veritau Tees Valley Limited once the new company is established
- delegates the approval of the articles, the company name, the members agreement and any other governance documents associated with the new company to the Managing Director (Head of Paid Services)
- delegates the approval for the Council to enter into all other related agreements necessary for the establishment and operation of the new company to the Managing Director (Head of Paid Services)
- approves the appointment of a director to the board of the new company once it is established

DETAILED PROPOSALS

3.0 What are the objectives of the report and how do they link to the Council's priorities

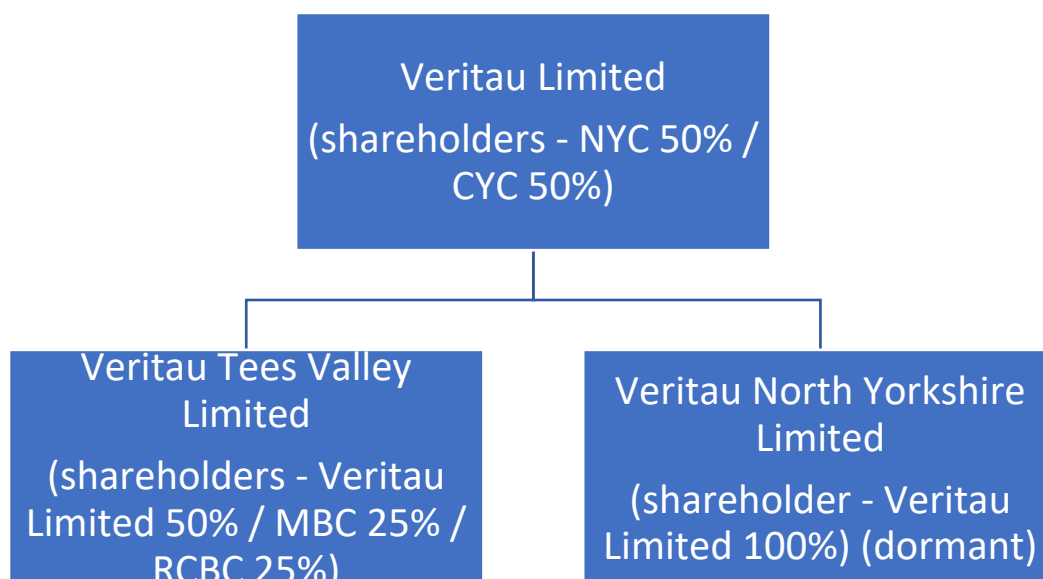
Background

- 3.1** Veritau Tees Valley Limited currently operates as a Teckal company (in accordance with the Public Contracts Regulations 2015) and is owned by the Council, Middlesbrough Council (MC) and Veritau Limited. Veritau Limited is also a Teckal company and is jointly owned by North Yorkshire Council (NYC) and the City of York Council (CYC). Collectively these companies are known as the 'Veritau Group'.
- 3.2** Veritau Tees Valley provides internal audit and counter fraud services to the Council, reporting the outcomes of work to the Governance Committee. The work of Veritau therefore forms a key part of the Council's overall framework of governance, control, and risk management.
- 3.3** Veritau Limited (VL) has provided a business case for a proposed restructure of the Veritau Group. The business case as attached as confidential appendix 1.
- 3.4** The proposal is to create a new Teckal compliant company, limited by guarantee which will be jointly owned by NYC, CYC, MC and the Council. The formation of the new company will provide a sustainable business model, enabling Veritau to continue growing and allowing further member authorities to be admitted over time.

Current Group Structure and Proposal for Restructure

- 3.5** Following the establishment of VL in 2009, the shared service model proved to be successful, resulting in several other local authorities expressing an interest in joining. A further joint venture company called Veritau North Yorkshire Limited (VNY) was established in February 2012, which was co-owned by VL and five of the North Yorkshire district / borough Councils. Following local government reorganisation in North Yorkshire, VL purchased the shares in VNY previously held by the North Yorkshire district / borough Councils. VNY is therefore now a wholly owned subsidiary of VL, and the company is currently dormant.
- 3.6** Veritau Tees Valley Limited (VTV) was formed as a second joint venture company in December 2019. The staff who were previously employed by the Council (in a shared service with Middlesbrough Council) were transferred to the company and it started trading on 1 January 2020.
- 3.7** Both VL and VTV were established as Teckal compliant companies. This enabled the local authority members of both companies to take advantage of the exemption contained in Regulation 12 of the Public Contracts Regulations 2015, to award contracts to the companies for the supply of services without the requirement to undertake a public procurement exercise, providing certain conditions were satisfied throughout the life of any long-term contracts they have with the local authority members.

3.8 The current group structure is therefore:



3.9 In addition to providing services to its four local authority members, the Veritau Group now provides assurance services to over 700 other clients. To comply with the Teckal exemption, this commercial activity must account for less than 20% of the overall value of the services provided. This limit therefore restricts the growth opportunities for the Veritau Group.

3.10 The shared service model also continues to attract interest from other councils. However, the existing corporate structure for both VL and VTL does not allow new local authority members to be easily admitted due to the need to issue additional shares, and the impact this has on existing shareholdings. Existing member councils also cannot easily leave.

3.11 The key drivers for a change to the Veritau Group's current business model and corporate structure are therefore:

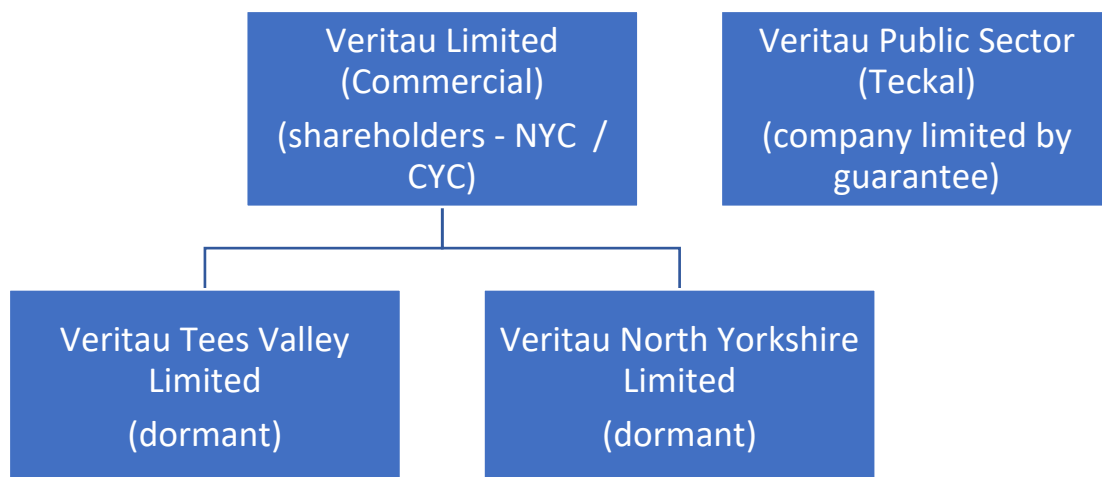
- to ensure Veritau can maintain its Teckal status, allowing it to continue delivering audit and assurance services to its current member councils;
- to ensure Veritau can continue to grow through the admission of new member councils and that the business remains competitive.

Proposal – creation of Veritau Public Sector Limited

3.12 The proposal is to create a new Teckal compliant company, limited by guarantee. The new company would be called Veritau Public Sector Limited (VPS).

3.13 The four existing Veritau member authorities (CYC, NYC, MC and RCBC) would all become the initial members in the new company. Further member councils would be admitted after the formation of the company.

- 3.14** Each member authority of VPS would be required to pay a one-off subscription fee of £20k to join the new company to cover set-up costs, working capital and contingencies. VTV would pay a dividend to MC and RCBC to fund each council's subscription.
- 3.15** The future liability of the Council and the other member authorities, otherwise known as the guarantee, would be capped at an agreed value of no more than £10. The guarantee is the maximum sum which would need to be paid by the member council to the company in the event of the company being wound up. If the Council or one of the other local authorities ceased to be a member of VPS, the guarantee would continue to apply for one year after the date of exit.
- 3.16** VL would become a non-Teckal company limited by shares providing services to external clients. All the existing commercial contracts would therefore remain with VL. The company would also continue to be co-owned by CYC and NYC. The existing staff and assets of both VL and VTV would transfer to VPS once the company was created.
- 3.17** VPS would recharge any payroll and overhead costs to VL at a market rate and would also charge VL a management fee for strategic leadership services.
- 3.18** To the extent that VPS makes a surplus in respect of any services it provides (whether to VL or to its member councils), this would either be reinvested in its business operations or returned to the member councils in the form of a rebate.
- 3.19** Both VNY and VTV would eventually be wound up.
- 3.20** Subject to approval from all the existing member council, the Veritau Group structure would then be as follows:



- 3.21** This corporate structure would satisfy the Teckal exemption within the Public Contracts Regulations 2015. A company limited by guarantee would also facilitate the admission and exit of member authorities which permits the future growth of the company.

4.0 What options have been considered

- 4.1** A number of options have been considered and external legal advice has been obtained in respect of Teckal compliance. The alternative options were:

Option 1 - Do Nothing

This option is not considered to be viable because it does not allow the Veritau Group to grow and remain Teckal compliant.

Option 2 - Keep the existing business structure but take steps to ensure continued Teckal compliance

This would require careful monitoring of the external fee work undertaken by Veritau. Any reduction in the value of this work could have a negative impact on Veritau's financial viability. In addition, the corporate structure would still not allow for the easy admission of new member authorities.

Option 3 - Re-purpose VNY and novate all external commercial work to VNY

This option would involve converting the existing dormant company into a standalone commercial business. The existing commercial contracts held by Veritau Limited would then be novated to VNY. This would partially address any longer-term concerns about potential Teckal compliance but would still not allow for the easy admission of new authorities.

- 4.2** As such, these alternative options are not considered to be viable, and the proposed creation of the new company limited by guarantee remains the most appropriate solution to ensure continued Teckal compliance and growth.

5.0 Impact Assessment

5.1 Climate Emergency – there are no direct implications from this report.

5.2 Health and Safety – there are no direct implications from this report.

5.3 Social Value – the work of Veritau supports overall aims and priorities by promoting probity, integrity and honesty and by helping to make the Council a more effective organisation.

5.4 Legal - the Council will rely on the general trading powers in conjunction with its powers to carry out the activity in question. Both general trading powers require the authority to trade through a company. Section 95 of the Local Government Act 2003 enables relevant authorities 'to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions' (anything they are empowered to do in legislation). The section 95 power can be limited by order and authorities exercising it must have regard to guidance issued by the Secretary of State. Section 4 of the Localism Act 2011 enables the local authority to do for a commercial purpose anything that it is empowered to do under section 1 (the general power of competence). The section 4 power is therefore wider than the section 95 power.

The section 95 and section 4 trading powers prescribe which company structures may be used, one of which is a company limited by guarantee.

The local authority must prepare a business case supporting the exercise of the section 95 power, which the authority must approve (Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009). The business case attached at appendix 1 fulfils this purpose.

It is proposed that the new company will comply with the Teckal exemption as incorporated into the Public Contracts Regulations 2015. Regulation 12(1) enables a contracting authority to directly award contracts to a company it owns without undertaking a procurement exercise where the following criteria are satisfied:

- the contracting authority exercises the same amount of control over the company as it does over any of its internal departments. This will be governed through reserved matters in the company's Articles of Association, Members Agreement and corresponding Scheme of Delegation and the composition of the Board of Directors of the company which will contain a majority of member authority directors; and
- more than 80% of the company's turnover is derived through activities performed for the contracting authority; and
- there is no direct private capital participation in the company.

It is proposed that the new company will be set up and operated in a way which will fulfil all three criteria.

It will be possible for the new company to admit new members provided that it continues to satisfy the control and activities tests under Teckal. This is possible due to the company being limited by guarantee.

The Procurement Act 2023 introduces slightly different tests for Teckal (under the Act referred to as 'vertical arrangements') but in practice the control test contained in Schedule 2 of the Act is not fundamentally different from that currently contained under Reg 12(1) of the Public Contracts Regulations 2015. There is a new component of the test under the Procurement Act 2023, requiring that any controlling or member entity fulfils the requirement of 'parent undertaking' as defined under section 1162, Companies Act 2006.

The new company's activities will be bound by the Public Contracts Regulations 2015. The company will therefore need its own Procurement and Contract Procedure Rules. It is proposed that where the company requires the use of office accommodation it will enter into appropriate commercial leasing or licencing agreements.

The new company will also provide staff resources and strategic leadership services to Veritau Limited on an ongoing basis. Any services provided by the new company to Veritau Limited would be charged at market rates and would count towards the 20% Teckal limit.

The proposal for Veritau Tees Valley Limited to declare a dividend to its shareholders is subject to shareholder's consent. Approval of the dividend by the Council is therefore required.

The staff within Veritau Tees Valley Limited will transfer to the new company under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

- 5.5 Financial** – the work of Veritau contributes to the effective management of the Council’s financial risks. The payment of a dividend by Veritau Tees Valley Limited will provide the funding to enable the Council to pay the one-time subscription fee for admission to the new company.

The recommendations contained in this report will ensure the Council is able to retain a cost-effective internal audit assurance service.

- 5.6 Human Resources** – the work of Veritau contributes to the effective management of the Council’s employment related risks.

- 5.7 Equality and Diversity** – the work of Veritau contributes to the effective management of risks associated with equalities and diversity.

6.0 Consultation and Engagement

- 6.1** Senior officers have been consulted on the business case attached as appendix 1 to this report.

7.0 Appendices and Background Papers

Appendix 1 – business case for the creation of a new Teckal company limited by guarantee (confidential).

8.0 Contact Officer

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