



Report On The Proposed Sale Of Denbighshire Leisure Ltd (DLL)

UNISON Wales

(Denbighshire Council)

This report has been
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1. Introduction

- 1.1 Denbighshire Council UNISON branch has asked APSE Solutions to prepare a report on the proposed sale of Denbighshire Leisure Ltd (DLL) to a new company owned (or to be owned) by the current managing director of DLL, along with a private equity investor.
- 1.2 APSE has had sight of documents that are in the public domain, including a business case presentation setting out the arguments for the sale. Access to the business case itself has not been granted.
- 1.3 The decision not to share the detailed rationale for the proposed sale or how it is to be achieved, means that there are a significant number of questions that need to be answered before a firm analysis can be completed. This report therefore sets out some initial thoughts on the proposal, along with questions aimed at gaining a fuller understanding. It does not at this stage draw conclusion or make recommendations beyond relaying the questions to the council. For ease of reading, these are the questions:
 - How and by whom was the value of the sale calculated? Is the council satisfied that it is the best price that could be obtained?
 - Does DLL have the power to facilitate the sale?
 - Does DLL have the power to create a profit distributing subsidiary? Where is this set out in the Articles of Association?
 - Is the sale consistent with the objects of DLL and if not, what power does it have to agree to it?
 - What conflicts of interest have been considered and authorised (by the council) under Article 12 of the DLL Articles of Association, by whom and when?
 - What involvement, if any have Macintosh Holdings and 360 Leisure Group had in the development of the sale proposal? Are these companies expected to be involved in the run up to the sale?
 - Has the council taken its own advice and satisfied itself that transferring the contract to the new company in these particular circumstances does not trigger a fresh procurement? Can it explain why this is the case given that the new company will not satisfy any of the conditions set out in Regulation 12 of the Public Procurement Regulations 2015 which was the basis for the award of the contract to DLL? Has the council committed to awarding the new company a further contract at the expiry of the current one? If so, is the council satisfied that such a commitment is lawful?

- Has the council satisfied itself that the arrangement with the private equity partner has been lawfully procured? What procedure was followed and when and by whom was the preferred bidder selected?
- Has any consultation taken place with any of those organisations that currently provide grant funding to DLL? If so, what was the outcome of that consultation?
- What has the Council done to satisfy itself that the offer it has received from the new company is competitive and that a different provider procured through competition would not have offered a more economically advantageous bid?
- What mechanism is available to allow the council to access the £1.5m proceeds from the sale of DLL?
- Has the council considered the Code of Practice on Workforce Matters? If so, where is the outcome of this consideration recorded?
- Has the council considered the requirements of The Well-being of Future Generations (Wales) Act 2014? If so, where is the outcome of this consideration recorded?
- Has the council considered the requirements of the Social Partnerships and Procurement (Wales) Act 2023? If so, where is the outcome of this consideration recorded?

1.4 This report is provided to UNISON for its sole use and should not be relied on by any other party. It does not purport to offer legal advice. It has also notably been developed in response to UNISON as the client and at this juncture the council has not presented the full range of documents that would be needed to assess the proposals in detailed terms. However, the author would welcome further dialogue between all parties to assist mutual understanding.

2. Background – What is DLL?

2.1 DLL is a company wholly owned and controlled by Denbighshire County Council. It is an example of what is often referred to as a Teckal company, in reference to the European Case law that first defined the circumstances in which a public authority could lawfully contract with a company that it owned, without having to comply with the competition requirements of the EU Public Procurement regime¹. The principle was incorporated into the European Public Sector

¹ Teckal SRL v Comune de Viano (Case C-107/98)

Procurement Directive of 2014 and into UK law by the Public Contracts Regulations 2015.

- 2.2 Following the UK's withdrawal from the European Union, new legislation has been introduced in the form of the Procurement Act 2023. This new legislative framework broadly preserves key elements of the European regime, including the general requirement for public contracts to be let via a fair and transparent process. The exceptions to this continue to include contracts awarded to companies owned and controlled by the contracting authority, with no private sector equity involvement. As under the EU legislation, the contractor must carry out more than 80% of its activities on behalf of the contracting authority².
- 2.3 The control requirement means that compliance cannot be achieved if any person other than the contracting authority exerts a decisive influence 'on the activities of the person (either directly or indirectly)'³. For clarity, 'contracting authority' in this case means the council and 'the person' means DLL.
- 2.4 DLL was created in 2019 to take over the then inhouse leisure service. The business case for this is set out in a report considered by a full council meeting on 30 May 2019. The rationale was primarily financial, in that DLL was expected to benefit from National Non-Domestic Rate relief and VAT exemptions. These savings were to be used for reinvestment into leisure facilities and to reduce reliance on council subsidies. The report also refers to the potential for increased revenue from external trading and improved operational efficiency. Elected members were assured that there would be no loss of control.
- 2.5 The report proposed a ten-year contract with DLL. This was subsequently awarded without competition under the provisions of the Public Contracts Regulations. The contract was extended by an additional year in 2022 and therefore now runs until 2031. Council owned facilities are leased to DLL under a parallel agreement.
- 2.6 According to the business case presentation setting out the case for its sale, 'Since going live DLL has delivered excellent services and has been performing well above levels expected post-pandemic'.

3. The Proposal

- 3.1 The management team of DLL have now come forward with a proposal for what is often referred to as a management buy-out. This would involve transferring the business of running the Council's Leisure Centres and other services currently delivered by DLL, to a new company owned by members of the DLL management

² The conditions pertaining to this are set out in Sch. 2 of the Procurement Act 2023.

³ Ibid

team. The proposal includes a commitment to extend shareholding to other employees as and when the company becomes profitable.

- 3.2 DLL is a company limited by guarantee, without share capital. The slides suggest that the sale would therefore involve the creation by DLL of a subsidiary Trading Company Limited by Shares which would then take over the contract with the council. This new company would then be sold to a new parent company owned by members of the current management team and their private equity partners. The proposed sale price is £1.5m. The basis on which this valuation has been made has not been disclosed and it is not apparent who is paying it. If the whole amount is coming from the PE investor, to acquire a minority shareholding, this suggests that the company could be worth significantly more than £1.5m. The council is under a fiduciary duty to obtain best consideration when it disposes of assets.

How and by whom was the value of the sale calculated? Is the council satisfied that it is the best price that could be obtained?

Does DLL have the power to facilitate the sale?

- 3.3 Article 4 of the DLL Articles of Association sets out the objects of the company and Articles 5 sets out the powers it has to pursue them. Whilst they do not explicitly rule out facilitating the making of private profit, it is highly questionable whether this is consistent with objects and powers that are focused on delivering services to the benefit of the public and which specifically prevent the distribution of profit.

Does DLL have the power to create a profit distributing subsidiary? Where is this set out in the Articles of Association?

Is the sale consistent with the objects of DLL and if not, what power does it have to agree to it?

- 3.4 The Articles of Association also create a process for avoiding conflicts of interest. This gives a power to the council as the sole member of the company 'to authorise any matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in the Companies Act 2006. Under the Article the interested director must provide the member with details of his/her interest.
- 3.5 In the current case those members of the DLL management team who become shareholders of the new company stand to gain substantially if the company is successful and/or when it is sold. They would therefore appear to have a clear pecuniary interest in the proposed sale of the DLL subsidiary trading company.

- 3.6 A number of new companies have been registered over the past few months with similar names to DLL⁴. The first of these, DLL Group Ltd, was set up in December 2024. It is wholly owned by DLL and has one officer, the current Managing Director of DLL, Mr Jamie Groves. This is presumably the trading company that is to take over the contract and then be sold to the new company or companies.
- 3.7 The other new companies, DLL Leisure Ltd, DLL F&B Ltd and DLL Events Ltd are jointly owned by Mr Groves, who has a 75% or more shareholding, and Andrew Jones who is understood to be an employee of DLL. DLL has no shares in these companies even though they share its registered address. It is not known whether Mr Jones's involvement is as an employee of DLL or as a private individual.
- 3.8 These companies were all set up months before the council considered the proposed sale of DLL at its meeting on 26 March 2025.
- 3.9 The owners of the three new companies are also the sole directors of two other companies – Macintosh Holdings Ltd and 360 Leisure Group Ltd. These companies share a different address to DLL and the other new companies mentioned above. As with the other companies, Mr Groves personally holds at least 75% of the shares. It is possible that these companies have no interest in the proposed sale of DLL but if they have, then it might be expected that this would have been declared and considered through the process discussed above.

What conflicts of interest have been considered and authorised (by the council) under Article 12 of the DLL Articles of Association, by whom and when?

What involvement, if any have Macintosh Holdings and 360 Leisure Group had in the development of the sale proposal? Are these companies expected to be involved in the run up to the sale?

- 3.10 The Articles of Association state that the income and property of the Company shall be applied solely in promoting its Objects. The question therefore arises as to whether Company funds and property have been used for the benefit of any of the companies mentioned above. If they have then this is arguably unlawful. These uses would include:
- Costs incurred in relation to the agreement with the private equity partner
 - The cost of legal and other financial advice taken by Directors acting on behalf of these companies rather than for DLL

⁴ Details taken from Companies House

4. The role of Private Equity (PE)

- 4.1 Private equity investors are typically associated with the acquisition and subsequent sale of privately owned companies. Their primary objective is to deliver yields to their investors by increasing the value of the shares they hold. They are unlikely to have any long-term interest in the wellbeing of target companies or indeed of their customers. They are often focussed on driving down costs. In a business where salaries are the biggest cost this can impact very directly on pay, pensions and other terms and conditions. For reasons discussed below the benefits of reduced costs are often offset by the additional cost created by the requirements of the PE investor.
- 4.2 Whilst private equity can be a good choice for companies in need of a capital injection, it is also widely associated with practices that benefit the investor rather than the company. One of these is the use of so-called leveraged buy outs whereby some of the cost of the purchase is loaded on to the target company as debt. Other practices divert revenue to pay for head office services, goodwill, inter-company loans etc.
- 4.3 As no information is provided on the detail of what has been agreed in the current case, it is impossible to know whether any or what proportion of the PE investment will impact on the balance sheet of the new company. It can however be reasonably assumed that a proportion of revenue will go to fund the return on the PE investment. This is money that currently stays within the service and within the local economy.
- 4.4 As the business case presentation slides acknowledge, the private equity partner is unlikely to hold onto its holdings in the new company for very long. According to the Investopedia website, the average holding period is just 5.6 years. PE investors expect a yield from their investment; acquired companies are expected to be sold at a profit. It is possible that the company itself will have first preference when the shares are sold. Whilst buying back shares might reduce the amount of leakage from the local economy, it would probably be debt financed and therefore create a further strain on the company's finances.
- 4.5 The business case states that whilst performing well, DLL 'is beginning to reach its organic ceiling'. It says that the company's 'Teckal structure makes bidding for external business difficult'. It does not explain this. In fact, the conditions allowing the direct award of contracts do not dictate any particular structure other than requiring the council to be able to exercise decisive control over the company's affairs. Nor does it explain how a new company with no financial records or history would be better placed to bid for new work. An immature company is arguably

less able to win new work than the existing Teckal company or indeed the council in its own right under the insourcing option.

- 4.6 Given that the retention of council control over its leisure provider was seen as an advantage of the DLL model of delivery it is difficult to understand why this should now be regarded as a problem.
- 4.7 The slides also refer to geographical restrictions 'of only being able to operate significantly within the current DCC contract and Denbighshire area'.
- 4.8 For clarity, a council owned and controlled company is free to trade, provided that more than 80% of its activity is carried out on behalf of the council. It is not subject to any geographical restrictions unless these are imposed by the company's own constitution. This not the case for DLL whose objectives are widely drawn and not limited to the benefit of the Denbighshire area or its public.
- 4.9 The business case slides set out a vision for growth based on:
- Take over services from neighbouring and other UK Local Authorities
 - Closer working relationship with Alliance Leisure to create opportunities further afield
 - Increase food and beverage opportunities
 - Move into new markets
- 4.10 None of these objectives require the privatisation of DLL. Indeed, some of them may be harder to achieve as a privately owned company. Other council services will only be capable of being taken over if they are put out to tender and the new company is successful in bidding for them. DLL on the other hand could extend its activities by joining with other local authorities to create a jointly owned company that would continue to enjoy the benefits of the Teckal exception.
- 4.11 Ironically, Alliance Leisure, with whom the new company wishes to work more closely, is an example of this. It is jointly owned by High Peak Borough Council and Staffordshire Moorlands Council and is constitutionally not for profit. A council owned DLL seems a more natural fit as a partner than the proposed privately owned new company. Any formal arrangement between the new company and Alliance Leisure could raise procurement and pollical/ethical issues for Alliance Leisure and the authorities that own it that would not arise were it to partner with DLL.

5. Procurement Issues

- 5.1 The business case slides state that expert legal advice has confirmed that the contract with DLL can be novated to the new company, without the need for a

fresh procurement. This advice appears to have been provided to the DLL management team, rather than to DLL as a company or to the council. It is crucial that the council, DLL and the company seeking to buy DLL take their own independent advice on this and all other legal and financial aspects of the sale, as the three parties each have different and potentially conflicting interests.

5.2 Regulation 72 of the Public Contracts Regulations 2015 governs the modification of contracts awarded under those Regulations. Novation is allowed in circumstances 'including takeover, merger, acquisition or insolvency'. However, this is subject to the new company fulfilling 'the initially established criteria for qualitative selection and the modifications, irrespective of their value, not being 'substantial within the meaning of paragraph (8)'.

5.3 The fact that the new company does not fulfil the criteria set out in Regulation 12 (The Teckal criteria) means it could not have been awarded the contract as originally procured, so it is difficult to see how the novation satisfies the first element of this stipulation. In fact, once the trading company is sold the contract will cease to be compliant with the conditions for direct award of contract. The new company will neither be in the ownership nor the control of the contracting authority. It will also have private sector capital involvement.

5.4 Paragraph 8 includes the following:

(a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;

(b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have —

(i) allowed for the admission of other candidates than those initially selected

(ii) allowed for the acceptance of a tender other than that originally accepted, or

(iii) attracted additional participants in the procurement procedure;

5.5 The original conditions included those that allowed the direct award under Regulation 12. As these will no longer be met it is difficult to understand how the expert advice has concluded that there is no material change in the character of the contract. Moreover, had the Regulation 12 conditions not applied, the contract would have to have been open to other candidates.

5.6 Without knowing what questions were asked of the legal advisor and what the opinion says, it is not possible to take a view on the advice given but there is good reason to believe that the council will be vulnerable to challenge if the contract is not retendered. The following appears on the CIPFA website. Although this refers specifically to a situation in which a Teckal Company is converted to an employee

mutual, it would apply in the case of any sale to a company that does not meet the Teckal criteria.

If the Teckal company operates for a period of time and then decides it should become an employee-owned mutual (or co-op), the council will need to sell the company to the employees and at this point any contracts it has with the Teckal company will need to be retendered, as the Teckal exemption would no longer apply once the ownership and control change. It should be noted that there is no guarantee that the newly formed co-op or mutual would succeed in winning the contract⁵.

5.7 Has the council taken its own advice and satisfied itself that transferring the contract to the new company in these particular circumstances does not trigger a fresh procurement? Can it explain why this is the case given that the new company will not satisfy any of the conditions set out in Sch. 2 to the Procurement Act 2023?

5.8 Even if the sale of DLL does not trigger a fresh procurement, the contract has less than five years to run. In response to a question about this, UNISON has been told that there will be a further 10-year contract. Notwithstanding that the council does not seem to have made any such decision, it would be absurd to make such a decision five years in advance of the end of the current contract. Moreover, a direct award is highly unlikely to be lawful in the circumstances. The Teckal conditions will not be met and whilst the service probably falls into the so-called light touch category⁶, awarding a contract to a private company with minimal or no competition would be highly questionable from a best value or fiduciary duty perspective.

Has the council taken its own advice and satisfied itself that transferring the contract to the new company in these particular circumstances does not trigger a fresh procurement? Can it explain why this is the case given that the new company will not satisfy any of the conditions set out in Regulation 12 of the Public Procurement Regulations 2015 which was the basis for the award of the contract to DLL?

5.9 If the business case projections turn out to be accurate the requirement for a council subsidy will reduce from 2026/27 onwards. Given that there is no reason why a private company would subsidise the services delivered on behalf of the council, this suggests an expectation that these services will move towards breakeven or even profitability. If this happens the Council might want to consider

⁵ [CIPFA article - Teckal: The basics explained | CIPFA](#)

⁶ The rules governing the procurement of so called light touch services are less onerous and prescriptive but the general principles of transparency and equality of treatment between potential suppliers still apply

bringing them in house so as not to have to share the profit with an external provider.

- 5.10 The business case slides state that, 'Executive Management has been out to the market to secure private investor funding'. No detail has been provided in relation to the process followed.
- 5.11 The Teckal status of DLL means that it is subject to the requirements of the public procurement legislative framework. Engaging with a joint venture partner is a kind of procurement and must therefore follow one of the procedures laid down in the legislation. These procedures are intended to ensure transparency, fairness and protection of the public purse.

Has the council satisfied itself that the arrangement with the private equity partner has been lawfully procured? What procedure was followed and when and by whom was the preferred partner selected?

6. Best Value

- 6.1 Councils are subject to a statutory duty to 'make arrangements to secure continual improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness'
- 6.2 Councils are free to decide for themselves what delivery model they believe will provide best value. There is however an implicit requirement to consider all potential delivery options.
- 6.3 Although the business case slides do purport to compare the buyout option with those of continuing with DLL and bringing the service in house, there is little detail and no challenge of the data these are based on which appears to have been provided by a party with a clear interest in the outcome. Even if the preference for a private, for-profit provider has been properly arrived at, there is no consideration of how this should be best implemented. In effect, the contract is to be awarded to a new company, with unknown investors, without any evident attempt to test the market. Whether or not this is lawful in procurement terms, it is highly questionable from a best value perspective.
- 6.4 What has the Council done to satisfy itself that the offer it has received from the new company is competitive and that a different partner, procured through competition would not have offered a more economically advantageous bid?

Consultation with stakeholders

- 6.5 The duty of best value incorporates a requirement for consultation with representatives of local taxpayers, service users and others with an interest. There appears to have been no consultation with any of these groups prior to the decision to sell DLL to the new company. It is difficult not to see this as a breach of statutory duty.
- 6.6 Some of the leisure facilities are school based. Consultation with schools would therefore seem to be an essential element of any decision to alter the arrangements for provision. The business case slides suggest that users of the service will see no change as the contract specifications will remain the same but a change in supplier from one that is owned and controlled by the Council to one that is owned and controlled by private investors is a material change. Key factors for schools might include service resilience and continuity, price certainty and mechanisms for ongoing consultation around service development.
- 6.7 The business case supporting the establishment and transfer of the service to DLL referred to the Arts Council Wales as a stakeholder of particular significance. It was seen as important to ensure that the new arrangement was acceptable to it as a funder of elements of the service. There is no evidence that similar consultation has taken place with regard to the sale of DLL to a for profit organisation. Not does there seem to have been consultation with Sports and Disability Sport Wales which is also provides grant funding to DLL?

Has any consultation taken place with any of those organisations that currently provide grant funding to DLL? If so, what was the outcome of that consultation?

How does the council benefit from the deal?

- 6.8 Under the terms of the proposal the new company is to pay DLL £1.5m to acquire the trading subsidiary. This will be paid to DLL, not the council. The question therefore arises as to how the money can be used and in particular whether it can be returned to the council.
- 6.9 Article 6 and Article 7 of the DLL Articles of Association determine what the company is able to do with income and what happens to its assets and property in the event that it is wound up.

Article 6.2 rules out the possibility of the £1.5m being paid to the council whilst DLL continues to trade:

‘No distribution, dividends or bonus may be paid or capital otherwise returned to the Members in cash or otherwise’

- 6.10 Article 7.1 requires any assets or property that remains after debts and liabilities have been met to be transferred to 'another body (charitable or otherwise) with objects similar to those of the company' and expressly prohibits payment or distribution to the Members i.e. the Council.
- 6.11 What mechanism is available to allow the council to access the £1.5m proceeds from the sale of DLL?
- 6.12 The business case slides also refer to a 10% reduction in subsidy each year from year two onwards as a means by which the council will gain financially from the deal. The slides project a total saving of £6.79m to DCC over 10 years. It is not clear whether this is intended to be contractual but as discussed above, the current contract has less than five years to run so projecting savings over a ten-year period suggests that the figures are speculative.
- 6.13 The options for reducing the amount the council pays are to reduce the cost of provision or to increase the income received from users of the service or a combination of the two. The slides suggest that business growth within the current scope of the service is unlikely. This leaves price increases or reductions in running costs as the likely drivers of the envisaged reduction in subsidy. It is understood that prices are determined by the council. Given that the terms of the contract are to remain as they are now, this route to net cost reduction is not therefore within the control of the new company. For this reason, it can be reasonably assumed that cost reduction will be the approach followed. As salaries and other employee costs are the most significant cost element, this has implications for current and future staff.

7. Workforce Issues

- 7.1 The business case slides overtly recognise the right of current staff to retain their existing terms and conditions of employment under the TUPE regulations and provides assurance that these will not be reduced. The slides also state that DLL is 'effectively paying double the market rate for certain positions' indicating that cutting pay and conditions is to be a core part of the company strategy under the new owners.
- 7.2 It should be noted that TUPE does not cover pension provision. The slides state that transferees who are members of the LGPS will remain so but this assumes that the new company will gain admission into the scheme. This will not be automatic. There is also the question of whether the DLL LGPS scheme is currently underwritten by the council and whether this will (or can) continue once the company is sold.

7.3 Lower pay and minimum pension provision for new starters will play a major role in moving the company into profit and creating increased value for the private equity investors. Over time it will also bear down on the cost of delivering the council contract as TUPE protected workers are replaced by lower cost staff. Aside from the inherent problems this creates from having a so-called two-tier workforce, it raises issues around long-term recruitment and retention, skills, and service quality. It also has wider ramification around the local economy and goes to matters covered by both the Social Partnership and Procurement (Wales) Act 2023 and the Well-being of Future Generations (Wales) Act 2015. There is no evidence that the requirement of either have been considered. Moreover, the likely creation of a so called two tier workforce seems to be in direct conflict with the Welsh Government's code of Practice on Workforce Matters⁷ which states that:

'The Code of Practice should be applied where a body transfers its employees to a service provider as part of a contract to provide any service to the body. It will ensure that new joiners to the transferred-out workforce are offered terms and conditions which are, overall, no less favourable than those of the transferred staff.'

Has the council considered the Code of Practice on Workforce Matters? If so where is the outcome of this consideration recorded?

Has the council considered the requirements of The Well-being of Future Generations (Wales) Act 2014? If so, where is the outcome of this consideration recorded?

Has the council considered the requirements of the Social Partnerships and Procurement (Wales) Act 2023? If so, where is the outcome of this consideration recorded?

8. Timeframe

8.1 The business case slides include a timeframe which envisages completion of the acquisition, including the transfer of staff by 1st July 2025. This seems extraordinarily tight and offers little time for any meaningful input from stakeholders who have as yet not been consulted on the proposal.

8.2 A number of statements in the slides indicate that the reason for the tight time frame is that the private investor's offer is 'time sensitive'. It is crucial to proper and effective due diligence that the needs and requirements of this company do not dictate the pace at which the project proceeds. There are clearly a number of

⁷ Circular: code of practice on workforce matters 2014

matters, some of which are raised in this report, that need careful consideration. If necessary, the process should be paused in order to fully address them.

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