

WEST OXFORDSHIRE DISTRICT COUNCIL
COUNCIL – WEDNESDAY 6 SEPTEMBER 2017

**COUNCIL RETAINED OFFICER STRUCTURE AND DELEGATIONS AS A
CONSEQUENCE OF ESTABLISHMENT OF SHARED SERVICES COMPANY**

REPORT OF THE HEAD OF PAID SERVICE

(Contact: Frank Wilson, Tel: (01993) 861291)

1. PURPOSE

To set out the new arrangements to enable the Council to continue to discharge its functions once the Council enters into contracts with its own local authority company, Publica, for the delivery of services.

2. RECOMMENDATIONS

- (a) That the following officers be appointed to the specified statutory officer roles with effect from the date of transfer:-
Giles Hughes – Head of Paid Service
Jenny Poole – Section 151 Officer
- (b) That the structure in the report be approved, and the Head of Paid Service be authorised to determine the manner in which the discharge by the authority of their different functions is co-ordinated in conjunction with Publica in line with paragraph 4.16 below;
- (c) That officers employed either solely or partly by the Council be employed using the same terms and conditions, HR policies and procedures as Publica employees;
- (d) That the Head of the Paid Service be designated as the Council's Proper Officer for any functions or purposes where the matter does not fall within the specific authority of one of the statutory officers or any of the roles where dual employment will apply; and
- (e) That the Monitoring Officer be authorised to make any necessary changes to the Council's constitution as a result of the changes approved pursuant to this report.

3. BACKGROUND

- 3.1. In June 2014 the four GO Shared Services Partner Councils approved a "Report and Outline Business Case for a "2020 Vision for Joint Working". Subsequently the four 2020 Partners Councils approved a "Report on Options for Future Delivery Models and Interim Management Arrangements" prepared by Activist Ltd.
- 3.2. In August 2015, the full "2020 Vision for Joint Working Business Case" was prepared. This business case, based on the original proposition, forecast to return cumulative savings totalling £38m over a 10 year period with annual revenue savings of £5.7m. External funding of £3.8m towards the cost of the Programme was received from the Government's Transformation Challenge Funding.
- 3.3. Consequently, the business case was agreed and approved by the four Councils in September/October 2015. Subsequently the 2020 Joint Committee was established and became operational in February 2016 with a number of shared services being

established from April 2016. This has resulted in savings of £2,332,000 being delivered for the partner Councils to the end of 2016/17.

- 3.4. In June 2016 the Joint Committee agreed an updated business case and to consult with partner Councils about the proposal to implement a company model. In October 2016 the Councils all agreed a report recommending the creation of a company model comprising three companies, then described as a support services company, co-ordinating company and a regulatory services company. Cotswold District Council (CDC), Forest of Dean District Council (FoDDC) and West Oxfordshire District Council (WODC) agreed to become members of the three companies. Cheltenham Borough Council agreed to become a member of the support services company and only to receive Finance, HR and ICT from that company. As agreed the Publica companies were formed early in 2017 and over the intervening period officers have been working to establish the companies to accept the transfer-in of approximately 650 employees. Recently it has been determined that to mitigate tax issues, ease complexity for employees, and, keep running costs down, only one company is necessary at least initially. To enable Cheltenham to retain their involvement within the shared service company this will need to be Publica Group (Support) Ltd as this is the company of which they are members.
- 3.5. As part of the arrangements the Councils will be entering into contracts with Publica to deliver the current joint services and the remainder of those Councils' services from autumn 2017. Cheltenham BC will contract with Publica to receive the services of Finance, HR and ICT services only (in line with their current contract arrangements).
- 3.6. As a result of the creation of Publica and the consequent new contracting arrangements, it is necessary to agree new arrangements to enable the Council to continue to discharge its functions once the Council enters into contracts with Publica for the delivery of services and, therefore, complete the agreed delivery of the 2020 Vision of the partner Councils.

4. NEW ARRANGEMENTS AS PUBLICA BECOMES OPERATIONAL

Company Governance

- 4.1. The company is a public body, wholly owned by the partner Councils. Those Councils exercise control over the company through the appointment of the Leaders of the Councils to act as the Member (Shareholder) Representatives and appointing Directors to the company boards.
- 4.2. The Board of Directors for the company have been now been established by the Councils with an independent non-executive chairman, three independent non-executive directors and four executive directors. Cheltenham Borough Council has appointed a councillor-nominated non-executive director. The Boards of Directors will govern the company and ensure that the Councils' objectives and contractual requirements are fulfilled. The Boards of Directors will seek approval and authority from the Member (Shareholder) Representatives when required by the company's constitution. The company will establish an executive management structure that will be responsible for the day to day operations and management of the company in much the same way as the current Councils do.

Commissioning Arrangements

- 4.3. The following commissioning arrangements have been agreed by Cotswold, Forest of Dean and West Oxfordshire Councils as part of the previous decisions:-
- The Councils will commit to transfer all functions and services that can be delegated to be provided by the Company
 - The Councils' Statutory Officers will be employed by the Council(s) with an agreement to provide some management activities for Publica
 - The non-delegable decision making officers will be employed by Publica and the Council under joint employment contracts
 - Each Council will have a named lead commissioning officer who will also undertake the statutory role of Head of Paid Service and receive commissioning support and advice
 - Clear standards of behaviour, an ethical walls policy and an escalation procedure to deal with any potential conflicts of interest will be established

Service Delivery Arrangements

- 4.4. Cotswold, Forest of Dean and West Oxfordshire Councils will contract with the company to provide all functions and services that can be delegated with Cheltenham Council taking a lesser range of services.
- 4.5. With regard to any functions that cannot be delegated such functions will continue to be provided by the respective employees acting for the Council.
- 4.6. It has been previously agreed by the Council that the contract durations will be as follows:
- Commissioning and Advisory Services – 10 years plus opportunity to extend for 10 years
 - Direct Service Provision – seven years plus opportunity to extend for seven years
 - Support Service Provision – five years plus opportunity to extend for two further periods each of four years
- 4.7. Service delivery will be managed within the company in accordance with the service contracts agreed by the Councils. It is proposed that service partnership boards will be established by Publica to enable the relevant Council Portfolio Holder, Commissioner and Publica Service Provider to monitor service performance, quality and improvement. Scrutiny Committees will continue to monitor performance and hold Publica to account.

Delivery of the remainder of the 2020 Vision benefits

- 4.8. The delivery of the remainder on the 2020 Vision benefits will be carried out by Publica under contract to the Councils. The outstanding benefits are primarily related to operational service transformation, commercialisation, and company development that are better suited to being managed within the company. In addition long term pension cost savings will be delivered by the companies. As part of the contract with the company an element of already approved funding for completing the remainder of the planned transformation under the company's control will be included. The new company Board of Directors will be accountable for driving the necessary changes within the company to deliver further efficiencies on behalf of the Councils as owners of the company.

Legal Requirements

- 4.9. Local authorities, as creatures of statute, have to act within the express and reasonably implicit powers granted to them by Parliament. If they do not do so then their act(s) can be deemed to be **ultra vires** and therefore vulnerable to challenge by way of judicial review or auditor challenge.
- 4.10. In restructuring any local authority provided service it is therefore necessary to ensure that the methods for future delivery are permitted by statute both in terms of a local authority's general ability to act in a certain way, and, in terms of specific statutory requirements for each service.
- 4.11. To provide this assurance, the Council has undertaken a vires audit to ensure all anticipated services can be delegated to Publica. Where delegation is not permitted, the vires audit has identified which parts of the relevant functions must be carried out by the relevant Council's employees. This has been used to determine the scope of any joint employment arrangements and the allocation of tasks carried out by an employee between the joint employers.

Vires Audit and Council Retained Employment

- 4.12. The Vires Audit identified the principal areas of focus and key principles that have been incorporated into the legal agreements between the Councils and Publica. The vires audit has identified the non-delegable functions and these will be dealt with by retaining some Council employment, making any necessary changes to the Councils' constitutions and the inclusion of appropriate wording in the contracts to ensure legal compliance.

Statutory Delegable & Non-delegable Functions

- 4.13. Statutory functions are duties or powers given to a local authority to do something or provide something. These functions will always lie with the local authority, and cannot be delegated or contracted out unless otherwise expressly provided for in law. Unless there is an act or order permitting delegation, (or the relevant statute itself expressly allows the functions to be exercised/contracted out to a third party) then the exercise of relevant functions cannot be delegated or contracted out.
- 4.14. A function or decision able to be delegated can be carried out by a third party - this would include Publica company employees. A function or decision that cannot be delegated has to be carried out by a Council or a Council Officer (i.e. Council employee).
- 4.15. There are a number of matters where legislation requires a Council to designate an officer as the "Proper Officer" for a specified purpose or function. The recommendation in paragraph 2(d) above is intended to cover this aspect.

Principal Roles, Service Areas and Non-delegable Functions

- 4.16. The outcome from the vires audit has identified the following functions that are non-delegable along with some specific statutory roles. These primarily relate to the Councils' regulatory functions. In addition there are some further roles which whilst they are able to be delegated it may be appropriate to retain as Council employees for probity reasons, such as commissioning decisions. The list below shows the proposed functions to be retained by the Councils which would therefore require some Council employees to undertake them.

Retained Non-delegable Functions

4.17. The following positions will be employed by the Council:

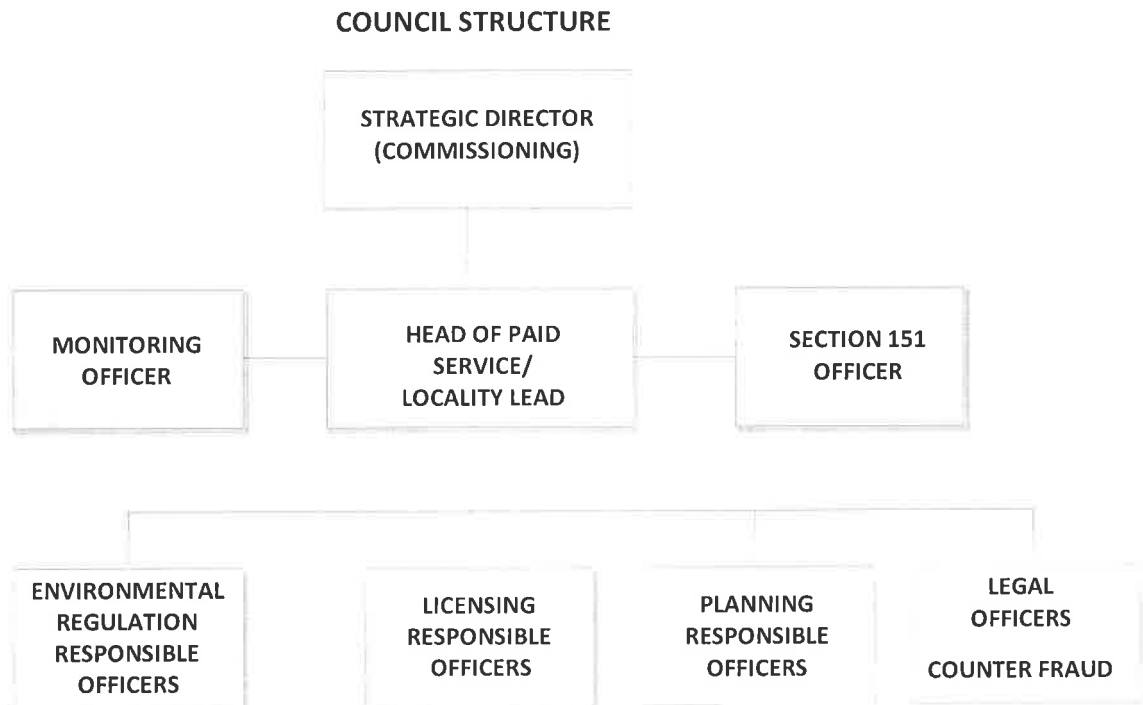
- Head of Paid Service
- Section 151 Officer
- Monitoring Officer
- Electoral Registration and Returning Officer
- Legal Advisors
- Counter Fraud

4.18. The following positions will be employed jointly by the Council and Publica:

- Delegated Planning decisions
- Delegated Licensing decisions
- Delegated Environmental Regulatory decisions

Proposed Council Structure

4.19. It is proposed to retain these roles and the diagram below gives a representation of the resulting officer structure for the Council. It is proposed to appoint the majority of these roles on joint employment contracts between Councils and Publica with the statutory posts and legal officers remaining solely Council employees (although they will potentially carry out some work for Publica under a contract between the Council and Publica).



4.20. To enable the Council to discharge these non-delegable functions it is necessary therefore for each Council to confirm the appointment of the key roles and adoption of their retained officer structure. It is also recommended that the Councils agree the principle to adopt the Publica employment HR policies, terms, and conditions to ensure consistent employment practice across the partnership.

5. ALTERNATIVES/OPTIONS

Options have previously been covered in the detailed business case reports presented to Council.

6. FINANCIAL IMPLICATIONS

None arising from the recommendations within the report.

7. RISKS

Failure to comply with legal requirements for Council employed roles could lead to legal challenge.

8. REASONS

To meet the necessary employment requirement arising from the Vires Audit.

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Background Papers:

None