



WEST OXFORDSHIRE
DISTRICT COUNCIL

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Name and Date of Committee	EXECUTIVE – 15 NOVEMBER 2023
Subject	PUBLICA REVIEW
Wards Affected	ALL
Accountable Member	Councillor Andy Graham – Leader of the Council. email: andy.graham@westoxon.gov.uk
Accountable Officer	Giles Hughes – Chief Executive. email: Giles.Hughes@westoxon.gov.uk
Report Author	Giles Hughes – Chief Executive. email: Giles.Hughes@westoxon.gov.uk
Summary/Purpose	To outline the conclusions from the recent Strategic Review of Publica Services, carried out by Human Engine on behalf of the four Publica Councils, and to consider the next steps.
Annexes	Annex A – Human Engine Proposal: Strategic Review, August 2023; Annex B – Strategic Review of Publica Services, Human Engine, October 2023.
Recommendations	That the Executive Resolves to: <ol style="list-style-type: none">1. Note any decisions taken by the Cabinets at Cotswold District Council, Cheltenham Borough Council and Forest of Dean District Council;2. Support in principle the direction recommended in the Human Engine report to return a range of services back to the Council and reshape Publica;3. Instruct the Chief Executive to commence preparatory work and prepare a business case for a new operating model, and an associated transition plan identifying any necessary consultations, in partnership with Cheltenham Borough Council, Cotswold District Council, Forest of Dean District Council and Publica, and to report back to Executive with these;4. Instruct the Chief Executive to prepare an Equality Impact

Assessment as part of the preparatory work;

5. Agree to set the following principles to help guide the preparatory work and transition plan:
 - Recognise the significant contribution of Publica staff and management to West Oxfordshire;
 - Ensure that human resources processes are fair and appropriate, and that there is effective engagement with Unions and staff;
 - Support the financial sustainability of the Council, and the delivery of the Council's ambitions as set out in the Council Plan;
 - Explore the potential for delivering services in partnership to ensure adequate capacity and capability, and realise economies of scale;
 - Ensure that there are effective governance, management and staffing structures in place for the Council, any partnership services, and for Publica, both through the transition process and afterwards;
 - That the transition costs from changes are shared fairly amongst all of the partner Councils;
 - That the funding model for Publica and partnership services in the future is fair and reflects the extent of services received.
6. Instruct the Chief Executive to commence the process for Union recognition for West Oxfordshire District Council staff;
7. Refer the Publica Review and Human Engine Report to the Overview and Scrutiny Committee for their comments, prior to further consideration at the Executive and consideration by Council;
8. Agree to set aside £100,000 from the Corporate Priorities earmarked reserve to fund potential transition and preparatory work required for the Council and for the Publica Partnership during the 2023/24 financial year;
9. Agree to set aside a further £200,000 of earmarked reserve to 2024/25 transition costs within the ongoing budget setting process for 24/25 (and update of the Council's Medium Term Financial Strategy);
10. Agree that for the 2024/25 Budget and Medium-Term Financial Strategy (currently being developed for presentation to Council in February 2024) to consider the financial implications more broadly,

	including on Council's revenue and capital budgets, its risk profile and its balance sheet (reserves and liabilities).
Corporate priorities	<ul style="list-style-type: none"> ● Putting Residents First; ● A Good Quality of Life for All; ● A Better Environment for People and Wildlife; ● Responding to the Climate and Ecological Emergency; ● Working Together for West Oxfordshire.
Key Decision	YES
Exempt	NO
Consultees/ Consultation	In preparing their report Human Engine engaged selected staff from each Council and from Publica, and also engaged with Council Leaders.

1. BACKGROUND

- 1.1** The Council currently delivers a wide range of its services through Publica and through Ubico, both of which are local authority owned companies of which the Council is a shareholder. The West Oxfordshire Council Plan recognises that in order for the Council to deliver on its aspirations it is essential to work collaboratively with others.
- 1.2** In August 2023, the four Publica shareholder councils (West Oxfordshire District Council, Cheltenham Borough Council, Cotswold District Council, and Forest of Dean District Council) commissioned an external review aimed at helping improve the partnership and outcomes for each of the partner councils. Publica was formed in 2017, and 6 years after the formation is an appropriate time to review how the partnership is working. Human Engine were appointed as the consultants to carry out this review.
- 1.3** Publica was originally set up to deliver services back to the Councils, as a vehicle for sharing resources, transforming services, promoting resilience, and achieving economies of scale. Over the last six years Publica has delivered significant annual savings for the Council. This independent review was undertaken to look at whether the Publica model was still able to meet the current and future needs of the Councils.
- 1.4** A copy of the Human Engine proposal is attached at Annex A, and a copy of the final report is included as Annex B.

2. MAIN POINTS

Review Methodology

- 2.1** Human Engine engaged with a range of stakeholders to help inform their report, including:
 - Council Chief Executives
 - Retained officer teams at all four Councils
 - Political Leadership, including 1:1s with each Council Leader
 - Publica Leadership, including Managing Director, Finance Director and Board Chair
 - Assistant Directors and Business Managers for selected services
- 2.2** Human Engine also undertook an analysis of service data provided by Publica and by the Councils.

Summary of Findings

- 2.3** The stakeholder engagement identified that there is a difference in perspective around the sovereignty and control that the stakeholder councils experience. Publica sees this as an essential feature of the Publica Model, whereas some of the Councils are concerned over the level of their control.
- 2.4** Human Engine state that Publica was set up as a vehicle for cost savings, in order to provide an acceptable level of service at the lowest possible cost. They outline that Publica is now being asked to be a 'turn-key' operation, being flexible, adaptable and responsive to changing priorities, and not just traditional back-office services.

- 2.5 Governance has been raised by stakeholders and Human Engine note that significant improvements have been made since a review in 2020. Notwithstanding these improvements this remains an important area to consider.
- 2.6 Publica is set up as a Teckal Company, which allows it to trade with third parties for up to 20% of its activities. Human Engine note that there is no strong desire from the partners for the company to trade commercially.
- 2.7 Human Engine also recognise anecdotal evidence that not offering Local Government Pension Scheme is a challenge to recruitment to some public sector specific professions for Publica. Although this comment does need to be seen in the context of the wider Local Government sector recruitment challenges for certain positions.
- 2.8 Human Engine also recognise that the Future Publica Programme sets out an ambitious but achievable target operating model for service delivery in common with many councils across the country. But they consider that there is not a need for a company like Publica to deliver the savings attributed to the Future Publica programme.
- 2.9 In conclusion, Human Engine believe that the purpose of Publica needs to be fundamentally reconsidered in the context of the Councils' priorities. Therefore, they have suggested a range of fundamental options for service delivery which go beyond the list of services originally listed in their original proposal.

Human Engine's Options for Future Delivery and Recommended Option

- 2.10 A range of options were developed by Human Engine ranging from the option proposed by the Publica Board to further invest in Publica and joint working, through to a complete dismantling of the company and any shared service arrangements, and a spectrum of options in between.
- 2.11 After considering benefits and disbenefits Human Engine identified Option 6 – Retain Selected Services as the option they are recommending. This option would return a majority of the services to the Councils, whilst retaining a select few services in Publica effectively as shared services.
- 2.12 It is recognised that this represents a fundamentally different future for the Councils and for Publica.
- 2.13 Human Engine state that this recommendation is not a commentary on the performance of staff. They believe that staff in Publica have worked diligently and professionally to deliver services on behalf of the shareholder councils.
- 2.14 Human Engine identify a number of benefits from Option 6 along with some key risks. Some of the key risks identified relate to the cost of services in the new model, and to the costs of change. At present there is not sufficient information for Human Engine to thoroughly assess the financial implications of the recommended option and its impact on the financial sustainability of the Councils. Further work on transition planning is needed to understand the financial implications.
- 2.15 Human Engine state that services moving from Publica should be returned to the Councils in a phased way. Councils will then have the choice over whether to keep those services wholly sovereign, or to seek to opportunities to share with other Councils.

Benefits

2.16 The recommended option from Human Engine has the following potential benefits:

- Greater autonomy for the Council over service delivery and for shaping future services;
- More direct control over service spend, and greater ownership of savings plans;
- Potentially easier recruitment for hard to recruit roles, given the offer of the Local Government Pension Scheme;
- Ability to provide specific focus on key service areas and programmes for West Oxfordshire; and
- Ability to be more 'fleet of foot' – shaping services specifically to the needs of West Oxfordshire's residents and communities rather than adopting a one size fits all approach.

Cost Considerations

2.17 Human Engine state that the exact costs associated with the proposed change are difficult to isolate at this stage. Their initial analysis is that the proposed model has a net additional cost greater than the current operating model, and that this estimate equates to £150,000 additional cost per year per authority. It should be emphasised that this is presented by Human Engine as a "broad indication of cost" and that the actual cost could therefore be higher or lower than this. The Human Engine analysis does not factor in any savings that can be made from changes to how teams operate. Nor does it factor in the additional costs that might arise from the loss of economies of scale.

2.18 In addition, Human Engine also identify that there will be a number of one-off costs including staffing related costs, and the costs of managing the transition. No figures are provided for these one-off costs, as some aspects are not known. Human Engine note that the Councils have a duty to avoid any compulsory redundancy if at all possible. Human Engine recognise that the Councils do not currently have the capacity to project manage a change of this complexity, and provide some options on how this could be managed.

Contractual Position

2.19 Publica Services are provided to the Council through the following three contracts, which are of different lengths and have different end dates:

- Commissioning Services, 10 years, next renewal date November 2027
- General Services, 7 years, next renewal date November 2024
- Support Services, 5 years, next renewal date November 2027

2.20 Notwithstanding these renewal dates there is a clause within each contract that enables councils to remove a service from Publica at any point with an agreed notice period. As the Human Engine report notes this means that shareholder councils can take a service-by-service decision and use a phased approach to the return of services.

Transition Plan

- 2.21** Human Engine propose that a phased approach to transition should be adopted. They state that this will reduce disruption to service delivery, staff and residents through any change.
- 2.22** The suggested Transition Plan shows the following phases over 2023/24 and 2024/25:
- Phase 1 – Mobilisation and preparation
 - Phase 2 – Transition round I – first wave of services
 - Phase 3 – Transition round II – second wave of services
 - Phase 4 – Review of services
- 2.23** The Human Engine report envisages that a detailed Transition Plan for rounds I and II should be prepared. The detailed work required to prepare this plan will provide important information to allow financial implications to be assessed.
- 2.24** The return of services to the Councils directly as suggested represents a significant and complex change project that will require a comprehensive fully costed business case based on a newly designed operating model. A significant amount of specialist input (including HR, Finance, IT, legal) will be needed as will resource to design the operating model and coordinate and report progress and manage stakeholders.
- 2.25** It should be noted therefore that delivery will potentially require additional posts as well as the activities of current post holders to be adapted. For instance, it is likely that a Project Director and/or Manager will be required to work across all partners to coordinate and deliver this complex project. Workstream leads / managers will also be needed and there will be a need for project assurance. Input will be needed from current (council and Publica) employees. This may require some roles to be backfilled. External capacity and independent external specialist advice will be needed too.
- 2.26** A robust programme governance and project management infrastructure will be needed including appropriate project plans, progress reporting and Board / Workstream meetings. Member oversight will be needed, as will Publica / Partner Council engagement as well as comprehensive and ongoing communications to Publica and Council staff and other stakeholder together with any necessary consultation.

Consideration by Other Shareholder Councils

- 2.27** The Cotswold District Council Cabinet considered the Human Engine report on the 2nd November 2023. The Cabinet agreed to support the recommendations set out in the Human Engine report, to return the majority of services to the Council. They also supported the creation of a detailed transition plan and a process of due diligence to calculate the short and long-term costs.
- 2.28** Forest of Dean District Council are due to consider the report at their Cabinet meeting on the 9th November 2023. Cheltenham Borough Council will consider the issue on the 5th December 2023. A verbal update on any decisions taken at the Forest of Dean meeting will be given at the Executive Meeting.

Union Recognition

2.29 Publica has recognition agreements with GMB and Unison. Effective engagement with these unions will be a vital part of the transition planning process. West Oxfordshire District Council has not historically had a recognition agreement with any Union. Given the significance of the proposed changes to the Council's structure, the need to carefully work through human resource implications, and the likelihood that the number of Council employees will increase significantly, the Council should commence the process for Union recognition from West Oxfordshire District Council.

Next steps

2.30 Given the significance of the proposals the Leader has asked if there can be a special meeting of the Overview and Scrutiny Committee to consider the Human Engine report. This would allow the Committee's comments to be considered before the matter receives further consideration from the Executive and Council.

2.31 As noted above this represents a significant and complex change project across a number of different (interdependent) organisations with multiple stakeholders. Critically in terms of next steps:

- detailed work must be undertaken in the first instance to design the future operating model (in terms of structures, people, teams, IT systems etc) specific to each Council.
- Specialist input, expertise and advice (financial, legal, HR, TUPE, IT, data & information) will be needed in this regard to clarify the operational, financial and legal (TUPE) implications of this model.

2.32 This will help the creation of a comprehensive and fully costed business case in support of any proposed change. Project Management disciplines will then need to be put in place to effectively deliver the change. Features of this would include:

- Governance and Project Management (with clear roles and responsibilities across councils, Publica, advisors)
- Detailed Project Plan
- Communications / Stakeholder management Plan
- Transition Budget
- Progress Reporting
- Risk and Issues Log
- Project Board (regular meetings)
- Workstreams / Task and Finish Groups (regular meetings)
- Member Project Oversight / Group

Conclusions

2.33 Six years after the establishment of Publica is an appropriate time to review the Publica model. Discussions with the other Publica Councils have shown that there is significant dissatisfaction with aspects of the current Publica model. This is reflected in the recommendation made by Human Engine that a majority of the services should be returned to the Councils.

2.34 There are potential benefits for the Council in having greater autonomy over service delivery and for shaping future services. This would allow the Council to be more 'fleet of foot', shaping services specifically to the needs of West Oxfordshire's residents and communities.

2.35 Human Engine recognise that the exact costs associated with the proposed change are difficult to isolate at this stage. Further work is required to assess the financial implications of the recommended option and its impact on the financial sustainability of the Councils. The preparation of a business case for a new operating model with an associated transition plan is required.

3. ALTERNATIVE OPTIONS

3.1 It is clear from the views and recommendations of the other Councils that maintaining the status quo is not a realistic option.

3.2 As part of the next steps set out above, further work would be undertaken to design the future operating model of the Council. This exercise will consider the options in terms of services. The Council could choose to:

- Deliver all of the returning services itself
- Deliver services in partnership with one or more of the Publica Councils
- Explore other partnership opportunities to deliver services
- Retain individual services within Publica

3.3 The next steps include the development of a business case and associated project plan which will consider the options in terms of implementation, phasing and timing. This work will be carried out in partnership with the other Councils and Publica.

4. FINANCIAL IMPLICATIONS

4.1 The financial implications of returning the majority of Publica services back to being directly managed by the Council (with selected services retained within the Publica model on a case by case basis) as recommended by the Human Engine review ('the review'), remain unclear.

4.2 The financial implications would include any one-off staffing and transition costs, and a recurring revenue budget impact. The review:

- identified the risk of potentially significant one-off staffing costs, including possible redundancy and pension costs, the value of this cannot yet be established;
- identified that there will be transition costs (such as project management), but these cannot yet be established;
- estimated an additional ongoing pension cost of £1m per annum to be shared across partner councils (though it should be noted that this is a high level figure and would need to be tested);
- There could also be significant one-off pension strain costs related to any possible redundancies, and these cannot yet be established.
- identified potential management savings (based on some broad assumptions) which (after pension costs) it is estimated would cost an additional £150,000 per annum per council

(though as stated above this was presented as a “broad indication of cost”, which therefore could be higher or lower than this estimate).

- 4.3** In addition to the above it should be noted that this would constitute a significant change programme which would require the attention of management and staff (of Publica and the Council) for a period of time. Although it is difficult to be precise in estimating the value of any ‘cost of disruption’ with any certainty, there is a risk of impacting progress on other change initiatives and projects (including transformation and current and near future cost saving initiatives) during the transition period.
- 4.4** The review is a strategic review, and it does not provide a detailed analysis of future staffing structures. As such it does not undertake a detailed legal assessment of whether TUPE applies (or not) to those staff or assess risk of redundancy. There is a risk that one off redundancy costs (and pension strain costs) are significant.
- 4.5** In conclusion, the financial implications of returning the majority of Publica services back to being directly managed by the Council (with selected services retained within the Publica model on a case by case basis) as recommended by the review:
- are potentially significant in terms of one-off redundancy costs (pension strain costs) and one-off transition costs;
 - are potentially significant in terms of recurring revenue implications;
 - but remain uncertain at this stage.
- 4.6** Further work is therefore required in order to calculate the recurring and one-off financial implications, as part of an evidence based phased approach.
- 4.7** Consideration will need to be made as to when these costs should be included in the Council’s budgets and at what point they should be disclosed in the Statement of Accounts.
- 4.8** As part of any subsequent project, the Council would need to work with partners and commission the required expert project, legal, HR and financial expertise in order to properly plan and resource this change project and accurately calculate the financial implications of it.
- 4.9** At this stage however, given the above, it would be prudent to:
- set aside £100,000 from the Corporate Priorities earmarked reserve to fund potential transition and preparatory work required during the 2023/24 financial year;
 - set aside a further £200,000 of earmarked reserve to 2024/25 transition costs within the ongoing budget setting process for 24/25 (and update of the Council’s Medium Term Financial Strategy).
 - Undertake further work as part of the budget setting exercise (for 2024/25), to consider the financial implications more broadly, including on Council’s recurring revenue and capital budgets, its risk profile and its balance sheet (specifically reserves and liabilities).

5. LEGAL IMPLICATIONS

- 5.1** As with the financial implications, the legal implications of returning the majority of Council services to be delivered “in-house” cannot be established with certainty at this stage and will need further investigation with the support of external legal advisers, in collaboration with

the Monitoring Officer and Head of Legal Services. At this stage, the legal implications appear to fall into three principal areas:

- Employment law
- Governance and Local Government law
- Contract

5.2 In terms of employment law, this report already identifies that it will be necessary to consider the implications in terms of TUPE and this is necessary because the process of bringing services back in-house is highly likely to amount to a service provision change under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) which will trigger obligations to transferring staff. Careful consideration will also need to be given of how best to apportion liabilities between the transferring employer (Publica) and the new employer (the Council).

5.3 In terms of general local government law, if the proposals proceed from a formative stage to a one where there is sufficient information to give “intelligent consideration” to them the Council will need to consider the application of section 3 Local Government Act 1999 and whether there is a need to carry out a public consultation if the Council is making arrangements to secure continuous improvement in the way in which its functions are exercised as part of its best value duty.

5.4 In terms of internal governance and compliance with Local Government Act 1972, The Council will need to evaluate its existing non-executive scheme of delegation and satisfy itself that it either employs or has available to it (for example through shared services) the officers empowered to discharge delegated powers. Any new organisational structure will have to align with the scheme of delegation.

5.5 The contractual arrangements between the Council and Publica are referenced elsewhere in this report. The existing relationship is in fact the subject of various legal agreements, including:

- A members’ agreement dated 25 May 2017 between West Oxfordshire District Council, Cotswold District Council and Forest of Dean District Council.
- An admission agreement dated 30 November 2017 between the Council, Oxfordshire County Council and Publica in relation to the Local Government Pension Scheme.
- A services agreement dated 31 October 2017

5.6 Clause 37 of the Services Agreement provides:

“Without prejudice to the Council’s rights of early termination under this Agreement, or otherwise at law or equity, the Company hereby irrevocably grants to the Council a break option in respect of all or any part of its services which may be exercised by the Council by giving not less than 12 months’ prior written notice expiring on 31 March in the following Contract Year.”

This is the basis upon which services might be taken back in-house within an existing contractual term. In addition, the Council might decide against extending the contract beyond the original expiry dates or the expiry date of any extension. The Human Engine Report

correctly identifies that the 7-year term for provision of General Services expires in October 2024.

- 5.7 The consequences of termination under Clause 37 are set out in Clause 38 and include obligations to (inter alia) agree an exit strategy, agree the disaggregation and division of assets, and deliver data.
- 5.8 As well as cessation of existing contractual arrangements, the report's recommendations propose the creation of new ones to provide for shared working arrangements and ongoing provision of the remaining services by Publica.

6. RISK ASSESSMENT

- 6.1 The Human Engine Report (included as an appendix to this report) outlines a number of risks associated with their recommended option.
- 6.2 Staffing costs and pension costs have not been established and could be significant.
- 6.3 Transition costs (such as project management, HR and legal advice) have not been established yet and could be significant.
- 6.4 The return of services to Councils represents a significant change programme that may impact on staff and likely performance in the short term. Retention and recruitment and staff morale may be affected at least in the short term.
- 6.5 Management capacity and attention will be drawn away from other business and projects – including cost saving / efficiency projects. There is a risk that performance in the short term may decline, although there may be performance benefits in the longer term.
- 6.6 Staff may not wish to TUPE transfer and may seek redundancy.
- 6.7 There is a risk that ongoing costs may be higher under the new structures.
- 6.8 An effective partnership approach with the other Publica Councils may help manage some of the risks facing the Council, as will robust governance and project management. The preparation of a business case for a new operating model will help manage the financial risks.
- 6.9 Risks around the Publica Review are addressed in the Council's risk register which will need to be continually updated.

7. EQUALITIES IMPACT

- 7.1 Under equality legislation, the Council has a legal duty to pay 'due regard' to the need to eliminate discrimination and promote equality in relation to:
 - Race
 - Disability
 - Gender, including gender reassignment
 - Age
 - Sexual Orientation
 - Pregnancy and maternity
 - Religion or belief

7.2 The Transition Plan will need to address this legal duty and assess any impacts from the proposed changes. Effective Human Resources advice and processes will be required to manage any redundancies and TUPE processes appropriately.

7.3 An Equalities Impact Assessment should be carried out as part of the preparatory work as further information becomes available.

8. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS

8.1 None directly from this report.

9. BACKGROUND PAPERS

9.1 None

(END)