

Division(s): All

Audit & Governance Committee

8 May 2019

Oxfordshire County Council and Cherwell District Council Partnership – Review of Governance Arrangements

Report by the Monitoring Officer

RECOMMENDATION

1. The Committee is RECOMMENDED to endorse the review of the partnership governance outlined in this report.

Introduction

2. The purpose of this report is to present the Committee with a review of the governance arrangements of the partnership working between Oxfordshire County Council and Cherwell District Council.
3. The Committee will be well aware that Oxfordshire County Council (OCC) and Cherwell District Council (CDC) entered into a partnership agreement at the beginning of September 2018. The Committee approved the terms of the partnership agreement (also known as the Section 113 Agreement) together with the approval of a number of other documents that related to the governance of the relationship between the two Councils. These included the Chief Executive Protocol, the Ethical Walls Protocol, the Role of Councillors Arrangements and the Terms of Reference of the Joint Committee.
4. On the 12 September 2018, the Audit & Governance Committee sought further clarification on the role and purpose of the Joint Committee and the terms of reference which were considered and approved further on the 14 November 2018.
5. At the inaugural meeting of the Partnership Working Group – the advisory committee set up to manage joint working between the two Councils – it was acknowledged that a review of the governance should be undertaken to ensure that effective and efficient arrangements were in place to underpin the development of the joint agreement.
6. This report seeks to review those governance arrangements for endorsement by the Audit & Governance Committee and ratification by the Partnership Working Group and the respective Executive and Cabinet of the partner authorities.

7. The review of governance is addressed through four areas:
 - a. the terms of the Section 113 Agreement
 - b. the decision-making process
 - c. the ethical walls arrangements, and
 - d. the scrutiny review function.

The Section 113 Agreement

8. The Section 113 Agreement is essentially a facility whereby members of staff of the separate Authorities are loaned to each other. There are consultation obligations with those staff whose role might involve them in joint working but the employment relationship, in law, does not change. Employees would remain employed by their original Authority, sharing their time reasonably and fairly between the two Authorities.
9. In essence, the Section 113 Agreement establishes the legal framework within which the partnership operates and includes the establishment of a Partnership Working Group (PWG) which considers joint proposals and recommends to the Cabinets of each respective Authority the approval of shared services with a shared management.
10. In addition, the 113 Agreement sets out practical matters such as the undertaking of the review, the arrangements for the sharing of a joint Chief Executive, liabilities, intellectual property rights, sharing of information etc.
11. The Section 113 Agreement also made provision for a six month review of the partnership arrangements. That review has now been undertaken and been endorsed by the Partnership Working Group and the respective Cabinets of the partnership councils.
12. There are a number of improvements that can be made to the Section 113 Agreement, these include textual amendments dealing with the role of third parties, delegation of powers, data protection and incorporating some of the protocols that currently sit separately. As was acknowledged by the Partnership Working Group, deep and broad two-tier joint working is rare and the nature of County and District Councils is different and, therefore, the scope and remit of the various Committees involved in decision making may be different at each Authority. The Section 113 can be improved to reflect those differences given the original 113 Agreement was based around an agreement between two District Councils.
13. The Section 113 Agreement provides that salary costs, on-costs, pension etc should be apportioned in such ratios as may be agreed by the Councils on the recommendation of the Partnership Working Group. Currently the shared costs of the Chief Executive are split broadly between the County and Cherwell 61/39 with the arrangements for other officers as set out in Annex 1.

It is intended the cost split should be amended to reflect the effort and time spent by those officers in those roles.

The Decision Making Process

The structure, as outlined in the Section 113 Agreement is as follows:

14. In conjunction with the Partnership Working Group, officers give consideration to joint working proposals. Those proposals are formally endorsed by the Partnership Working Group and it is recommended to the respective Cabinets of the partnership Councils to endorse both the business plan and any recommended staffing changes.
15. For senior staffing appointments, delegation has been given to the Joint Staffing and Shared Service Committee to undertake those appointments. Areas relating to performance of staff and grievance related matters can be dealt with by a Joint Appeals Committee.
16. It is anticipated that there will be greater use of the Joint Personnel and Shared Services Committee. This would be the interviewing panel for appointment of senior officers. The power to appoint staff within the shared service, other than senior or chief officers remains that of the Chief Executive or the Directors in the respective employing Authorities. The role of the Joint Committee would also include the approval of dismissals that might arise from redundancy relating to restructuring proposals within a shared service.
17. The Joint Committee also has a role in implementing and outworking of the shared services that they have created rather than separate reports to each respective Cabinet. Delegations were made to the Committee to enable it to exercise Cabinet's power, for example, to approve a restructuring, to consider any contractual or procurement issues etc. There is further work to be undertaken in relation to guidance and assistance for joint appointments facilitating the HR consultation, a process and making clear expectations in relation to joint working and accountabilities to the respective Councils. Further HR work also needs to be undertaken in relation to staff terms and conditions as a future consideration.
18. It is considered this is still a valid model to deal with decision making. A copy of the decision making diagram is attached at Annex 2.

Ethical Walls

19. One of the most sensitive and difficult areas within joint working is dealing with conflicts of interest. The Audit & Governance Committee approved the ethical walls procedure which sets out the arrangements in place to manage those rare occasions when conflicts arise. The purpose of the ethical wall is to provide a screen or fire wall effectively acting as an information barrier within an organisation to prevent exchanges or communication that could lead to conflicts of interest.

20. In the vast majority of cases, members or officers dealing with a matter that pertains to both Councils would not have a conflict of interest. Mainly senior officers working in senior management, legal, financial or regulatory posts (including planning) may become aware of a conflict and officers are reminded to flag those as appropriate. The ethical walls procedure requires officers to alert the Monitoring Officer who maintains a list of officers with a potential conflict and those that will be representing each party. Once the wall has been erected, officers on either side should treat and behave towards the other Council as if they would to any external organisation.
21. A commitment was provided to this Committee to set out the areas of potential conflict, which are attached at Annex 3.
22. The ethical walls arrangements have been working well and senior managers have had the ability to empower and enable officers to work to a successful resolution. At this stage there have been no circumstances which have required any external intervention in order to manage the conflict.

Scrutiny and Review

23. Clearly the objectives of this report is to provide the Audit & Governance Committee with a review of the governance arrangements. The Committee will also want to have regular reviews as to the governance and financial value for money that the partnership provides by way of regular reporting.
24. Performance Scrutiny Committee also has a role in reviewing the partnership and is doing so on the 9 May by looking at the six month review of the partnership, successes to date and future work plans.

Legal and Financial Implications

25. The review of governance set out in this report does not itself contain any legal or financial implications, except insofar as the governance flows from a legal agreement under local government legislation.

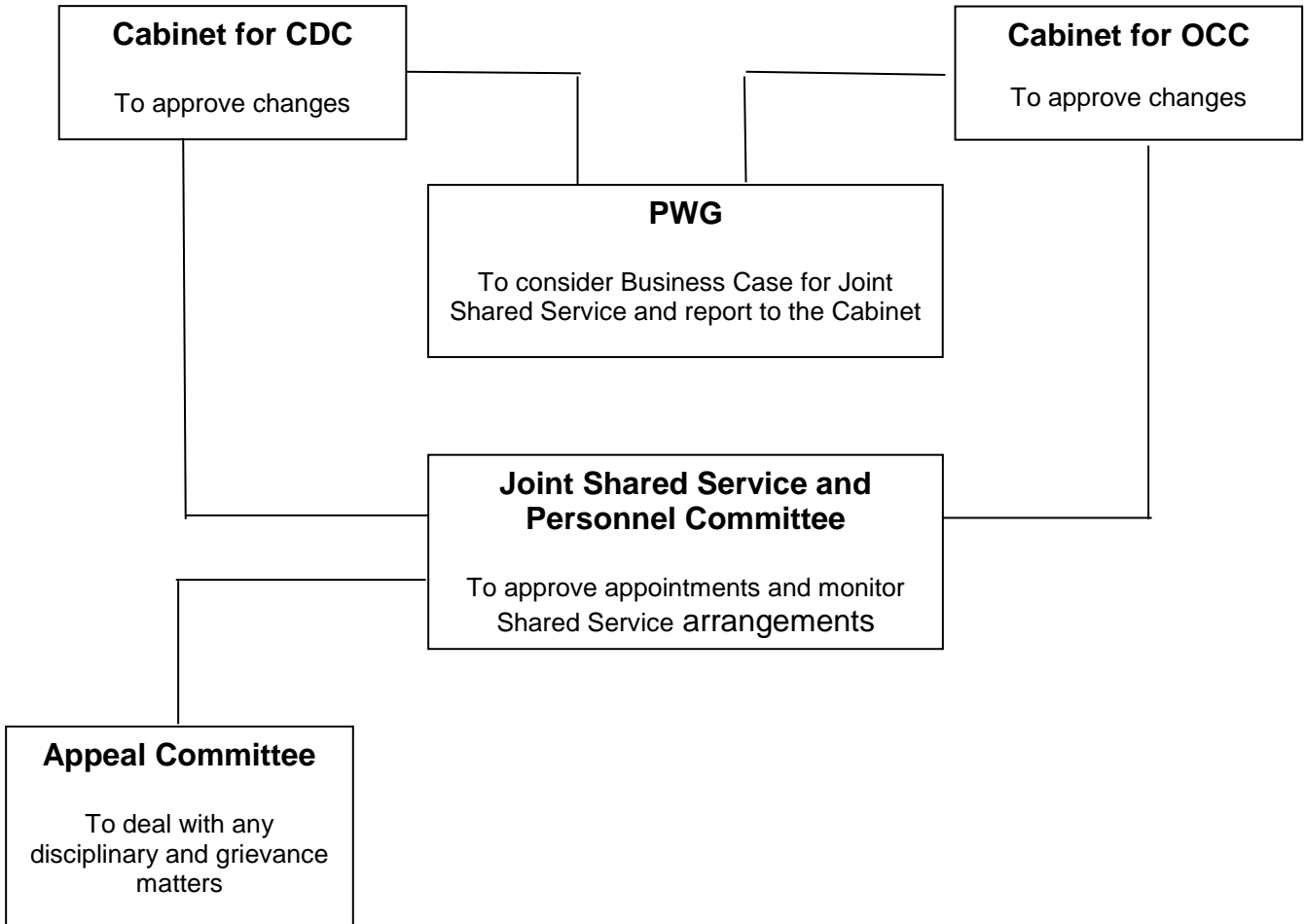
Conclusion

26. Some pragmatic changes are being considered with regard to the operation of the Section 113 Agreement, as mentioned above. However, the governance arrangements put in place by the Council, and previously endorsed by this Committee, are considered to be a sound basis for delivering the Partnership between this Council and Cherwell District Council.

Annex 1 – Shared Posts

<u>CDC Posts being recharged to OCC (employed by CDC)</u>		
Post	% Split Agreed	Time Period
CEO	61%/39%	w.e.f. October 2018
Ass CEO	70%/30%	w.e.f. November 2018
Asst Director of Social Care, Commissioning and Housing	tbc	w.e.f. January 2019
Head of HR (tba)	70%/30%	w.e.f. April 2019
<u>OCC Posts being recharged to CDC (employed by OCC)</u>		
Post	% Split Agreed	Time Period
Monitoring Officer	80%/20%	w.e.f. November 2018
Asst Director for Regulatory Services and Community Safety	40%/60%	w.e.f. August 2018
Emergency Planning Officer	50%/50%	w.e.f. January 2019
Head of Procurement and Contract Management (tba)		

Annex 2



Annex 3

OCC and CDC – Potential Conflicts of Interest

OCC and CDC – Potential Conflicts of Interest

No.	Name of Case	Officer	Status	Date Reviewed
1.	The Mill Arts Centre	Richard Hodby Richard Hawtin	Completed	15.04.19
2.	The Sunshine Centre: lease arrangements	Sarbjit Nahl Richard Hawtin		30.01.19
3.	Castle Quay: Section 278 Agreement	Julia Taplin External Solicitors	Completed	15.04.2019
4.	Land at South West Bicester	Sarbjit Nahl Matthew Barrett	Transfer to OCC from CDC further to existing agreement. Quite well advanced and time critical for delivery of new secondary school	30.01.19
5.	Admiral Holland Banbury, S106 Agreement	Julia Taplin Christian Smith Matthew Barrett External solicitors	CDC landowner. Therefore at the behest of CDC (and because CDC cannot contract with itself) commitments on district matters as well as county matters will be given to OCC. Knights are acting for CDC as landowner. Matthew Barratt involved as legal adviser to CDC as local planning authority.	30.01.19
6.	Graven Hill, Bicester	David Mytton Nigel Bell	Proposed variations to existing S106 agreement. Nigel Bell continuing to act for CDC as local planning authority. The	30.01.19

			landowner is a CDC company who are represented by Trowers. Long running matter.	
7.	Growth Deal, Howes Tunnel		Potential conflict noted.	30.01.19
8.	Growth Deal - Affordable Housing Funding Agreement	Christian Smith Chris Mace	Completed	15.04.19
9.	Sports Area Land	Sarbjit Nahl Richard Hawtin	Transfer of sports area land at South West Bicester in parallel with acquisition by OCC of secondary school site from Countryside Homes	30.01.19