

Division(s): N/A

**AUDIT & GOVERNANCE COMMITTEE
12 SEPTEMBER 2018**

**Joint Working Arrangements Between
Oxfordshire County Council & Cherwell District Council:
Governance Arrangements**

Report by Director of Law & Governance

Introduction

1. Cabinet agreed on 4 June 2018 to approve, in principle, a joint working arrangement with Cherwell District Council. Cherwell formally made the same decision in July. These arrangements are governed by a formal "Section 113 Agreement" (see Annex 1). That Agreement included the appointment of a joint Chief Executive and statutory Head of Paid Service, which was undertaken through the Council's normal constitutional processes, including a recommendation from the Remuneration Committee and final approval by Full Council on 10 July 2018.
2. Section 113 of the Local Government Act 1972 enables local authorities to enter into agreements with one another for the placing at the disposal of each other their respective officers for carrying out their respective functions.
3. The Section 113 Agreement, now in place, establishes a structure to enable proposals for joint working to be approved with the necessary Member oversight. Each proposal will need approval by each separate Authority.
4. These new arrangements clearly have an impact on the way in which the County Council undertakes its business and indeed constitutional changes are required in order to ensure good governance is maintained.
5. Consequently, this report brings the suite of relevant governance arrangements to this Committee so that it can assure itself of the sufficiency and effectiveness of these governance arrangements underpinning the joint working arrangements.
6. The principal issues for consideration by the Audit & Governance Committee are:
 - i. To note the agreed Section 113 Agreement (Annex 1);
 - ii. To note the Terms of Reference of the Partnership Working Group (Annex 2)
 - iii. To consider and approve the Terms of Reference of the Joint Personnel Committee and Joint Appeals Committee – which Council on 11 September was due to establish. It is expected that Council will have delegated approval of the Terms of Reference to this Committee. (Annex 2)

- iv. To review and endorse the following protocols (Annex 3):
 - a. 'Roles of Members and Officers and Dealing with Conflicts of Interest Protocol' – including the Ethical Walls Procedures
 - b. 'Chief Executive Protocol'
- 7. Each of these governance provisions is explained further within this report.

Section 113 Agreement

- 8. In deciding to enter into partnership working with Cherwell District Council, Cabinet also delegated to the Monitoring Officer the responsibility for finalising, with Cherwell District Council, a Section 113 Agreement which would articulate the agreement between the two Authorities.
- 9. A Section 113 Agreement is made under Section 113 of the Local Government Act 1972 which says that a local authority may enter into an agreement with another local authority for placing at the disposal of the latter the service of its officers.
- 10. The concluded Section 113 Agreement is attached as Annex 1. The Committee is asked to note the Agreement and the governance implications of it, setting out, as it does, the nature of the agreement between the two Authorities including the intention to establish an informal Partnership Working Group to generate proposals to be approved by both Authorities. The Agreement envisages a Shared Senior Management Team and the achievement of proposals for joint working.

Partnership Working Group

- 11. It is envisaged that the Partnership Working Group will be made up of 5 members from each Authority and will be, at least initially, an informal body. As such, it is not a requirement that this Group is politically proportional. The Partnership Working Group, under the Section 113 Agreement, will be charged with recommending proposals for joint working to the respective councils, which in this Council's case will be to Cabinet. The Terms of Reference for it have been included in Annex 2 for information.

Joint Personnel Committee and Joint Appeals Committee

- 12. The Section 113 Agreement recognises that once the Authorities have agreed a proposal, for example, for joint management arrangements, there may be staffing issues for both Authorities that arise. As such, as envisaged in the Section 113 Agreement, Full Council is being asked on 11 September to establish two joint committees – a Joint Personnel Committee and a Joint Appeals Committee.
- 13. Full Council is also being asked to delegate the decision on the final terms of reference of these committees to this Committee. The **draft** terms of reference are included within Annex 2 to this report. The Joint Committees provide an efficient way of addressing the staff issues that may flow from any

proposals. Similar arrangements operated between Cherwell District Council and South Northamptonshire District Council and were effective.

Joint Personnel Committee

14. The Joint Committee would effectively act as our current Remuneration Committee with regard to decisions on terms and conditions, pay, redundancy payments etc. for staff directly affected by the incremental implementation of the partnership proposals. The Joint Personnel Committee would be comprised of three members from each council. As it is intended that the Joint Committee would have executive as well as non-executive functions, at least one member would need to be an executive member. However, as a Committee of the Council, the Joint Committee would still operate under the rules of political proportionality.
15. In the first instance, it is envisaged that the Joint Personnel Committee would look specifically at the statutory roles in terms of joint arrangements and would also be the body to address any issues to do with disciplinary matters.

Joint Appeals Committee

16. The Joint Appeals Committee would then be placed to hear any appeals by way of grievance or disciplinary concerns arising from decisions of the Joint Personnel Committee.
17. As such, the Committee is asked to consider and approve terms of reference for the Joint Personnel and Joint Appeals Committees.
18. Appointments to these bodies are likely to be made by the Monitoring Officer under his delegated authority to give effect to the wishes of Political Group Leaders in respect of political proportionality. Full Council on 11 September is considering asking the Monitoring Officer to do this.

Protocol – Roles of Members/Officers and Dealing with Conflicts of Interest: An Ethical Walls Procedure

19. Under the joint arrangements with Cherwell District Council, whilst the officers of both Councils will be managed under one Joint Chief Executive, the two Authorities remain two distinct local authorities with different memberships and political priorities. It is perhaps inevitable that conflicts of interest between the two Authorities will arise. For example, a conflict could arise in an operational issue (such as a fire safety concern about a Cherwell District Council property; or an environmental health issue for a maintained school) or in the strategic approach to an issue (such as a differing view about any proposed corridor to the expressway).
20. It is important that both members and officers are alive to those potential conflicts and vigilant in managing them. An effective conflict of interest protocol has been in place with the arrangements between Cherwell District

Council and South Northamptonshire District Council alongside, and what is known as, an Ethical Walls policy.

21. It is proposed, and envisaged under the Section 113 Agreement, that such an arrangement should largely be replicated between the two Authorities. It is intended that this would be incorporated into the Council's Constitution, and would relate to the roles of members and officers in dealing with conflicts of interest, together with a detailed procedure and a guide to establishing Ethical Walls.
22. A **draft** protocol on 'Roles of Members and Officers and Dealing with Conflicts of Interest' is attached at Annex 3. This includes a draft 'Ethical Walls Procedure'.
23. It is anticipated that there will be rare occasions where it is not possible to reconcile the interests of two Authorities with their respective legal responsibilities. The Ethical Walls Procedure sets out a framework within which such a conflict would be managed. In short, it would involve the Monitoring Officer alerting all the relevant officers (pertinent to the issue in question), ring-fencing them and then establishing to which local authority they will report over the particular issue. Those officers would be instructed to liaise with the other officers on the basis that they are working with *a separate party*. This will ensure that, in practice, officers will only be advising members and officers on their side of the Wall. Similarly reports to formal meetings of the authority Committees will reflect the arrangements.
24. At the last meeting of this Committee, members expressed the view that the *Policy on Roles of Members/Officers and Dealing with Conflicts of Interest* should address the issue of dual-hatted councillors i.e. those who serve on both Cherwell District and Oxfordshire County Councils. A paragraph to address this has been added to page 2 of the Policy (in Annex 3).
25. The arrangements would be overseen by the Monitoring Officer and ultimately the Joint Chief Executive who will seek to address any issues that might arise from the conflict.
26. It is suggested that Audit & Governance Committee would receive regular reports on the Ethical Walls that are in place from time to time and any of issues that arise from them.

Protocol – 'Chief Executive Protocol'

27. It is intended that a 'Chief Executive Protocol' should set out the status of the Joint Chief Executive, how the Joint Chief Executive will work effectively on behalf of both authorities and provisions as to that person's appraisal process. It would set out which responsibilities remain with Cherwell District Council (as employer) and which will be undertaken jointly.
28. A **draft** 'Chief Executive Protocol' is attached for this Committee's approval at Annex 3.

Legal and financial implications

29. There are no financial implications arising from the decisions in this report.

30. The Joint Committees, if Council establishes them, would be established under Section 101(5) of the Local Government Act 1972 and in accordance with The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

Recommendation:

31. The Committee is RECOMMENDED to:

- a) To note the agreed Section 113 Agreement (Annex 1);**
- b) To note the agreed Terms of Reference for the Partnership Working Group (at Annex 2);**
- c) To consider and approve Terms of Reference for the Joint Personnel Committee and the Joint Appeals Committee (at Annex 2);**
- d) To note and endorse the 'Roles of Members and Officers and Dealing with Conflicts of Interest' Protocol (including the Ethical Walls Procedure appended to it) (Annex 3);**
- e) To note and endorse the 'Chief Executive Protocol' at Annex 3 of this report;**
- f) To agree regularly to monitor the operation of the 'Roles of Members and Officers and Dealing with Conflicts of Interest' Protocol (including the Ethical Walls Procedure appended to it) as at Annex 3 of this report;**
- g) To delegate authority to the Monitoring Officer to make any further minor adjustments to these documents and to make the necessary changes to the Council's Constitution.**

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