

Divisions Affected – all

COUNCIL

08 February 2022

Discontinuance of The Oxfordshire County Council – Cherwell District Council S.113 Agreement

Report by the Chief Executive Officer

RECOMMENDATION

1. That Council is RECOMMENDED to: -

1.1 Terminate the s.113 partnership with Cherwell District Council;

1.2 Formally notify Cherwell District Council of Oxfordshire County Council's decision to give 6 months' notice of its intention to terminate the s.113 Agreement dated 31 August 2018 regarding joint working between the two authorities;

1.3 Agree the ongoing role of the Joint Shared Services and Personnel Committee (JSSP) in providing suitable oversight and decision-taking concerning the termination of the s.113 Agreement.

1.4 Adopt a revised Terms of Reference for the JSSP at Appendix 1 of this report.

1.5 Disband the Partnership Working Group and note the conclusion of its business.

1.6 Instruct the Interim Chief Executive of Oxfordshire County Council subject to Council agreeing Recommendation 1.1 to work alongside Cherwell District Council officers to establish a Joint Officer Transition Working Group

1.7 Note the responsibility for agreeing the transition plan rests with Cabinet.

1.8 Adopt the Financial Principles for the termination of the s.113 Agreement as set out in Section 8.3 of this report.

1.9 Agree amendments to the existing dispute resolution process set out in section 4.2 of this report

1.10 Request that the Monitoring Officer undertakes a review of the existing Scheme of Delegation to ensure that decision making is both effective and efficient.

1.11 Delegate responsibility to the Monitoring Officer to undertake amendments to the Council's Constitution to reflect the resolutions arising from this report to Council.

1.12 Agree to keep the best interests of its mutual residents at the centre of its decision making, endeavouring to ensure that such actions will not be to their detriment.

1 Introduction

1.1 The shared services arrangements between Oxfordshire County Council and Cherwell District Council have been in place since 2018 and they have been effective. The arrangements have ensured frontline services have been protected and enabled the Councils to share and develop good practice. In certain circumstances improved service delivery and outcomes for residents have been achieved.

1.2 It is now considered that with staff capacity stretched at a strategic leadership level these arrangements have run their course and that they should now cease. The pandemic has had a significant impact upon both Councils which has led to wider partnership working amongst all of the local authorities and partners in Oxfordshire. It is an appropriate time to explore wider partnership working outside the s.113 Agreement.

1.3 The Joint Shared Services and Personnel Committee met on 1 February 2022 and received the Report at Appendix 2

2 The Mutual Agreement to Terminate the Joint Arrangements

2.1 Discussions have taken place between the two Councils regarding the s. 113 Agreement.

2.2 The Council through its Cabinet wishes to have the flexibility to consider alternative options for the provision of County services and to enable wider partnership working. Cherwell respects this position and is content to also give consideration to its alternative service delivery options. Initially each Council plans to independently carry out such review of options.

2.3 There is mutual agreement to formally end the arrangements between the two Councils. However, both Councils agree that during the process of dissolving the current arrangements, they will seek to keep the best interests of their mutual residents at the centre of their decision making and endeavouring to ensure that such actions will not be to their detriment.

- 2.4 It is noted that in line with best practice around the review of these types of partnership working arrangements, discussions began pre pandemic to support a review of the joint working arrangements. Discussions about this were paused during the pandemic, however, initial discussions with PWC have commenced recently. The PWC work will now inform the due diligence work envisaged by this report.
- 2.5 The termination of the formal s.113 Agreement between the two Councils will be in accordance with paragraph 7.2 (b) of the Agreement – essentially providing for mutual agreed termination. This requires a recommendation for termination from one of the Joint Committees of the two Councils. The Joint Shared Services and Personnel Committee met on 1 February 2022 and recommended to both Councils the termination of the s 113 Agreement. This report to Council now proposes such termination to fulfil this purpose.
- 2.6 For the future, no option of mutual service delivery is ruled out but in order to give each Council the widest range of options, it is felt that this can, at this point, best be achieved through autonomy and independence.
- 2.7 To effectively manage the separation process, there is a need for a plan to ensure an orderly and fair transition to give effect to the cessation of the s.113 Agreement to be developed to meet the needs of the Council in terms of maintaining service delivery to local residents.

3 Timing

- 3.1 Each Council is required to give six months' notice of the termination of the s.113 Agreement. Such notice will be formally given shortly after the consideration of this report and consideration of the recommendations by each Full Council.
- 3.2 Accordingly, it is proposed that the formal termination date be 31 August 2022. However, it is likely that the Councils will agree the disaggregation of some management and operating arrangements to be completed sooner and some may continue beyond this date.

4 Dispute Resolution

- 4.1 The dispute resolution provisions in the s.113 Agreement are not practical for the implementation of the termination of the s.113 Agreement.
- 4.2 It is proposed that the principles for dispute resolution, below are adopted:
 - 4.2.1 If a dispute arises each Council will endeavour to resolve that dispute between the officers involved in the relevant service area or function;

- 4.2.2 If the dispute continues then it will be referred to a director of each Council for consideration with a view to the two Directors evaluating the issues and seeking to reach a resolution.
 - 4.2.3 If the dispute continues then it will be referred to the Monitoring Officer and Chief Executive of each Council for consideration with a view to the respective Monitoring Officers and Chief Executives evaluating the issues and seeking to reach a resolution.
 - 4.2.4 If the dispute continues then it will be referred to the JSSP Committee for consideration and resolution.
 - 4.2.5 Only if having followed this dispute resolution process and having failed to reach Agreement should any dispute be referred for mediation. Any mediator would be appointed by Agreement or otherwise by the Chairperson for the time being of the Local Government Association.
- 4.3 These principles will need to be overlaid upon all shared services areas and a plan devised to best give effect to them. Such transition plan will recognise that it is probable that different timescales and solutions will be required dependent upon the given circumstances in each shared service area.
 - 4.4 The Financial Implications section (Section 8.3) of this report sets out some further principles which should specifically guide the apportionment of cost attributable to the termination of the s.113 Agreement.
 - 4.5 It is recommended that a Joint Officer Transition Working group is established to advise on executive decisions regarding the arrangements consequential upon the termination of the s.113 Agreement.
 - 4.6 A review of the Council's existing Scheme of Delegations will be undertaken to ensure that suitable individuals are authorised to take appropriate decisions.

5 Engagement and Due Diligence

- 5.1 It will be necessary to undertake a process of establishing the service areas, full costs and functions which are impacted by the decision to terminate the s.113 Agreement. This will be undertaken by the Joint Officer Transition Working Group.
- 5.2 The purpose of that Group is to carry out a short and directed due diligence exercise on the current extent and cost of the s.113 arrangements and thereafter to prepare a transition plan for Cabinet to separate the joint working arrangements between the two authorities; ensuring steps are put in place to maintain effective operational activity in accordance with the s.113 Agreement.

- 5.3 Work should be undertaken jointly by the two Councils in a timely and focussed manner. It will include a review of the costs, officer and staffing cohort, service provision which is not officer sharing, contracts, assets and liabilities.
- 5.4 Once the potential impacts have been identified this will inform the production of service area/function specific plans, which will inform the transition plans. Suitable colleagues from both Councils will need to be assigned to develop such plans.
- 5.5 Following the due diligence exercise, transition plans for separating the existing joint working can be developed and subject to appropriate employee and stakeholder engagement as and when they are developed. This will result in the s.113 Agreement being terminated but with scope for discrete service areas to be mutually delivered under different governance arrangements.
- 5.6 Engagement with Councillors is a vitally important principle throughout the preparation and delivery of the transition plan. That includes individual business plans and options appraisals for disaggregating existing services and/or new forms of partnerships for future service delivery. The relevant service director will have the responsibility to ensure that relevant Cabinet Members are closely engaged with at all stages in the design and delivery of the transition and future service delivery arrangements.
- 5.7 The relevant Director will also be expected to engage with the relevant portfolio holder if and when the Director is undertaking a role set out in the second stage of the Dispute Resolution process at paragraph 4.2.2 of this report.

6 Service Delivery

It is emphasised that a clear desire in giving effect to this termination is not to interrupt or unduly impact upon front line service delivery through the process of the transition. Both Councils are committed to maintain positive relations with all service users/customers, stakeholders, contractors and interested parties through this period of transition and into the future.

7 Implications for Employees

- 7.1 The Agreement recognises that early steps are required to be taken in relation to the Shared Senior Management Team. It has been agreed that the Agreement whereby Cherwell District Council share its Chief Executive with Oxfordshire County Council will cease once notice is given following the decisions of the two Councils. Thereafter, the current post holder, will revert to solely being the Chief Executive of Cherwell District Council and Cherwell District Council shall comply with its legal obligations in ensuring this happens (with Oxfordshire County Council reimbursing Cherwell District Council sixty one percent of the costs that arise). Oxfordshire County Council intends to put in place an

appointment of an interim Chief Executive and Head of Paid Service with effect from 9 February 2022.

- 7.2 From the point at which both Councils agree to terminate the partnership, contributions to the employing authority for the Chief Executive, s151 Officer and Monitoring Officer roles will cease.
- 7.3 In the case of the Monitoring Officer, the element of the role that is the Director of Law and Governance of Cherwell District Council will continue in a shared capacity until new arrangements are established.
- 7.4 In the case of the joint s.151 officer it is noted that in respect of the Cherwell District Council element, the role that is the Director Finance of Cherwell District Council, shall cease.
- 7.5 Once the due diligence exercise referred to above is completed there are likely to be some significant factors, including changes of role for existing employees. In principle each employee should return to their employing Council as set out in the s.113 Agreement unless otherwise agreed.
- 7.6 Naturally through this process there will be engagement with employees and their trade union representatives.

8 Financial Implications

- 8.1 Initially it can be observed that the termination envisaged is not expected to inhibit the Council setting its budget for the next financial year 2022/23.
- 8.2 In giving notice to terminate the s.113 Agreement, this triggers a six month notice period during which the due diligence exercise will be undertaken and in some cases it may be possible to terminate the arrangements sooner, but in other cases it is acknowledged that it will take longer for the arrangements to be dis-aggregated. Charging arrangements will be terminated once new arrangements are agreed. An exit agreement will be entered into by both councils as soon as reasonably practicable.
- 8.3 The following Financial Principles are proposed to be adopted as being applicable for the apportionment of the costs of terminating the s.113 Agreement:
 - 8.3.1 The Councils will, acting reasonably, utilise the due diligence exercise to help identify and agree the costs that will be included in the costs of settlement calculation including any time frame for their inclusion in said calculation.
 - 8.3.2 The s.113 Agreement indicates that the majority of costs of termination should, in the ordinary course, be borne equally by the two Councils.
 - 8.3.3 It is acknowledged however, that the historic utilisation and therefore cost of the provision of the services has not been

equally split and often utilisation is often weighted in favour of one council over the other. The Councils also recognise their size, and the future utilisation of arrangements will also not be equal as between them.

8.3.4 To this end the Councils will use all reasonable endeavours to agree the apportionment of settlement costs arising from the termination proportionately, fairly and taking into account historic or actual cost sharing percentages and any mutual provision that it is agreed will be put in place for discrete service areas

8.3.5 Unless otherwise agreed, the Councils agree that any internal or external costs incurred by them in relation to the management of the transition period shall be borne by each Council

8.3.6 However, if in relation to any specific item of cost, it is not possible to agree a different apportionment of the cost utilising the earlier stages of the Dispute Resolution Process, the apportionment will be referred to mediation in accordance with the Dispute Resolution process outlined above.

8.4 Through the development of the transition programme, the Council will need to give consideration to the capacity required to deliver the transition, including decision making capacity and the capacity required for service redesign and change. In some cases additional resources for change will be required, sourced either internally or through interim or external support arrangements, taking into account varying inhouse capacity between the two Councils the costs of which will be addressed through the Financial Principles set out above.

8.5 The costs of the new arrangements cannot be quantified until alternative structures are put in place during 2022/23. It is also anticipated that some one-off settlement costs may arise. It is proposed therefore, that any additional costs that may be incurred as the result of new structures are met from the relevant council's contingency budget and addressed on a permanent basis as part of any exit Agreement and the Budget & Business Planning process for 2023/24.

9 Risk Implications

9.1 In principle the reversion of the two Councils to independent operations represents a transition to a long established and understood operating arrangement. However, with any change there is inevitable risk and this will be mitigated and managed through the plan devised to give effect to the transition. This may include new arrangements for mutual delivery for discrete service areas.

- 9.2 As each Council decides upon how to deliver its service and functions, it is recognised that there is some risk in making any change. As part of the due diligence and business plans for future delivery, it will be mandatory for a risk assessment to be undertaken and for the risks associated with that plan to be managed and mitigated as part of the plan approval and implementation.
- 9.3 Each Council may in the future consider different operating models and the attendant risk of adopting any such model will need to be evaluated as part of such consideration.

10 Legal Implications

- 10.1 The arrangements for the sharing of the Chief Executive and other employees between the two Councils are set out in the s.113 Agreement dated 31 August 2018. That Agreement makes certain provisions for termination and the Councils need to observe those requirements or reach Agreement as to any alternative proposed approach.
- 10.2 As with many such arrangements it is not possible for an Agreement to make provision for all of the implications and consequences of the termination of that Agreement, and the s.113 Agreement is no exception. Each Council must be realistic that it is essential that resource is deployed into the planning and implementation of the termination arrangements. It is likely that further key issues will need to be resolved and each Council must commit to the overarching principle of a fair and mutual decision to terminate the s.113 Agreement and to work together to reach fair outcomes in the implementation of that decision.
- 10.3 Each Council is under a duty pursuant to s.3(1) of the Local Government Act 1999, whereby each authority must: "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness." It is suggested that this is a guiding principle for the termination of the s.113 Agreement. The application of this duty can only be implemented as each service area is considered and plans are developed for that service area in the context of the termination of the s. 113 Agreement.
- 10.4 Social value should be considered as part of the detailed s.113 agreement and transition plans which should consider overall value, including economic, environmental and social value, when reviewing service provision.

11 Equality Act

- 11.1 The application of the respective Councils' equality duties is an integral element of the steps proposed to be taken to give effect to the termination of the s.113 Agreement. Those equality duties extend to:
- 11.2 Having due regard to the need to:

- 11.2.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
 - 11.2.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - 11.2.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 11.3 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- 11.3.1 remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - 11.3.2 take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - 11.3.3 encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 11.4 In producing the service area s.113 transition plans, these equality responsibilities will be considered and applied.
- 11.5 The legal implications of the s.113 transition plans will need to be evaluated and the subject of further advice as necessary in due course.

12 Constitution Review

- 12.1 The Council will need to undertake a review of and update its Constitution to make provision for the situation following the giving of notice of termination of the s.113 Agreement. Delegation to the Monitoring Officer has been requested and contained within recommendation 1.11.
- 12.2 In shared service and staffing arrangements, each Council retains its sovereignty. This includes its own governance and constitutional structures and there may be no restriction on each authority's ability to determine how it exercises its functions nor how each formulates and spends its budget. There are opportunities for shared formulation of policy and alignment of procedures but in each case, these are subject to approval by each Council in accordance with its executive and wider governance requirements.

Exempt Information

N/A

Corporate Policies and Priorities

2. A review of the Council's Constitution is underway and the ultimate form and function of the Authority will be reflected in the Constitution over the course of the next municipal year.

Financial Implications

3. Financial principles have been arrived at and the termination of the s 113 Agreement will not inhibit the Council in setting its budget for the next financial year 2022/23.

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Legal Implications

4. The duties of the Authority to comply with the Local Government Act 1972 and the Local Government Act 1999 have been fully considered in respect of this report.

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Staff Implications

5. Each Council will need to put in place arrangements for the fulfilment of all of their required statutory officers where such posts, will as a result of the termination of the current arrangements, cease to be filled.
6. Oxfordshire County Council will engage with employees and their trade union representatives throughout the transition period.

Equality & Inclusion Implications

7. The legal implications of the s.113 transition plans will need to be evaluated and the subject of further advice as necessary in due course.

Sustainability Implications

8. The due diligence exercise will outline the operational and ancillary consequences associated with the current service model and future models for subsequent consideration and decision.

Risk Management

9. The reversion of the two Councils to independent operation represents a transition to a long established and understood operating arrangement. However with any change there is inevitable risk and this will be mitigated and managed through the plan devised to give effect to the transition. This will be overseen, principally, by the JSSP.

Consultations

10. Any such consultations required will be undertaken in line with relevant Council policy.

NAME:

Yvonne Rees, Joint Chief Executive – Oxfordshire County and Cherwell District Councils

Appendix:

Appendix 1 Revised Terms of Reference for the Joint Shared Services and Personnel Committee
Appendix 2 – Report to JSSP 1 February 2022
Discontinuance of the Oxfordshire County Council – Cherwell District Council s.113 Agreement

Background papers:

s. 113 Agreement dated 31 August 2018

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4 February 2022