

## Appendix E (p1): Potential Role of Members within a Confederation

This document sets out the potential implications for Members if the councils were to move to a confederation model.

### 1. The Role of Elected Members

- 1.1 As with any new way of working there would be changes to the way that the founding councils operate and the way decisions are made. The founding councils would move from the role of being service providers to that of service commissioners, with the role of assessing the needs of communities, setting the vision and priorities and then commissioning services to meet these needs and objectives.
- 1.2 These changes would not happen immediately but would be incremental when the new model is implemented evolving over time as the confederation develops.
- 1.3 It has long been a frustration of elected Members that when services are outsourced or housing stock transferred there is a loss of influence over that service. This model aims to not only preserve the role and influence of elected Members but to enhance it. Through the creation of the confederation each council together with the other founding partners would maintain 100% ownership of services and the delivery mechanism, ensuring accountability, the ability to respond to community needs and deal with service issues and complaints.
- 1.4 Members would make up the majority of the Members of the board of the confederation, with equal representation from the founding partners, voting thresholds and procedures would be set out in the shareholders agreement. The board of directors would be comprised of non-executive directors (members and officers appointed by the founding partners) and executive directors who would be the senior managers employed by the confederation (e.g. Managing Directors). There would be roles for both Executive and non-Executive Members on the board(s) of the confederation and the companies it owns, with very few prima facie conflicts of interest. Directors would be fully voting and decision making, and this would help to address many of the criticisms of the Cabinet/Executive arrangements where decision making power has been mainly concentrated in the hands of relatively few Members.
- 1.5 Additionally the confederation would allow Members to once again develop specialist expertise that was in evidence on service committees in the past e.g. Leisure Services Committee at CDC and Community Services Committee at SNC, or Housing Services at SDC but also to contribute their own skills and knowledge.
- 1.6 Some aspects of the roles of elected Members would not change such as representing their ward, full council, standards, planning and licensing. Whilst these roles would not change, councillors carrying out these functions are likely to be working with officers who are employed by the confederation as opposed to their Council. There are likely to be more as opposed to fewer roles for elected Members through adopting a commissioning and confederation model and it is envisaged that Members will have greater opportunity to use their experience and develop their interests in different services.
- 1.7 Whilst it is difficult to be specific due to the evolutionary nature of the transfer to the confederation model, there are a number of likely trends that can be identified in terms of the roles of elected Members.

- The role of the Personnel Committees at Cherwell and South Northants would reduce as staff are transferred to the confederation and its companies. At Stratford most personnel decisions are already delegated to the Head of Paid Service so there will be less change. Decisions formally taken by Personnel Committees would now be taken by the Boards of Directors for the company which employs the staff. Similarly the role of employee consultative meetings would shift from the councils to the confederation.
- Performance and risk management would become more strategic with many operational and lower level risks owned and managed by the confederation instead of the Councils.
- Whilst the Executive and Cabinet would still take strategic decisions, operational decisions and some lower level decisions would transfer to the Confederation. This may overtime lead to a reduction in the size of some of the Cabinets/Executive as the role is refocused to strategic with responsibility for staff and operational aspects transferring to the confederation.
- There would be a change of emphasis where staff employed by the confederation will no longer directly work for Members, but will work with elected Members collaboratively.
- Whilst the work of developing policy and budget strategy would continue at each of the three councils, with high levels of member engagement, in the case of budget strategy this focus would evolve over time to a commissioning role? and the costs involved in commissioning services as opposed to consideration of line items, cost centres and savings exercises based around arbitrary percentage savings on services and directorates.

## **2. Overview and Scrutiny**

- 2.1 Individual Council Overview and Scrutiny functions would continue as at present in terms of reviewing and developing policy, holding the Cabinet/Executive to account and scrutinising matters externally to the council. There would be a need for some additional scrutiny both at the transition stage in deciding to and moving to a confederation and subsequently in respect of performance review if the Confederation is agreed.
- 2.2 Work supported by the Centre for Public Scrutiny (following a successful bid) is taking place with Members to develop what this joint scrutiny might look like and the project plan is set out in the annex to this document. It is envisaged this would look at the performance of the confederation and the commissioning role of the councils on a three-way basis. In order to manage this additional work it is envisaged that some refocusing of internal scrutiny would take place to prevent duplication of effort and to reflect the new commissioning role of the council. Suggested terms of reference for the Joint Commissioning Scrutiny Committee are set out below:

### **Joint Commissioning Scrutiny Committee**

- I. To receive and scrutinise reports from the Joint Commissioning Officer Group detailing the performance against targets that are included within the Contract and Commissioning Plan and otherwise relating to the services provided by the Confederation and its delivery units, other major shared contracts, and to be able to challenge external providers and hold their senior managers publicly to account.

- II. To receive and scrutinise reports from the Joint Commissioning Officer Group detailing the financial performance of the confederation against savings targets detailed in the Budget and Medium Term Financial Strategies.
- III. To receive and scrutinise change requests and contract variations between the Shared Services Joint Committee and external service providers to include (but not be limited to) the introduction of new key performance indicators, delivery of new commissions via the external delivery units, changes required due to new legislation and commercial development opportunities.
- IV. To engage with partner organisations, other relevant public sector bodies, private sector organisations, trade unions, local residents or any other appropriate witnesses when fulfilling the overview and scrutiny role in relation to the monitoring of contracts for services provided by external service providers.
- V. To scrutinise decisions of and services reporting to the Shared Services Joint Committee including the Joint Commissioning Group.

2.3 All of these changes are likely to require future constitutional change such as changes to committee terms of reference and the officer scheme of delegation. In addition member role profiles which are already in use at Stratford would be refreshed and reintroduced for elected Members and in particular Executive and Cabinet Lead Members and Committee Chairmen. Additionally role profiles would be created for Members who are nominated by the councils to serve as Directors.

### **3. New roles**

3.1 There would be a number of new roles for elected Members on the board of the confederation and its subsidiary companies, on the joint commissioning functions of the councils (similar to the current Joint Arrangements Steering Group) and joint overview and scrutiny as discussed above.

3.2 It is likely that the Independent Remuneration Panels would need to consider the remuneration for the new roles on overview and scrutiny and joint commissioning and there may need to be consideration to the creation of a Joint Independent Remuneration Panel to look at joint functions. In the case of the Board of Directors of the confederation and its subsidiary companies, whilst the councils will nominate representatives it would be up to the confederation to consider whether remuneration should be paid and at what level. It would be in order for the confederation to have regard to the remuneration paid pursuant to the recommendations of remuneration panels and the amounts paid to equivalent posts such as Cabinet/Executive Members in considering the level of remuneration.

3.3 In terms of the time commitment of elected Members it is envisaged that for those involved in the Joint Commissioning and Joint Scrutiny it would be similar to current involvement in the Transformation Working Group or Joint Arrangements Steering Group, most likely with bi-monthly meetings. For those nominated as Directors it is anticipated that the level of commitment would vary but in local authority terms is likely to be similar, but most likely slightly less than that of a Cabinet/Executive Member or committee Chairman such as Planning Committee. It is anticipated that Board meetings would take place monthly or bi-monthly with a maximum duration of 3 hours and that there would also be briefings held monthly or bi-monthly. Documents would be succinct and meetings conducted in a way which is business like and focuses on outcomes and decisions. In addition Board Members would spend around the equivalent 1 to 2 days per month on company business, when the confederation is up and running, but this is

likely to be higher in the early stages where there would be a greater intensity of work and where Directors are becoming familiar with their role.

- 3.4 As there are fewer legal restrictions on companies than councils it is intended wherever possible to use technology to assist Directors in their role including virtual meetings, (Skype, Microsoft Lync, video conferencing etc.) and electronic documentation with paperless meetings.

#### The Joint Commissioning Function

- 3.5 Whilst each Council would have a separate contract with the companies of the confederation, in order to provide economies of scale, prevent duplication and reduce the administrative burden on the confederation it is envisaged that there would be a joint commissioning function. The joint commissioning function would consist of two elements a slim joint commissioning officer group and a Joint Commissioning Committee, that would together act as an intelligent client. The shared joint commissioning officer group would manage the contracts on behalf of the councils, carrying out performance and contract management operating as the principal interface with the confederation at the contract management level. The second element of the joint commissioning function would be a joint Member body; it is proposed that a joint committee would be the best form for this body.
- 3.6 It is suggested that a Joint Commissioning Committee is established pursuant to an agreement between Cherwell District Council, Stratford-on-Avon District Council and South Northamptonshire Council. The Joint Committee's remit is to have overall responsibility for the provision, to the Councils, of shared services arrangements both through services it has direct responsibility for and as the councils' interface with the confederation. It is understood that joint committees can have both Executive and non-Executive functions (legal clarification is being sought) based on this the Joint Commissioning Committee would have the functions as set out in Appendix E (pt II).

#### Company Directors

- 3.7 Whilst the role of being a company director is different to that of a councillor, there are also many similarities and there are a significant number of Members who have or are currently directors in a private capacity. Whilst becoming a Director may be daunting at first, many officers and Members who have held these positions have described it as 'valuable' 'liberating', 'extremely rewarding' whilst at times 'challenging'.
- 3.8 One of the key differences to the role of being a councillor is that Directors have personal liability and are likely to be sitting alongside fellow decision making Directors who may be officers. It should be noted that Councillors did have some degree of liability prior to the introduction of the Local Government Act 2000.
- 3.9 To support Directors, role descriptions will be developed for Director posts, also it is proposed that following the recent experience of Cherwell, in setting up the Graven Hill companies that Directors be allocated specific roles based on mapping skills and experience e.g. Finance, Operations, Sales and Marketing, Governance / Management and Technical. Whilst Directors would be non-executive e.g. that is they would not be individually empowered to take decisions they would maintain regular links with their area of responsibility. Directors would be insured and indemnified both by their Council and the confederation for carrying out their role

## **4. Training and Development**

4.1 It is key that Directors have the required knowledge and training in their role and together with the Confederation the Councils would ensure that high quality training and development is available in terms of legal, risks and responsibilities and generic training on the role of a Director. Some training has already been delivered in the context of Cherwell's Graven Hill work but as an indication the following is suggested:

- Specific portfolio role training
- Generic Director training on roles and responsibilities (including liability)
- Commercial awareness
- Company awareness

## **5. Roles and Responsibilities**

5.1 It is clear that the role of Director would be very different for Members and officers who take up Director posts. Unlike a councillor Directors carry personal responsibility and liability, with one of the key differences being the legal duty of loyalty to the company. The Companies Act 2006 sets out the following duties for Directors:

- to act within powers in accordance with the company's constitution and to use those powers only for the purposes for which they were conferred
- to promote the success of the company for the benefit of its Members to exercise independent judgement
- to exercise reasonable care, skill and diligence
- to avoid conflicts of interest
- not to accept benefits from third parties
- to declare an interest in a proposed transaction or arrangement

5.2 These statutory duties cannot be seen in isolation because in addition a director will be subject to a wide range of regulation and legislation including the Insolvency Act 1986, the Company Directors' Disqualification Act 1986, the Health and Safety at Work etc. Act 1974, the Corporate Manslaughter and Corporate Homicide Act 2007 and the Bribery Act 2010. Councillors who are appointed as Directors will be required to abide by the member code of conduct, save where it is in conflict with the duties owed to the company as a director in which case it must be subservient to this.

5.3 Directors may be liable to penalties if the company fails to carry out its statutory duties, incur personal liability, both civil and criminal, for their acts or omissions in directing the company. The court may also require a director to make a contribution to the company's assets if, in the course of the winding up of a company, a director was knowingly a party to the carrying on of the company's business with the intent to defraud the creditors.

Additionally Directors may be disqualified if the following apply:

- the director has been guilty of three or more defaults in complying with companies legislation regarding the filing of documents with the Registrar of Companies during the preceding five years;
- he or she is, or was, a director of a company that has at any time become insolvent and that his/her conduct as a director of that company makes him/her unfit to be concerned in the management of a company;
- the director is found to be guilty of wrongful or fraudulent trading as defined in the Insolvency Act 1986

## **6. Conflicts of Interest**

6.1 6.1 There would be very few restrictions on which Members could serve on these Boards as situations where potential conflicts of interest might militate against this would be likely to be rare. Advice and guidance would be provided for Members on dealing with the potential conflicts that could arise in their role as an elected member and their role as a company director. Officers would work with Members to develop the new relationship that will be required between the councils and the confederation. Where conflicts do occur the councils have developed an ethical walls policy to manage officer level conflicts which would be the basis for managing conflicts that occurred between different functions e.g. planning and economic development or the role of a member as Councillor and Director.

## **Appendix E (pt2): Joint Commissioning Committee**

The Joint Commissioning Committee would be established pursuant to an agreement between Cherwell District Council, Stratford-on-Avon District Council and South Northamptonshire Council. The Joint Committee's remit would be to have overall responsibility for the provision, to the Councils, of shared services arrangements both through services it has direct responsibility for and as the councils' interface with the confederation (if established). It is understood that joint committees can have both Executive and non-Executive functions (legal clarification is being sought) based on this the Joint Commissioning Committee would have the following functions:

- To have responsibility for and to take any decisions (other than those delegated to officers), for any shared service including the confederation that is created for the above councils.
- To ensure that any shared service meets the requirements of the councils in furthering the objectives of their corporate plans.
- Through the Joint Commissioning Group to manage (on behalf of the councils) their contracts for service delivery with the confederation.
- To set and monitor performance standards for shared services, including those provided by the confederation, providing intervention where required.

### Shared Management

In the case of a decision to appoint a shared management team:

- To act as the interviewing panel for the Head of Paid Service (Chief Executive), making recommendations to all three councils for formal appointment.
- To act as the interviewing panel and appoint Strategic Directors and Heads of Service working across all three Councils (NB. Anyone involved in the decision for a particular post must be present throughout the entire interview process).
- To appoint an Appraisal Subcommittee comprised of 6 councillors, 2 from each authority, who will be responsible for carrying out the appraisal of the Head of Paid Service (Chief Executive). The Leaders of all three councils will not be part of the subcommittee but must be invited to participate.
- To appoint the designated independent person where a complaint of misconduct requires it to be investigated against a Head of Paid Service, Monitoring Officer or Section 151 Officer where working across all three Councils.

### Shared Posts

- To agree posts to be declared 'at risk', dismissal, including compulsory or voluntary redundancy and the exercise of discretionary awards to any post where costs are shared or are going to be shared.
- Determination of the terms and conditions of employment of any posts where costs are shared or are going to be shared.

- Determination and review of all policies affecting the employment of staff in posts where costs are shared or going to be shared.
- Approval of the creation of new posts where costs are shared or are going to be shared.
- Approval of any restructuring of teams where costs are shared or are going to be shared.