

Cherwell District Council

Council

7 February 2022

Section 113 Agreement Cherwell District Council and Oxfordshire County Council

Report of Chief Executive

This report is public.

Purpose of report

To agree the arrangements to end the formal partnership arrangements between Cherwell District Council and Oxfordshire County Council.

1.0 Recommendations

The meeting is recommended that subject to no amendments to the proposed recommendations to be considered at Oxfordshire County Councils Full Council meeting on 8 February 2022:

- 1.1 To terminate the s.113 partnership with Oxfordshire County Council.
- 1.2 To formally notify Oxfordshire County Council of Cherwell District 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 To 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 To adopt a revised Terms of Reference for the JSSP at Appendix 1 of this report.
- 1.5 To disband the Partnership Working Group and note the conclusion of its business.
- 1.6 To instruct the Chief Executive of Cherwell District Council subject to Council agreeing Recommendation 1.1 to work alongside Oxfordshire County Council officers to establish a Joint Officer Transition Working Group
- 1.7 To adopt the Financial Principles for the termination of the s.113 Agreement as set out at paragraph 3.31 of this report.
- 1.8 To agree amendments to the existing dispute resolution process as set out at paragraph 3.10 of this report.

- 1.9 To request that the Monitoring Officer undertakes a review of the existing Scheme of Delegation to ensure that decision making is both effective and efficient.
- 1.10 To delegate responsibility to the Monitoring Officer to undertake amendments to the Council's Constitution to reflect the resolutions arising from this report to Council.
- 1.11 To 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.

2.0 Introduction

- 2.1 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.
- 2.2 It is now considered that these arrangements have run their course and that they should 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.
- 2.3 The Joint Shared Services and Personnel Committee met on 1 February 2022 and received the Report at Appendix 2

3.0 Report Details

The Mutual Agreement to Terminate the Joint Arrangements

- 3.1 Discussions have taken place between Cherwell District Council and Oxfordshire County Council regarding the S113 Agreement.
- 3.2 During the pandemic, we have worked very closely with all our local authority partners to support our most vulnerable residents and deliver much-needed services. What we want to do now is to capitalise on this and focus on the opportunities that broader partnership working gives us so that we can best serve the residents of Oxfordshire. Initially each Council plans to independently carry out a review of alternative service delivery options and wider partnership working.
- 3.3 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.
- 3.4 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.

- 3.5 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 from one of the Joint Committee 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.
- 3.6 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.
- 3.7 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.

Timing

- 3.8 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.
- 3.9 Accordingly, it is proposed that the formal termination date be 31 August 2022. However, it is likely that the Councils will agree the dis-aggregation of some management and operating arrangements to be completed sooner and some may continue beyond this date.

Dispute Resolution

- 3.10 It is proposed that the principles for dispute resolution, below are adopted:
 - 3.10.1 If a dispute arises each Council will endeavour to resolve that dispute between the officers involved in the relevant service area or function;
 - 3.10.2 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.
 - 3.10.3 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.
 - 3.10.4 If the dispute continues then it will be referred to the JSSP Committee for consideration and resolution.

3.10.5 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.

- 3.11 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.
- 3.12 The Financial Implications section 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.
- 3.13 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.
- 3.14 A review of the Council's existing Scheme of Delegations will be undertaken to ensure that suitable individuals are authorised to take appropriate decisions.

Engagement and Due Diligence

- 3.15 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.
- 3.16 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 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.
- 3.17 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.
- 3.18 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.
- 3.19 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.

Service Delivery

- 3.22 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.

Implications for Employees

- 3.23 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 shares 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.
- 3.24 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.
- 3.25 Cherwell District Council will appoint an interim Monitoring Officer and Section 151 Officer. Subject to Council agreeing the recommendations in this report, these appointments will be considered at agenda items 8 and 9 respectively.
- 3.26 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.
- 3.26 In the case of the joint S151 Officer, it is noted that in respect of the Cherwell District Council element, the role that is Director of Finance for Cherwell District Council shall cease.
- 3.27 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.
- 3.28 Naturally through this process there will be engagement with employees and their trade union representatives.

Financial Implications

- 3.29 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.
- 3.30 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.

- 3.31 The following Financial Principles are proposed to be adopted as being applicable for the apportionment of the costs of terminating the s.113 Agreement:
- 3.31.1 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.
- 3.31.2 The s.113 Agreement indicates that the majority of costs of termination should, in the ordinary course, be borne equally by the two Councils.
- 3.31.3 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.
- 3.31.4 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
- 3.31.5 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
- 3.31.6 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.
- 3.32 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.
- 3.33 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.

Risk Implications

- 3.34 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.

- 3.35 As each Council decides upon how to deliver its service and functions, it is recognised that there is some risk that 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.
- 3.36 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.

Legal Implications

- 3.37 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.
- 3.38 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.
- 3.39 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.
- 3.40 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.

Constitution Review

- 3.41 The Council will need to undertake a review of and update their 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 1.10.
- 3.42 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 authorities' 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.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The leaders and deputy leaders of Oxfordshire County Council and Cherwell District Council have agreed to work towards bringing our formal partnership arrangements to an end. The decision to end the partnership lies with Full Council at both authorities. This report sets out the proposal to Full Council for agreement by Members to formally end the partnership. A similar report will be considered by Oxfordshire County Council at their Full Council meeting on 8 February 2022.

5.0 Consultation

Joint Shared Services and Personnel Committee

The recommendations to Council were considered and agreed by the Joint Shared Services and Personnel Committee at its meeting of 1 February 2022.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Not to agree the recommendations. This is not recommended as both Councils have indicated a desire to end the formal partnership.

7.0 Implications

Financial and Resource Implications

- 7.1 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.
- 7.2 See also paragraphs 3.29 – 3.33

Comments checked by:

Michael Furness, Assistant Director - Finance, michael.furness@cherwell-dc.gov.uk

Legal Implications

- 7.3 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.
- 7.4 See also paragraphs 3.37 – 3.40

Comments checked by:

Anita Bradley, Director of Law and Governance, anita.bradley@cherwell-dc.gov.uk

Risk Implications

- 7.5 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.
- 7.6 See also paragraphs 3.34 – 3.36

Comments checked by:

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Equalities and Inclusion Implications

- 7.7 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:
- 7.7.1 Having due regard to the need to:
- i. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
 - ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - iii. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.7.2 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:
- i. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - ii. 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;
 - iii. 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.
- 7.8 In producing the service area s.113 transition plans, these equality responsibilities will be considered and applied.
- 7.9 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.

Comments checked by:

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Sustainability Implications

7.10 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.

Comments checked by:

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8.0 Decision Information

Key Decision

Financial Threshold Met: N/A

Community Impact Threshold Met: N/A

Wards Affected

All

Links to Corporate Plan and Policy Framework

N/A

Lead Councillor

Councillor Barry Wood, Leader of the Council

Document Information

Appendix number and title

- Appendix 1 - Revised Terms of Reference for the JSSP
- Appendix 2 - Report to JSSP 1 February 2022

Background papers

S113 Agreement dated 31 August 2018

Report Author and contact details

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