

Joint Shared Service and Personnel Committee

1 February 2022

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

Report of the Chief Executive

- 1 Recommendations
 - 1.1 The Committee is recommended to:
 - 1.1.1 Resolve that a mutual and consensual decision is proposed to be taken by the Full Councils of both Oxfordshire County Council and Cherwell District Council to terminate the s 113 Agreement dated 31 August 2018.
 - 1.1.2 Recommend the Full Councils of both Oxfordshire County Council and Cherwell District Council to give notice to terminate the s 113 Agreement dated 31 August 2018 regarding joint working between the two authorities;
 - 1.1.3 Forward this report and the resolutions of this Committee to the Full Councils of both Oxfordshire County Council and Cherwell District Council for their consideration;
 - 1.2 Note that subject to the Full Councils of the two Councils resolving to terminate the s 113 Agreement dated 31 August 2018, it has been agreed that the arrangement for Cherwell District Council to share its Chief Executive with Oxfordshire County Council will cease and she will revert to be the Chief Executive of Cherwell District Council solely.
 - 1.3 Recommend to the respective Councils that they agree that on or before the 9th February 2022, they will appoint or ensure that they have filled (at least on a temporary basis) their other statutory officer roles (i.e. s151 officer and Monitoring Officer) with officers who are no longer shared between the respective councils.
 - 1.4 Subject to the Full Councils of the two Councils resolving to terminate the s 113 Agreement dated 31 August 2018, relevant officers are instructed to establish a Joint Officer Working Group, 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.
 - 1.5 The two Councils should consider the ongoing role of the JSSP in providing suitable oversight and decision-taking concerning the termination of the s 113 Agreement. To this end recommending to both Councils that the Partnership Working Group is dissolved the JSSP terms of reference are amended to include:

- 1.5.1 that the JSSP shall be given responsibility to oversee the role of the Joint Officer Working Group;
- 1.5.2 to be kept informed as to progress regarding the termination arrangements;
- 1.5.3 to take non-executive decisions as necessary; and
- 1.5.4 all decisions of the JSSP will be taken on the basis of unanimity

The JSSP should recommend that the two Councils resolve to adopt the Financial Principles for the termination of the s 113 Agreement as set out in paragraph 11 of this report.

2 Executive Summary

- 2.1 The leaders and deputy leaders of Oxfordshire County Council and Cherwell District Council have agreed to work towards bringing the formal partnership arrangement to an end. The arrangement between the two councils, which has taken the form of joint services under a single chief executive, has been in place since September 2018. The partnership has served the councils, residents and stakeholders well for the past three years and enabled the delivery of high-quality cost-effective services.
- 2.2 Each Council is required to give six months' notice of the termination of the S 113 Agreement.
- 2.3 The decision to end the partnership lies with the councils of both authorities, and a proposal will come to Full Council for Agreement by all members.
- 2.4 Joint services will remain in place while new arrangements are finalised. Once a decision has been reached by the Councils to end the partnership the shared Chief Executive will return to her substantive post as chief executive for Cherwell District Council and will no longer be the chief executive for Oxfordshire County Council. The Councils agree that on or before the 9th February 2022, they will appoint or ensure that they have filled (at least on a temporary basis) their other statutory officer roles (i.e. s151 officer and Monitoring Officer) with officers who are no longer shared between the respective councils.
- 2.5 In dissolving the partnership a number of financial principles will be used to guide decision making over the coming months
- 2.6 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, endeavouring to ensure that such actions will not be to their detriment.
- 2.7 To effectively manage the separation process, there is a need for each Council to move swiftly to new management and operating arrangements. Plans for an orderly and fair transition to give effect to the cessation of the s 113 Agreement will be developed to meet the needs of each Council in terms of maintaining service delivery to local residents.

3 Introduction

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. 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.

4 The Mutual Agreement to Terminate the Joint Arrangements

- 4.1 Discussions have taken place between the two Councils regarding the s 113 Agreement. In the case of Oxfordshire, there is a desire 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.
- 4.2 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.
- 4.3 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.
- 4.4 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. It is proposed that this Committee fulfils that purpose.
- 4.5 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.
- 4.6 To effectively manage the separation process, there is a need for each Council to move swiftly to new management and operating arrangements. Plans for an orderly and fair transition to give effect to the cessation of the s 113 Agreement will be developed to meet the needs of each Council in terms of maintaining service delivery to local residents.

5 Timing

Each Council is required to give six months' notice of the termination of the S 113 Agreement. It is anticipated that such notice will be formally given shortly after the consideration of this report and recommendations of this Committee by the Full Councils of the two Councils scheduled for 7th February (Cherwell) and 8th February

(Oxfordshire). 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.

6 Orderly and fair transition

6.1 Heads of terms for the termination of the S 113 Agreement.

6.2 In order to frame the disaggregation work necessary to deliver a satisfactory exit for both Councils it is recommended that a Memorandum or Heads of Terms document is entered into. Such Agreement will serve as a useful reference point to the ongoing work and also perfect certain inconsistencies in the existing Agreements to form the best foundation for exit and reduce the risk of disagreement at any later stage over wording and interpretation. The following terms regarding the termination of the s 113 Agreement should be included:

6.2.1 Through this mutual termination, the two Councils shall collaborate to achieve an orderly and fair transition in the termination of the s 113 Agreement.

6.2.2 So far as possible, the objective through the termination of the s 113 Agreement, shall be that no citizen should suffer a detriment attributable solely to the termination of the s 113 Agreement.

6.2.3 A revised dispute resolution procedure to allow for a better more balanced approach than currently found in the s 113 Agreement – see below.

6.2.4 The Financial Principles should be agreed – see below in the Financial Implications section.

6.2.5 A focussed Due Diligence exercise to identify the affected services and functions should be undertaken to identify costs and appropriate actions

6.2.6 The JSSP should receive progress reports from the Joint Officer Working Group and take decisions as appropriate throughout the period of the termination.

6.2.7 The effects of termination of the s 113 Agreement should be implemented and costs allocated to the two Councils in line with the Financial Principles.

6.3 The Councils agree that on or before the 9th February 2022, they will appoint or ensure that they have filled (at least on a temporary basis) their statutory officer roles (i.e. Head of Paid Services, s151 officer and Monitoring Officer) with officers who are no longer shared between the respective councils.

7 Dispute Resolution

7.1 The dispute resolution provisions in the s 113 Agreement are not practical for the implementation of the termination of the s 113 Agreement.

7.2 It is suggested that the two Councils agree to arrangements for dispute resolution based on these principles:

- 7.2.1 If a dispute arises each Council will endeavour to resolve that dispute between the officers involved in the relevant service area or function;
- 7.2.2 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.
- 7.2.3 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.
- 7.2.4 If the dispute continues then it will be referred to the JSSP Committee for consideration and resolution.
- 7.2.5 Only if having followed this dispute resolution 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.
- 7.3 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.
- 7.4 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.
- 7.5 It is recommended that a Joint Officer Working group is established to advise on executive decisions regarding the arrangements consequential upon the termination of the s 113 Agreement. It is recommended that each Council shall review their existing Scheme of Delegations to ensure that suitable individuals are authorised to take appropriate decisions. It is also proposed that this Committee shall be given responsibility to oversee the role of the Joint Officer Working Group and to be kept informed as to progress regarding the termination arrangements, and to take non-executive decisions as necessary.
- 7.6 It is however acknowledged that officers who remain jointly engaged and /or shared via the s 113 Agreement will be faced with an intrinsic conflict of interest. It is recommended that the Committee acknowledge this.

8 Engagement and Due Diligence

- 8.1 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 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.

8.2 Once the potential impacts have been identified this will inform the production of service area/function specific plans. Suitable colleagues from both Councils will need to be assigned to develop such plans.

8.3 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.

9 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.

10 Implications for Employees throughout the two Councils

10.1 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 2 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.

10.2 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. In each case any current post holders will work with the Councils to put in place suitable arrangements to meet statutory obligations.

10.3 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.

10.4 In the case of the Monitoring Officer, the element of the role that is the Director of Law and Governance of Cherwell DC will continue in a shared capacity until new arrangements are established. In the case of the joint s 151 officer in respect of the Cherwell DC element, the role that is the Director Finance of Cherwell DC, shall cease.

10.5 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.

10.6 Naturally through this process there will be engagement with employees and their trade union representatives.

10.7 As has been observed both Councils are determined to collaborate to deliver sound outcomes.

11 Financial Implications

11.1 Initially it can be observed that the termination envisaged is not expected to inhibit each Council setting their budget for the next financial year 2022/23.

11.2 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.

11.3 The following Financial Principles are proposed to be adopted as being applicable for the apportionment of the costs of terminating the s 113 Agreement:

11.3.1 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.

11.3.2 The s 113 Agreement indicates that the majority of costs of termination should, in the ordinary course, be borne equally by the two Councils.

11.3.3 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.

11.3.4 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.

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

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

11.4 Through the development of the transition programme, both Councils 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.

- 11.5 The costs of the new arrangements in both councils 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.

12 Risk Implications

- 12.1 In principle 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 may include new arrangements for mutual delivery for discrete service areas.
- 12.2 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.
- 12.3 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.

13 Legal Implications

- 13.1 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.
- 13.2 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.
- 13.3 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.

- 13.4 Social value should be considered as part of the detailed s 113 Agreement transition plans which should consider overall value, including economic, environmental and social value, when reviewing service provision.

14 Equality Act

- 14.1 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:

- 14.2 Having due regard to the need to:

- 14.2.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;

- 14.2.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- 14.2.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 14.3 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:

- 14.3.1 remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

- 14.3.2 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;

- 14.3.3 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.

- 14.4 In producing the service area s 13 transition plans, these equality responsibilities will be considered and applied.

- 14.5 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.

15 Constitution Review

- 15.1 Each Council will need to undertake a review of their Constitution to make provision for the situation following the giving of notice of termination of the Agreement. Sufficient resource will need to be allocated to undertake this work in a timely fashion.

- 15.2 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 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.

16 Next Steps

On the basis that the recommendations for termination of the s 113 Agreement contained in this report are accepted, the next steps will be:

- 16.1 The District Council will report to its Full Council on 7 February 2022;
- 16.2 The County Council will report to its Full Council to be held on 8th February 2022;
- 16.3 Providing both Councils resolve to mutually terminate the Agreement then formal six months' notice of such termination will be served.
- 16.4 The Due Diligence exercise should be undertaken to cover:
 - 16.4.1 Scope of the entire shared service;
 - 16.4.2 Costs and financial implications;
 - 16.4.3 Contractual and other obligations;
 - 16.4.4 Employees;
 - 16.4.5 Operational and ancillary consequences.
- 16.5 Head of terms drafted and agreed through the appropriate decision-making route at both Councils as soon as reasonably practicable.
- 16.6 The JSSP should receive progress reports from the Joint Officer Working Group and take decisions as appropriate throughout the period of the termination.
- 16.7 The effects of termination of the s 113 Agreement should be implemented and costs allocated to the two Councils in line with the Financial Principles.