

Cheltenham Borough Council
Officer Decision Report
Publica Articles of Association and Members Agreement
Authorisation

Accountable member	Cabinet Member Corporate Services, Councillor Roger Whyborn
Accountable officer	Head of Paid Service, Pat Pratley
Ward(s) affected	None directly
Key/Significant Decision	No
Executive summary	<p>On 11 October 2016 Cabinet passed the following resolution:</p> <p><i>Authorises the Head of Paid Service, in consultation with the Leader, Cabinet Member for Corporate Services, the s151 Officer and the Borough Solicitor, to work with the Partnership MD to finalise and complete the Articles of Association, Members Agreement, Contract for Services and documents and to take all necessary steps to enable the support service local authority company formation”.</i></p> <p>This report summarises the work undertaken since October to complete the Articles of Association and Members’ agreement in order for the first official board meeting of Publica to take place on 19 May 2017.</p> <p>Work is commencing on the contract for services which will be completed in due course and will also be subject to the same consultees as required by the above Cabinet decision.</p>
Decision	<p>To enable the authority to participate in Publica Group (Support) Limited (the company) to:</p> <ul style="list-style-type: none"> • Agree the Articles of Association; and • Authorise the Borough Solicitor to complete the Members’ Agreement between the authority, the company, Cotswold District council, West Oxfordshire District Council and Forest of Dean District Council.

Financial implications	<p>Advice sought from KPMG, recommends that the companies are established so as to benefit from Mutual Trading Status (MTS). Where MTS applies, no Corporation Tax should be payable on transactions between the Member Council's and the companies.</p> <p>Whilst the original intention was for services to be delivered to the Councils on an 'at cost basis', this could lead to an inefficient VAT position. In order to ensure that the cost sharing exemption does not inadvertently apply, it is recommended that a small mark-up (profit) is applied in order to satisfy HMRC that the companies qualify for MTS.</p> <p>It is anticipated that the retention of these surpluses (profit) will be utilised through the investment in assets, the cost of which would inevitably fall on the Councils in any event.</p> <p>Contact officer: Paul Jones, Chief Finance Officer Paul.jones@cheltenham.gov.uk, 01242 775154</p>
Legal implications	<p>As contained in this report and set out in the Trowers and Hamlins Legal Advice Letter attached to this report at appendix 4</p> <p>Contact officer: Shirin Wotherspoon, Head of Law (Commercial) Shirin.wotherspoon@teWKesbury.gov.uk, 01684 272017</p>
HR implications (including learning and organisational development)	<p>No HR implications arising from this decision as far as it relates to CBC for the delivery of GO Shared Services and ICT. The officers who deliver these services are employees of Cotswold District Council and Forest of Dean District Council respectively.</p> <p>Contact officer: Julie McCarthy, HR Manager GO Shared Services Julie.mccarthy@cheltenham.gov.uk, 01242 264355</p>
Key risks	<p>That the legal documentation is not agreed between CBC and the other partner councils leading to Council's nominated representative being unable to take part in the Publica Group (Support) board meetings.</p>
Corporate and community plan Implications	<p>Fulfils the corporate plan objective to consider a business case for a local authority company model and to finalise the legal documentation.</p>
Environmental and climate change implications	<p>None arising from this report</p>
Property/Asset Implications	<p>None arising from this report</p> <p>Contact officer: David Roberts, Head of Property Services david.roberts@cheltenham.gov.uk, 01242 774151</p>

1. Background

- 1.1 The 2020 Partnership comprises Cheltenham Borough Council (CBC), Cotswold District Council (CDC), West Oxfordshire District Council and Forest of Dean District Council (FoDDC). The partnership came into being in 2014 with an ambition of *“a number of councils, retaining their independence and identities, but working together and sharing resources to maximise mutual benefit leading to more efficient, effective delivery of local services”*.
- 1.2 In October 2015 CBC approved the creation of the 2020 Partnership Joint Committee (joint committee), delegation of GO Shared Services and ICT from the date of the committee’s creation and the subsequent delegation of revenues, benefits and customer services following Cabinet decision on 9 February 2016.
- 1.3 In October 2016 Cabinet approved the transfer of GOSS and ICT functions to a local authority support company owned by CBC, CDC, FoDDC and WODC agreeing to retain the remaining services previously delegated to the joint committee.
- 1.4 The Head of Paid Service (HoPS) was authorised, in consultation with the Leader, Cabinet Member for Corporate Services, s151 Officer and Borough Solicitor to work with the Partnership MD to finalise and complete the Articles of Association, Members’ Agreement, Contract for Services and documents to take all necessary steps to enable the support service local authority company formation.
- 1.5 This report explains the key matters that have been progressed since Cabinet made its decision in October 2016 which resulted in the HoPS taking the decision to complete the Articles of Association and the Members’ Agreement (Appendices 2 and 3).
- 1.6 The Contract for Services and other necessary documentation will be finalised in the Autumn and the decision will be subject to the same consultees as originally required by Cabinet.

2. Matters Pertaining to the Decision

2.1 Partnership principles

- 2.1.1 The partnership approved an overarching Leaders’ Statement which was included in the October 2016 report and which had been approved by the joint committee on 30 September 2016. The statement outlined a set of principles which the partnership would operate under and which were important principles in guiding the development of the legal documentation.

2.2 Articles of association and members’ agreement

- 2.2.1 The authority’s legal representative has worked with the partnership legal representatives to arrive at the Articles of Association and Members’ Agreement. The legal documentation have been based on a model set of documents provided by the partnership’s external legal advisers Trowers and Hamlins. Advice on these documents has also been provided by Trowers and Hamlins and KPMG (Appendices 4 and 5).
- 2.2.2 The documentation has been subject to a number of iterations and discussions between the HoPS, Leader, Cabinet Member Corporate Services and Councillor Wendy Flynn, in her capacity as a member of the joint committee. Meetings have also taken place with the Partnership MD with regard to specific matters of principle.
- 2.2.3 All consultees met with the HoPS on 18 May 2017, prior to the decision being taken, to confirm that they were in agreement to the completion of the Articles of Association and the Members’ Agreement.

2.3 Contracts for services

- 2.3.1 The Publica programme board has advised that the contracts for services/Service Level Agreements relating to services to be provided by the Public Group (Support) Company will not be in place until Autumn at the earliest. This means that information such as a detailed specification and KPIs; what services will be transferred to the Company by the other councils; the Staff to be transferred under TUPE; whether occupational leases will be entered into; whether

any equipment and other assets will be transferred and whether any working capital loan facility will be required (references to these matters are in the Members Agreement).

2.3.2 Internally, CBC has established a project team to oversee the development and finalisation of the Contracts for Services. The Executive Board lead for this project is the Director of Corporate Resources and Projects and he will be supported by CBC client officers, the s151 Officer and the Head of Law (Commercial).

2.3.3 The authority's legal adviser has advised that potential risks associated with this situation is, from a legal perspective, partially mitigated by the fact that the Members' Agreement includes a provision to allow any member to leave the company upon giving 12 months' notice

2.4 Conflicts of Interest

2.4.1 Trowers and Hamblins have provided advice on this matter. The board will comprise directors who are common to all 3 companies (other than the authority's director). This gives rise to potential conflicts at Board meetings. The articles seek to address this matter by effectively allowing the "conflict" situation by permitting each director to participate in the vote in such circumstances (see appendix 2- article 21.9.3).

3. Company Directors

3.1 **Executive directors** are responsible for operational matters and are normally employees of the company and they will have employment contracts with the company(ies). In February 2017 the joint committee considered a report outlining the proposed executive structures for the companies.

3.1.1 The joint committee agreed to delegate to the MD, in consultation with the relevant council leaders, the appointment of candidates, and agreement of the final company structures. CBC Leader, Councillor Jordan, was consulted on the proposals and in an email to Deborah Bainbridge, GO Shared Services Head of HR, gave his approval to the proposals subject to "*it being the principle of flexible retirement of the MD but with the detail of future phasing to be agreed by the board*".

3.1.2 The joint committee proposed that each member council will have the right to appoint a **non-executive director**. The authority proposed to appoint a single non-executive director on its behalf, who it was expected to be an elected member of the Council. At its meeting on 7 March 2017 Cabinet approved the appointment of Councillor Wendy Flynn as a non-executive director of Publica. Councillor Flynn will be a board member with regard to Publica Group (Support) Limited.

4. CBC Head of Finance (s151 Officer)

4.1 At its meeting on 17 October 2016, Council approved the continued designation of Paul Jones as s151 officer in an interim seconded capacity until 27 March 2017. At its meeting on 27 March 2017 Council designated Paul Jones permanently to the role of Chief Finance Officer (to include the role of s151 officer) with effect from 28 March 2017. Paul Jones is now an employee of CBC.

5. Business case update

5.1 The revised business case 'local' cost for this council is £0.851m which covers our share of expert professional advice, programme management and project support, ICT including telephony and the cost of transformational change. Advice has been commissioned by the partnership with regard to tax and VAT.

6. Reasons for recommendations

6.1 As per the contents of this report.

7. Alternative options considered

7.1 The October 2016 Cabinet report outlined the work undertaken at that time to assess the options for the provision of the services currently provided by GO Shared Services and ICT. The conclusions and financial implications of that review were taken into account when Cabinet made its decision to transfer services to the company.

8. Consultation and feedback

- 8.1 The programme has continued to engage with staff and trade union representatives throughout. Employee updates have been provided on the intranet and members have been updated at times via the fortnightly members' briefing.

9. Performance management – monitoring and review

- 9.1 Current performance of GO Shared Services and ICT is monitored through the Client Officer Group (COG) which reports in the joint committee and these arrangements will remain in place until the service transfer to the company(ies).
- 9.2 The Contract for Services will need to outline the client monitoring arrangements.
- 9.3 The Members' Agreement also provides for, at article 11.6.3, any member which requests the company to do so, to be sent papers for all board and general meetings of the company and draft minutes within 14 business days of the board and general meetings. The agreement also provides for any member to send a representative to speak on a matter of business at board meetings subject to written permission of the chair of the board.
- 9.4 With regard to attendance at overview and scrutiny, the Partnership MD has attended meetings in the past and it will continue to be the case that the MD can be called to attend as necessary.

Report author	Contact officer: Pat Pratley, Head of Paid Service Pat.pratley@cheltenham.gov.uk, 01242 264100
Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Articles of Association (exempt)3. Members Agreement (exempt)4. Trowers and Hamlins Legal Advice (exempt)5. KPMG Advice (exempt)
Background information	<ol style="list-style-type: none">1. GOSS and ICT functions – Schedule 2 of the 2020 joint committee inter-authority agreement2. 2020 vision for joint working – Cabinet 24 June 20143. 2020 Vision Memorandum of Understanding – Cabinet 14 April 20154. 2020 Vision Programme (information paper) – Overview and scrutiny 21 September 20155. 2020 Vision – cabinet and council – 13 and 19 October 20156. Business case for sharing revenues and benefits – cabinet 9 February 20167. Business case for sharing customer and support services – 9 February 20168. 2020 Partnership Local Authority Company – Cabinet 11 October 2016 Council 17 October 20169. Section 151 Officer Arrangements – Council 27 March 2017

The risk				Original risk score (impact x likelihood)			Managing risk					
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register	
1	If the Articles of Association and Members' Agreement are not completed then the authority nominated non-executive director will not be able to take part in Public board meetings	Pat Pratley	17.5.17	4	1	4	Accept	Completion of the Articles of Association and Members' Agreement in accordance with Cabinet recommendation	18.5.17	Pat Pratley		
2	If the Contracts for Services do not reflect the needs of the authority then this will impact on authority service delivery	Mark Sheldon	17.5.17	4	2	8	Reduce	Specific project set up to progress and finalise contract for services with requisite client officer and advisory support	30.9.17	Mark Sheldon		
<p>Explanatory notes</p> <p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>												

Guidance

Types of risks could include the following:

- Potential reputation risks from the decision in terms of bad publicity, impact on the community or on partners;
- Financial risks associated with the decision;
- Political risks that the decision might not have cross-party support;
- Environmental risks associated with the decision;
- Potential adverse equality impacts from the decision;
- Capacity risks in terms of the ability of the organisation to ensure the effective delivery of the decision
- Legal risks arising from the decision

Remember to highlight risks which may impact on the strategy and actions which are being followed to deliver the objectives, so that members can identify the need to review objectives, options and decisions on a timely basis should these risks arise.

Risk ref

If the risk is already recorded, note either the corporate risk register or TEN reference

Risk Description

Please use “If xx happens then xx will be the consequence” (cause and effect). For example “If the council’s business continuity planning does not deliver effective responses to the predicted flu pandemic then council services will be significantly impacted.”

Risk owner

Please identify the lead officer who has identified the risk and will be responsible for it.

Risk score

Impact on a scale from 1 to 5 multiplied by likelihood on a scale from 1 to 6. Please see risk [scorecard](#) for more information on how to score a risk

Control

Either: Reduce / Accept / Transfer to 3rd party / Close

Action

There are usually things the council can do to reduce either the likelihood or impact of the risk. Controls may already be in place, such as budget monitoring or new controls or actions may also be needed.

Responsible officer

Please identify the lead officer who will be responsible for the action to control the risk.

For further guidance, please refer to the [risk management policy](#)

Transferred to risk register

Please ensure that the risk is transferred to a live risk register. This could be a team, divisional or corporate risk register depending on the nature of the risk and what level of objective it is impacting on