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# The future of PPP – Outline response to Wokingham BC Executive Decision

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<b>Committee considering report:</b>	JPPC
<b>Date of Committee:</b>	31 March 2021
<b>Portfolio Member:</b>	Councillor Hilary Cole
<b>Date Portfolio Member agreed report:</b>	04 March 2021
<b>Report Author:</b>	Paul Anstey
<b>Forward Plan Ref:</b>	N/a

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## 1 Purpose of the Report

- 1.1 To outline the response of West Berkshire Council ('West Berks') and Bracknell Forest Borough Council ('Bracknell Forest'), to the paper presented by the Chief Executive of Wokingham Borough Council ('Wokingham') recommending that all functions currently governed through the Joint Public Protection Committee (JPPC) and delivered by the Public Protection Partnership (PPP) would be brought back in-house to Wokingham.
- 1.2 To provide an overview of options available to the West Berkshire and Bracknell Forest Councils ('the partners') to ensure that any operational and financial risks are appropriately managed.

## 2 Recommendation

- 2.1 None – this is for information only.

## 3 Implications and Impact Assessment

Implication	Commentary
<b>Financial:</b>	<p>There will be a requirement to recruit a project manager to support the existing management team. This is currently estimated at hosts Grade J part time for 6 months, approximately £35k. This is based on other similar project management expenses.</p> <p>There may also be external subject matter experts required. This type of project has been estimated at £20k.</p>

	<p>This is in addition to any direct losses that are identified as part of the process; Restructure costs e.g. redundancy, redeployment, pensions, TUPE support and project management of the process;</p> <p>ICT software and licensing e.g. annual licence costs, data migration, development and contract costs related to the single case management project;</p> <p>Equipment e.g. air monitoring sites; surveillance cameras and printers; and</p> <p>Vehicles e.g. Electric Vehicles and leases.</p>
<b>Human Resource:</b>	<p>Recruitment of a Project Manager. HR support will also be needed to establish the position on TUPE requirements and organisational change, in line with the host (West Berks) policy.</p>
<b>Legal:</b>	<p>Legal support will be required to detail the process in accordance with the Inter Authority Agreement (Appendix 1). This will focus on:</p> <ul style="list-style-type: none"> <li>- The Joint Committee, relevant functions of both full council and the Executive;</li> <li>- Defined terms such as 'exit plan';</li> <li>- Interpretation about the application of TUPE legislation; and</li> <li>- The level of penalty for early termination.</li> </ul>
<b>Risk Management:</b>	<p>The partners have identified the following risks that will require mitigation measures (in no particular order):</p> <ul style="list-style-type: none"> <li>- Management capacity</li> <li>- Staff morale</li> <li>- Operational response to Covid matters</li> <li>- TUPE (interpretation dispute and operational disruption)</li> <li>- Media communication/coverage</li> <li>- Financial liabilities</li> <li>- Contracts with suppliers</li> </ul>

	<ul style="list-style-type: none"> <li>- Single Case Management System project</li> <li>- Inter Authority Agreement interpretation dispute</li> </ul>			
<b>Property:</b>	There are no direct property implications from this report. Consideration will need to be given to the use of Theale Gateway as part of future PPP operations but this is not a short term issue.			
<b>Policy:</b>	Consideration will need to be given to the PPP policy framework as part of the process. At this stage nothing has been identified.			
	<b>Positive</b>	<b>Neutral</b>	<b>Negative</b>	<b>Commentary</b>
<b>Equalities Impact:</b>				
<b>A</b> Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		
<b>B</b> Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		
<b>Environmental Impact:</b>		X		
<b>Health Impact:</b>		X		

<b>ICT Impact:</b>			X	The PPP will need to re-evaluate its single case management project, including the potential cost liabilities of licences, software and hardware. This will require input from ICT over the coming months.
<b>Digital Services Impact:</b>			X	The PPP will need to re-evaluate its single website project. This will require some limited support from the digital services team in the coming months.
<b>Council Strategy Priorities:</b>		X		With careful planning and mitigation measures the PPP should be able to continue delivering a sustainable service.
<b>Core Business:</b>			X	It is inevitable that there will be some management capacity issues to deal with the implications of the report, this will impact on Covid response and other BAU.
<b>Data Impact:</b>		X		
<b>Consultation and Engagement:</b>	Damian James – Bracknell Forest, Clare Lawrence – Wokingham			

## 4 Executive Summary

- 4.1 On 26<sup>th</sup> February 2021 the Chief Executive of Wokingham notified the Partners that they would be recommending to their Executive and Full Council that all functions currently governed through the Joint Public Protection Committee (JPPC) and delivered by the Public Protection Partnership (PPP) would be brought back in-house. The proposal was discussed at an Extraordinary Executive meeting and at Full Council on the 18<sup>th</sup> March 2021.
- 4.2 Wokingham Borough Council's Executive and Full Council resolved to serve formal notice on the Public Protection Partnership before 31st March 2021 to enable it to leave the partnership by 31st March 2022. The next steps will be for the partners to develop a detailed exit plan within 6 months of the notice being served and The Joint Management Board will work together to agree a programme for this.
- 4.3 As set out in the report, Wokingham Borough Council's decision is not a reflection of the work of the partnership and its staff, but is to enable the Council to embrace the opportunities of integration of PPP services with other council services to best serve the needs of its residents.

- 4.4 There are legal, financial and operational implications as a result of Wokingham's position and suitable planning needs to begin. It is in all of the Councils interests to avoid any prolonged period of uncertainty for staff and the risks will be reduced if this exit process can be concluded within 6 months of the decision being taken.

## 5 Supporting Information

### Introduction

- 5.1 The PPP is overseen by a Joint Public Protection Committee (JPPC), supported by a Joint Management Board (JMB) made up of senior officers from each of the partner authorities.
- 5.2 All decisions relating to budgets, strategy and policy are voted on by the JPPC. All papers are provided by the JMB.

### Background

- 5.3 Wokingham have expressed concern about the integration of the PPP and how 'locality' services have operated since late 2019. This led to a series of discussions during 2020 focussed on how the PPP could respond to those concerns.
- 5.4 By December 2020 the JMB compiled a report for the partner authorities' Chief Executives outlining the various approaches that had been taken, including managing the impact of Covid, and service improvements for the future:
- (a) Responsiveness to partner authorities (allocated lead managers);
  - (b) Improve consistency in performance management arrangements;
  - (c) Movement to single system (Covid19 has delayed this);
  - (d) Moving to one authority lead on ICT (subject to the outcome of updated discussions through partner ICT services);
  - (e) Continued development of website and on-line media platforms;
  - (f) Continued use of remote working platforms and reduction in travel;
  - (g) Improved levels of customer satisfaction with respect to trading standards service requests;
  - (h) Continue to work with and build relationships with partners in key areas such as law enforcement, health, environmental crime, housing standards, safeguarding and modern slavery;
  - (i) Achieve Community Safety Accreditation Scheme accreditation for a number of staff in key areas; and
  - (j) Member updates.

5.5 During 2020/21 the JPPC met 4 times and all recommendations were approved unanimously.

5.6 It was noted by the JPPC on several occasions that the PPP had showed great resilience during the Covid response, providing vital services such as outbreak management, track and trace, business compliance and advice.

### **The Wokingham Position**

5.7 On 26<sup>th</sup> February 2021 the Chief Executive of Wokingham notified the partners that they would be recommending that all functions currently governed through the JPPC and delivered by the PPP would be brought back in-house. This decision was ratified by both the Executive and Full Council on 18<sup>th</sup> March 2021.

5.8 In essence, the recommendations seek to reverse the delegated authority of both Full Council and Executive powers provided to the JPPC by Wokingham in January 2017.

5.9 It outlines that this exit process will be viewed as a negotiation, considering costs and operational requirements, designed to be completed by April 2022.

5.10 Wokingham have identified a budget of £500k over 2 years, starting in 2021/22, to address the Direct Losses issue and their management of bringing the service back in-house.

5.11 The risks identified by Wokingham can be summarised as:

- (a) Costs of the project (requested that the PPP should provide evidence and work together to mitigate them);
- (b) Recruitment and retention (mitigated through effective communication);
- (c) Reduced operation resilience (mitigated through additional commissioned services – potentially back through the PPP);

5.12 It is proposed that there may be an option to 'buy-back' a selection of services outside of the PPP, essentially commissioning them on a case by case basis.

5.13 This position has been outlined to staff by the Wokingham Chief Executive directly to the PPP staff in the form of an online meeting which took place on the 10<sup>th</sup> March 2021.

### **Principles of the PPP Response**

5.14 The partners respect Wokingham's position and will work in good faith and in an open, co-operative and collaborative manner to minimise risk and disruption to staff and the service. This is entirely in line with Clause 3 of the IAA 'general principles and objectives' (Appendix 1).

5.15 It is imperative that the staff are kept informed of the Wokingham position and the partners will make every effort to show a united front. This recognises the fact that at some stage the issues relating to finance and risk may require separate communication.

- 5.16 The partners will work openly and fairly in their estimates relating to financial risk arising from the Wokingham position.
- 5.17 The project management costs required to oversee the exit plan should be met entirely by Wokingham.
- 5.18 Communication to staff explaining the position should be led by Wokingham, supported by the partners at every step. An initial staff meeting took place on Wednesday 10<sup>th</sup> March, the day the Wokingham Executive papers were published.
- 5.19 The partners consider that all matters related to the exit plan should be agreed and in place within 6 months of the key decision to withdraw. This was agreed by the Chief Executives at a meeting on the 26<sup>th</sup> February 2021. This limits service disruption, staff uncertainty and aligns with the budget setting cycle of all 3 Councils i.e. matters can then be concluded in time for 2023/24 budgets.

### **Key Legal Considerations**

- 5.20 The IAA (Appendix 1) is the key reference document and sets out the framework for all the Councils to operate within.
- 5.21 The IAA gives a clear position on the establishment of the Joint Committee, the responsibility of the host authority (West Berkshire Council) and in current circumstances, the termination of the agreement.
- 5.22 Clause 17 of the IAA 'Termination of this Agreement' requires any council to give at least 12 months' notice to terminate. Wokingham have met that requirement by stating they wish to terminate the agreement by 31<sup>st</sup> March 2022.
- 5.23 The Councils must then make all reasonable endeavours to sign off an agreed Exit Plan within 6 months.
- 5.24 There are a range of considerations, detailed at Clauses 17.6.1-17.6.8, which aim to manage the risks, legal and financial implications of the termination. These issues must be considered for all the Councils.

### **Key Financial Considerations**

- 5.25 In line with Clause 18 Wokingham must indemnify the remaining partners against all Direct Losses, defined as:
- 'all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law.
- 5.26 The remaining partners should take all reasonable steps to mitigate these Direct Losses. This will include issues such as (not an exhaustive list):
- (a) Restructure costs e.g. redundancy, redeployment, pensions, TUPE support and project management of the process;

- (b) ICT software and licensing e.g. annual licence costs, data migration, development and contract costs related to the single case management project;
- (c) Equipment e.g. air monitoring sites; surveillance cameras and printers; and
- (d) Vehicles e.g. Electric Vehicles and leases.

5.27 On the basis of a full withdrawal it is very likely that Wokingham would incur redundancy costs, unless staff affected were able to seek redeployment. This is based on how the current structure operates, with staff covering specialist functions across more than one council area.

5.28 Based on comparable projects a budget of £55k for 2021/22 should be sought from Wokingham. £35k for Project Management and £20k for Subject Matter Experts. This is in addition to costs set out in 5.25

### **Key Operational Considerations**

5.29 The PPP is a frontline service delivering vital support to each of the Councils Covid responses. It is not in anyone's interest to progress the exit plan in a way that disrupts that.

5.30 It is important that the staff and management are supported throughout this process, this includes the use of dedicated project management and, where necessary, subject matter experts to provide independent advice.

5.31 There may be a need for structural changes to the management, frontline and partnership support teams and if there is no longer a business case for certain posts the host will need to consider the implications of its organisational change policy e.g. redundancy and redeployment.

5.32 The PPP should identify, as soon as is reasonably practicable, the necessary staffing levels to achieve this. At this stage it is anticipated that the following will be needed:

- (a) Project Manager – Wokingham
- (b) Subject Matter Expert – Wokingham
- (c) Project Manager – West Berks and Bracknell Forest
- (d) Subject Matter Expert - West Berks and Bracknell Forest

5.33 It will be necessary to seek agreement on the level of support i.e. 0.2FTE per role for 6 months (using comparable projects as a benchmark) and how that influences the financial implications for Wokingham to manage as per Clause 18 of the IAA.

### **Next Steps**

5.34 The Councils will need to agree on the communication plan for the process following the decision made on the 18<sup>th</sup> March 2021.

5.35 The Councils will need to nominate a senior officer to engage on the exit plan.



- 5.36 A data gathering exercise will need to be completed to establish a ‘baseline’ set of facts and figures which can shape the exit plan and help elaborate on how future costs and risks can be mitigated.
- 5.37 Suitable candidates for both project management and subject matter experts will need to be identified.
- 5.38 A report will need to be written for the JPPC explaining the project plan, detailing key milestones and how each of the Councils will need to proceed in line with the requirements of the IAA.
- 5.39 The JMB should identify suitable project management and subject matter expert resources that it requires in order to deliver the Wokingham Executive decision.

## **Proposals**

- 5.40 This is a ‘For Information’ report.

## **6 Other options considered**

- 6.1 Do nothing – this is not possible due to the hosts’ policy requirement to notify staff that Wokingham have agreed to leave and this will have organisational change implications. The IAA also expresses clear actions that need to be taken in the event that one of the authorities requests to terminate the agreement.

## **7 Conclusion**

- 7.1 West Berkshire and Bracknell Forest respect Wokingham’s position and will work in good faith and in an open, co-operative and collaborative manner to minimise risk and disruption to staff and the service.
- 7.2 There are clear legal, financial and operations implications as a result of Wokingham’s position and there needs to be a carefully constructed exit plan overseen by an adequately resourced project team.
- 7.3 It is desirable to avoid any prolonged period of uncertainty for staff and the risks to all Councils will be reduced if this exit process can be concluded within 6 months of the decision being taken.

## **8 Appendices**

- 8.1 Inter Authority Agreement – hyperlink and key extracts

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### **Background Papers:**

None

### **Subject to Call-In:**

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Yes: ☐ No: ☒

The item is due to be referred to Council for final approval	<input type="checkbox"/>
Delays in implementation could have serious financial implications for the Council	<input checked="" type="checkbox"/>
Delays in implementation could compromise the Council's position	<input checked="" type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Management Committee or associated Task Groups within preceding six months	<input type="checkbox"/>
Item is Urgent Key Decision	<input type="checkbox"/>
Report is to note only	<input checked="" type="checkbox"/>

**Wards affected:** All

**Officer details:**

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## Appendix A

### Full Agreement at

<http://decisionmaking.westberks.gov.uk/documents/s53463/Joint%20Public%20Protection%20Partnership%20Appendix%20B%20Draft%20Inter%20Authority%20Agreement.pdf>

### Key headlines

#### 17 TERMINATION OF THIS AGREEMENT

17.1 Any Council may give at least twelve (12) months' notice to terminate ("Notice of Termination") to the other Councils after three years of operation of this Agreement, such Notice of Termination to expire on the next following 31st March, or twelve months' notice to expire at the end of the Initial Term, as the case may be. Once a Notice of Termination has been served the Councils shall within 6 months make all reasonable endeavours to sign off an agreed Exit Plan in accordance with the principles set out Clause 17.5.

17.2 Any Council may terminate this Agreement by serving notice immediately at any time upon another Council committing a Fundamental Breach of this Agreement. Such a notice can only be served when the process set out in Clause 16 has been exhausted.

17.3 This Agreement may be terminated upon the mutual consent of all of the Councils by giving Notice of Termination.

17.4 Where by reason of any change in law or other reason not attributable to the fault of the Councils prohibits or prevents one of the Councils from giving effect to their obligations under this Agreement, any of the Councils to this Agreement may terminate this Agreement so as to avoid the Councils from breaching legislative or otherwise binding obligations upon it by written notice effective upon receipt by the other Councils, specifying the date upon which the termination should take effect, provided that the terminating Council has first entered into discussion in good faith with the other Councils and used all reasonable endeavours to negotiate a solution with the other Councils, whereby the intent and purpose of this Agreement may be fulfilled by another mechanism.

17.5 West Berkshire as Host Authority may terminate this Agreement by serving notice immediately at any time upon either Bracknell Forest or Wokingham reducing the payments to be made pursuant to Clause 7.2 and Schedule 4 of this Agreement to a level which West Berkshire as Host Authority deems unacceptably low.

17.6 If a Notice of Termination is served the Joint Management Team shall cooperate in good faith to agree an '**Exit Plan**' setting out how the arrangements considered in this Agreement will be ended and which shall be in accordance with the agreed principles:

17.6.1 that continuation and quality of service delivery are paramount and options should be assessed in this light;

17.6.2 exit arrangements shall seek to minimise the costs to the Councils of exiting or terminating this agreement;

17.6.3 the Exit Plan for each Service shall identify critical timescales and issues as appropriate with proposals to address them;

17.6.4 the option of transferring the entire workforce to a new host should be explored before deciding to split the Service;

17.6.5 where the Councils decide to return to direct service provision then the Service Managers shall produce recommendations for the staffing structures to be considered by the Councils according to previous usage and future perceived need. Where any staff cannot be placed with any Council then all Councils shall consider redeployment;

17.6.6 the Councils in consultation with the Fund shall instruct the Actuary to produce an Exit Valuation to enable the Joint Committee and the Councils to consider the pension implications of transferring staff in accordance with the principle that any deficit on the Fund arising from the break-up of PPP shall be attributable to each of the Councils in the Agreed Percentages (where the Services are outsourced) or attributable to the Councils based upon the transfer of staff back to them;

17.6.7 liabilities relating to the Services shall be, in the absence of specific agreed alternatives or provision in this Agreement, shared and/or borne by the Councils in accordance with the Agreed Percentages.

17.6.8 the Assets shall be dealt with in accordance with the provisions set out in 9.7.

## **18 CONSEQUENCES OF TERMINATION**

18.1 All liabilities under Clause 20 shall survive the termination of this Agreement.

18.2 The Council which exercises its right to terminate under Clause 17.1 shall indemnify the other Councils against all Direct Losses (which the other parties shall take all reasonable steps to mitigate) arising out of such termination.

18.3 In the event of termination of this Agreement under Clause 17.2 any Direct Losses of the Councils arising out of such termination shall be borne by the Council that has committed the Fundamental Breach of this Agreement.

18.4 In the event of termination of this Agreement under Clause 17.2 any of the Councils shall also be at liberty to pursue all remedies available to them at law.

18.5 In the event of termination of this Agreement under Clause 17.3 each Council shall bear its own losses incurred by the other Council as a result of such termination.

18.6 In the event of termination of this Agreement under Clause 17.4 each Council shall bear its own losses, provided however that if the terminating Council has not entered into discussions in good faith with the other Councils and/or not use all reasonable endeavours to negotiate a solution with the other Councils, whereby the intent and purpose of this agreement may be fulfilled by another mechanism, the terminating Councils shall indemnify the other Councils against all Direct Losses (which the other Councils shall take all reasonable steps to mitigate) incurred by the other Councils as a result of such termination.

18.7 In the event of termination of this Agreement under Clause 17.5 any Direct Losses of West Berkshire and the other Council which has not reduced its payments under this Agreement arising out of such termination shall be borne by the Council which reduced its payments under the Agreement resulting in its termination under Clause 17.5.