

Agenda Item 44.

TITLE	Future Part Provision of Regulatory Services by West Berkshire Council
FOR CONSIDERATION BY	The Executive on Thursday, 30 September 2021
WARD	None specific
LEAD OFFICER	Director, Place and Growth - Steve Moore
LEAD MEMBER	Executive Member for Neighbourhood and Communities - Bill Soane

PURPOSE OF REPORT (INC STRATEGIC OUTCOMES)

To seek approval to enter into an agreement with West Berkshire Council to provide a limited range of regulatory services to the Council in parallel with the bulk of regulatory services that will be delivered in-house to achieve the best value for money. The proposal is that a limited range of services continue to be commissioned from West Berkshire Council (the host for the Public Protection Partnership to:

- retain the regional & national capability provided by the Public Protection Partnership (PPP) for Trading Standards, Food Standards, air quality & animal welfare; and
- retain their regulatory proceeds of crime and enforcement case preparation support for functions.

RECOMMENDATION

That the Executive:

- 1) approves the recommendation to enter into an agreement with West Berkshire Borough Council for the provision of certain regulatory functions under s113 of the Local Government Act 1972, from 1 April 2022 until 8 January 2027; and
- 2) delegates to the Director of Place and Growth and Deputy Chief Executive (and Section 151 Officer), in consultation with the Lead Member for Finance and Housing, the agreement of the final terms with West Berkshire and completion of the agreement.

EXECUTIVE SUMMARY

On 18 March 2021 Full Council resolved to terminate the partnership with West Berkshire and Bracknell councils and to bring regulatory services back in-house from the Public Protection Partnership. 12-months' notice was given, and the new service is planned to start on 1 April 2022.

Officers in Wokingham and West Berkshire have since been working to determine how best to do this, and to put in place the necessary arrangements.

Officers believe that it is possible to deliver a post-partnership aspiration for a significantly different response to anti-social behaviour concerns, whilst retaining the regional and national capability that we currently enjoy through a blended service delivery approach.

This report therefore clarifies that most regulatory services will be brought back in-house upon termination of the partnership and proposes entering into a separate new agreement with West Berkshire to deliver a minority of support and ancillary regulatory services for which regional and national capability is increasingly important.

Background

On 18 March 2021, Executive and Full Council decided that the regulatory services currently provided by the three-borough Public Protection Partnership should be brought back in-house for the following reasons:

1. **Integrated service delivery:** where pragmatic Wokingham will align and integrate services that transfer back with existing Council services on a local level. The benefits of that being the service can operate within conditions to better understand local issues and are then more effective and responsive (in a joined-up approach) to address local issues. (The service will be able to work with organisations on a local level such as the voluntary and community sectors and Town and Parish Councils). The principal aim is to integrate Wokingham's services so that it is a single and simplified response to residents' concerns and issues.
2. **Control and influence:** It allows Councillors, Officers and service users to have more democratic control over service provision. There will be greater flexibility on how services are delivered and how we respond to priorities. We want to encourage innovation in responding to local issues.
3. **Improved service delivery:** The Council will ensure that we continue to deliver our statutory responsibilities for public protection, and to exceed residents' expectations. Aligning our public protection to what matters most to Wokingham residents and to address the quality-of-life issues that are key to our strategic aims.

Functional review and proposal

In reviewing whether the service should be wholly, or partly, brought back in-house, Officers have sought to ensure that service outcomes should materially improve. Officers have sought to ensure that new arrangements should result in clearer outcomes for residents suffering anti-social behaviour, recognise the needs of Wokingham residents and embrace opportunities of integration within the Council.

This review has identified that the following services should be brought back in-house:

- animal warden
- anti-social behaviour
- contaminated land
- development control advice
- drainage
- exhumations and pauper funerals
- filthy and verminous premises
- food hygiene
- health and safety
- infection control
- integrated pollution control
- licensing, permits and authorisations
- pest enforcement
- private housing, mobile homes & caravan sites

- private water supplies
- Safety Advisory Group

All the above services have a particular local focus and provision of excellent services subject to more local control and influence has the potential to improve local issues for residents, local workers and visitors.

However, some functions – most notably Trading Standards – have dramatically changed in recent times, because of internet trading and globalisation. The traditional image of undertaking weights & measures checks or resolving local consumer complaints is no longer an accurate picture. Trading Standards services now focus on fraud, recovering proceeds of crime, international product safety and protecting our children from the dangers of obtaining restricted products such as tobacco, alcohol, knives, glue, pornography, gambling services etc. An additional focus is on protecting elderly and vulnerable people from fraudulent and unwanted doorstep traders.

Whilst we could undoubtedly also undertake these functions in-house, a medium-sized local authority alone cannot achieve the same service outcomes that a multi-borough shared service can achieve. Most notably the capacity and capability of a shared service to undertake interventions of regional or national in scope. It is therefore proposed after the existing partnership comes to an end, that the below limited functions be provided commissioned from the West Berkshire Borough Council.

The regulatory functions proposed to be provided to Wokingham are:

- trading standards, including fair trading, weights & measures, product safety, restricted products;
- food standards (often regional or national in scope);
- air quality (operation & maintenance of monitoring network, reporting results, annual Air Quality Management Area reporting and advising of efficacy and likely impact of AQ actions being considered for implementation by Wokingham council);
- animal welfare, biosecurity and feed-stuffs;
- pre-legal prosecution and enforcement case-building support; and
- financial investigations and proceeds of crime.

This option, if adopted, would be the '*best of both worlds*', termination of the existing partnership, an in-house anti-social behaviour function and continuing regional and national capacity & capability for Trading Standards and access to lawyer support for investigation advice and case development.

This option would also:

- simplify partnership termination staff transition complications & risks; and
- reduce the potential partnership termination financial liabilities.

Heads of Terms

The Heads of Terms for the proposed agreement with West Berkshire are:

Term: The proposed new agreement for services to Wokingham would, if agreed, run from 1 April 2022 until 8 January 2027 – the date when the agreement for a shared service between West Berkshire, Bracknell comes to an end. 4 years, 9 months and 1 week, subject to the break clauses listed herewith;

Cost: £459k in the first year 2022/3. This amount is calculated on a cost recovery basis – that there is no profit element but rather the parties are pooling resources in the public interest;

Budgets and Increases: The budget is agreed in the budget-setting process. The price would be adjusted each year in line with the local authority national pay settlement award, but this process includes the agreement of the services to be provided. There would be end of year reporting and annual budget calculation;

Service: a full specification, outcomes and performance measures will be agreed. This will enable Wokingham to require changes to service activity through the budget setting process or the contract variation process.

Decision Making: This agreement will specifically delegate certain decisions to officers within West Berkshire and these will be expressly documented. Wokingham will permit the officers of West Berkshire to perform the day-to-day actions and functions of the Service as if they were officers of Wokingham (under s113 of Local Government Act 1972). The Agreement will also include which decisions specifically cannot be made by West Berkshire officers. These will be expressed in the Agreement as significant decisions with wide impact or importance that can only be made by employed Wokingham officers. These may include matters such as decisions to issue enforcement proceedings, to prosecute, decisions that impact on all residents or group of residents or *decisions that have an adverse financial or reputational impact on Wokingham.* *The Agreement will provide that these reserved decisions can be added to and modified by Wokingham at any time. In all circumstances, all decision making by West Berkshire must be in accordance with the agreed budget and the yearly business plan.*

Break clauses (full or part service):

- i. termination for convenience: 12-months notice may be issued at any point in time.
- ii. termination on fault: 1-month notice if default and escalation process isn't successful (1-month notice will apply);
- iii. Termination variations: if Wokingham requests a service variation (whether for more or different activity) and the delivery of the request is refused or remains unaccommodated for a period of 6-weeks, 6-months notice will apply.

End of Service Liabilities: the principal liability will be staff related. Wokingham will pay a proportion of staffing costs of those staff directly providing the services (not managers or support staff) should these arise. The liabilities are no greater than under the existing agreement with West Berkshire.

The agreement will need to be compliant with regulation 12(7) of the Public Contract Regulations 2015 which enables a public body to award a contract to another where the main following principles are met:

- a) the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services undertaken are provided with a view to achieving objectives they have in common; and
- b) the implementation of that co-operation is governed solely by considerations relating to the public interest.

A shorter agreement period (e.g. 1 year) would be unlikely to be agreed with the partners as it would be effectively simply delaying the termination process for part of the services. It would also necessitate the requirement for more challenging liability requirements between the organisations and is therefore a far less attractive option for both authorities and is not recommended.

The agreement will include all those elements expected with a supply of services including a firm service specification, outcomes delivered, reporting and key performance indicators. Furthermore, approval of this agreement, together with the 31 March 2022 termination of service delivery partnership arrangement between Wokingham with West Berks & Bracknell (via the Public Protection Partnership), will result in withdrawal of the majority of statutory powers that have been delegated to West Berkshire, save for those necessary for the services outlined in this report.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The cost of the proposed agreement would be £459k in the first year 2022/23, broken down as follows:

Function	Cost p.a. (£000's)
Trading standards	340
Intelligence	27
Case work support	40
Air quality	17
Financial investigation	15
Management	20
TOTAL	459

The price would be adjusted each year in line with the local authority national pay settlement award. Assuming 2% p.a. price inflation, gives a contract cost of £2.275m over the 4.77 years of the proposed agreement.

The costs have been assessed by officers and considered to be appropriate cost that also includes the cost of provision including overheads.

On a like-for-like basis, this proposal is the best financial option. In contrast, provision of a comparable level of Trading Standards service - but provided in-house - is calculated to be considerably higher at £849k p.a.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	Nil	Yes	-
Next Financial Year (Year 2)	Nil	Yes	-
Following Financial Year (Year 3)	Nil	Yes	-

Other Financial Information

If the proposed agreement is not approved, there would be:

- considerable loss of capability for Trading Standards matters that are of regional, or national scope, and
- increased partnership termination liabilities

Stakeholder Considerations and Consultation

Staff and unions were formally consulted on partnership termination processes between 13 August and 2 September 2021.

Staff and unions will be formally consulted on partnership termination structure and staffing proposals between 3 September and 8 October 2021.

Public Sector Equality Duty

This is likely to result in a larger and more effective regulatory service with no anticipated disadvantages for protected staff or public groups.

Climate Emergency – *This Council has declared a climate emergency and is committed to playing as full a role as possible – leading by example as well as by exhortation – in achieving a carbon neutral Wokingham Borough by 2030*

No impact.

List of Background Papers

None

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Appendix 1 – Draft Equality Action Plan

Equality Impact Assessment (EqIA) form: Initial impact assessment

If an officer is undertaking a project, policy change or service change, then an initial impact assessment must be completed and attached alongside the Project initiation document.

EqIA Titular information:

Date:	26 August 2021
Service:	Enforcement & Safety
Project, policy or service EQIA relates to:	Repatriation of services from Public Protection Partnership
Completed by:	David Thrale
Has the EQIA been discussed at services team meeting:	Not yet.
Signed off by:	Stephen Brown
Sign off date:	
Review of EQIA	26 Feb 2022

1. Policy, Project or service information:

This section should be used to identify the main purpose of the project, policy or service change, the method of delivery, including who key stakeholders are, main beneficiaries and any associated aims.

What is the purpose of the project, policy change or service change, its expected outcomes & how does it relate to your services corporate plan:

Purpose:

- To repatriate regulatory functions such as anti-social behaviour, Environmental Health, licensing etc from West Berkshire to Wokingham
- To determine any specialist regulatory services to remain within West Berkshire

Expected outcomes:

- A new and improved service based within Wokingham from 01 April 2022
- A more integrated and local service to the residents.
- A service level agreement with West Berkshire for the remaining specialist services
- Reduction in the number of touchpoints and handover of responsibility for residents.

Services corporate plan:

- This project will contribute to the Council vision of delivering safe, strong communities and a clean and green borough

Outline how you are delivering your project, policy change or service change.

What governance arrangements are in place, which internal stakeholders (Service managers, Assistant Directors, Members ect) have/will be consulted and informed about the project or changes:

How is the project delivered?

- Corporate project delivery team, including HR, Communications, Finance, IT, comms property and Legal

Governance:

- Escalation and decision making as per corporate project delivery plan

Stakeholders:

- Project team
- Senior managers
- Executive Members
- Localities
- Berkshire Police Service

Outline who are the main beneficiaries of the Project, policy change or service change?

- **Residents** – the aim is to integrate and align the regulatory services into the council other services offer to provide a localised and more focused services that addresses the relevant principal aims and concerns of the residents.

Outline any associated aims attached to the project, policy change or service change:

- An ASB response service that is open 7-days a week at times when typically needed by residents
- Reduce the number of unresolved queries or problems experienced by residents.
- Improved collaboration on ASB matters across WBC

2. Protected characteristics:

There are 9 protected characteristics as defined by the legislation:

- Race
- Gender
- Disability
- Gender re-assignment
- Age
- Religious belief
- Sexual orientation
- Pregnancy/Maternity
- Marriage and civil partnership:

3. Initial Impact review:

Protected characteristics	Impact score	Please detail what impact will be felt by the protected group:
Race:	Positive	ASB affects higher-density housing area in which BME groups disproportionately live. The enhanced service will likely benefit BME groups to a greater degree than wider society
Gender:	Positive	Carers - who are disproportionately female - are likely to be disproportionately affected by ASB as a disproportionate number spend a greater proportion of their day at home – where ASB blight occurs. The

		enhanced service will likely benefit women to a greater degree than wider society.
Disabilities:	Positive	People with disabilities - are likely to be disproportionately affected by ASB as a disproportionate number spend a greater proportion of their day at home – where ASB blight occurs. The enhanced service will likely benefit people with disabilities to a greater degree than wider society.
Age:	Positive	Young children and elderly people - are likely to be disproportionately affected by ASB as a disproportionate number spend a greater proportion of their day at home – where ASB blight occurs. The enhanced service will likely benefit young children and elderly people to a greater degree than wider society.
Sexual orientation:	No impact	
Religion/belief:	No impact	
Gender re-assignment:	No impact	
Pregnancy and Maternity:	Positive	Pregnant women are likely to be disproportionately affected by ASB as a disproportionate number spend a greater proportion of their day at home – where ASB blight occurs. The enhanced service will likely benefit women to a greater degree than wider society.
Marriage and civil partnership:	No impact	

Based on your findings from your initial impact assessment, you must complete a full impact assessment for any groups you have identified as having a low or high negative impact. If No impact, or a positive impact has been identified, you do not need to complete a full assessment. However, you must report in this initial assessment and it must receive formal approval from the Assistant Director responsible for the project, policy or service change.

Task	Date:	Signed off by:	Amendments
Initial Approval	26 Aug 2021	David Thrale	
Review of EQIA	26 Feb 2022		