

Title: Organisational Change Policy Statement Update
Lead Officers: Chris Elliott/David Buckland/Tracy Dolphin
Portfolio Holders: Councillor Hales/Cargill
Wards of the District directly affected: None

Summary

This report seeks approval to amend the Joint Organisational Change Policy Statement from a Lead Authority/TUPE approach to Stratford-on-Avon (SDC) and Warwick (WDC) District Council's service integration, to a process based on the extended use of Section 113 Agreements and delegated authority to the Heads of Paid Service to implement this.

Recommendations to Council

- (1) To replace the wording, agreed in March/April 2021 by the respective Committees of SDC and WDC, which approved the joint Organisational Change Policy Statement, paragraphs 4.1 and 4.2:

4.1 Where a joint team is to be set up, a 'lead employer' will be agreed by the Chief Executives of the Councils, all staff within scope for the joint team, who are not employed by the lead employer will transfer to the employment of the lead employer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE regulations"); and

4.2 Once the lead employer has been agreed the process followed will be in accordance with the TUPE regulations and then, if necessary, the Joint Redundancy and Redeployment Procedures.

with:

4.1 To use Section 113 of the Local Government Act 1972 jointly across the organisations, which allows a local authority to enter into an agreement with another authority to place its officers at the disposal of the other authority, subject to consultation with the staff concerned.

- (2) To approve the Heads of Paid Service at (SDC) and (WDC) to enter into a Collective Agreement with both SDC and WDC branches of UNISON to vary terms and conditions of employment to incorporate the use of S113 Agreements in employee contracts.
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1 Background/Information

- 1.1 At the respective SDC and WDC Cabinet meetings in July 2020, the following recommendations were approved:

(1) That the principle of shared working with Stratford-on-Avon District Council/Warwick District Council be confirmed as part of the adopted policy framework; and

(2) That agreement(s) be entered into with Stratford-on-Avon District Council/Warwick District Council pursuant to Section 113 of the Local Government Act 1972 and all other enabling powers so that employees can be placed at the disposal of the other Council as may be required, subject to the Leader of the Council endorsing business cases for any such services.

- 1.2 Under this agreement, the use of S113 was used on an individual basis for all Joint Deputy Chief Executive and Joint Head of Service posts.
- 1.3 Prior to commencing the service integration for all staff, an alternative approach was considered. The approach favoured a lead authority model which would result in staff being transferred by TUPE to the nominated lead employer for that service. This approach received the agreement of both UNISON branches at Stratford-on-Avon District Council and Warwick District Council.
- 1.4 In March/April 2021 the respective Employment Committees approved the Joint Organisational Change Policy Statement which determined that where joint teams were to be established, a 'lead employer/TUPE' model should be used. The approach relied upon a decision being reached between the Chief Executives as to who would be the lead Council for each joint team. Employees from the other Council would be transferred in accordance with TUPE Regulations with re-structuring of the joint team following the transfer.

Reviewing the Approach

- 1.4 Since the agreement to use the 'Lead Employer/TUPE' model in spring 2021 there has been the opportunity for further review.
- 1.5 Consideration has been given to the strength of feedback from both Unison and employees through regular joint meetings, communication through briefings and the Working Together Hub. Concerns were raised by both Unison and staff that the use of the Lead Employer Model implied a 'takeover'. There was also angst about using TUPE when the workforce may need to be transfer again in April 2024 with the potential political merger into a new Council.
- 1.6 In addition, further discussions have taken place with other Councils who have completed or are on a similar journey; ensuring we are continually reviewing considering best practice and learning points.
- 1.7 In reviewing the approach, external specialist legal advice has been taken and reviewed to ensure there has been robust consideration to the revised recommendations.
- 1.8 The proposed change is to extend the use of S113 of the Local Government Act 1972 (the Act) as a mechanism for legally enabling staff to carry out work for

both authorities. As detailed above, this approach has been used for the Joint Management Team posts.

- 1.9 The Act states that *"a local authority may enter into an agreement with another local authority for the placing at the disposal of the latter for the purposes of their functions, on such terms as may be provided by the agreement, of the services of officers employed by the former, but shall not enter into any such agreement with respect to any officer without consulting him."*
- 1.10 One benefit of using the S113 approach across the whole workforce would be to give the essence of working together in partnership as the foundation of the joint working. However, staff remain with their current employer and all staff transfer together to the proposed new authority in 2024. This follows the approach agreed and adopted for JMT and negates the necessity to potentially transfer employers twice within a short space of time. Furthermore, should the proposed merger not progress, the use of S113 agreements will allow greater flexibility.
- 1.11 In addition, it is now recognised that in the event that a political merger to a new authority is not agreed by the Council's or approved by the Government, S113 would provide greater flexibility in respect of next steps.
- 1.12 The use of S113 requires a variation in staff employment contracts. As is usual practice, where a workforce wide change in terms and conditions is proposed, both Councils are seeking to reach a 'collective agreement' with Unison (the authorised body for collective bargaining) which will agree the change for all staff.
- 1.13 In addition to the collective agreement, the Councils are required by the Act to carry out individual consultation with each member of staff affected. This consultation will be carried out as part of the re-structuring consultation process for each team in accordance with the service integration timeline.

2 Alternative Options available to the Committee

- 2.1 The Committee could decide not to agree the recommendation and continue to proceed with the Lead Employer/TUPE approach agreed earlier this year. However, this would not reflect the feedback received and subsequent research and could have a detrimental impact upon staff morale.
- 2.2 The Committee could decide to delay the decision pending further information. If this option was taken the service integration work would be delayed which would impact on the ability to deliver full integration before March 2024.
- 2.3 The Committee could decide not to agree to the principle of entering into a Collective Agreement to vary terms and conditions to enable use of S113 Agreements. In the event that collective agreement is not reached, and the S113 approach is still agreed, this would result in a significantly lengthier process to agree the change individually with staff, which could also leave the Councils more vulnerable to legal challenge.

3 Consultation and Members' comments

- 3.1 The report and recommendations have been developed in consultation with senior members at both Councils.

- 3.2** Members of staff and Unison Regional and Branch Representatives have been consulted on the proposals and their views actively sought. Based on the timing of the deadline of this report the outcome of that consultation will be reported verbally to the respective Committees as an addendum to this report.

4 Implications of the proposal

4.1 Legal/Human Rights Implications

- 4.1.1 The ultimate vision is to create a single workforce to support both authorities, and after considerable review this report recommends below the legal options to deliver service team integration, including:

* Section 113 of the Local Government Act 1972, which allows a local authority to enter into an agreement with another authority to place its officers at the disposal of the other authority.

- 4.1.2 External legal advisors have stated that the use of S113 is a variation of employment contract and therefore this can only be implemented either by reaching a collective agreement with the recognised body for collective bargaining, Unison, or by individual agreement with each employee. Reaching a Collective Agreement with UNISON in relation to the use of S113 agreements will enable both Councils to proceed efficiently to deploy officers more flexibly and efficiently.
- 4.1.3 In addition, individual consultation will be carried out with all staff, subject to a S113 Agreement, on an individual basis at the time of their team restructure.

4.2 Financial

- 4.2.1 Any delay in agreeing the process for integrating teams will delay the delivery of the estimated savings and have a further adverse impact on the financial profile of both Councils.

4.3 Council Plan

- 4.3.1 The proposals included in this report supports the Stratford-on-Avon Council Plan to become a more agile and resilient Council, and support all the aims of the Plan.
- 4.3.2 The Warwick District Council's Business Plan has six core themes, which impact either internally or externally. This proposal will have the following relevance and impact as set out below.
- 4.3.3 People - Health, Homes, Communities – The proposal will enable the Council to be better able to deliver its agreed services and projects.
- 4.3.4 Services - Green, Clean, Safe – The proposal could assist with the attainment of the Council's objectives across all its policy priorities.
- 4.3.5 Money - Infrastructure, Enterprise, Employment - The proposal will enable the Council to be better able to deliver its agreed services and projects.
- 4.3.6 People - Effective Staff – The policies will help to address how we can integrate our services consistently and effectively.
- 4.3.7 Services - Maintain or Improve Services – the Council will be better able to maintain or improve its services and will have greater resilience overall.
- 4.3.8 Money - Firm Financial Footing over the Longer Term – the Council will be able

to make savings in the time and on the scale needed as set out in the agreed MTFS.

4.4 Other Service Implications

4.4.1 It is proposed that the first three pilot teams (Legal, ICT and Environment & Operations) will commence preparing for their team integrations in November 2021. Any delays to agreement of the process as proposed in this report will potentially delay the integration work and impact on the deadline of March 2024 for completion of the merger process.

4.5 Environmental/Climate Change Implications

4.5.1 The report has no direct Environmental/Climate Change implications. Any direct impacts will be from within the service integration work and will be detailed in the relevant business cases for each integration.

4.6 Health and Wellbeing

4.6.1 Both Councils are dedicated to ensuring the health and well-being of staff is a priority. This is a period of significant change and it is important to ensure that the process is both transparent and clear. Support for staff is consistent for both Councils through a variety of sources including Human Resources, Occupational Health, 24 hour phone line Employee Assistance, Unison, Mental Health First Aiders (SDC) and Employee Support Officers (WDC).

4.7 Analysis of the effects on Equality

4.7.1 Compliance with equality legislation has been incorporated throughout the procedures, particularly in relation to the redundancy selection criteria.

4.8 Data Protection

4.8.1 There are no employee data protection implications of this proposal as the proposal will be broad and not detail individual names. However, it is recognised that in the integration of services, further consideration will need to be given to data sharing and this is being explored with the Information Governance Manager.

5 Risk Assessment

5.1 If this amendment is not approved there is significant risk in delays to the integration of services, because the TUPE process requires significant additional information and consultation as part of each proposed service integration.

5.2 In the event that collective agreement is not reached, and the S113 approach is still agreed, this would result in a significantly lengthier process to agree the change individually with staff, which could also leave the Councils more vulnerable to legal challenge. It is hoped to avoid this through the consultation and engagement process that is proposed.

5.3 The bringing together of teams both under S113 agreements and TUPE transfers leads to co-workers being employed on different terms, conditions and salaries. If this is sustained it will inevitably lead to dissatisfaction. This is recognised and both authorities are committed to working with UNISON and staff to agreeing joint protocols and transitional arrangements.

6 Conclusion/Reasons for the Recommendation

6.1 The recommendation will enable the Councils to proceed with their progress on service integration and so deliver the savings needed to help to continue

services.

Background papers:

Reports to JASG July/September 2021

Reports to Cabinet 23.9.21 (WDC) 6.10.21 (SDC)

Supporting documents:

None.

Report Information Sheet

Committee/Date	WDC Employment Committee 28.10.21 SDC Appointments Committee 28.10.21
Item No/Title of report	Organisational Policy Update
Consultations undertaken	
Consultee	Unison (SDC/WDC) Staff (SDC/WDC) Consultation for Collective Agreement MTU (WDC 27.10.21 tbc) JNCG (SDC 28.10.21 tbc)
Ward Members	Not applicable
Portfolio Holder WDC & SDC *Required	CLLrs Hales and Cargill
Financial Services * *Required	Mike Snow
Legal Services * *Required	Phil Grafton
Other Services	All Heads of Services
Chief Executive (s)	Chris Elliott/David Buckland
Head of Service	Tracy Dolphin
Section 151 Officer	Mike Snow
Monitoring Officer	Phil Grafton
CMT (WDC/SDC)	Chris Elliott, Andy Jones, Tony Perks, Dave Barber
Other organisations	
Final decision by this Committee or recommendation to another committee/Council?	Final decision
Contrary to Policy/Budget framework	No
Does this report contain exempt information/Confidential? If so, under which paragraph(s) ?	No
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)	No