

# Cumberland Shadow Executive

27<sup>th</sup> March 2023

## Inter Authority Agreement - Hosted Services

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<b>Report from:</b>	Cllr Mark Fryer, Leader of the Council
<b>Report Author:</b>	Monitoring Officer
<b>Wards:</b>	All Wards
<b>Key Decision:</b>	Yes

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### 1.0 Purpose/Summary of report

- 1.1. The purpose of the report is to present the suite of documents that together form the Inter Authority Agreement (IAA) between Cumberland Council (CC) and Westmorland and Furness Council (WFC) for hosted services from the 1st April 2023. The two authorities have agreed that for certain periods of time the exercise of their duties is best served by way of particular functions and services being discharged and delivered jointly and that certain former Cumbria County Council contracts should be managed jointly. This report sets out the governance arrangements which are proposed to be put in place with regard to service delivery between the councils and delegated authority is sought to ensure that the agreements are completed prior to Vesting Day.

### 2.0 Recommendations

#### It is recommended that the Shadow Executive:

- a) Approves the Inter Authority Agreement attached at Appendix A and delegates authority to the Monitoring Officer, following consultation with the Leader and the Chief Executive, to make any necessary amendments, finalise and execute the Agreement.
- b) Notes the Governance Arrangements within Appendix A and delegates authority to the Monitoring Officer, following consultation with the Leader and the Chief Executive, to make any necessary amendments, finalise and execute the Agreement.
- c) Delegates authority to the Monitoring Officer, following consultation with relevant Portfolio Holders, to finalise Service Schedules.

### 3.0 Background and Proposals

- 3.1 In July 2021 the Secretary of State announced his decision, subject to Parliamentary approval, to implement a two unitary pattern of Local Government in Cumbria based

on an East-West geography. The Cumbria (Structural Changes) Order 2022 (SCO) gave effect to that decision and came into force on 18 March 2022.

- 3.2 In September 2022 Cumberland Shadow Executive agreed a number of services and functions which would be hosted. The hosting arrangements were agreed to be either for a short time until any dependencies are resolved to support a future split or hosted in the medium-longer term because splitting is impractical or undesirable from a cost or service delivery perspective.
- 3.3 A hosted service involves an arrangement between the two Councils, with appropriate Member oversight, where one Council employs the staff, holds the related assets and delivers the service needed by both authorities, to agreed service levels. The host authority manages the service on behalf of both Councils, but each Authority retains its statutory responsibilities and duties. A written agreement between the Councils, known as an Inter Authority Agreement, sets out the legal principles and is supported by a joint financial arrangement.

#### Hosted Services

- 3.4 It has already been agreed by the Shadow Executive that Cumberland Council and Westmorland and Council respectively will be the host Authority for the particular services and functions set out in Appendix B, which also outlines the indicative timeframes for hosting.
- 3.5 It is proposed that those services identified as delivered through the hosting arrangements would be managed through the establishment of a Joint Committee, which would be made up of executive members of both Authorities, and a Joint Officer Board which would make decisions at an operational level and refer strategic and important decisions to the Joint Committee. This is the basis of the Terms of Reference for the Joint Committee set out in the Cumberland Constitution, which was agreed by members of the Shadow Authority on 26<sup>th</sup> January and is the subject of a separate report to Shadow Executive today.
- 3.6 Terms of reference for the Joint Committee and Joint Officer Board have been included within the agreements and are attached as Appendix B to this report.
- 3.7 To ensure that day to day decisions are able to be made in an efficient and streamlined way, it may be appropriate for individual officers within the authorities to receive powers delegated to them by both Councils. The Council has power to delegate functions to other local authorities through section 101 of the Local Government Act 1972. These are contained within the Inter Authority Agreement.

#### Inter Authority Agreement

- 3.8 The Inter Authority Agreement is an overarching agreement and includes general, or “boilerplate”, clauses which will apply to all hosted services regardless of whether the Council is host or lead. The agreement is based upon good faith and partnership

between the authorities and is entered into with the aim of continuing to deliver excellent and cost effective services. Key clauses are;

- Length, notice and termination arrangements
- Information, data sharing, data protection and confidentiality;
- Dispute resolution; Insurance and indemnities.

3.9 The agreement will have a commencement date of 1st April 2023 however there is no end date to enable the authorities to continue to deliver services in a collaborative way, should they choose to. In the event that either council wishes to terminate either the entire agreement or simply to remove services from it, there are clauses enabling termination on notice. An exit strategy is included within the Agreement to enable transitional arrangements to be agreed and implemented by the parties.

3.10 The Agreement has a number of Schedules namely:

- Schedule One- List of Functions and Services / Service Strategies
- Schedule Two- Terms of Reference of the Joint Committee
- Schedule Three- Joint Overview and Scrutiny Committee
- Schedule Four- Joint Officer Board
- Schedule Five- TUPE Employment Provisions
- Schedule Six- Data Protection
- Schedule 7 Hosted Contracts.

3.11 The Service Strategies will be a key element of the governance of the shared services and will be used to ensure that services are accountable and are delivering services in line with agreed expectations. Key elements of the Service Strategies are;

- Functions and Services Description;
- Functions (including any retained functions/dependencies of the Recipient Authority or support services to be provided by the Recipient Authority not falling within another Service Strategy);
- Host Authority and Recipient Authority (including Lead Officer);
- Governance including lead officers and requirements for engagement with and decision making by the Recipient Authority and any Function/Service specific review;

- Performance management metric/standards and key performance indicators for joint performance management and review of the Function and Service;
  - Applicable policies;
  - Period to run;
  - Financial Planning, Budget and Financial Recovery (including Budget proportion split, liability split if different and arrangements for approval of demand led expenditure);
  - Service Planning, Performance Standards and Reporting;
  - Staffing;
  - Outsourcing and Contractor arrangements (including PFI) and commissioning plans;
  - Premises and Assets (including approach on disaggregation);
  - IT and Information Assets;
  - Data Protection arrangements; and
  - Disaggregation and continuity of provision subsequent to the termination of the shared service (to include exit planning).
- 3.12 Delegated authority is sought for the Monitoring Officer, following consultation with the relevant Portfolio Holder, to finalise the service schedules. Once agreed it is likely that further amendment or updating will be required, including by the Joint Executive Committee which will consider the schedules as part of its remit. The delegation sought, therefore, includes taking any further decisions or actions that the Monitoring Officer considers to be necessary to agree and update the schedules on an ongoing basis.

### **Governance Arrangements**

- 3.13 As indicated above, the two councils have established a Joint Executive Committee pursuant to section 101(5) of the Local Government Act 1972. The membership and terms of reference for Joint Executive Committee are set out in the Agreement. It is proposed that the councils shall take it in turns to chair the Committee and that, in year 1, Cumberland shall nominate the Chair. This means that Cumberland will also provide legal and democratic support for the first year.
- 3.14 The Authorities have also established a Joint Overview and Scrutiny Committee for the purpose of exercising their functions under section 9F of the Local Government Act 2000 in respect of those responsibilities exercised by the Joint Committee. The membership and terms of reference for this Joint Committee are set out in the

Agreement. It is proposed that Westmorland and Furness will chair the Joint Overview and Scrutiny Committee for Year 1.

- 3.15 The Authorities have set up a Joint Officer Board. The membership and terms of reference for this Board are set out in the Agreement.
- 3.16 A scheme of delegation from the Joint Executive Committee to Officers shall be maintained.
- 3.17 The Authorities agree that they will ensure that their individual schemes of delegation relevant to the Functions and Services and the Hosted Contracts are aligned.

### **Hosted Contracts**

- 3.18 The Inter Authority Agreement sets out the arrangements in relation to Hosted Contracts.

## **4.0 Consultation**

- 4.1. The Structural Change Order requires us to establish two new authorities by 1 April 2023. Consultation on the proposed model of local government was undertaken by national government during the decision-making process leading to this SCO.
- 4.2. Consultation has taken place with the staff and trade Unions.

## **5.0 Alternative Options**

## **6.0 Implications**

### **Financial, Resources and Procurement**

- 6.1 The basis of the budget that is included within the service schedules (and summarised in the financial summary schedule) is the 2023/24 approved annual revenue budget. This will be uplifted where required for agreed inflation and pay award increases. The annual revenue budget for the individual service areas for 23/24 was agreed as part of the revenue budget setting process for each Council.
- 6.2 The costs for each shared service will be monitored on a quarterly basis and reported to the Joint Officer Board. Where the service incurs revenue costs that are above the approved budget both authorities section 151 officers must agree the level of additional funding required in year and follow their own governance arrangements for approval. The agreed split of any additional costs will be consistent with the agreed apportionment of the original budget. Where costs are related to demand/ activity (and separately identified as this in the schedule) any required increase in the budget will

require the relevant Director and section 151 Officer to agree and approve the increase.

- 6.3 If there is a requirement to increase future year's revenue budgets or apply savings to the budget this will be agreed as part of the budget setting process for the following financial year. Both authorities' section 151 officers must agree the changes to the annual budget and follow their own governance arrangements for approval. The agreed split of any agreed changes to the budget will be consistent with the agreed apportionment in the service schedule.
- 6.4 Following the end of each financial year, the Authorities shall reconcile the actual costs of each Function and Service against the agreed budget (as amended). Following agreement of this reconciliation by the Joint Officer Board and Joint Committee, the Recipient Authority or Host Authority (as appropriate) shall make a payment to the other Authority to reflect the outcome of the reconciliation.
- 6.5 All assets have been disaggregated and aggregated as per the section 16 agreement and the responsibilities for maintaining those assets remains with the relevant authority. Where the service schedule determines that assets should be hosted or shared these will be listed and agreed as part of the schedule and any shared responsibilities for maintenance, insurance and relevant associated revenue costs confirmed.
- 6.6 Where there is a capital programme budget relevant to the service area this will be identified in the service schedule. The relevant scheme will be already approved within the 23/24 -27/28 capital programme for the host authority. The schemes are fully funded will have been agreed as part of the disaggregation of capital schemes in the section 16 agreement. Where capital costs are incurred above the approved budget both authorities section 151 officers must agree the level of additional funding required and follow their own governance arrangements for approval. The agreed split of any additional costs will be consistent with the agreed apportionment in the service schedule and approved through the Joint Officers Board and if required through the Joint Members Committee.

## **Human Resources**

- 6.7 Each IAA sets out arrangements for one council to employ the staff required to deliver a service on behalf of the new authorities. Where this arrangement is provided on a temporary basis, until any dependencies are resolved to support a future split, there will likely be a requirement for staff to undergo a further TUPE transfer.

## **Legal**

- 6.8 The legal power to enter into this agreement is set out in sections 101 and 113 of the Local Government Act 1972, section 9EB of the Local Government Act 2000 and the

Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

- 6.9 Section 101 allows Local Authorities to delegate functions to other local authorities. It is a very common feature of many shared service arrangements. The “receiver” Council chooses to delegate functions to another authority and the “Host” authority agrees to accept the delegation. The authority will then perform the function on behalf of the Receiver authority, even though the Receiver authority remains ultimately responsible for the function.
- 6.10 Section 113(2) of the Local Government Act 1972 provides that an officer whose services are placed by their employing authority at the disposal of the other is to be treated for the purposes of any enactment relating to the other authority’s functions as an officer of that other authority (paragraph 3.6).
- 6.11 By the agreement, the two authorities agree that:
- a. the exercise of responsibility for the discharge and delivery of the executive Functions and Services shall be delegated to the Joint Executive Committee; and
  - b. the relevant Recipient Authority has agreed to and the relevant Host Authority has agreed to discharge and deliver the Functions and Services set out in Schedule 1 to the Agreement.
- 6.12 In respect of the workings and functions of the Joint Executive Committee, their terms of reference include the specific power to delegate any of the functions of the Joint Executive Committee to an officer of either authority.

### **Health and Sustainability Impact Assessment**

- 6.13 Have you completed a Health and Sustainability Impact Assessment? No
- 6.14 If you have not completed an Impact Assessment, please explain your reasons: There are no health and sustainability impacts arising out of the recommendations in this report.

### **Equality and Diversity**

- 6.15 Have you completed an Equality Impact Analysis? No
- 6.16 If you have not completed an Impact Analysis, please explain your reasons: There are no equality impacts arising out of the recommendations in this report.

### **Contact Officers**

Clare Liddle, Monitoring Officer  
Liz Morgan Senior Governance Lawyer, Cumbria County Council

**Appendices Attached to this Report**

Inter Authority Agreement (DRAFT)  
Hosted Services with Indicative Timeline

**Background Documents Available**

None