



COTSWOLD
DISTRICT COUNCIL

Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	CABINET 2ND NOVEMBER 2023
Subject	PUBLICA REVIEW
Wards affected	All
Accountable member	Cllr Joe Harris, Leader of the Council Email: joe.harris@cotswold.gov.uk
Accountable officer	Robert Weaver, Chief Executive Email: Robert.weaver@cotswold.gov.uk
Report author	Robert Weaver, Chief Executive Email: Robert.weaver@cotswold.gov.uk
Summary/Purpose	To consider the Human Engine Consultants report and to approve the recommendations therein.
Annexes	Annex A - Peer Review report and recommendations Annex B - Human Engine report and recommendations
Recommendation(s)	<i>That Cabinet resolves to:</i> Recommend to Full Council to: <ol style="list-style-type: none">1. Approve the recommendations set out in the Human Engine report (that the majority of services are returned to the Council as per the detail provided on page 12 of the Human Engine report)2. That the Chief Executive oversees the creation of a detailed transition plan for subsequent agreement by Cabinet and Council3. Endorses the approach to the further due diligence outlined in the financial implications of the report including analysis of the detailed payroll data required, which will be essential to calculate the short and long-term costs associated with the recommendations set out in the Human Engine report.



COTSWOLD
DISTRICT COUNCIL

Corporate priorities	Ensure that all services delivered by the Council are delivered to the highest standard.
Key Decision	YES
Exempt	NO
Consultees/ Consultation	The relevant staff consultation process will commence following the decision making process (if applicable).



I. EXECUTIVE SUMMARY

- I.1** Since 2017, Cotswold District Council, along with Forest of Dean District Council, West Oxfordshire District Council and Cheltenham borough Council have worked in partnership with Publica, a teckal company owned by the Councils and created to deliver day to day services. Since 2017, Publica has delivered a number of efficiencies and savings but due to the pressures and the local aspirations that the councils are focussed on, an independent review was undertaken to look at whether Publica's company model was still able to meet the current and future needs of its council owners.
- I.2** For Cotswold District Council, a Local Government Association Peer Review in 2022 highlighted the need to ensure the council was best placed to maximise opportunities associated with an ambitious Administration and Corporate Plan. It recommended that an options appraisal be undertaken, considering the appropriateness of some services remaining within Publica.
- I.3** An options appraisal review was undertaken by a company called Human Engine. The final report recommends that a significant number of services should move from Publica and return to being under greater control of the councils. This would leave Publica delivering a range of back office and customer services for the Councils.
- I.4** This represents a fundamentally different future for the councils and for Publica. The Publica of the future will be smaller, leaner, and principally a vehicle for sharing services rather than an entity with its own management, cultural identity, and high-profile brand. If the recommendations of the Human Engine report are approved, each of the four councils will then work in partnership to create a phased plan for the transfer of services.
- I.5** It is important to note that this recommendation is not a commentary on the performance of staff. Staff in Publica have worked diligently and professionally to deliver services on behalf of the shareholder councils. They are passionate about public service and there is every reason to believe they would be equally passionate in direct employment.
- I.6** The recommended option reflects a view that returning services to direct management by the council will provide the council with greater autonomy over service delivery, recruitment, service performance and creating a sustainable financial future.
- I.7** The company Directors are responsible for the management of the company's business and have indicated they will work with the Councils to ensure that the revisions set out in the



Human Engine report are in the best interests of the Company following the review. However, Article 7.2 of the company's Articles of Association gives members, by Special Resolution, the power to direct the Directors to take or refrain from taking specified action provided that no such Special Resolution invalidates anything which the Directors have done before the passing of the Special Resolution.

- 1.8** Section 6 of the report sets out the initial view on the financial projections arising from the recommendations from the review of Publica services. Whilst Human Engine have undertaken modelling and provided high-level financial projections of returning the majority of services to the councils these should be seen as indicative given the limited availability of relevant and detailed data. Sections 6.1 to 6.7 set out the further due diligence requirements including the provision and analysis of detailed payroll data required to enable the S151 officers to calculate the short and long-term financial implications.
- 1.9** The councils retained teams do not have the internal capacity to project manage a change of this scale and complexity. The Human Engine report refers to a number of options in terms of how the Councils could manage the transition process. In addition, it is likely that independent Human Resources and legal support will be needed to complement the Publica and in-house teams, respectively.
- 1.10** Should members be minded to approve the recommendations, the Chief Executives, and their retained management teams will work with Leaders and the Publica Board and Executive to consider in detail the requirements for a smooth transition, via preparing and presenting a detailed transition plan for subsequent approval by Cabinet and Council.

2. BACKGROUND

- 2.1** In October 2022, the Council invited the Local Government Association (LGA) to conduct a corporate peer challenge. A corporate peer challenge provides for an external review of how a council functions and its ability to deliver on its plans, proposals, and ambitions. The review was undertaken by a team that is knowledgeable and experienced in local government and includes both officer and councillor representatives. The team acts as a 'critical friend' and produces feedback that provides a health check and commentary on areas of strength and potential areas for further consideration.
- 2.2** The corporate peer challenge team gathered information from a wide range of sources and attended various meetings, whilst also conducting interviews with staff, councillors, and some of the Council's key partner organisations. In addition to covering the core assessment areas

associated with all peer challenges (including leadership, financial management, corporate priorities, and governance) the Council requested that the peer challenge team also consider the following questions:

- How well equipped the Council is to respond to the challenges and opportunities that are facing local government now and into the future?
- How well does the Council ensure it delivers its ambitions and priorities through its existing partnership arrangements with Publica?

3. MAIN POINTS

3.1 Following the Corporate Peer Challenge 2023 feedback report (which sets out the team's findings and recommendations – **Annex A**) the Chief Executive oversaw the creation of an action plan that set out how the recommendations would be implemented. This action plan was approved at full Council in January 2023.

The action plan reproduced the recommendations made by the corporate peer challenge team, the measures that will be implemented to embed the recommendations, commencement dates and the lead officers assigned to oversee delivery.

3.2 The peer review team identified that there was work to do to improve the effectiveness of the Publica partnership and help drive the Councils priorities. One of the recommendations set out and subsequently agreed by Council in the action plan was to:

'Give consideration to reviewing service delivery options,' namely the continued appropriateness of some services remaining within Publica.'

The peer review recommendation referred in particular to Democratic Services, Elections, Planning, Strategic Finance, Commissioning and Procurement.

3.3 The Peer Review team felt this was important, given the Councils ambition, leadership, Corporate Plan and a desire to be more 'fleet of foot' when it came to setting the direction to deliver services. It noted in their feedback that Publica had been set up in 2017 when circumstances, politics and drivers were different.

3.4 Whilst the peer review was specific to Cotswold District Council, a discussion with the other partner councils in relation to the recommendation to undertake an options appraisal regarding service delivery took place. Publica Executives also agreed that it would be beneficial



to undertake an options appraisal once, collectively, rather than individually. This approach was agreed at the Publica's Shareholder Forum (Chair of the Board, Publica Executive Officers, Council Leaders, and Chief Executives). As such the CEO's (Cotswold District Council, West Oxfordshire, Forest of Dean and Cheltenham Borough Council) agreed to jointly commission an options appraisal.

- 3.5** The peer review report and recommendations formed the basis of a brief and the starting point for the options appraisal. Two consultancies with experience in this field were approached (Local Partnerships and Human Engine). After reviewing the submissions (based on quality, cost, timescales and an interview with the Chief Executives, all CEO's agreed that Human Engine be commissioned to undertake the options appraisal.
- 3.6** The approach adopted by Human Engine was similar in format to that of an LGA peer review. This entailed a review of relevant documents, and a number of one to one and group interviews (including interviews with key Council and Publica senior staff, the Leaders of each Council, the senior management teams of each Council and the Chair of the Publica Board) and then triangulation and assessment of this information. The Human Engine report and recommendations are set out at **Annex B**.
- 3.7** The key recommendation is that the majority of services are returned to the Councils. The report sets out the proposed service area groupings.
- 3.8** The Human Engine report sets out the benefits associated with returning the majority of services to the Council. In summary these include providing greater flexibility for councils in their approach to delivering individual strategic objectives and greater responsibility in doing so; the return of a critical mass of strategic oversight to councils, enabling councils to better manage the strategic direction of the organisation; increasing capacity within each Council's core operating team(s); greater ownership to deliver and 'own' savings plans, through a range of different service arrangements that best align to each council's priorities; reducing the risk of recruitment challenges for local government specific roles and a reduction in corporate overheads of services retained in the Publica model.
- 3.9** The Human Engine report sets out that in their worst-case scenario, the net cost associated with in-sourcing would be approximately £150k per Council. This has been estimated on the data provided to date by Publica in relation to the pension liabilities the councils could inherit and assumptions on mitigation through management and structure savings. Human Engine's assessment of the worst-case scenario is predicated on limited cost and staffing information

and should be viewed as indicative at this stage. This information will be reviewed by the S151 officers as part of the due diligence process.

3.10 It is likely that further opportunities to mitigate the additional pension cost pressure will arise through the detailed due diligence and transition period. (For example, support requirements for services that continue to be delivered by Publica such as ICT, Customer Services will be reduced). However, detailed payroll data will need to be provided and analysed to establish the short and long-term impact. This analysis will be undertaken by each partner Council's S151 officer in due course, as the detailed payroll data could not be requested until the outcome of the review had been agreed and made known. The financial implications set out in this report make it clear that extensive further due diligence is required to give members confidence in the likely financial impact of the HE recommendations.

4. NEXT STEPS – Transition Arrangements

4.1 Reference is made within the Human Engine report to options for the process of returning services (the transition) to the Councils. If the report is approved, the Council Chief Executives will work with Leaders, the Publica Executives and Board, if necessary, to prepare a detailed transition plan for subsequent submission to the Cabinet and Council. A key aim of the transition plan would be to seek agreement between the Leaders on the order in which services are returned.

4.2 A transition team will be established first to oversee the entire process. Channels for clear communications with the staff who might be impacted by the transition will be put in place. Cooperation with Publica leadership will be essential for aligning the transition with the Council's goals and objectives and we expect to work closely with our Publica colleagues to make a success of the transition process. Transition governance arrangements will be established to provide structure and oversight and will set out the relevant staff consultation process that will be followed where applicable. Agreement on phased services will be made to determine the scope and timeline of the transition.

5. ALTERNATIVE OPTIONS

5.1 The Human Engine review considered a range of options from 'doubling down' (Option 1) and investing more resources in Publica, through to the complete dismantling of the company. (Option 7). This report recommends that Option 6 (returning the majority of services to the



partner councils) is adopted. Members may decide not to approve the recommendations to return to the partner councils the majority of services and instead decide that there is merit in the other options considered. However, in light of the recommendation from the 2022 Peer Review and the outcomes of the Human Engine report, these options are not recommended.

6. FINANCIAL IMPLICATIONS

Due diligence requirements

- 6.1** As set out earlier in this report, the indicative financial projections set out in the Human Engine review are based on limited information. The financial impact of the proposals set out in this report will need to be developed as part of the due diligence process over the coming weeks and included in the Transition Plan that will be considered by Cabinet and Council in January 2024.
- 6.2** In considering the recommendations from the Human Engine review of Publica and those set out in this report, members should be aware of the difficulty in providing precise estimates at this stage.
- Decision around structure, composition of services and management arrangements has not yet been considered.
 - High-level assumptions are subject to degrees of estimation and judgement
 - Detailed payroll data is required to provide timely and accurate modelling of options which has not been undertaken at this stage of the process
 - Affordability of options will need to be part of the decision-making process
- 6.3** Estimates as to the additional cost and mitigation options will be subject to variation throughout the due diligence and transition periods. Members should therefore expect variations on the estimates to be reported regularly to ensure they are appraised on the likely financial impact and mitigation options should costs increase or benefits are not able to be realised.
- 6.4** The Council must undertake further and extensive due diligence on the recommendations from the Human Engine review. This will be a complex process with consideration of a number of workforce planning issues (e.g., Pensions, TUPE arrangements).



- 6.5** Detailed salary and payroll information will need to be provided by Publica to partner Councils to calculate the financial impact of changes to service delivery.
- 6.6** Partner Councils will need to undertake detailed modelling of the potential impact on their respective LGPS (Local Government Pension Scheme) funds with Gloucestershire County Council and the actuary to determine the short-term and longer-term impact on the pension fund liability and contribution levels.
- 6.7** Members will need to consider the longer-term financial implications as highlighted through the due diligence. It is anticipated that further resources will be required as part of this process. These costs could be significant covering workstreams such as:
- External/independent legal advice (to consider contractual matters)
 - External/independent HR (Human Resources) advice (to consider employment matters and TUPE)
 - Detailed LGPS modelling undertaken in conjunction with Gloucestershire County Council and the pension fund actuary, Hymans Robertson

Transition period

- 6.8** The estimated cost over the duration of the transition period for option ii is £236k which is shared between the partner councils. On that basis, Cotswold District Council's share would be £78k over the 18-month transition period.
- 2023/24: £22k
 - 2024/25: £56k
- 6.9** For costs incurred during 2023/24 it is proposed that this is funded from the Council Priorities Fund in line with the position set out in the Budget Strategy and MTFs (Medium Term Financial Strategies) Update report being considered by Cabinet at their meeting on 02 November 2023 (paragraph 5.34).
- The recommended approach funding additional transition costs would be to set aside adequate funding in the Savings and Transformation Reserve. A review of the Council's Balances and Reserves is being undertaken by the Council's Section 151 Officer as part of the 2024/25 budget setting process and will be included in the 2024/25 Revenue Budget, Capital Programme, and Medium-Term Financial Strategy report to be considered by Cabinet and Council in February 2024.



6.10 For the purposes of this report it would be prudent to notionally set aside £0.200m in the Savings and Transformation reserve (transferred from the Council Priorities Fund) to recognise the commitments outlined above.

Monitoring and reporting

6.11 It is important that members are kept apprised on the outcomes from the due diligence and the financial implications throughout the transition period. The estimated cost outlined in the report of £236k (CDC (Cotswold District Council) £78k) only covers the project management costs associated with the programme of returning services to partner councils. As set out earlier in the financial implications, there will be significant additional costs associated from the due diligence work and there will be costs arising from implementing change.

6.12 Whilst the Human Engine report and this covering report set out some of the potential opportunities that will mitigate some of these costs, these have not been developed in full and are therefore subject to variation. Members should be cognisant of the risk that

- timing of additional expenditure and availability of resources may not align
- additional one-off costs associated with change may increase pressure on the Council's revenue budget requiring savings to be identified and delivered from other Council services
- cost mitigation actions may not be delivered in full or on time
- impact of redundancy and recruitment costs if staff do not wish to TUPE across

6.13 Although there will be further reports to Cabinet and Council throughout the transition period, it is recommended that the quarterly financial performance reports to Cabinet include timely and relevant financial updates.

7. LEGAL IMPLICATIONS

7.1 Prima Facie, the Legal Implications of transferring services back to the Council, fall into three principal areas:

- Contractual Obligations
- Governance and vires issues
- Employment law

All are complex and require further detailed specialist advice, as did the establishment of Publica and its relationship with its creator councils six years ago. However, the following issues are immediately apparent.

7.2 Contractual arrangements

The Human Engine Report briefly refers to the contractual implications of its proposal. The contractual relationship between the Council and Publica Group Ltd is in fact the subject of various legal agreements including:

- A members' agreement dated 25 May 2017 between CDC, FoDDC (Forest of Dean District Council) and WODC (West Oxford District Council)
- An admission Agreement in relation to the Gloucestershire County Council Local Government Pension Scheme dated 14 November 2017
- A Revolving Credit Facility Agreement between CDC and Publica Group Ltd dated 31 October 2017
- A Services Agreement dated 31 October 2017

Clauses 37 of the Services Agreement provides:

“Without prejudice to the Council’s rights of early termination under this Agreement, or otherwise at law or equity, the Company hereby irrevocably grants to the Council a break option in respect of all or any part of its services which may be exercised by the Council by giving not less than 12 months’ prior written notice expiring on 31 March in the following Contract Year.”

This is the basis upon which services might be taken back in-house within an existing contractual term. In addition, the Council might decide against extending the contract beyond the original expiry dates or the expiry date of any extension. The Human Engine Report correctly identifies that the 7-year term for provision of General Services expires in October 2024.

The consequences of termination under Clause 37 are set out in Clause 38 and include obligations to (inter alia) agree an exit strategy, agree the disaggregation and division of assets, and deliver data.

As well as cessation of existing contractual arrangements, the report’s recommendations appear to envisage the creation of new ones to provide for shared working arrangements are proposed and ongoing provision of limited services by Publica.

7.3 Governance

The Council will need to evaluate its existing non-executive scheme of delegation and satisfy itself that it either employs or has available to it (for example through shared services) the



officers empowered to discharge delegated powers. In some areas (for example, Environmental and Regulatory functions) one officer currently holds delegated powers for all three councils.

7.4 Employment Law

The process of bringing services back in-house is highly likely to amount to a service provision change under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) which will trigger obligations to transferring staff and careful consideration of how best to apportion liabilities between the transferring employer (Publica) and the new employer (the Council).

8. RISK ASSESSMENT

- 8.1** The options appraisal undertaken by Human Engine sets out a recommendation to return the majority of services back to the Council. It also sets out the benefits and risks associated with doing so. The financial and legal implications in this covering report refer to the need for the Council to undertake appropriate due diligence, particularly in relation to the costs associated with pension liability, to ensure it is fully informed. The covering report also refers to the need for a detailed transition plan to support the return of services to the Council should members be minded to approve the recommendation to do so. This plan will ensure the Council has the information required to successfully manage the transition of the services identified in the Human Engine report. Clarity around the transition plan will also help to minimise risks associated with staff feeling unsettled and unsure of their future, which in turn should minimise risks around day to day service delivery.

9. EQUALITIES IMPACT

- 9.1** Under equality legislation, the Council has a legal duty to pay ‘due regard’ to the need to eliminate discrimination and promote equality in relation to:
- Race
 - Disability
 - Gender, including gender reassignment
 - Age
 - Sexual Orientation
 - Pregnancy and maternity
 - Religion or belief

When considering this recommendation, no barriers or impact on any of the above groups has been identified.

10. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS

10.1 This recommendation has no climate change implications.

11. BACKGROUND PAPERS

- Annex A Peer Review report and recommendations
- Annex B Human Engine report and recommendations

(END)