

# Cabinet Member Decision Report

<b>Decision maker(s) at each authority and date of Cabinet meeting, Cabinet Member meeting or (in the case of individual Cabinet Member decisions) the earliest date the decision will be taken</b>	CABINET MEMBER FOR FINANCE Cllr Max Schmid  Date of decision: xx July 2016	
	CABINET MEMBER FOR FINANCE AND STRATEGY Cllr Warwick Lightfoot  Date of decision: xx July 2016	 THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
	CABINET MEMBER FOR FINANCE AND CORPORATE SERVICES Cllr Tim Mitchell  Date of decision: xx July 2016	 City of Westminster
<b>Report title (decision subject)</b>	PHASE 2: ESTABLISHING A SHARED ICT SERVICES FUNCTION	
<b>Reporting officers</b>	<b>London Borough of Hammersmith &amp; Fulham</b> Nigel Pallace, Chief Executive  <b>Royal Borough of Kensington &amp; Chelsea</b> John Quinn, Executive Director Corporate Services  <b>Westminster City Council</b> John Quinn, Executive Director Corporate Services  Ed Garcez Chief Information Officer	
<b>Key decision</b>	No	
<b>Access to information classification</b>	PUBLIC	

## 1 EXECUTIVE SUMMARY

- 1.1 This report seeks authority to implement Phase 2 of the ICT restructure and shared service, following consultation with staff in the shared ICT service on the proposals.
- 1.2 In summary the proposals are to establish two ICT functions. A single sovereign and autonomous LBHF ICT function and a shared bi-borough RBKC and WCC ICT function.
- 1.3 It is anticipated that the three councils will continue to share services in ICT where there is a suitable business case for doing so, for example, the arrangements in place for sharing Geographic Information Systems and Office 365, including support staff. Also the recently agreed Information Management Strategy and associated information security policies are common across the three councils.
- 1.4 The two ICT functions will have different lead officers, with a dedicated Chief Information Officer reporting to the Chief Executive in LBHF, and a Bi-borough Chief Information Officer reporting to the Bi-borough Executive Director Corporate Services in RBKC and WCC.
- 1.5 The HR processes associated with the deletion of the 'Tri-borough Chief Information Officer' and establishment of the two new posts will be managed through a separate restructure. The existing 'Tri-borough Chief Information Officer' post will be deleted no later than 31 October 2016, to coincide with the LBHF transition from the HFBP contract.
- 1.6 The proposals set out will protect delivered and committed savings for the three boroughs and will allow for further shared work to deliver further shared savings, both across the three councils and with a range of other councils and organisations as may be appropriate from time to time.
- 1.7 The proposals as set out can be accommodated within existing budgets, with a small increase in the staffing costs to H&F (circa. £12k) arising from the establishment of the dedicated H&F Chief Information Officer. This can be managed within ICT budgets.

## 2 RECOMMENDATIONS

- 2.1 To note the achievements of the shared ICT service.
- 2.2 To note that staff consultation will be undertaken before the new structures are implemented.
- 2.3 **LBHF, RBKC and WCC** Cabinet Members to approve the implementation of necessary changes and variations to the existing S113 agreement. These variations will allow the establishment of a shared service across the three councils for the Bi-borough CIO 'dotted line', GIS and Office 365.

- 2.4 **LBHF, RBKC and WCC** Cabinet Members to approve a variation to the S113 agreement to establish and implement a new service sharing arrangement for network and telephony services between LBHF and RBKC. This is necessary to accompany the Inter-Authority Agreement as signed by the LBHF Chief Executive and the RBKC Town Clerk on 20 July 2016.
- 2.5 **RBKC and WCC** Cabinet Members to approve establishment and implementation of the 'new' bi-borough shared ICT service between RBKC and WCC with an associated new S113 agreement between the RBKC and WCC.
- 2.6 To note that, subject to the outcome of consultation, this will entail deleting the posts listed in **Appendix A** (included in the exempt report). The restructure will also delete all vacant posts within the councils' ICT structures.
- 2.7 To note that, subject to the outcome of consultation, the new posts listed in **Appendix B** (included in the exempt report) will be created.
- 2.8 To note that no compulsory redundancies are expected as a result of these proposals.

### **3 REASONS FOR DECISION**

- 3.1 The next stage of implementation of the shared ICT service needs to be formalised through agreements pursuant to S113 of the Local Government Act 1972 in order to establish the legal relationship between the parties and comply with the Authorities' various public law duties including their fiduciary duties to their council tax payers.
- 3.2 These variations will lead to the creation of new services therefore Cabinet Member approval is sought.

### **4 BACKGROUND AND CONTEXT**

- 4.1 Significant progress has been made across the three councils in achieving the anticipated benefits for our councils, staff, and the knock-on effect for residents of the boroughs. For example:
  - 4.2 **Making it easier to work (saving time and increasing productivity)**
  - 4.3 We have brought together key applications enabling staff to work consistently (eg Framework-i across Adult Social Care and the single library system allowing staff to work consistently across libraries in the three councils and introducing a single library card for library users).
  - 4.4 We have converged infrastructure, eg physical and wifi networks in all three councils' buildings and users can now print in all offices.

- 4.5 We have enabled shared applications, so that users in shared services can access systems across the three councils and avoid the cost, hassle and risk of multiple desktops and logins.
- 4.6 We have implemented Office 365, a collection of tools to support working together and working on the move more effectively.
- 4.7 We have work planned and underway to extend these benefits by:
- further aligning network and telephone services, starting with H&F and RBKC
  - reviewing desktop services and the 'end user compute' strategy at all three councils to assess options to better support new ways of working
  - reviewing data centre and storage options to enable cost reduction, better collaboration, information sharing and resilience arrangements
  - rolling-out Office 365 email for all users, so enabling much greater flexibility as accommodation changes are made across the councils

#### **4.8 Saving money**

- 4.9 Over £3m has been saved through the initial portfolio of ICT work.
- 4.10 A further £6.5m of savings are being realised through H&F's exit from HFBP, the implementation of the single shared team (mainly RBKC and WCC), and the adoption of digital across service areas and departments. These savings are broadly on target for 2017/18 and 2018/19.
- 4.11 Further cost saving opportunities are being investigated in H&F and WCC.

#### **4.12 Improving the delivery and quality of ICT**

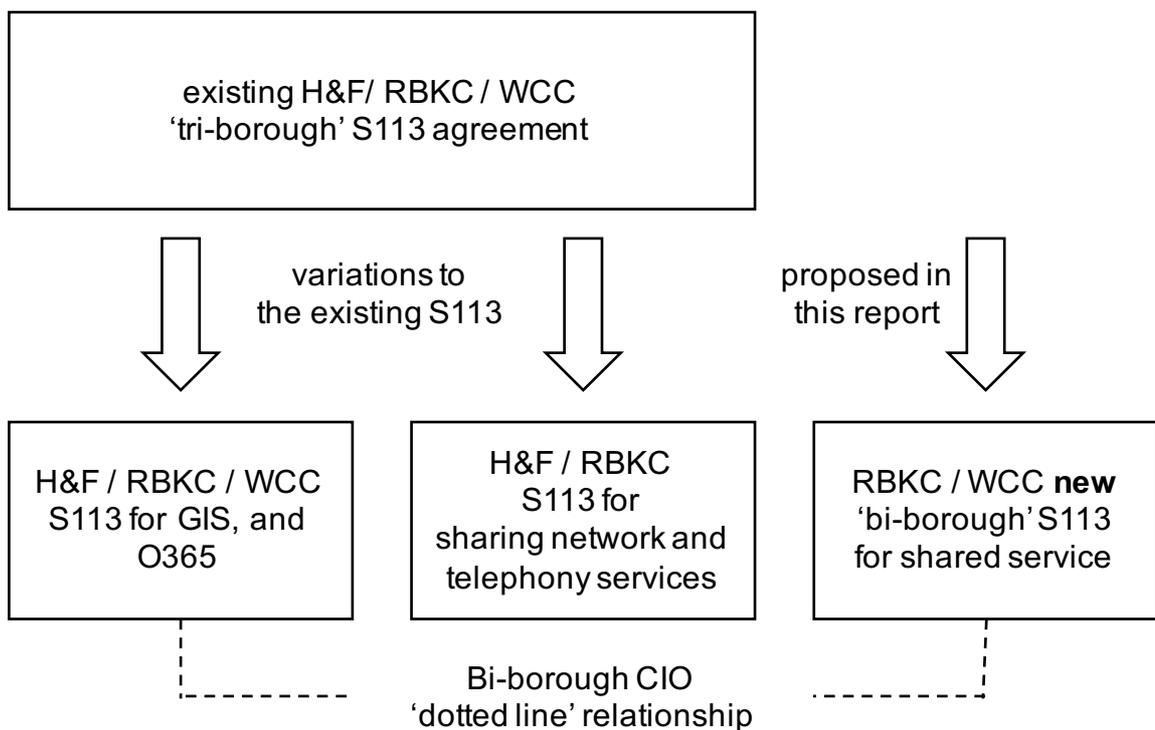
- 4.13 Cabinet Member governance arrangements have been put in place with the 'digital technology board' bringing together the three Cabinet Members to oversee and set the priorities for the shared ICT service portfolio.
- 4.14 Officer governance arrangements have recently been refreshed and are now focused on reviewing the strategic ICT priorities for the three councils and ensuring that our effort and resource are aligned to deliver these.
- 4.15 The Office 365 programme has started to deliver and will allow new ways of working across the three councils and with partners more widely, allowing staff to work more flexibly and on the move. Office 365 is a key enabler to crucial programmes such as the City/ Town Hall refurbishments.
- 4.16 The digital programme has updated the three council intranets which are now based on a common platform while retaining each council's look and feel; a challenging project both technically and in terms of organisation change.
- 4.17 Work is underway to assess further options for system consolidation and alignment, and to find further opportunities to digitise ways of working, both internally and for residents.

## 5 PROPOSAL AND ISSUES

5.1 The proposals for Phase 2 of the shared ICT service, if approved, will require:

- The existing S113 agreement to be varied in order to:
  - retain the shared service across the three councils for GIS and Office 365 (this will also include a provision for the Bi-borough CIO)
  - share a network and telephony service and staff between H&F and RBKC
- A new S113 will need to be established to implement the 'new' bi-borough shared ICT service between RBKC and WCC.

5.2 These proposals are shown pictorially below:



5.3 All ICT staff were consulted as part of Phase 1 of the ICT restructure and will again be consulted as part of Phase 2. This is necessary before entering into an agreement under section 113. The main provisions of the section 113 agreement are set out in **Appendix C**.

## 6 OPTIONS AND ANALYSIS

6.1 A range of options were explored in the business case before conclusions were drawn and recommendations made. These are set out in the exempt report.

## 7 CONSULTATION

- 7.1 Consultation with the three council Cabinet Members has taken place in one-to-one briefings.
- 7.2 Extensive engagement with staff has taken place in order to satisfy the requirements of section 113 described above and the Council's wider employment law duties. This has included:
- a number of co-design sessions with staff
  - a number of 'open door' sessions for staff to influence, input to, challenge and co-create the proposed target operating model
  - a number of staff meetings
- 7.3 Once this report has been agreed formal consultation on the proposals with staff and their recognised trade union representatives will be carried out in accordance with the councils' statutory obligations as required under appropriate employment law provisions primarily the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996. This is supplemented by a set of overarching HR policy principles adopted by the three boroughs contained within the shared HR Policies Agreement.
- 7.4 Consultation mechanisms on proposals to re-organise and integrate teams across either the two or three partner boroughs follow established and generally consistent principals overseen by a Joint Management and Trade Union forum consisting of the HR Directors of the 3 councils and representatives (both at regional and branch level) of the three councils' recognised trade unions.
- 7.5 Consultation in practice consists of the introduction of such proposals initially to the forum for initial comment followed by staff and trade union consultation within the relevant service area and includes team consultation meetings, individual one-to-one consultation meetings, briefing and updates. Documentation is also made available electronically to the relevant staff groups and Trade Unions and usually includes the written proposals (rationale document) and other associated documentation including current and revised job descriptions, staff assimilation tables, regularly updated sets of staff question and answers, current and proposed structure charts. Consultation either takes 30 or 45 days depending on the numbers of staff affected in the establishment and relevant policies and procedures.
- 7.6 Following consultation, implementation of the proposals (original or as amended) takes place. The three councils mitigate against any compulsory redundancies in a variety of ways including but not exclusively seeking volunteers first and through redeployment processes across LBHF, RBKC and WCC as well as other opportunities.

- 7.7 A HR Working Protocol document has also been established which supports managers and staff working across LBHF, RBKC and WCC by giving further clarity and detail on the creation and operation of integrated teams as they affect the day to day employment issues of staff employed by one of the three boroughs and where such teams are managed by an employee of one of the three boroughs or their partners. The protocol reflects the fact that those managers managing integrated teams will need to be clear about the contractual terms of the staff they manage but who are employed by one of the other two boroughs.
- 7.8 Individuals who are unsuccessful in obtaining a post at their current level will be able to apply for a post one level below. Salaries will be protected in accordance with the employing council's existing policy. If unsuccessful at that level they are potentially redundant and subject to redeployment.
- 7.9 Those staff who have jobs which are similar to a job in the new structure should be ring-fenced for that job together with anyone who has been previously unsuccessful and wishes to be considered for a job at the next lower level. Salary is not the sole determinant of similarity, job content is more important. These staff may then either be directly assimilated, if the number of people and jobs are the same, or competitively assimilated through interview and assessment if there are more staff than jobs.

## **8 EQUALITY IMPLICATIONS**

- 8.1 The public sector equality duty has been considered by officers in the development of the proposals.
- 8.2 This is an internal change, which should not affect services. We are therefore not aware of any equality implications.

## **9 LEGAL IMPLICATIONS**

- 9.1 The proposed legal relationship between the Authorities is described above. Section 113 of the Local Government Act 1972 allows a local authority to enter into an agreement with another authority for the placing at the disposal of the latter for the purposes of their functions, on such terms as may be provided for by the agreement, of officers employed by the former. Officers placed at the disposal of the "borrowing" authority are treated as an officer of that authority for the purposes of all their statutory functions whilst remaining an employee of the "lending authority" for employment law purposes. Before entering into an agreement under section 113 the affected staff must be consulted (see section 7). The nature of section 113 means that no direct EU procurement issues arise in relation to the proposed agreements.
- 9.2 The Director of Law is of the opinion that the agreements provide a prudent framework for the integration and combination of the services and that the Council may lawfully enter into the agreements.

## 10 FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1 With respect to LBHF, the savings identified through the establishment of the shared ICT service have been reflected in the relevant Corporate MTFS programmes to 2017/18. These are being delivered and realised through the exit from the HFBP contract arrangement. The existing savings target will not change due to the agreement of these proposals.
- 10.2 With respect to RBKC, there is a cash limited budget for delivery of the ICT service and the Phase 2 structure needs to fall within this budget. Until the new structure has been fully evaluated by Human Resources this cannot be confirmed. Consideration should also be given to the agreed financial plan savings that are required for the 2017-18 and subsequent budget years.
- 10.3 With respect to WCC, the savings identified through the establishment of the shared ICT service have been realised. Further MTFS savings targets set by WCC are subject to proposal by the Executive Director for Corporate Services and acceptance by WCC's Executive Management Team and Cabinet Member for Finance, but are not a pre-condition of this agreement.
- 10.4 The S113 agreements will be updated to reflect the changed structure as relates to the financial protocols.
- 10.5 Services will continue to provide a professional working relationship with the Councils' internal and external auditors.

Ed Garcez | **Chief Information Officer**

### **Local Government Act 1972 (as amended) – background papers used in the preparation of this report**

- none

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## SECTION 113 AGREEMENT OVERVIEW

A detailed summary of the standard provisions which apply to the shared ICT service.

- **Clause 1 – Background**  
This sets out the aspiration to realise economies and efficiencies through the combination and integration of services through alignment, joint working and co-location rather than through a single authority to which functions will be delegated and staff transferred. The concept of the Sovereignty Guarantee is introduced. The use of section 113 of the Local Government Act 1972 is explained.
- **Clause 2 – Definitions and interpretation**  
Sets out the definitions used in the agreement and contained in Schedule 1.
- **Clause 3 – Duration**  
The agreement remains in force until terminated under the termination provisions (see clause 25).
- **Clause 4 – The arrangements**  
This, together with Schedule 2, establishes the aims, benefits and intended outcomes of the agreement and the high level principles which underpin it. These are aspirational and are not themselves legally binding. The arrangements comprise those in relation to combined teams (section 3), governance (section 4) and finance (section 5). The arrangements do not affect the liabilities of a council to third parties.
- **Clause 5 – (Non) Delegation of functions**  
This makes it clear that the arrangements do not transfer statutory functions from one council to another and that shared officers discharge the functions of the authority they are acting for at the time as an officer of that authority. Should the councils wish to delegate any functions to one another in the future then this must be accomplished through a separate agreement.
- **Clause 6 – Section 113 arrangements**  
This, together with Schedule 5, establishes the arrangements for sharing staff by listing the posts being integrated and combined. It also provides a framework for the management, appraisal and supervision of the shared joint director (Chief Information Officer) together with a mechanism for the parties to raise any concerns in relation to their performance.
- **Clause 7 – Single Management Team (SMT)**  
This establishes a single management team for the service. Membership and terms of reference are set out in Schedule 6. It has responsibility for implementing and monitoring the arrangements and for complying with the financial protocol and Sovereignty Guarantee. It has the power to establish further subsidiary management teams whose terms of reference are agreed by the parties.

- **Clause 8 – Accountability**  
 This sets out the accountability of post holders and requires the development of detailed arrangements as to the responsibility of post holders.
- **Clause 9 – SMT review meetings**  
 This requires SMT to hold an agreed number of review meetings to discuss performance of the arrangements and the realisation of savings etc. The minutes will be submitted to the parties.
- **Clause 10 – Annual review**  
 This requires SMT to carry out an annual review of the arrangements to evaluate performance, effectiveness and outcomes etc. and produce targets and priorities for the next financial year and make recommendations to the cabinets with a view to producing an Annual Strategic Agreement summarising priorities, targets and budgets for the next financial year and any required variations to the arrangements. It is not intended to have an Annual Strategic Agreement in place for the first year.
- **Clause 11 – Financial arrangements for postholders**  
 This makes the employing authority solely responsible for payments due under contracts of employment. The non-employing council is responsible for expenses incurred in carrying out duties for them provided they are of a nature payable under the employer's expenses policy. The non-employing councils are also responsible for any training they require a postholder to undertake in relation to section 113 duties carried out for that council. The sharing of savings is dealt with below.
- **Clause 12 – Financial protocol**  
 This provides for the financial protocol at Schedule 4 which sets out the financial relationship between the parties and includes provisions relating to financial planning, management, reporting, risk management, audit and the sharing of savings. The financial protocol will ensure that the authorities discharge their fiduciary duties to their council tax payers as far as the arrangements are concerned.
- **Clause 13 – Human resources protocol**  
 This sets out, in schedule 3 the protocol for dealing with HR issues. It is not a substitute for the parties' existing HR policies and procedures.
- **Clause 14 – Indemnities and liabilities**  
 Each party indemnifies the others against damage caused by that party's negligence, (excluding the contributory negligence of the other parties). As far as postholders are concerned the non-employing party is responsible for the acts/ omissions of a postholder when performing section 113 duties for that party and the employing party is responsible when they are performing duties for the employer. This puts the parties in the same position as if they were not sharing officers.

TUPE is not expected to apply but if it is subsequently found to apply (TUPE is a question of fact and law rather than intention) then the transferor indemnifies the transferee in respect of liabilities which arise due to their act or omissions and the transferee indemnifies the transferor in respect of those which arise due to their acts or omissions. Liabilities incurred as a result of the acts or omissions of more than one party shall be apportioned reasonably. Parties are under a duty to mitigate losses.

- **Clause 15 – Insurance**

The parties may, but are not obliged to, maintain insurance in respect of potential liabilities arising from the arrangements. Where they do so they must ensure that they cover liabilities incurred through their own staff performing employee duties and the staff of other parties performing section 113 duties.

- **Clause 16 – Standards of Conduct**

This requires the parties to ensure that the arrangements comply with statutory requirements and guidance in respect of conduct, probity and good corporate governance.

The parties will review and where appropriate amend their constitutions as necessary to comply with the agreement and enable the arrangements to run as smoothly as possible. This does not require a party to make alterations which it reasonably considers would be inconsistent with the Sovereignty Guarantee.

- **Clause 17 – Conflict of interest**

This sets out the procedure for dealing with conflicts of interest arising from the arrangements. It identifies two types, private interest conflicts and combined working conflicts. The former may arise where an employee discharging section 113 duties has a private conflict with the non-employing party. In such circumstances the conflict is notified to and recorded by the employing party in accordance with their own procedures. The Joint Director and the Chief Executives are then notified (and the Leaders where the Chief Executives are conflicted). The parties then take such action as is required to protect their interests.

In the event that a combined working conflict arises which affects the Joint Director he shall notify the parties and the non-employing party shall appoint an interim director as necessary and appropriate. Where other combined working conflicts arise the Joint Director shall ensure appropriate steps are taken to protect the interests of all parties including the obtaining of appropriate professional advice.

- **Clause 18 – Complaints**

Third party complaints are dealt with using the complaints procedure of the appropriate party. The parties may agree a combined complaints procedure in writing.

- **Clause 19 – Ombudsman**

The parties shall co-operate with one another as required in relation to Ombudsman investigations.

- Clause 20 – Intellectual property**

The parties grant one another a licence to use each others' intellectual property rights for the purposes of the agreement. The parties shall agree their respective rights in relation to any IPR jointly created through the arrangements.
- Clause 21 – Confidentiality and data protection**

This requires the parties to treat confidential information appropriately and sets out limited circumstances in which it may be disclosed. It provides, in Schedule 7, a Data Sharing Protocol which must be complied with and requires the parties to comply with the Data Protection Act 1998.
- Clause 22 – Freedom of information**

The parties shall co-operate with one another to enable them to fulfil their obligations under the FOIA and shall consult one another before disclosing information relating to the arrangements.
- Clause 23 – Default**

This provides a mechanism to deal with breaches of the agreement which are capable of remedy. The parties shall meet and agree a remedial action plan giving the defaulting party a reasonable period to remedy the breach. If a party is not satisfied that the defaulting party has complied with the plan it may initiate the dispute resolution procedure (clause 24) or terminate the agreement (clause 25).
- Clause 24 – Disputes**

This provides a tiered mechanism for the resolution of disputes. The first stage is a meeting between the parties' representatives who will endeavour to resolve the dispute. If this is not possible within a reasonable period then the matter is escalated to the relevant Cabinet Members and if not resolved by them to the Leaders. In the event that the parties cannot resolve the dispute themselves then they must refer the matter to mediation. Legal proceedings may not be commenced unless a party has attempted to resolve the matter by mediation and it has either terminated or the other party has failed to participate.
- Clause 25 – Termination**

This sets out the circumstances in which the agreement may be terminated. It may be terminated at any time by agreement and upon 12 months notice by any party. Individual post holders are removed from the agreement if they cease to be employed by an employing party.

The agreement may be terminated on 20 working days notice by an innocent party where another party commits a material breach incapable of remedy or one which is capable of remedy but has not been remedied in accordance with Clause 23.

The agreement may also be terminated after a reasonable period where it is no longer possible to fulfil it due to a change in law or guidance from the Secretary of State and the parties are unable to agree a suitable variation to enable the obligations to be fulfilled.

In the event of termination the parties shall use all reasonable endeavours to minimise disruption to the continued delivery of services and staff.

- **Clause 26 – Variations**  
This allows the parties to propose and agree variations to the agreement.
- **Clauses 27—34 – Boilerplate**  
These are standard provisions relating to the service of notices, waiver, severance and transfer etc.