

Transfer of Parish Services to Four Parish Councils

Cabinet

Date: 5th February 2020

Author:	Cabinet Member for Transport and the Environment Head of StreetSmart Service
Wards:	Central; Chiseldon and Lawn; Eastcott; Gorse Hill and Pinehurst; Liden, Eldene, and Park South; Lydiard and Freshbrook, Mannington and Western; Old Town; Penhill and Upper Stratton; Rodbourne Cheney; Shaw; and St Andrews
Parishes Affected:	Central Swindon South, Central Swindon North, West; and St. Andrews

1. Purpose and Reasons

- 1.1 The aim of this report is to recommend that Swindon Borough Council (SBC) begins a process to terminate the Service Level Agreements with four Parish Councils which provide for SBC to deliver certain StreetSmart Services to those Councils and to enter into agreements with those Parish Councils to TUPE transfer the SBC staff to the respective Parish Councils.
- 1.2 The four Parish Councils affected are Central Swindon South Parish; Central Swindon North Parish; West Parish; St. Andrews Parish.
- 1.3 An agreement to terminate the service is necessary to commence the TUPE transfer of staff as highlighted above and to recover all costs for the Communities and Housing Directorate and Swindon Borough Council as a whole
- 1.4 The overall aim of this proposal is to protect transferring staff, to ensure a smooth transfer of services with minimal disruption to service standards to residents / customers and to protect SBC from incurring additional cost

2. Recommendations

Cabinet is recommended to:

- 2.1 Authorise the Cabinet Member for Finance, Education, and Skills and the Cabinet Member for Transport and the Environment, in consultation with the Corporate Director for Communities and Housing to confirm the cost implications of the future pension and redundancy costs set out in the body of the report and then trigger the four-month notice termination clause within the SLAs.
- 2.2 Authorise the Corporate Director of Communities and Housing in consultation with the Cabinet Member for Transport and the Environment along with Cabinet Member for Finance, Skills and Education and the Corporate Director of Finance and Assets:

Further information on the subject of this report can be obtained from Ian James, Head of StreetSmart, 07717 801 000, ljames@swindon.gov.uk.

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- 2.2.1 Subject to 2.1 above, to terminate the service level agreements with Central Swindon South Parish, Central Swindon North Parish, West Parish and St. Andrews Parish Councils and
- 2.2.2 Subject to 2.2.1 above, to commence the TUPE transfer process for all affected SBC staff to the respective Parish Councils in order for the Parish Councils to self-deliver these services.

3. Detail

- 3.1 As part of the devolution processes that accompanied the 2016 Community Governance Review, Parish Councils were given the freedom to invest in certain services whereas the Borough Council would give prioritised funding for statutory personalised social care. This devolution was taken up by those parishes newly created in May 2017.
- 3.2 These services include a combination of:
 - 3.2.1 amenity grass cutting and gang mowing,
 - 3.2.2 shrub bed and hedge cutting & maintenance,
 - 3.2.3 tree maintenance on Parish-owned land, ground level tree maintenance, open spaces,
 - 3.2.4 sports pitches (if relevant),
 - 3.2.5 the inspection and cleaning of along with repairs to play areas,
 - 3.2.6 street cleaning; litter picking, sweeping and leaf clearance,
 - 3.2.7 litter and dog bin emptying along with bin installation,
 - 3.2.8 graffiti removal and fly posting removal,
 - 3.2.9 fly tips;
 - 3.2.10 washing of road signs and bollards,
 - 3.2.11 and dead animal, removal.
- 3.3 Following this devolution process in 2017, the four Parish Councils named above chose to re-employ SBC StreetSmart to carry out these services on their behalf, whilst other Parish Councils chose either to deliver through their own Direct Labour Organisations (DLOs) or to employ a different, private third party contractor.

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- 3.4 Individual Service Level Agreements (SLAs) were drawn up and signed between SBC and the four Parish Councils. Within the SLAs are four month notice termination clauses that can be triggered by either party.
- 3.5 In April 2019, as part of a StreetSmart restructure and in order to improve the service delivery, the Grounds Maintenance and Street Cleansing staff were combined to form a Parish Delivery Service for each of the four named Parish Councils, thereby creating bespoke teams for each of the four Parish Councils, headed by a single, dedicated Supervisor for each Parish. It should be noted that the cost of the Supervisor is not currently recovered from their respective Parishes.
- 3.6 During this period, extensive discussions took place between SBC and all four Parish Councils. These discussions were based around SBC Parish Delivery value for money, cost efficiencies and service quality. The economies of scale were brought about by the combined service delivery for the four Parishes, with North and South Parish making up over 70% of the combined value
- 3.7 During these discussions, the four Parish Councils clarified their position that they were seeking the most cost-effective and operationally efficient delivery model. This could be delivered either through the continuation of the StreetSmart Parish Delivery, or by creating their own DLOs, or by choosing a different third party contractor to deliver the services.
- 3.8 As the four Parish Councils were considering these options throughout 2019 SBC made it clear to all Parish Councils that a reinvestment programme would be necessary at the start of the new financial year (2020-2021) because of the age (end of life) of the current vehicles, plant and equipment (3.5 and 7.5 tonne flatbed vehicles, mechanical street sweepers, ride-on mowers etc.)
- 3.9 As a result of this investment, it would likely to be that the economies of scale could only be met if all four Parish Councils continued to employ SBC and enter into new agreements with a duration of 3 to 5 years as much of the equipment described above is shared across the four Parishes. Otherwise there would be considerable cost increases as a result of the necessity to purchase new vehicles, plant and equipment with the loss of the economies of scale.
- 3.10 The four Parish Councils were requested to give an indication as to their respective decisions by 20th December 2019. Since this date, all Parish Councils have responded: one Parish Council has requested that the Street Cleansing services and staff are transferred directly to them; a second Parish has invited third party contractors (not SBC) to tender for the services. The remaining two Parish Councils have indicated their desire to continue to use SBC to carry out the services but not if this were at an increased cost.
- 3.11 Although there remains an option for a longer term, strategic review of the services and the methodology of future service delivery, the current SBC Parish

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Service Delivery model is no longer financially viable or tenable. However, as set out below and the financial implications section, there are a number of questions about the possible costs of redundancies as well as any pensions costs.

Local Government Pension Costs

3.12 The following section was included within the Cabinet Report entitled Community Governance Review on 19th October 2016, in relation to pension and redundancy costs, which remains relevant for this TUPE transfer proposal. (Cabinet Minute 58, 2016/17 refers).

3.12.1 All Council staff are automatically entitled to be part of the Local Government Pension Scheme if they work for the Council and this national pension scheme is more expensive than many other pension schemes due to its more favourable benefits.

3.12.2 In order to support the workforce to be welcomed by parish councils or other future employers and to balance the financial risks facing smaller organisations in future, it is proposed that the Borough Council underwrites a proportion of the liabilities for any staff transferring to a parish council or sub-contractor of a parish council

3.12.3 If no further service transfers to existing parish councils took place and no new parish councils were established, the status quo position means that the Borough Council is responsible for meeting all pension liabilities due to be paid by the employer for its workforce. This includes future service costs, past service liabilities plus one-off severance costs should staff retire early or be made redundant. Therefore, any transfer of pension costs to a new employer will reduce the Borough Council's current financial exposure. The same applies for redundancy payments.

3.12.4 Recognising this, it is proposed that Cabinet agrees that a cost-sharing arrangement is put in place with organisations employing staff currently providing services that the Borough Council will be pulling back from in future on the following basis.

Pension Transfer Costs

3.12.5 Parish Councils will have an automatic entitlement to be part of the Local Government Pension Fund. Any sub-contractors can apply for admitted body status so that they can employ staff and allow them to remain in the Fund.

3.12.6 For all transferring pension liabilities, the Borough Council will pay upfront any deficit value within the existing pension fund as at the transfer date so that any transferring staff are fully funded on their first day of employment with their new employer

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3.12.7 The parish council, or new employer, will meet the cost of its future employers pension on-costs recommended by the Local Government Pension Fund actuary. By doing this, the fund should remain fully funded and there should be no deficit liabilities for the parish in future.

Future Redundancy Costs

3.12.8 The Borough Council will under-write any severance costs (including pension and redundancy payments) up to the value as at the service commencement date by the parish council. In effect, this would mean that if liabilities arose for an employee with 20 years' service, two years after the parish service commencement date, the Borough Council would meet 18/20ths of the pension and redundancy costs.

3.13 The Cabinet Minutes from 19th October 2016 do not include an explicit resolution regarding the above costs. Therefore, it is recommended Cabinet authorises the delegated authority to the Cabinet Member for Finance, Education and Skills and the Cabinet Member for Transport and the Environment, along with the Corporate Director for Communities and Housing to confirm the cost implications and then trigger the four month notice termination clause within the SLAs. Cabinet is also invited to delegate the authorisation to transfer of all staff within scope of TUPE to the respective Parish Councils on whose behalf they have been working to the Corporate Director of Communities and Housing, in consultation with the Cabinet Member for Transport and the Environment.

4. Alternative Options

- 4.1 Do not transfer the staff and continue as is funded by the Parish Council at considerable additional and unsustainable cost to SBC
- 4.2 Other alternatives e.g. restructuring the current service and entering a partnership with another (third party) organisation or making the service full commercial and traded.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 As the cost to employ the dedicated Parish Supervisors is not currently met by the Parishes, there would be a removal of these costs to SBC of c. £120k once the TUPE transfer of staff has been completed
- 5.2 The redundancy and pension strain cost arrangements arising from the TUPE transfer of staff are set out in the body of the report. These costs would need to be determined as part of the delegated decision should Cabinet agree to proceed.

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- 5.3 There are cost implications for Swindon Borough Council for the purchase of vehicles and plant (a reinvestment programme) which are at the end of their life. The avoidance of these procurement costs form a part of this proposal as outlined above in the body of the report. SBC may make available to the Parishes any of this plant or equipment in order to facilitate a smooth transfer of services.

Legal and Human Rights Implications

- 5.4 The termination of current service agreements together with continuation of the services by a new provider results in the transfer of staff employed in carrying out the services. The TUPE process is a legal requirement to ensure transferring staff have all of their terms and conditions of contract preserved together with the preservation of other rights including pension.
- 5.5 The SLAs can be terminated with four months' written notice, this notice must be sent to the relevant Parish Clerk for each of the Parishes to ensure compliance with the requirements of the SLA.
- 5.6 The underlying deeds of transfer between SBC and each of the 4 Parish Councils will remain in force and the Parish Councils will still be obliged to discharge the relevant services under these existing agreements with SBC.
- 5.7 These same underlying deeds include an indemnity provided for the benefit of SBC, from the Parish Councils, against any loss arising out of the discharge of the relevant services.
- 5.8 Legal advice should be sought with regards to the TUPE process itself.
- 5.9 The TUPE process is legally binding and has clear guidance. Other legal and human rights implications have been taken into account in preparing this report. It is considered that the recommendations are compatible with Convention Rights.

Climate Change Impact

- 5.10 The proposals would not bring a change in service delivery, only service deliverer, and therefore Officers believe that there is no expected effect on the Council's carbon footprint

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.11 There are 48 full time employees within the Parish Delivery Service all of whom have a right to transfer under TUPE. Although employees affected have a right to transfer they are not obliged to do so and may object to being employed by the new employer. Where an employee objects to becoming employed by the Parish Council, the transfer of the services will operate to terminate her or his contract of

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employment with the Council. It is anticipated that all 48 employees would transfer to their respective Parish Councils.

Diversity Impact Assessment

- 5.12 A Diversity Impact Assessment (DIA) has been completed and there are no diversity impact concerns. A copy is available from the report author

Risk Management

- 5.13 There are no risk management implications. The above mentioned 2016 Community Governance Review Cabinet Report outlines the requirement for Parish Councils, under the Deed Agreement to deliver services to quality standards they deem desirable, with a minimum level of service delivery provided to at least the standard provided by the Borough Council prior to the 1st April 2017 as outlined in the Deed Agreements
- 5.14 Street Cleaning, as a statutory function, should be carried out in accordance with the Environmental Protection Act guidance and the Code of Practice on Litter and Refuse. This is also written within the Deed Agreements

6. Consultees

- 6.1 The Corporate Director of Finance and Assets (s151 officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all reports.
- 6.1.1 The Corporate Director of Finance and Assets (s151 Officer) cleared this report for publication on: 28th January 2020
- 6.1.2 The Chief Legal Officer (Monitoring Officer) cleared this report for publication on: 28th January 2020

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 None

9. Key Decision/Decision in Cabinet Work Programme and Forward Plan

- 9.1 This is a Key Decision and is included in the Cabinet Work Programme and Forward Plan for February 2020.