

Proposed Extension of Shared Services Arrangement for Trading Standards

Report of the Head of Economy, Enterprise and Skills

Please note that the following recommendations are subject to consideration and determination by the Cabinet (and confirmation under the provisions of the Council's Constitution) before taking effect.

Recommendations:

- (a) that approval be given to the proposed renewal of the current shared Trading Standards Service arrangement with Somerset County Council and Torbay Council for a ten-year period starting from 01 April 2021;
- (b) that approval be given to the proposed extension of the current shared service arrangement with Somerset County Council and Torbay Council for delivery of the Trading Standards Service to also include Plymouth City Council;
- (c) that accordingly the Council approve the discharge of Plymouth City Council's Trading Standards functions as identified in paragraph 4 and Appendix 1 of this Report in accordance with s101 of the Local Government Act 1972 to be delegated to Devon County Council, recognising and accepting also (i) responsibility for the specific delegations made to Devon County Council to support the transfer of the Relevant Functions, and (ii) the need to extend the membership of the Trading Standards Joint Service Review Panel to include representatives of Plymouth City Council;
- (d) that the Head of Economy, Enterprise & Skills be authorised to finalise and agree / amend the share service agreements with Somerset County Council, Plymouth City Council, and Torbay Council, and any other appropriate legal and financial agreements with Somerset County Council, Plymouth City Council, and Torbay Council in order for the proposed services to be provided by Devon County Council.

1. Summary

This report summarises a proposal for a renewal of the Legal Agreement to the joint Devon County Council, Somerset County Council & Torbay Council Shared Trading Standards Service for 10 years from 01 April 2021. It also proposes an extension of the Joint Service to include Plymouth City Council. The Full Business Case can be made available on request.

The report asks for approval in principle of the renewal and extension of the Joint Service Legal Agreement, subject to oversight of the final Legal Agreement by the Joint Service Review Panel.

The previous Somerset agreement was approved pursuant to Minute 200 of the County Council, 24 April 2013 and the Torbay agreement pursuant to County Council Minute 98, 27 April 2017.

2. Background

On 1 May 2013, Devon County Council formally entered into a shared service agreement with Somerset County Council for the provision of a joint Trading Standards Service. Devon County Council agreed to host the Joint Service and the ex-Somerset staff transferred across under TUPE arrangements. On 1 May 2017, the shared service agreement was extended to include Torbay Council and the ex-Torbay staff also transferred across under TUPE arrangements

The Joint Service has widely been held to be a success with regular reports to the Joint Service Review Panel (created as a cross-council governance group) and attendance at a number of Scrutiny Committees for both Councils.

The four authorities involved in the proposals presented in this report, like many others nationally, face similar challenges in ensuring that their regulatory services continue to meet customer needs at a time of significant financial pressure, regulatory change and increasing demand and expectations. One of the objectives of the Joint Service was to develop the capability to respond to possible changes in role, scope or budget by expanding the scope of the service either geographically and/or by broadening the range of functions within its remit.

During the financial year 2019/2020, discussions were initiated between the Devon, Somerset, Torbay and Plymouth councils and an initial report was submitted to relevant Members of each Authority. In Devon, an Outline Business Case was presented to Councillor Rufus Gilbert, Cabinet Member for Community and Environmental Services. A Heads of Terms was agreed with the Joint Service Review Panel (JSRP) and signed by the Authorised Representative (senior officer representative on JSRP) in each Council.

It was agreed that the project should proceed to the completion of a Full Business Case in respect of the proposal and project governance has been through the Joint Service Review Panel.

3. The Current Arrangements

The current Joint Service is predominantly funded through partner contributions established initially by a comparison of the individual budget ratios per capita, per business and per consumer complaint. Future contributions are then set annually against these ratios and adjusted to include inflationary pay increases. Provision is made for the sharing of any redundancy or exceptional costs. Any underspend or excess income is paid back to partner authorities according to the same ratio weighting.

A comparison of the type of activities covered by Devon, Somerset & Torbay Trading Standards Service and the Plymouth Trading Standards Team has shown that there is a significant alignment between the priorities of the two services. The main exception to this is Animal Health and Agriculture work which is a key activity overall for Devon, Somerset & Torbay Trading Standards Service (DST TSS) but understandably requires far less resource in Plymouth. Other differences of note are that Plymouth City Council would retain responsibilities for petroleum and explosives

licensing, safety of sportsgrounds and simple food standards work (more complex food standards issues would be referred to the new joint service where the expertise in this area of work would sit). These latter differences are due to the fact that in Plymouth City Council the activities are currently carried out by other teams such as Environmental Health.

After making an adjustment for Animal Health, Agriculture and the other activities retained by Plymouth City Council then the budgets and staffing levels are broadly in line with the customer (population and business) base of the two services. In respect of ICT, both services currently use the same main operational database and reporting system. Consequently, the merging of data and standardisation of system usage will be easier in the future.

In reviewing the proposed shared service, a prime consideration has been the Government's promotion of collaborative approaches. As funding streams to local authorities reduce, it is essential to identify more efficient and cost-effective ways of providing services. Delivery of certain trading standards functions has always benefited from working on a larger scale; providing the resource base and the flexibility to deal with complex investigations or emergency situations, allowing for the range of specialist expertise needed to cover the broad range of functions within its remit and having the necessary "clout" to tackle major organisations.

Business Support is a key function for both current Services. However, the resources required to deliver this are offset to some degree by the generation of income through the commercialisation of certain activities and the opportunities to apply for central government grant funding providing the service has the requisite specialist expertise. In DST TSS a significant amount of income is generated to support its base budget, in the financial year 2019/2020 this was 21% (as calculated for Association of Chief Trading Standards Officers Impacts & Outcomes report 2019/20). For Plymouth Trading Standards Service (PTSS) the equivalent figure was 9%. It is believed that the proposed combination of resources will allow further development of these activities, particularly in the more densely business populated urban area of Plymouth. The alignment of business support activities across the Heart of the South West, Local Enterprise Area is also felt to be a significant advantage not only making delivery easier and more cost effective but also improving consistency and accessibility of support and advice for businesses.

4. The Proposed Arrangements

It is proposed that the joint Trading Standards Service covering Devon, Somerset and Torbay be extended to include Plymouth. As Devon County Council is the current employing organisation, it is proposed that Plymouth staff, 8.29 FTEs (9 individuals) TUPE transfer to Devon County Council, on 01 April 2021

It is also proposed that the current contract between Devon, Somerset and Torbay be renewed for a further 10-year period, to take effect from 01 April 2021.

The functions to be transferred across from each partner authority to Devon County Council are listed in Appendix 1 to this report. They vary slightly due to the different existing structures currently in place for delivery of regulatory services within the two Unitary Councils.

The funding arrangements would remain similar to those currently in place but adjusted to include PTSS. The Joint Service Review Panel has given consideration to the length of time over which future budgets for the Joint Service should be set

and has agreed that 3 years was an appropriate length of time. This balances the need for a degree of operational stability whilst ensuring that the Service can still effectively respond to uncertain funding pressures in the future. This funding set-up is not unique and longer-term budgets have been set for other “arms-length” local authority delivery models.

The Joint Service will maintain its current offices in Devon, Somerset and Torbay and will also retain a presence in Plymouth; in order to be close to its customers, to ensure it can respond quickly to any urgent matters, to minimise travel costs and to minimise disruption to staff. It is not anticipated that any staff will be required to relocate as part of the merger.

The Plymouth staff would move into the existing Devon, Somerset and Torbay team structure: no redundancies are proposed as a direct result of this merger.

Although the extension of the Joint Service is not predicated on a reduction in costs, the local authorities involved will all have or be setting medium term financial plans (MTFP) in place. It is anticipated that the Joint Service approach could more efficiently deliver any savings required whilst still maintaining an acceptable level of service. It is extremely unlikely that any significant level of saving could be achieved by the services operating individually, without impacting significantly on front-line service delivery and the ability to continue to meet statutory requirements and customer needs.

Non-financial benefits from a shared service will include:

- greater resilience in the combined service in respect of service delivery, professional expertise and knowledge and the ability to respond to major incidents
- “greater clout” in tackling major investigations
- improved intelligence sharing
- economies of scale from shared expertise and an opportunity to develop greater specialisms; to more effectively service the communities of Devon, Somerset, Torbay and Plymouth whilst still maintaining local responsiveness, choice and identity
- maintaining achievement of key outcomes in the face of any reduced budget over the next three years
- maintaining the ability of all four councils to fulfil statutory obligations
- an easily accessible and consistent approach for those businesses that cover the Heart of the South West Local Enterprise Partnership area
- greater efficiency in training and maintenance of staff competencies.

It is also envisaged that this might be the starting point for further opportunities to provide managed services or commissioned activities for other authorities in the south west region.

The Joint Service Review Panel, in its advisory capacity to Devon, Somerset and Torbay Councils, has considered the Full Business Case and recommended that approval be given to the proposed extension of the current shared service arrangement for Trading Standards.

As in 2013 and 2017 the approval of the full Council will also be required to transfer these trading standard functions to be discharged by Devon County Council.

Subject to Cabinet's approval of the Recommendations in this Report, full Council approval to the transfer of these trading standards functions will be sought on 01 October 2020.

5. Consultations/Representations

Staff members have been kept informed throughout. Formal consultation with Unions and relevant staff members of each Authority has been undertaken.

Key external stakeholders have also been consulted.

6. Financial Considerations

The current Shared Service has a gross budget of £3.7m with 72.4 full time equivalent staff. The Plymouth service will add in the region of £0.4m and 8.29 staff to the arrangement.

Some financial savings are anticipated in the first year which will cover the costs of the integration of the ICT data systems, more closely align working practices and developing future income streams. There is then the potential to deliver savings in future years, mostly relating to increased income recovery over the remainder of the contract. The use of the savings will be balanced with the need to invest in regulatory change against the savings requirements for each partner authority. Further details are available in the Full Business Case.

The terms of savings and extraordinary cost sharing is set out in the contract and on an agreed % basis similar to the current Devon, Somerset and Torbay arrangement.

No VAT risks have been identified.

The staff that TUPE across will continue to participate in the Devon LGPS scheme albeit as employees of DCC rather than Plymouth. There will be no impact on the pension funding arrangements for either authority.

No assets will transfer.

7. Environmental Impact Considerations (including Climate Change)

No significant impact identified.

8. Equality Considerations

Where relevant to the decision, the Equality Act 2010 Public Sector Equality Duty requires decision makers to give due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

Taking account of age, disability, race/ethnicity (includes Gypsies and Travellers), gender and gender identity, religion and belief, sexual orientation, pregnant women/

new and breastfeeding mothers, marriage/civil partnership status in coming to a decision, a decision maker may also consider other relevant factors such as caring responsibilities, rural isolation or socio-economic disadvantage.

This may be achieved, for example, through completing a full Equality Impact Needs Assessment / Impact Assessment or other form of options/project management appraisal that achieves the same objective.

In progressing this particular proposal an Impact Assessment has been undertaken as part of the full business case, as was the case with the Devon and Somerset joint service arrangements. This has been circulated separately to Cabinet Members and also is available on the Council's website at <https://www.devon.gov.uk/impact/tradingstandards-sharedservices-extension/>, which Members will need to consider for the purposes of this item.

No significant equality impact has been identified.

9. Legal Considerations

The lawful implications of the proposed course of action have been considered and taken into account in the preparation of this report. Section 101 of the Local Government Act 1972 provides that two or more local authorities may discharge any of their functions jointly, where arrangements are in force for them to do so.

10. Risk Management Considerations

A risk assessment of the proposal has been undertaken and is set out in Section 6 of the Full Business Case. All necessary actions have been taken to safeguard the Council's position. Such actions will minimise the potential adverse impact in these areas and the overall risk is not felt to be significant.

11. Public Health Impact

Due to a greater resource base and opportunities to specialise and develop expertise, a Joint Service will be more readily able to contribute to the Public Health Agenda.

12. Options/Alternatives

There are specific legal and logistical difficulties in the outsourcing of local authority regulatory services to the private sector. These along with the option to continue with separate services were considered at the Outline Business Case stage. In the case of the latter option, this was rejected on the basis that the net benefits of a Joint Service significantly outweighed those of separate services. The Full Business Case confirms this.

13. Reason for Recommendation/Conclusion

This report recommends extending the full shared service arrangement with Somerset and Torbay Councils for a further 10 years from the 01 April 2021. It also recommends extending the arrangement to include Plymouth City Council from the same date and for the same period of time. Once the immediate period of forming the new Service is bridged, it is anticipated that there will be significant benefits,

both financial and non-financial, to all four local authorities, to officers, other direct stakeholders and the wider community.

Both serving Heads of Trading Standards (for Devon, Somerset & Torbay and for Plymouth) are of the opinion that the current Services are relatively well matched in terms of pro-rata resources and believe that the financial and non-financial benefits of extending overall capacity and of mirroring the geographical footprint of the Heart of the South West Local Enterprise Partnership significantly outweigh any dis-benefits and set-up costs.

In addition, the proposed approach is wholly consistent with Government thinking. It places the Joint Service in a strong strategic position within the South West region as a centre of excellence for business support. It has the potential to realise further savings and generate greater income and represents a pragmatic approach to cost efficiencies and maximising scarce staff resources.

Keri Denton
Head of Economy, Enterprise and Skills

Electoral Divisions: All

Cabinet Member for Economy and Skills: Councillor Rufus Gilbert

Chief Officer for Communities, Public Health, Environment and Prosperity: Dr Virginia Pearson

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Reference
Trading Standards Joint Service Full Business Case	September 2020	PT
Equality Impact Assessment	September 2020	

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Appendix 1 – Legislation enforced by Trading Standards and to be discharged by DCC unless otherwise stated

* denotes functions to be retained by PCC

**denotes functions to be retained by PCC and TC

N.B. Enforcement of Food Safety legislation will be shared in line with the current Food Law Code of Practice (England) (see <https://www.food.gov.uk/about-us/food-and-feed-codes-of-practice>) with the Trading Standards Service acting as if a “County Council Competent Authority” in a two-tier local Authority area, with the exception that in Plymouth City Councils’ area the conduct of routine risk based inspections under Food Safety law will be retained by PCC. This does not include targeted sampling programmes.

Accommodation Agencies Act 1953

Administration of Justice Acts 1970 and 1985

Agriculture Act 1970

Agriculture (Misc. Provisions) Act 1968

Animal Health Acts 1981 and 2002

Animal Health & Welfare Act 1984

Animal Welfare Act 2006

Animals Act 1971

Anti-Social Behaviour Act 2003

Architects Act 1997

Business Protection from Misleading Marketing Regulations 2008

Cancer Act 1939

Charities Acts 1992 & 2006

Children and Young Persons Act 1933

Children & Young Persons (Protection from Tobacco) Act 1991

Clean Air Act 1993

Companies Acts 1985 and 2006

Companies Directors Disqualification Act 1986

Companies (Trading Disclosures) Regulations 2008

Consumer Contracts (Information, Cancellation & Additional Charges) Regulations 2013

Consumer Credit Acts 1974 and 2006

Consumer Protection Act 1987

Consumer Protection from Unfair Trading Regulations 2008

Consumer Rights Act 2015

Consumers, Estate Agents & Redress Act 2007

Control of Pollution Act 1974

Copyright, Designs and Patents Act 1988

Courts and Legal Services Act 1990

Crime & Disorder Act 1988

Criminal Attempts Act 1981

Criminal Justice Act 1988

Criminal Justice & Police Act 2001

Criminal Law Act 1977

Crossbows Act 1987

Customs and Excise Management Act 1979

Development of Tourism Act 1969

Dogs Act 1906

Dogs (Amendment) Act 1928

Education Reform Act 1988
Employment Agencies Act 1973
Energy Act 1976
Energy Conservation Acts 1981 and 1996
Energy Efficiency (Private rented Property) (England and Wales) Regulations 2015
Energy Performance of Buildings (England and Wales) Regulations 2012
Enterprise Act 2002
Environmental Protection Act 1990
Estate Agents Act 1979
**Explosives Acts 1875 and 1923
Explosives (Age of Purchase) Act 1976
Fair Trading Act 1973
Farm and Garden Chemicals Act 1967
**Fire & Safety and Places of Sport Act 1987
**Fireworks Acts 1951, 1964 and 2003
Food & Environment Protection Act 1985
Food Safety Act 1990
Forgery & Counterfeiting Act 1981
Fraud Act 2006
Gambling Act 2005
Hallmarking Act 1973
Health and Safety at Work Etc., Act 1974
Housing Act 2004
Health Protection (Coronavirus, Restrictions) (No2) (England) Regulations 2020 and
the Health Protection (Coronavirus, Restrictions) (No3) (England) Regulations 2020
Housing Act 2004
Housing and Planning Act 2016
Insolvency Act 1986
Intellectual Property Act 2014
Intoxicating Substances (Supply) Act 1985
Knives Act 1997
Legal Services Act 2007
Licensing Act 2003
Magistrates Courts Act 1980
Malicious Communications Act 1988
Medicines Act 1968
Motor Cycle Noise Act 1987
Motor Vehicles (Safety Equipment for Children) Act 1991
Offshore Safety Act 1992
Olympic Symbol etc., (Protection) Act 1995
Package Travel, Package Holidays and Package Tours Regulations 1992
Pesticides (Fees & Enforcement) Act 1989
*Petroleum (Consolidation) Regulations 2014
Poisons Act 1972
Prices Acts 1974
Proceeds of Crime Act 2002
Protection from Harassment Act 1997
Protection of Animals Act 1911
Psychoactive Substances Act 2016
*Public Health Act 1961 (S73)
Registered Designs Act 1949
Regulatory Enforcement & Sanctions Act 2008
Road Traffic Acts 1988 and 1991
Road Traffic (Consequential Provisions) Act 1988

Road Traffic (Foreign Vehicles) Act 1972
Road Traffic Offenders Act 1988
**Safety of Sports Ground Act 1975
Scotch Whisky Act 1988
Solicitors Act 1974
Telecommunications Act 1984
Tenant Fees Act 2019
Theft Acts 1968 & 1978
Theft (Amendment) Act 1996
Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010
Tobacco Advertising & Promotion Act 2002
Tobacco Products Duty Act 1979
Trade Descriptions Act 1968
Trade Marks Act 1994
Trading Representations (Disabled Persons) Acts 1958 & 1972
Trading Schemes Act 1996
Unsolicited Goods and Services Act 1971
Unsolicited Goods and Services (Amendment) Act 1975
Video Recordings Acts 1984 & 2010
Weights and Measures etc., Act 1976
Weights and Measures Act 1985
Welfare of Animals at Slaughter Act 1991

And all relevant legislation made under the European Communities Act 1972 and Reenabled by the European Union (Withdrawal Agreement) Act 2020 including (inter alia):

Animal By-Products (Enforcement) (England) Regulations 2013
Animal Feed (Composition, Marketing and Use) (England) Regulations 2015
Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015
Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013
Condensed Milk and Dried Milk (England) Regulations 2015
Contaminants in Food (England) Regulations 2013
Electromagnetic Compatibility Regulations 2006
Fish Labelling Regulations 2013
Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (England) Regulations 2009
Food for Specific Groups (Food for Special Medical Purposes for Infants, Infant Formula and Follow-on Formula) (Compositional Requirements) (Amendment etc.) (England) Regulations 2020
Food Information Regulations 2014
Food Safety and Hygiene (England) Regulations 2013
Fruit Juices and Fruit Nectars Regulations 2013
Materials and Articles in Contact with Food (England) regulations 2012
Organic Products Regulations 2009
Personal Protective Equipment (Enforcement) Regulations 2018
Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011
Pressure Equipment Regulations 1999
Pyrotechnic Articles (Safety) Regulations 2015
Radio Equipment and Telecommunications Terminal Equipment Regulations 2000
Recreational Craft Regulations 2004
Simple Pressure Vessels (Safety) Regulations 1991

Spirit Drinks Regulations 2008

Supply of Machinery (Safety) Regulations 2008

Transmissible Spongiform Encephalopathies (England) Regulations 2018

And any legislation made amending or re-enacting or extending the same or any other legislation relating to Trading Standards and/or weights and measures functions of local authorities