

CHESHIRE EAST COUNCIL

REPORT TO: CABINET

Date of Meeting: 17 September 2012

Report of: Strategic Director – Places and Organisational Capacity

Subject/Title: PATROL Nomination of CE to be Host Authority

Portfolio Holder: Cllr Jamie Macrae/ Cllr. Rachel Bailey

1.0 Report Summary

- 1.1 In February 2012, Cheshire East Council gave agreement in principle to undertake the role of Host Authority to the PATROL Adjudication Service Joint Committee (this was a result of the Joint Committees selecting Cheshire East as their preferred location) and the Bus Lane Adjudication Service Joint Committee. Cheshire East Council is a member of each joint committee.
- 1.2 This reports sets out work undertaken since February to scope out the role of Host Authority and proposals and timetable for facilitating the transfer from Manchester City Council to Cheshire East Council

2.0 Decision Requested

- 2.1 To agree to undertake the role of Host Authority to the PATROL Adjudication Joint Committee and Bus Lane Adjudication Service Joint Committee subject to all legal and financial due diligence being satisfactorily completed in accordance with the proposed timetable. This decision will be communicated to the PATROL Adjudication Joint Committee at their next meeting.
- 2.2 To delegate authority to develop and implement a detailed activity schedule that will enable the commencement date for Cheshire East Council becoming the Host Authority to be 1 January 2013.
- 2.3 To note that by becoming the Host Authority, this will trigger the automatic application of the TUPE Regulations which will affect a transfer of 24 employees (Chief Adjudicator and 23 support staff) from Manchester City Council to Cheshire East Council.

3.0 Reasons for Recommendations

- 3.1 Manchester City Council is the current Lead Authority and has indicated their wish to relinquish this role at the earliest opportunity.

- 3.2 Suitable offices have been identified for the Traffic Penalty Tribunal headquarters in Wilmslow – benefiting from excellent public transport links, thus bringing another national public sector organisation to that locality.
- 3.3 Whilst it is anticipated that existing employees will transfer to Wilmslow, PATROLS remit is increasing as are the number of appeals has been increasing and it is anticipated that there will be further recruitment locally.
- 3.4 Cheshire East Council has considerable experience of supporting organisational change and understanding of supporting arms length bodies
- 3.5 The Joint Committee will reimburse Cheshire East for all services provided to the Joint Committee, underpinned by a service level agreement which will be subject to annual review over the five year period of tenure
- 3.6 The Joint Committee gains income via its 270 member authorities, Cheshire East would not be taking on additional expenditure and any liabilities would be reviewed in conjunction with the Joint Committee's reserves policy.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications including – Carbon Reduction - Health

- 6.1 The Joint Committee is mindful of the Council's commitment towards reducing carbon emissions and creating sustainable services. The Joint Committee share the same principles and will draw upon the expertise of Cheshire East Council to develop suitable and robust employee travel plans and pursue other carbon reduction initiatives in accordance with the Council's carbon reduction strategy.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

Budgets and Financing

- 7.1 The expenditure budget for 2012/13 in respect of PATROL is £3.1m, of which some £2m relates to pay (adjudicators and staff); £1m to non pay spend; and £100k to contingency/ contribution to reserves. £500k of this spend relates to the Bus Lane Adjudication Joint Committee account.
- 7.2 Expenditure is financed by contributions from local authorities that are part of the scheme. To ensure good cash flow, authorities are invoiced quarterly in advance, based on estimated numbers of penalty charge notices, with adjustments for actual numbers made retrospectively. The Committee can adjust the rate of contribution mid-year, if required, to ensure cost recovery.

Reserves

- 7.3 PATROL is principally reliant on a single source of income (contributions from authorities) and aims to be self-financing. Since its inception, levels of reserves have been built up, to ensure continuity in the event of unexpected variances in operating expenditure/ income; and to cover risks/ investment costs in relation to property and ICT.
- 7.4 The Reserves Policy is reviewed on an on-going basis and is presented to the Joint Committee on an annual basis for approval. The Committee's policy is for a reserve of £1.5m; the current level is £1.8m and there is a commitment to review the level, in the light of transfer of host authority.

Support Services

- 7.5 The range of support services required by the operation, both initially and on an ongoing basis, is summarised in paragraph 10.12 of the report. The Joint Committees anticipate discussing with Cheshire East which services can be provided in-house by the Council and which might be purchased from alternative providers, where appropriate.
- 7.6 The Council will need to consider the scope of services requested and our capacity to provide support, in respect of the individual Service areas. In order to give an indication of scale however, PATROL has been charged £40k per annum for the support services provided by its current host. Cheshire East will be reimbursed for all services it provides on behalf of the Joint Committee and service level agreements will be drawn up and reviewed each year.

- 7.7 It should be noted that PATROL have their own Finance staff, accounting system and financial regulations and manage their own budget setting, monitoring, reporting and day-to-day financial operations (except for payroll).

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Pending detailed discussions with the Joint Committee and due diligence being completed only general comments can be provided in relation to the legal implications
- 8.2 TUPE will apply in relation to the existing employees of the Joint Committee and Service. In addition there may be Manchester Council staff who also assert the right to transfer under TUPE.
- 8.3 The current relationship between the host Authority and the Joint Committee is somewhat unusual as despite the host authority being the employer the Committee/Service appears to act with autonomy from the host which if it continues if Cheshire East becomes the host may well expose the Authority to additional risks/liabilities which it would not ordinarily be exposed to as a result of a TUPE transfer.
- 8.4 The Joint Committee is not a legal entity and hence the requirement that the host authority enter into contracts on behalf of the Committee. A procurement exercise has been undertaken for an ICT case management system and the Council has been asked to enter the contract on behalf of the Committee. The terms of the contract will require review and the requisite indemnities sought from the Joint Committee in relation to potential liabilities. The Council has been asked to enter the contract now, prior to the Council becoming the host authority and if Members approve such action governance and a Service Level Agreement will need to be concluded prior to contract execution.

9.0 Risk Management

- 9.1 The review of governance documentation will enable dialogue between the Joint Committee and Cheshire East to style these according to current needs
- 9.2 The Joint Committee has agreed to review its reserves policy to provide assurance to Cheshire East in relation to contracts/leases that it enters into on behalf of the Joint Committee and which are fully funded by the Joint Committee.
- 9.3 The Joint Committee covers its expenses between the current membership of 270 Member authorities.

- 9.4 Cheshire East has considerable experience of supporting TUPE transfer.
- 9.5 The Council has recently introduced a requirement for all major projects and programmes to be reviewed by a new corporate quality assurance group called the Executive Monitoring Board (EMB) before they can proceed. Major projects and programmes are defined where there is a total cost in excess of £250k and/or where there is significant risk. The project arising from this report will therefore need to be reviewed by the EMB prior to any approval to proceed being given.

10.0 Background and Options

- 10.1 The PATROL Adjudication Joint Committee (PATROLAJC) has been established to enable the current membership of 270 Councils in England (outside London) and Wales undertaking civil parking enforcement to exercise their functions under Section 81 of the Traffic Management Act 2004 and Regulations 17 and 18 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007. These functions are exercised jointly with other councils in accordance with the requirements of Regulation 16 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007.
- 10.2 The functions of the PATROLAJC on behalf of its constituent councils are appointing independent adjudicators to the Traffic Penalty Tribunal (subject to the consent of the Lord Chancellor), providing these adjudicators with administrative staff and accommodation and providing hearing venues. Its remit in relation to the Tribunal is limited to these matters.
- 10.3 Civil bus lane enforcement is governed by separate legislation and this brings a requirement for a separate Joint Committee, the Bus Lane Adjudication Service Joint Committee. Adjudication services are provided to the Joint Committee on an integrated basis although the BLASJC has separate governance documentation and accounts.
- 10.4 The Traffic Penalty Tribunal is an independent tribunal where impartial lawyers consider appeals by motorists and vehicle owners whose vehicles have been issued with penalty charge notices arising from civil enforcement of parking (England outside London and Wales) and bus lanes. The associated regulations have been devolved to the Welsh Government.
- 10.5 The Traffic Penalty Tribunal comprises 23 Adjudicators (21 of whom work remotely across England and Wales on a fee paid basis). Two headquarters based Adjudicators (including the Chief Adjudicator) are salaried. The Adjudicators are supported by 23 support posts, 18 of

which are currently filled by contracted staff and the remaining 5 are currently filled with temporary staff. Once the transfer is complete, the intention is to fill these posts with contracted staff. The tribunal conducts both telephone, video conferencing and personal hearings around England and Wales. For the latter 22 casual hearing centre supervisors are employed on a fee paid basis to support hearings in local meeting rooms hired on an ad hoc basis.

10.6 The Tribunal follows the framework of standards for tribunals, in that it needs to be:

- Independent
- Providing open, fair and impartial hearings
- Accessible
- Offer cost effective procedures
- Be properly resourced and organised.

10.7 Because the Joint Committees have no corporate status and cannot therefore contract, they need to appoint of the constituent councils to enable goods and services to be provided on behalf of the Joint Committees.

10.8 The primary objectives of the Joint Committees are

- a fair adjudication service for appellants including visible independence of the adjudicators from the authorities in whose areas they are working
- Consistency in access to adjudication
- A cost effective and equitable adjudication service for all parking and bus lane authorities
- Flexibility to deal with a wide range of local authorities

10.9 The shared aims of the Adjudicators and the Joint Committees are the commitment to a fair adjudication service for appellants including visible independent of adjudicators from the authorities in whose areas they are working. The Adjudicators and Joint Committees will be entering into a Memorandum of Understanding which clarifies the relationship between the Adjudicators and the Joint Committees and the shared requirements to preserve judicial independence. The Memorandum of Understanding will inform the Service Level Agreement with the Host Authority.

10.10 The relationship with the Host Authority will therefore be sufficiently arms length and will be underpinned by a Memorandum of Understanding. The expectation of the Joint Committee is that the Host Authority will work with the Joint Committee and the Traffic Penalty Tribunal in an enabling way to facilitate goods and services, even where this may require working outside the council's standard policies.

- 10.11 The Joint Committees will reimburse the Host Authority all costs and charges associated with taking on the role of Host Authority.
- 10.12 The services required from Cheshire East fall into a number of stages:

Transfer

- Signing the lease for the premises in Wilmslow
- TUPE transfer of staff, transfer of pension arrangements and HR advice to support this process.
- Legal services liaison regarding the continuity of the PATROL and BLASJC Agreement and Memorandums of Participation with Member Authorities.
- Transfer of contracts as appropriate and entering into new contracts where required.
- Scoping of options for new business opportunities

Early Stages

- Preparation of Service Level Agreement to cover routine and project based services provided by the Host Authority – January 2013 Joint Committee
- Review of Governance Documentation - June 2013 Joint Committee meeting

Ongoing

- Advice, where required, (either from Cheshire East as part of the SLA) or bought in funded by the Joint Committee in respect of: HR, Legal, FOI, Equality, Health and Safety, ICT, Finance, Procurement to support the current arrangements and ensure that the Joint Committees and the Traffic Penalty Tribunal are able to take advantage of new opportunities.
- Minute taking for Joint Committee meetings three times per year.
- Providing engrossed Memorandums of Participation to new councils joining the Joint Committee (tbc)
- Internal Audit Services (tbc)
- Staff payroll
- Liaison officer

Annual

- Approval of annual accounts by Treasurer

Timescale

A detailed programme mapping out the activities to be delivered by CEC/PATROL is currently being prepared. The two organisations will be working to ensure that the independent adjudication service is up and running from its new premises by 31st March 2013. Critical activities in the run up to this deadline include HR transfer of staff under TUPE, provision of ICT infrastructure and the negotiation and agreement of the property lease for office accommodation

11.0 Access to Information

- 11.1 The background papers relating to this report can be inspected by contacting the report writer.

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