

Executive

18 August 2022

Report of the Director of Transport, Environment and Planning
Portfolio of the Deputy Leader and Executive Member Transport

Emergency Planning Shared Service Collaboration Agreement between City of York Council and North Yorkshire County Council

Summary

1. In order to fulfil the Council's Emergency Planning duties, a shared service approach between City of York Council (the "**Council**") Emergency Planning and the North Yorkshire County Council ("**NYCC**") Resilience and Emergencies Team has been in operation since August 2021.
2. This was established during COVID-19 pandemic and in response to several vacancies in the Council's Emergency Planning Team. The pilot scheme being approved for an eighteen-month pilot period lasting until March 2023.
3. Under this pilot, the Council retains the strategic management role of Emergency Planning and is represented at the Local Resilience Forum. The coordination of the response in an emergency is provided by NYCC.
4. The local delivery of assets and resources at Operational, Tactical and Strategic Command will still be provided by York Officers
5. The pilot was established to test such arrangements before considering a permanent service delivery model. A decision is now required to determine the future provision of the Emergency Planning Service to ensure the ongoing fulfilment of the Council's statutory responsibilities under the Civil Contingencies Act 2004 ("**CCA**"), National Resilience Standards Review 2021 and Post Implementation Review 2022.

Recommendations

6. Executive are asked to approve:

Continuing the shared service collaboration between the Council and NYCC.

Reason: *Provides the most cost-effective use of resources for a resilient Emergency Planning Service.*

Background

7. In 2021 the Council's Emergency Planning Service consisted of a full time "Emergency Planning Manager", an "Emergency Planning Officer" and an "Emergency Planning Assistant". This last post was employed on a temporary contract developed in response to the 2015 flooding. The role was to focus on community resilience.
8. The officer and the assistant resigned in close succession and took up employment elsewhere leaving a shortage for York Civil Contingency planning and response during the peak of the pandemic.
9. Alternative options were considered, and a decision was made (see **Annex A**) to enter a Pilot Scheme for a Shared Service with NYCC.
10. The timing of this agreement was aligned to coincide with the key dates in the Local Government Review process happening in North Yorkshire.
11. The Shared Service Agreement commenced on 17th August 2021, with a Pilot Scheme of 18-months taking the agreement to 31st March 2023, based on the following agreed terms:
 - the Shared Service Agreement could either be terminated early in accordance with its terms and conditions;
 - otherwise, either Authority had the right to terminate early either:
 - i. by giving the other Authority no less than 6-months' notice by no later than on 30th September 2022 during the Pilot Phase; or

- ii. then by giving the other Authority no less than 12-months' notice at any time after 31st March 2023 after the Pilot Phase.

A formal Shared Service Agreement was signed between the two Authorities on 22nd December 2021 (see **Appendix B**) requiring notice of termination of contract to be 6-months' during the pilot phase, a decision is therefore required on the future of the service provision no later than 30th September 2022.

12. The Shared Service currently under negotiation between the two Authorities splits the roles. The Council retains the strategic oversight role of Emergency Planning with the Emergency Planning Manager remaining a Council Employee acting as client for the service. NYCC will provide the Out of Hours Duty Officer, Incident Response and Recovery and Business Continuity planning.
13. A decision therefore now needs to be made about the Shared Service delivery model post 2023.

Options Considered

- a. continue the arrangement for a Shared Service between the Authorities as a rolling 12-month agreement as currently arranged;
- b. to move the strategic role to the Shared Service in addition to the current arrangements;
- c. terminate the arrangement allowing for a required 6-month termination process and revert to the Council's substantive emergency planning structure by 31st March 2023;
- d. terminate the arrangement allowing for a required 6-month termination process and develop a new more resilient structure by 31st March 2023.

Analysis

14. Option (a) continues the arrangement for a Shared Service between the Authorities as a rolling 12-month agreement as currently arranged.
15. The original concern with a Shared Service model was the initial lack of local knowledge and experience with the Council's procedures from NYCC officers, but the Pilot has resolved this and further testing and joint team working will improve this.
16. There are some issues with a joint service that need to be overcome, such as improved IT and physical access to each other's systems and building as part of a Shared Service.
17. The extra resilience provided by the Shared Service is due to the scale of resource available resources from NYCC's Resilience and Emergencies Team consisting of fifteen full time and two temporary contract staff.
18. The scale not only brings resilience, but it also brings addition skills such as the qualified Business Continuity Officer that the City of York now benefits from as part of the shared service.
19. Key decisions and expertise on Emergency Planning would remain within the Council through the Emergency Planning Manager whilst also ensuring the City of York is represented across the Local Resilience Forum work groups delivering necessary local plans and mitigation of risk.
20. In the officers' opinion this strikes the right balance between cost and resilience for planning, preparation, incident response and recovery to fulfil statutory responsibilities of the CCA.
21. Option (a) offers the best balance of resource and resilience whilst retaining the autonomy of the Council to make its own decisions as regards Emergency Planning.

**Option (a) is the recommended option approved by
Corporate Management Team 20th July 2022 and Portfolio
Holders Corporate Management Team 2nd August 2022**

22. Option (b) continues with the current arrangements but moves the strategic and client role to the Shared Service.
23. One advantage of this model is that with all officers in same team and management structure, there would be consistency of training and improved resilience for the manager role. However, the collaborative approach could still provide this if issues arose.
24. The concern with option (b) where NYCC provide the full service is that the Council would not have the same level of ownership and responsibility for the service provided and nor would it be represented in the same way regionally.
25. The strategic role being within the Council also provides a back stop position for the city council if required. Over a period, the Council may lose the dedicated officer knowledge and ownership. The relationships between emergency planning and other service areas may become more distant.

Therefore option b is not supported.

26. Option (c) is to end the Shared Service Agreement, reverting to the previous Emergency Planning provision for York being provided from the Council establishment and by Council personnel.
27. This would require recruitment of staff at a time when the availability of suitably qualified resources is limited due to the COVID-19 pandemic, National Resilience Standards and Post Implementation Review resulting in many partner agencies increasing their resilience.
28. The resilience and out of hours service provided by the core establishment of just two officers seriously limits availability and resilience and is not considered suitable for long term or concurrent incidents as experienced during the COVID-19 pandemic at the same time as York floods in 2020.
29. However, the Council would retain full control of Emergency Planning resources, it would ensure local knowledge is always available and local procedures and policies can be developed.

For the above reasons Option (c) is not supported.

30. Option (d) is to end the Shared Service Agreement, reverting to the previous Emergency Planning provision for York being provided from the Council establishment and by Council personnel, but increasing the resource to improve resilience.
31. This option seeks to address the resilience issues identified in option (c), in order to improve resilience the Emergency Planning Team need to be a minimum of three members to provide necessary out of hours cover and resilience.
32. The resilience is still not as strong as the Shared Service model and the financial cost are disproportionate when compared to provision of Shared Service by NYCC.
33. Even with three members of staff providing an out of hour's rota for three persons covering 247 / 365 days per year is poor resilience and contingency such as holiday or sickness absence or indeed vacant posts. The 3-week rota does not provide a suitable work and home life balance for the wellness and wellbeing of staff.

For the above reasons Option (d) is not supported.

Council Plan

34. The York Council Plan is structured around 8 core outcomes.
 - Well-paid jobs and an inclusive economy
 - A greener and cleaner city
 - Getting around sustainably
 - Good health and wellbeing
 - Safer communities and culture for all
 - Creating homes and world-class infrastructure
 - A better start for children and young people
 - An open and effective council

35. Whilst fulfilling the CCA is a statutory duty for the Council, good emergency planning and business continuity ensures all the objectives of the council are safeguarded and delivered.

Implications

Financial

36. The recommended option a has an increased annual cost, above the existing budget, of £21k which in 2022/23 is funded from reserves. If option a is approved this ongoing cost will need to be included as growth funded as part of the 2023/24 revenue budget. Option b is likely to have similar increased cost to the recommended option and option d will have a higher increased cost due to the additional staffing. Only the option c, reverting to the previous emergency planning provision, would be within the existing budget

Human Resources (HR) (*Contact – Head of HR*)

37. Option a) above is operated on an SLA agreement, and whilst there are no immediate staffing implications for Council staff, should there be a review of the service provision and other options considered, HR would assess whether TUPE applies between NYCC and CYC. Where TUPE is deemed to apply relevant staff would be transferred to employment with CYC. Other options that need to consider the recruitment of officers to maintain the statutory service would follow existing CYC recruitment and selection processes.

Equalities

38. The Council recognises its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).
39. There are no equalities implications identified in respect of the matters discussed in this report. However, emergencies can

impact most on those with protected characteristics the most so resilience of the service is very important.

Legal

40.

- a. With any of the options outlined above would require the Shared Service Agreement either to be terminated with the proper minimum 6-month notice period before 30th September 2022, or 12-month notice period after 31st March 2023. Any notice to terminate the Shared Service Agreement to be issued by the Council must be drafted and issued via Legal Services in conjunction with the relevant Authorised Officer in accordance with Rule 21 of the Council's Contract Procedure Rules.
- b. The preferred option (a) would require a new Shared Service Agreement between the Council and NYCC to replace the current one for the Pilot Scheme. The Council and NYCC have the statutory power to enter such an arrangement with one another per:
 - i. section 1 of the Local Authorities (Goods and Services Act) 1970;
 - ii. sections 101 and 111 of the Local Government Act 1972;
 - iii. section 93 of the Local Government Act 2003; and
 - iv. section 1 of the Localism Act 2011;

Further, the proposed Shared Service Arrangement would not breach the Authorities' procurement law obligations under the Public Contract Regulations 2015, because:

- v. the Shared Service Agreement is exclusively between two or more contracting authorities (i.e., the Council and NYCC);
- vi. the Shared Service Agreement would establish and implement a co-operation between the Council and NYCC with the aim of ensuring that public services they must perform (i.e., emergency planning services

per the CCA) are provided with a view to achieving objectives they have in common;

- vii. the implementation of that co-operation is governed solely by considerations relating to the public interest; and
- viii. the Council and NYCC perform on the open market less than 20% of the activities concerned by the co-operation,

and therefore sits outside of the full procurement regime.

The same legal implications for option (a) would also apply to (b), but not to options (c or (d).

- c. With option (c), and (d), as well as the implications for termination outlined above, there is a possibility of a relevant transfer of staff from NYCC to the Council or vice-versa under the TUPE Regulations, if the staff used by either the Council or NYCC to deliver their side of the Shared Service form an organised grouping of employees. Full and proper advice should therefore be sought with regards to any TUPE and Pension implications from Legal Services and HR before terminating the Shared Service Agreement under either option (c) or (d). Further, the Shared Service Agreement currently in place makes it clear that except in respect of any transfer of employees between the parties pursuant to the TUPE, neither party shall, without the prior written consent of the other party, at any time from the date of this agreement to the expiry of 6 months after the termination of this Agreement, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee of the other party in the provision of any of the Services, which will have implications in terms of future recruitment post termination under either option (c) or option (d).

Risk Management

- 41. This report seeks to balance the resilience of the team that is responsible for managing the risk of emergencies impacting on the councils services. The risks are detailed through the report and

seek to strike the balance between resilience, affordability and being York specific in managing the risk.

Author:

Steve Ball
Emergency Planning
Manager
Tel No.07919 544187

Chief Officer Responsible for the report:

James Gilchrist
Director of Transport
Environment and Planning

**Report
Approved**



Date 25/7/22

Specialist Implications Officers

Implication Financial

Name Jayne Close
Title Finance Officer

Implication Legal

Name Dan Moynihan
Title Senior Solicitor

Implication HR

Name Helen Whiting
Title Head of HR

Wards Affected:

All



For further information please contact the author of the report

Annexes:

Annex A – Officer Decision Report
Annex B – Partnership Agreement