

Report to CABINET

Review of the Council's Wholly Owned Company: Unity Partnership Limited

Portfolio Holder:

Councillor Arooj Shah, Leader of the Council

Officer Contact: Harry Catherall, Chief Executive

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Reason for Decision

In February 2018 Cabinet agreed to the reshaping of Unity Partnership Limited (UPL). To support the Cabinet in making this decision, the Council had undertaken an options appraisal of the arrangements between UPL and Kier Partnership Limited. The outcome of that appraisal saw UPL become wholly owned by the Council. At the time, the intended purpose of UPL was to assure the sustainability and performance of services provided to the Council to increase the likelihood of the sustainability of UPL and deliver efficiencies.

As part of UPL becoming wholly owned by the Council a Partnership Agreement (The Agreement) was agreed and this confirmed that annual reviews of the arrangements would be undertaken. In September 2021 it was therefore appropriate that a review of the arrangements was commissioned. The purpose of this review was to determine the viability of the company, confirm whether it is fit for purpose in terms of service delivery and value for money for Oldham residents and the Oldham pound and that the ambitions of the company align to those of the Administration as set out and endorsed at Full Council in May 2021.

This review has completed, and this paper sets out the outcome and recommended approach going forward for the Council and in doing so, details the changes necessary to respond to and implement the recommendations of the review.

Executive Summary

In September 2021 an options appraisal of our wholly owned companies was commissioned. This paper sets out the outcome of that appraisal for Unity Partnership Limited (UPL), details the

changes necessary and sets out the recommended option to transition services provided by UPL to the Council.

Recommendations

It is recommended that Cabinet:

1. Note the position outlined in this report in relation to the review and the subsequent options arising from this
2. Note and consider the options set out for the direction of travel and future model for services currently provided by UPL to the Council
3. If the recommended option as set out in section four of this report is agreed, delegate to the Chief Executive in consultation with the Director of Finance, Director of Legal and Director of Workforce and Organisational Design the exercise to undertake appropriate consultation with all staff, Trade Unions and Partners setting out the view to transition staff and services provided by Unity Partnership Limited to the Council under TUPE arrangements
4. Agree to the Partnership Agreement between the Council and UPL be terminated and in doing so, authorise the Director of Legal Services or their nominated representative to sign all appropriate documentation necessary for the purpose of implementing the recommended option.
5. Agree to Unity Partnership Limited Company continuing to trade for a minimum period of 12 months whilst a review of how the Council delivers Traded Services is undertaken. It is expected this review will be presented for consideration before January 2023
6. Appoint the Chief Executive and Head of Paid Service of the Council to be the Council's Shareholder representative of Unity Partnership Limited whilst it continues to trade

1 Background

1.1 Unity Partnership Limited (UPL) is a wholly owned company of Oldham Council. This was agreed by the Cabinet at its meeting on 26 February 2018. In response to this decision, amendments to the original Partnership Agreement (the Agreement) entered on 2 May 2007 between the Council and UPL was amended. The Agreement confirms the services provided on behalf of the Council and these are:

- Highways
- Property Services
- Revenues and Benefits (Exchequer Services)
- Contact Centre
- ICT
- Payroll (including Recruitment)
- Consultancy (Business Change Services)

1.2 The updated Agreement from September 2019 was due to expire at the end of the initial term on 31 August 2020, but a Deed of Variation was entered into to extend the Agreement for a further period of five years, subject to annual review. September 2021 was timely for such review to take place and this paper sets out the framework of that review, the recommended outcome, and the proposed way forward for implementation.

1.3 Due diligence in respect of all options has been undertaken by a team of council officers representing the key relevant areas; the outcomes of which are set out in various sections in this report.

2 Current Position

2.1 Adopted at Full Council in 2021, the Administration set out the priorities for the Borough. A main priority for the Council is to ensure we are resident focused and a fundamental part of this is ensuring we have one Council – working for our residents, businesses and communities. Key to this is having good quality service delivery that maximises outcomes for our residents. This priority was at the forefront of the review of UPL. This section sets out the background of the review and the recommended way forward.

2.2 The focus of the review was to determine the viability of the company, confirm whether it is fit for purpose in terms of service delivery and value for money for Oldham residents and the Oldham pound and that the ambitions of the company align to those of the Council.

2.3 A position has been reached that provides the basis for Cabinet to consider the outcome of the review and seek agreement to the preferred option which recognises that services currently provided by UPL are core Council services and should transfer to the Council. If this option is agreed a number of factors will need to be acted on. These are set out within the next sections of this report.

2.4 The termination of existing arrangements will be required. Clause 32 of the Partnership Agreement provides that “Without affecting any right or remedy available to it, the Authority may terminate this agreement at any time by giving 12 months’ notice to the Partner”. There is however scope for a negotiation for an earlier termination given the Council is the sole shareholder of the company. Directors are appointed to UPL and have

a fiduciary duty to act in the best interests of the company. It is envisaged that for a minimum period of 12 months, UPL will continue to trade providing the option for the Council to explore its delivery vehicle for traded services and therefore it is not recommended that the company ceases trading at this stage.

2.5 Should Cabinet agree to terminate the existing arrangements then the Council must follow the Partnership Agreement which sets out an “Exit Management Plan” contained as Schedule 9 to the Agreement. It is recommended that the Cabinet delegates authority of this exercise to the Chief Executive in consultation with the Director of Finance, Director of Legal Services and Director of Workforce and Organisational Design. The Council will continue to be the only shareholder of UPL during the transition of services and staff and whilst the company continues trading. It is recommended that the Chief Executive and Head of Paid Service is the Council’s shareholder representative of the Company.

2.6 Services provided by UPL

The services provided the Council by UPL contained within the Agreement are set out in section 1.1 of this report. As set out in option 4 of this report, it is recommended that the provision of these services is transferred from UPL to the Council. It is intended that the transfer of all services will be with effect from 1 April 2022 – although it is recognised that a small number of staff may still be employed by UPL to allow statutory requirements to be completed.

2.7 There is potential that services provided to third parties can be undertaken by the Council subject to existing legal powers. The power to trade for commercial purposes under the general power of competence provisions of the Localism Act are required to be undertaken, by section 4 (2) of the Act and by the provisions of the Local Government Act 2003 by a limited Company. There could be advantage in retaining UPL to deliver those services where trading takes place for commercial purposes. The Authority could provide services for which discretionary charges are made but subject to such changes equating to cost recovery. In addition, the provisions of the Localism Act there are a miscellany of statutory trading powers available to the Council and it would be necessary to undertake a detailed analysis of each service to ascertain whether such delivery could be undertaken by the Council in accordance with these statutory powers. These considerations will be key factors of a review of the delivery vehicle of traded services by the Council.

2.8 Some service provision provided by UPL is external to the Council as set out below:

- Highways – 12% external to the Council to Rochdale Borough Council, Utilities and private developers
- Property – 1% external to the Council to FCHO and the NHS and 9% to Schools and Academies
- Revenues and Benefits – 1% to Schools and Academies, 1% to First Choice Homes Oldham and Blue Badge Charges for Residents
- Consultancy – 11% to the NHS and Greater Manchester Combined Authority
- Payroll – 38% to Schools and Academies

The Council already provides traded services direct into schools and academies. The Council will further explore the option of continuing to provide these services directly however further detailed analysis is required to be undertaken particular in relation to the nature of the contract. Similarly, the Council will explore options in relation to service delivery to other Local Authorities/Public Bodies. Again, this will be a key factor of the Council’s review into the delivery vehicle of traded services. The review will also consider the provision of services provided to private developers.

In addition, from April 2021 UPL has provided an ICT managed provision to NHS Oldham CCG and staff. In addition to provision of hardware, this has included services such as the service desk, field services, application management, infrastructure and active directory services, IT procurement and IT security services. Unity ICT has also acted as the managing agent to the GPIT service between NHS Oldham and Greater Manchester Shared Services (GMSS), who have retained the operational management of the NHS Digital primary care systems.

2.9 Workforce Implications

There are a number of considerations given which have an impact on the workforce. This is set out below.

There are currently 345 staff employed within UPL, structured as follows:

Section	Number of Staff
Accounts Payable / Accounts Receivable	16
Business Change Services	6
Corporate	5
Customer Services	41
Estates	11
Highways	36
ICT	76
HR / Payroll	27
Property	39
Revs & Bens	87
Total	344

This is supplemented by a contractor workforce of 58 – bringing the total number of staff to over 400.

2.10 There are a number of factors to be considered from a workforce perspective if the recommended option is to be agreed. These are:

- Formal workforce consultation as required under TUPE regulations
- The design and integration of transferring functions and responsibilities
- Cost implications arising from the admittance of staff into the Local Government Pension Scheme
- The implications of UPL's varying terms and conditions of employment and the cost implication of their potential assimilation of pay to the Council's Pay and Grading Structure

The benefits of a unified workforce however are clear, most prominently being:

- The removal of any duplication to process, system and governance discrepancies leading the improved service synergy and delivery to residents;
- A more holistic approach across services to organisational and service transformation thus providing benefits and efficiencies to service delivery and residents;
- The removal of in-built inefficiencies and contention by redesigning and reducing duplication
- Removal of any risks around discrepancies in pay and conditions.

2.11 Consultation

The requirement for formal consultation with a workforce transferring under TUPE regulations is well defined and will be applied robustly in this situation. This will include the rationale, implications of transfer and any proposed 'measures' (i.e. changes) resulting from the transfer. The large scale and wholly owned nature of UPL provides opportunity to ensure full staff engagement with the process and the development of aligned values and behaviours as part of the transfer. Consultation can therefore extend beyond the mechanics of the transfer and incorporate engagement activity as appropriate.

2.12 Service Design and Integration

A number of services provided by UPL have a clear alignment with other Council functions. These are set out in the table below. However, there are exceptions of the ICT service, Customer Services and the 'Corporate' function which need further consideration.

Unity Partnership Function	'Aligned' Council Function
Accounts Payable / Accounts Receivable	Finance
Business Change Services	Transformation
Corporate	TBD
Customer Services	New Customer and Digital Function
ICT	New Customer and Digital Function
Estates	Economy
Property	Economy
Highways	Environmental Management
HR / Payroll	Workforce and Organisational Design
Revs & Bens	Finance

If integration, improved efficiency and service delivery are to be achieved, process and structural design work will be required. Whilst this needn't be fully developed in advance of the transfer (with the potential for services to transfer as-is in the first instance) this process will be critical to achieving the objectives sought. The Chief Executive and Head of Paid Service will give consideration to this aspect prior to consultation with staff.

2.13 Local Government Pension Scheme

Currently UPL operates under two pension schemes; the Local Government Pension Scheme (LGPS) (where transferred employees retained membership) and the Royal London Scheme. The breakdown for scheme membership is as follows:

Pension terms	Staff no.	% of Workforce
LGPS - Oldham	129	37.39%
LGPS 50/50 - Oldham	1	0.29%
Royal London	172	49.86%
No scheme	43	12.46%
Grand Total	345	100.00%

The Council are not able to offer the Royal London Scheme; therefore, all transferring staff must be given the option to be transferred to the LGPS. This scheme offers improved

benefits when compared to the Royal London Scheme but requires increased 'Employer' contributions. The estimated additional cost of staff being admitted to LGPS is circa £0.800m per annum and a total of £0.892m if individuals not currently in any pension also joined the scheme.

2.14 Terms and Conditions

UPL currently operates a range of employee terms and conditions as a result of transfers having occurred at different stages and the adoption of terms and conditions from Agilysis, Mouchel and Kier. These are in addition to UPLs own organisational terms and conditions. A full assessment of terms and conditions is required and will form part of the TUPE process. However, salaries will be a more prominent issue with some discrepancy within the salaries of the UPL workforce and this being further compounded by the transfer into the Council. The option to assimilate salaries onto the Council's pay scales (where this is not detrimental to the transferees) has been assessed and carries the following indicative costs:

Service Area	Current Salary Costs	New Assimilated Salary Costs	Additional Assimilated Costs
Business Change Services	£308,205.14	£313,645.83	£5,440.69
Highways	£1,102,226.62	£1,121,891.68	£19,665.06
HR, Payroll & Pensions	£826,728.78	£839,727.27	£12,998.49
ICT	£2,747,184.01	£2,786,181.60	£38,997.59
Property	£1,565,981.76	£1,581,170.01	£15,188.25
Revenues and Benefits and Customer Support Centre	£2,758,524.82	£2,784,711.81	£26,186.99
Unity Corporate HQ	£285,672.39	£287,795.61	£2,123.22
Grand Total	£9,594,523.53	£9,715,123.81	£120,600.28

2.15 Transitional Arrangements

UPL's governance permits the redesign and implementation of workforce changes (i.e. recruitment and redundancy) as required. Should however, the proposed recommendation set out within the paper receive support, consideration to joint decision (The Council and UPL) making in respect of significant workforce changes should be installed to ensure changes are cognisant of the future operating model of the Council.

2.16 Timeline

Whilst there is no fixed period for formal TUPE consultation, a minimum period of 45 days meaningful consultation to align with best and previous practice will be exercised. Should the recommended option be agreed, there will be sufficient opportunity for consultation and diligence for the organisation to occur between the end of January 2022 and March 2022, with a view to the transfer occurring thereafter.

2.17 Key Financial Matters

2.18 a) Council position

The Council receives services from UPL through the Agreement and the core fee – some of these services commissioned are variable in nature. The total core fee for 2021/22 is £11.305m and the breakdown is as follows:

Service	£m
ICT	£3.492
Revenues and Benefits	£2.668
Property	£1.747
Highways	£1.337
Contact Centre	£1,090
HR Transactional & Payroll Services	£0.564
Financial Transactions (AP/AR)	£0.407

The core fee for 2021/22 includes two budget reductions totaling £0.900m with a further reduction of £0.4755m required for 2022/23. Other commissioned services known as non-core activity are funded by a mixture of base budget, capital schemes, reserves and specific grants. This variable work is still subject to change for 2021/22. However, in 2020/21 the Council (including schools) paid UPL £19.865m. The split between core and non-core was as follows:

Core	61%
Capital	21%
Non-core	18%

The Council receives a contribution of £0.948m from UPL by way of an annual recharge for building occupation and access to professional services such as Finance and Legal. In addition, the Council expects an annual dividend of £0.250m from UPL.

2.19 UPL current financial position

The year-to-date results currently forecast profit of £0.077m (2020/21 £0.008m profit). This is after the inclusion of approved budget reductions and council recharges. It excludes the payment of a dividend to the Council as set out above. The main source of income for UPL is from the Council at 88%. UPL also generates income from external organisations including NHS Oldham CCG, Rochdale Borough Council, First Choice Homes Oldham and utility companies. This represents 6% of income with the remaining 6% from schools and academies. The main costs for UPL are for staff which represents 81% of total spend. Non pay costs account for 19% of total expenditure with the majority of this in Exchequer Services and ICT. ICT non-pay costs relate to specific systems which are covered from the core fee paid by the Council.

3 Options/Alternatives

3.1 Three options were considered as part of the review and these are set out below. The details to support the options are included in the narrative below.

3.2 Options

Option 1 – Continue as is

For the reasons set out earlier in this paper – this option is not recommended.

Option 2 – mixed model of delivery

A mixed model of services provided by the Council and UPL could be developed where either additional Council Services transfer to UPL and/or more services transfer back to the Council. Again, for reasons set out in this paper – this option is not recommended.

Option 3 – Transfer services back to the Council and retain UPL as a wholly owned company for a minimum period of 12 months whilst the Council considers its delivery vehicle for Traded Services.

4 Preferred Option

4.1 Option 3 – Transfer services back to the Council and retain UPL as a wholly owned company for a minimum period of 12 months whilst the Council considers its delivery vehicle for Traded Services.

4.2 As set out earlier in this report, a priority for the Council is to deliver resident focused services. Central to this is having one Council – delivering for our residents, businesses and communities. It is therefore recommended that the Cabinet agrees to the transfer of services provided by UPL back to the Council in line with our one Council approach. It is considered that by implementing this option, the Council see benefits of performance, service improvements and efficiencies, thus having a positive impact on both staff and residents of Oldham.

4.3 If this option is agreed, it is recommended that Cabinet delegates authority to the Chief Executive in consultation with the Director of Finance, Director of Legal and Director of Workforce and Organisational Design the exercise to undertake appropriate consultation with all staff, Trade Unions and Partners.

5 Consultation

5.1 Full consultation with Unity Partnership Board, staff, Trade Unions and Partners will be undertaken.

6 Financial Implications

6.1 The preferred option is to transfer services from UPL back to the Council and retain the company for a minimum of 12 months to enable the Council to consider its traded services.

6.2 As outlined in Section 2, the Unity Core Fee for 2021/22 is £11.305m for which full budget provision is available. In addition, the Council pays for variable non-Core fee work using capital resources where Unity colleagues support the delivery of capital schemes, service revenue budgets, grant income and reserves where Unity colleagues are supporting the delivery of specific projects, currently including many COVID related activities. This is still subject to change in 2021/22. Total payments to Unity for 2020/21 up to £19.865m.

6.3 The Council receives a contribution to overheads from Unity of £0.948m and expects to receive a dividend of £0.250m (although this depends on the performance of Unity). It is anticipated that the implications of the removal of these transactions will have a neutral budgetary impact, given that most of Unity's income is from the Council.

6.4 A review has been undertaken of the financial implications of the three options outlined above. This has indicated that in order to support the recommended approach, £1.3m should be provided in the 2022/23 budget on a one-off basis to support the additional

costs linked to any requests to join the GM Pension Fund, terms and conditions and other transitional arrangements. It is proposed that this is funded from Council reserves in the first instance with the expectation that the efficiencies and opportunities to redesign service delivery will effectively fund this investment over a two-year period.

- 6.5 The services that Unity provides to other organisations which generate fee income will require a detailed review aligned to a wider review of how the Council delivers traded services to determine a preferred approach. This review will take place over the financial year 2022/23. Any financial issues arising from this will be the subject of a further report.
- 6.6 An important consideration is the assets and liabilities in the Unity balance sheet. A detailed exercise is required to determine the overall benefit to the Council from the assets, including cash and will be undertaken as part of the programme to support the recommended approach. (Nicola Harrop, Finance Manager)

7 Legal Services Comments

- 7.1 Unity Partnership is a wholly owned “Teckal” compliant Company owned by the Council. There is a Partnership Agreement (the Agreement) in place between Oldham Council and the Unity Partnership Limited (the Company) for the provision of agreed Services. The Agreement was initially entered into on 2 May 2007, subsequently varied on 1 October 2014 and then further updated on 24 September 2019. The Agreement was due to expire at the end of the Initial Term on 31 August 2020, but a Deed of Variation was entered into to extend the Agreement for a further period of five years, subject to annual review.
- 7.2 Should the Council decide to terminate the existing arrangements by service the required notice then the Partnership Agreement provides that the parties should follow an “Exit Management Plan” which is contained as Schedule 9 to the Partnership Agreement.
- 7.3 The services provided by the Authority by Unity are contained within Schedule 1 of the Partnership Agreement and, of course, such services may therefore be undertaken by the Authority itself without any concern regarding vires. Services provided to third parties might be capable of being undertaken by the Authority subject to existing legal powers. The power to trade for commercial purposes under the general power of competence provisions of the Localism Act are required to be undertaken, by section 4 (2) of the Act and by the provisions of the Local Government Act 2003 by a limited company. There would be advantage in retaining the Unity company to deliver those services where trading takes place for commercial purposes. The Authority could provide services for which discretionary charges are made but subject to such charges equating to cost recovery. In addition, the provisions of the Localism Act there are a miscellany of statutory trading powers available to the Authority and it would be necessary to undertake a detailed analysis of each service to ascertain whether such could be undertaken by the Authority in accordance with these statutory powers to be intra vires.
- 7.4 Members will need to be satisfied of the reasonableness of making this decision and in particular will need to consider, as outlined in the report, the financial implications of the proposed arrangements, TUPE transfer issues, equal pay considerations, the novation of contracts and the cost implications of access to the GM pension scheme. (Paul Entwistle, Director of Legal Services)

8 Co-operative Agenda

- 8.1 The preferred option as set out in section 4 of the report is aligned to the Council’s Co-operative agenda and in particular the co-operative services element of this.

9 Human Resources Comments

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- 9.1 HR comments are fully reflected within the report in sections 2.9-2.16. (Paul Dernley, Assistant Director HR Operations)
- 10 **Risk Assessments**
- 10.1 All risk assessments have been undertaken as part of the options appraisal.
- 11 **IT Implications**
- 11.1 As the primary IT support provided for NHS Oldham CCG, UPL acquired the responsibility for supporting the CCG in their annual recertification of the DSP Toolkit, which is the NHS technical security standard. To support this, UPL has completed a task to segregate Unity Partnership and Oldham Council networks in order to obtain Cyber Essentials Plus security certification and deployment of a Zero trust end user environment that has been an enabler to establishing a secure Health and Social Care Network (HSCN) connection that allows Oldham-based staff to access the NHS digital services. UPL has a direct link to the Oldham Hospital Azure Active Directory, Patient Administration System and document store. This enables the pre-population of information and a safe transfer of documentation which has been produced utilising the apps managed by UPL. This will need to be carefully reviewed if the preferred option as set out in section 4 of this report is agreed. (Dominic Whelan, Chief Operating Officer, Unity Partnership)
- 12 **Property Implications**
- 12.1 Not applicable at this stage.
- 13 **Procurement Implications**
- 13.1 There are no direct Procurement implications of transferring these Services back in house, however Procurement will work with Legal with regards to novating over to the Council any Contracts that will be live beyond 1st april'22 procured in the name of Unity Partnership. Due to the likely high volume of contracts that will require novating a phased approach will be adopted, which may go beyond 31st March'22. As Unity Partnership are to trade as an entity for a further 12 months beyond March'22 this will not be an issue. Additionally, Procurement will work with Legal and other relevant members of the Project Team to review existing Trade Agreements that Unity Partnership have put in place. (Steve Boyd, Head of Procurement)
- 14 **Environmental and Health & Safety Implications**
- 14.1 Not applicable at this stage.
- 15 **Equality, community cohesion and crime implications**
- 15.1 N/A
- 16 **Equality Impact Assessment Completed?**
- 16.1 No – will be part of any consultation
- 17 **Key Decision**
- 17.1 Yes
- 18 **Key Decision Reference**
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18.1 ESR-10-21

19 **Background Papers**

19.1 None

20 **Appendices**

20.1 None