

REPORT TO SHAREHOLDER COMMITTEE

Deed of Termination of the Partnership Agreement between Oldham Council and Unity Partnership Ltd

Shareholder Committee Members:

Councillor Arooj Shah
Councillor Amanda Chadderton
Councillor Abdul Jabbar

Officer Contact: Harry Catherall, Chief Executive

Report Author: Lewis Greenwood, Head of Executive Services

31 March 2022

Reason for Decision

On 24 January 2022, Cabinet received a report in regard to the Review of the Councils wholly owned Company, Unity Partnership Ltd. The report highlighted the priority for the Council to deliver resident focused services and considered that, central to this priority, is to have a one Council approach – delivering for our residents, businesses and communities. The Cabinet accepted that the transfer of Services provided by Unity Partnership Ltd (the Company) back to the Council was in line with our one Council approach and considered that agreeing to such an approach would allow the Council to realise benefits of performance, service improvements and efficiencies, thus having a positive impact on both staff and residents of Oldham.

Following receipt of the report and having considered the associated options, Cabinet agreed a decision to: Transfer services back to the Council and retain Unity Partnership Ltd as a wholly owned company for a minimum period of 12 months whilst the Council considers its delivery vehicle for Traded Services.

Within the recommendations accepted by the Cabinet in making this decision was one specifically related to the current Partnership Agreement that is in place between the

Council and the Company. This stated that Cabinet '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'.

The Unity Board of Directors agreed, at a Board meeting on 9 February 2022, to accept a Heads of Terms that provided assurance on corporate governance, legal, company liabilities and risk, employee arrangements and other key elements. These Heads of Terms were developed in consultation with officers from the Council and Unity and were approved by legal advisors. The Board of Directors also agreed to waive the reduced notice period (to reduce from 12 months).

The Deed of Termination will be presented to the Unity Boards of Directors on 30 March 2022 and on the assumption that the Board of Directors approve the Deed of Termination, then the Shareholder Committee is being asked to endorse and approve the Board of Directors decision. This will allow the transfer to proceed with a completion date of 01 April 2022.

Recommendations

1. To note the Deed of Termination (attached at Appendix 1) that has been prepared by DWF LLP on behalf of Unity Partnership Limited and has been consulted upon with Oldham Council officers and Oldham Council legal advisors (Brabners LLP).
2. To note that the Unity Board of Directors will consider the Deed of Termination on 30 March 2022. Assuming that the Board of Directors agree to the Deed of Termination, it will have a material impact on the Company and therefore the Shareholder Committee are required to consider and make an endorsement of the Board decision.
3. To note that Oldham Council Cabinet have already agreed to the termination of the Partnership Agreement and have already authorised the Director of Legal Services to sign all appropriate documentation necessary to implement that decision. Therefore, the Deed of Termination will be sealed by Oldham Council once (and if) the Shareholder Committee approve the Board of Directors decision and this will bring the decision into effect.
4. To approve the Board of Directors' decision to agree the Deed of Termination

Unity Partnership Ltd Shareholder Committee

31 March 2022

Deed of Termination of the Partnership Agreement between Oldham Council and Unity Partnership Limited

1 Background

- 1.1 On 24 January 2022, Cabinet received a report in regard to the Review of the Councils wholly owned Company, Unity Partnership Limited. The report highlighted the priority for the Council to deliver resident focused services and considered that, central to this priority, is to have a one Council approach – delivering for our residents, businesses and communities. The Cabinet accepted that the transfer of Services provided by Unity Partnership Ltd back to the Council was in line with our one Council approach and considered that agreeing to such an approach would allow the Council to realise benefits of performance, service improvements and efficiencies, thus having a positive impact on both staff and residents of Oldham.
- 1.2 Following receipt of the report and having considered the associated options, Cabinet agreed a decision to: Transfer services back to the Council and retain Unity Partnership Ltd as a wholly owned company for a minimum period of 12 months whilst the Council considers its delivery vehicle for Traded Services.
- 1.3 Within the recommendations accepted by the Cabinet in making this decision was one specifically related to the current Partnership Agreement that is in place between the Council and the Company. This stated that Cabinet '*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*'.
- 1.4 In the period since the Cabinet decision, work has been underway to prepare for a potential transfer of Services from the Company to the Council. This has included legal advice, for both the Council and the Company.
- 1.5 The decision to terminate the existing Partnership Agreement is a decision already taken by the Oldham Council Cabinet. However, the termination of the current formal arrangements needs to adhere to relevant legal arrangements. The Partnership Agreement includes a clause that requires a 12 month notice period. The proposed Deed of Termination seeks to agree a waiver for such a period and, should it be agreed would enable the current Partnership Agreement to be terminated at shorter notice in order to enable a transfer of Services as soon as possible.
- 1.6 The Unity Board of Directors agreed, at a Board meeting on 9 February 2022, to accept a Heads of Terms that provided assurance on corporate governance, legal, company liabilities and risk, employee arrangements and other key elements. These Heads of Terms were developed in consultation with officers from the Council and Unity and were approved by legal advisors.
- 1.7 As a result the Board of Directors agreed to waive the reduced notice period (to reduce from 12 months) subject to the final agreement of a Deed of Termination, that would be modelled on the Heads of Terms. The Deed of Termination will be

presented to the Unity Boards of Directors on 30 March 2022 and on the assumption that the Board of Directors approve the Deed of Termination, then the Shareholder Committee is being asked to endorse and approve the Board of Directors decision.

- 1.8 Oldham Council Cabinet has already agreed the decision to terminate the Partnership Agreement so there is no requirement for any further Council decision. However, as the Shareholder Committee have responsibility for certain reserved matters relating to the Company and due to the fact that the Deed of Termination will have a material impact on the Company, it is recommended that the Shareholder Committee are asked to endorse and approve the decision of the Board of Directors to agree the Deed of Termination.

2 **Current Position**

- 2.1 Since the Cabinet decision on 24 January 2022 to terminate the existing Partnership Agreement between the Council and the Company and the subsequent transfer of Services back into the Council, work has been underway to prepare for the transition of Services. A programme team has been leading the work, comprising staff from Oldham Council and Unity Partnership, reporting via a joint SRO arrangement (Lewis Greenwood and Dominic Whelan). A Steering Group has been meeting regularly to monitor and oversee progress and provide high level decision making when required.
- 2.2 A detailed and formal Staff Consultation on the Measures that the Council is proposing to impose on transferring staff. This consultation will complete on 28 March 2022 and whilst there were many questions and requests for clarifications, there have been no material impacts at time of writing this report, if there is anything major then this will be briefed verbally at the committee meeting.
- 2.2 Each of the Unity Service leads has been working closely with the Council equivalent officer to ensure that service level issues, risks and decisions have been considered and dealt with in order to ensure an orderly transfer and to minimise any operational impacts. In addition to the Service level activity, there has been considerable programme work to ensure workforce, finance, contracts, legal and organisational level issues are all addressed or a plan is in place to address.
- 2.3 At time of writing this report, there are no issues that should prevent an orderly transfer of Services. The final decision required is the agreement of the Deed of Termination which will enact the ending of the Partnership Agreement, without the 12 month notice stated in the Agreement and this will enable the transfer of Services to proceed on the Completion date (expected to be 01 April 2022).

3 **Options/Alternatives**

- 3.1 Option 1 – Do not approve the decision of the Board of Directors to enter into the Deed of Termination. This would mean the Partnership Agreement between Oldham Council and Unity Partnership could not be terminated by means of the Deed of Termination attached at Appendix 1. This would then require the termination of the Partnership Agreement to be enacted via issue of the 12-month

notice period and would prevent the transfer of Services from occurring in April 2022 and would delay the process considerably.

- 3.2 Option 2 – Approve the decision of the Unity Board of Directors to agree the Deed of Termination and to note that this will enable the Deed of Termination to be presented to the Oldham Council Director of Legal to undertake the appropriate signing and / or sealing of the Deed of Termination on behalf of the Council to bring it into effect.

4 Preferred Option

- 4.1 Option 2.

Note that the Cabinet have already agreed to the Termination of the Partnership Agreement and therefore the decision to approve the Unity Partnership Ltd Board of Directors decision, to agree the Deed of Termination, will allow the Deed to be presented to Oldham Council for signing and this in turn will enact the termination of the Partnership Agreement with effect from the Completion Date.

5 Consultation

- 5.1 An initial set of Heads of Terms was developed in consultation with Council legal officers and S151 officer and with external legal advice from Brabners LLP. Unity Partnership Limited also sought advice from their legal advisors DWF LLP. These Heads of Terms were developed in order to provide assurance to the Unity Board of Directors in order for the Company to proceed with the staff consultation. The Deed of Termination was drafted initially by Unity Partnership Limited legal advisors (DWF LLP) and has had input from Unity Partnership officers and Council legal and finance officers. Oldham Council sought advice from Brabners LLP as part of the development of the document in order to provide assurance to Council legal officers in the production of this report and recommendations.

6 Financial Implications

- 6.1 The preferred option is outlined in 4.1 of the report with the Shareholder Committee being asked to endorse and approve the Board of Directors decision regarding the Deed of Termination which will the transfer from the 1st April 2022.
- 6.2 On the 24th January 2022, Oldham Council's Cabinet approved the transfer of services back to the Council and retain Unity Partnership Ltd for a minimum period. The finances relating to the transfer was covered in full within the Cabinet and Council report and this has been built into the budget for 2022-23.

(Nicola Harrop – Finance Manager)

7 Legal Services Comments

- 7.1 Included within the body of the report.

(Paul Entwistle – Director of Legal Services)

8. **Co-operative Agenda**

8.1 Not applicable.

9 **Human Resources Comments**

9.1 HR implications are addressed within the original Cabinet decision that made a determination to transfer Services back into the Council and resulted in a formal consultation with Staff and Trade Unions relating to the TUPE transfer of Unity Partnership staff into the Council.

(Paul Dernley - Assistant Director for HR Operations)

10 **Risk Assessments**

10.1 Not applicable

11 **IT Implications**

11.1 Not applicable

12 **Property Implications**

12.1 Not applicable

13 **Procurement Implications**

13.1 Not applicable

14 **Environmental and Health & Safety Implications**

14.1 Not applicable

15 **Equality, community cohesion and crime implications**

15.1 Not applicable

16 **Equality Impact Assessment Completed?**

16.1 Not applicable to this decision as no material impact to Services or loss of personnel.

17 **Key Decision**

17.1 No

18 **Key Decision Reference**

18.1 Not applicable

19 **Background Papers**

- 19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act :

File Ref :

Name of File: Review of the Council's Wholly Owned Company: Unity Partnership Limited 24 January 2022

Records held in Constitutional Services Department, Oldham Council

Officer Name: Lewis Greenwood, Head of Executive Services

Report to Unity Partnership Board of Directors: Item 4 – Unity Partnership Ltd – Termination of the Partnership Agreement with Oldham Council and Transfer of all Unity Services to the Council

20 **Appendices**

- 20.1 Appendix 1 – Deed of Termination