

REPORT TITLE Shared Digital Governance Model Review	
REPORT OF Ed Garcez, Chief Digital and Information Officer	
FOR SUBMISSION TO Shared Digital Joint Committee	DATE 30 October 2017
<p>SUMMARY OF REPORT</p> <p>The terms of reference for the Shared Digital Joint Committee require that the Joint Committee, by October/ November 2017, receive and consider a detailed report setting out Governance Model Options for Shared Digital and to make recommendations to the Cabinet/ Executive of each of the Councils in respect of the report. Options to be evaluated were to include the Joint Committee model as well as company models.</p> <p>This report builds on work with the Joint Committee Cabinet Members, the Councils' Chief Executives and senior officers over the summer to assess and consider governance models and sets out the reasons for the recommended option.</p> <p>Local Government Act 1972 – Access to Information</p> <p>The following document(s) has been used in the preparation of this report: none.</p> <p>Contact officers: Ed Garcez, Chief Digital Information Officer 5 Pancras Square, London, N1C 4AG ed.garcez@camden.gov.uk 0207 974 4583</p>	

WHAT DECISIONS ARE BEING ASKED FOR?

That the Shared Digital Joint Committee agree and recommend to the Cabinets/ Executive of Islington, Haringey and Camden that:

1. The Cabinet/ Executives note the options set out in the detailed 'Shared Digital Governance Model Options' report at Appendix 1 prepared by Activist Group following extensive work since March 2017 with Councillors and senior officers.
2. The Cabinet/ Executives approve the adoption of the governance model for the Shared Digital Service set out as Option 1 (a 'lean' Joint Committee model in paragraphs 3.2, 3.6 – 3.13 of this report and paragraphs 4.5 – 4.9 of Appendix 1) based on the outcomes framework at Table 2.4, paragraph 2.26 of Appendix 1

with a planned service commencement date of {to be confirmed before submission to Cabinet/ Executives}.

3. The Cabinet/ Executives approve Camden as the host Council and agree to the proposed staffing arrangements set out in section 5.1 of this report.
4. The Executive/ Cabinets of Islington and Haringey delegate to Camden (as the primary host authority in the Shared Service) the delivery of ICT services to include employing staff, managing the service, financial management and making day to day decisions.
5. The Executive/ Cabinets agree the Joint Committee be reconstituted to reflect the new governance model at 2 above.
6. The Executive/ Cabinets agree the Joint Committee will consist of two elected members from each Council.
7. The Executive/ Cabinets approve the creation of a Strategy and Portfolio Management Board, accountable to the Joint Committee, to manage the service, with an appointed Director from each Council amongst other key members of staff to be appointed from each Council and the Chief Digital Information Officer (or suitable alternative).
8. The Executive/ Cabinets make arrangements to delegate to relevant officers, on advice from their respective Borough Solicitors or equivalent, to take the necessary steps to put the above arrangements into effect including but not limited to finalising the terms of the inter-authority agreement and any changes to it and for the operation of the 3 way Shared Digital Service.

Date: 19/10/2017

Signed:

1 WHAT IS THIS REPORT ABOUT?

- 1.1 Camden, Haringey and Islington Councils recognise that sharing their Digital and ICT services will bring many benefits, including saving money, improving performance and resilience, and sharing learning to support better digital services to citizens and residents.

- 1.2 Shared Digital was established using a Joint Committee governance structure. The terms of reference for the Shared Digital Joint Committee require that the Joint Committee, by October/ November 2017, receive and consider a detailed report setting out Governance Model Options for Shared Digital and to make recommendations to the Cabinet/ Executive of each of the Councils in respect of the report. Options to be evaluated to include the Joint Committee model as well as company models.
- 1.3 The current governance of Shared Digital is underpinned by a legal agreement and terms of reference for the Shared Digital Joint Committee. The legal agreement works within the framework of the Local Government Acts 1972 and 2000, and the Localism Act 2011, which give Local Authorities powers to delegate the discharge of functions to another Local Authority or to a Joint Committee, and to make staff available ('place' staff) in order to discharge the functions in accordance with s113 Local Government Act 1972. Section 113 of the Local Government Act 1972 enables staff of local authorities to be placed at disposal of other local authorities, subject to consultation. Staff are essentially shared by a form of secondment, in which staff remain employees of their original authority for superannuation purposes, but can also take delegated decisions on behalf of the authority they have been seconded to. At the inception of the Shared Digital staff in the Councils were issued with a Section 113 notice and have received recent confirmation that this arrangement continues indefinitely pending any further decision stemming from the conclusion from the review being undertaken by the Joint Committee or change to the shared service which impacts on this arrangement.
- 1.4 From March 2017, a Governance Model Review Project was set up to fulfil the commitment to find the right governance model for Shared Digital in two phases:
- **Phase 1** was completed in July, and focused on exploring the future and helping the three partner boroughs to develop a shared understanding of the options available for the governance of their shared service, and to confirm their future ambitions (narrowing down options for detailed review in the options report).
 - **Phase 2** has investigated the options from Phase 1, and set out in detail an assessment of the two main options (a 'lean' Joint Committee and a public service company) for the Joint Committee to consider. This is set out in the discussion report attached as Appendix 1 to this report.

2 WHY IS THIS REPORT NECESSARY?

- 2.1 This report provides the detail for the Joint Committee in order to fulfil the requirement in its terms of reference that it:

"Receive and consider a detailed report, within twelve months of the creation of the Joint Committee [by October/ November 2017] that considers the Governance Model Options for Shared Digital and to make recommendations to the Cabinet/ Executive of each of the Councils in respect of the report. Options to be evaluated to include the Joint Committee model as well as company models."

3 OPTIONS

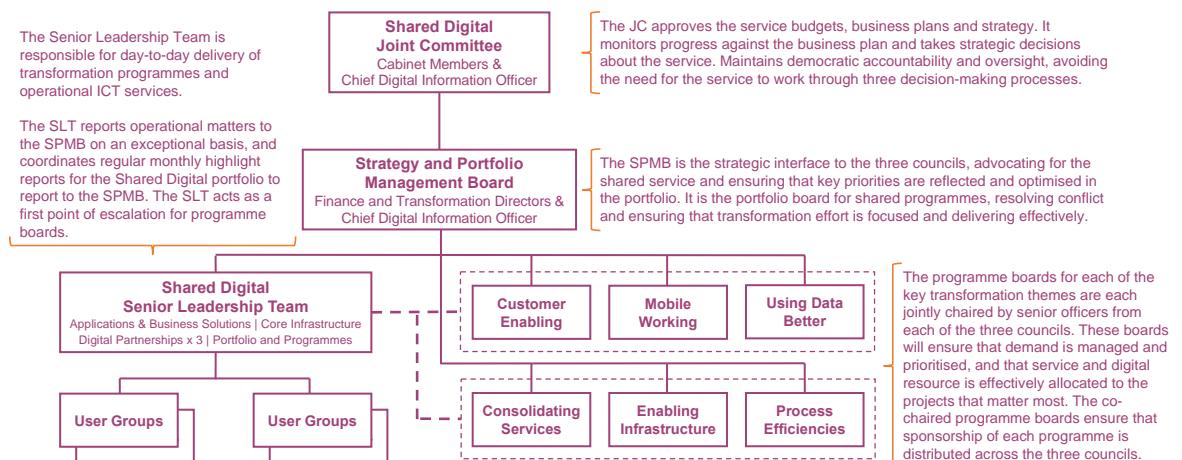
- 3.1 There are three options, to adopt one of the two models: a ‘lean’ Joint Committee model or a company model as identified and evaluated in the detailed report (Appendix 1), or to maintain the status quo.
- 3.2 **Option 1:** a ‘lean’ Joint Committee, similar to the current arrangements, with some streamlining – see the following paragraphs of the Activist Group report in Appendix 1 for more detail:
 - discussed in paragraphs 3.7 to 3.14
 - specific detail on the model in paragraphs 4.5 to 4.8
 - evaluation in paragraphs 4.9
- 3.3 **Option 2:** a public service company that could be jointly owned by the three partners – see the following paragraphs of the Activist Group report for more detail:
 - evaluation in paragraph 4.10
- 3.4 **Option 3:** to maintain the current governance model.
- 3.5 Option 3 is not recommended. The current model cannot address the fundamental issues that have been identified (see Table 2.3, paragraph 2.25, of Appendix 1), ie:
 - **Complex decision-making:** current decision-making processes and delegations are complex and introduce unnecessary risks and delays.
 - **Constitutional differences:** there is currently a divergence in views as to the operation of the arrangements and some ambiguity over some of the provisions which should be addressed by the recommended option.
 - **Diffuse employment arrangements:** the current arrangements for employment (with three employers) adds complexity and impedes the formation of a cohesive and focussed organisation.

To meet the Councils’ ambitions, and provide stability for staff in the service, a new governance model is urgently needed.

Option 1: a ‘lean’ Joint Committee

- 3.6 In this model Haringey and Islington would directly **delegate their Digital and ICT services to Camden as ‘host’ authority under s101** of the Local Government Act 1972 (this is the model used by Brent, Lewisham and Southwark for their shared ICT service) but with that being strategically directed by the Joint Committee.
- 3.7 This **delegation would include employing the staff, managing the service and making day-to-day operational decisions about the service subject to strategic direction by the JC.**

- 3.8 **Staff would be transferred to Camden under TUPE Regulations.** Pension fund arrangements will need to be examined and addressed by the three Councils as part of the transfer due diligence.
- 3.9 The arrangement would be underpinned by **inter-authority agreements and service descriptions which set out roles and responsibilities of in particular the Joint Committee and mutual expectations generally.**
- 3.10 A **Joint Committee of the partners would approve business plans and strategies;** monitoring high-level progress against the business plans and financial budgets.
- 3.11 Re-casting the arrangements to include standard consistent and specific delegations to the host authority and to Joint Committee would streamline decision-making while retaining transparency and accountability.
- 3.12 The principles of a governance framework to support the 'lean' Joint Committee are set out Table 4.1, paragraph 4.7 of Appendix 1.
- 3.13 An overview of the governance framework aligned with the lean Joint Committee is shown below, with four key elements:



1. The **Shared Digital Joint Committee** approves the service budgets, business plans and strategy. It monitors progress against the business plan and takes strategic decisions about the service and high value procurement decisions at a level to be decided by the three Boroughs. It maintains democratic accountability and oversight, avoiding the need for the service to work through three decision-making processes. It will be decision making.
2. The **Strategy and Portfolio Management Board** is the strategic interface to the three Councils, advocating for the shared service and ensuring that key priorities are reflected and optimised in the portfolio. It is the portfolio board for shared programmes, resolving conflict and ensuring that transformation effort is focused and delivering effectively.

3. **Priority shared digital transformation themes**/ programme boards for each of the key transformation themes. These are each jointly chaired by a senior officer from each of the three Councils. These boards will ensure that demand is managed and prioritised, and that service and digital resource is effectively allocated to the projects that matter most. The co-chaired programme boards ensure that sponsorship of each programme is distributed across the three Councils.
4. The **Shared Digital Senior Leadership Team** is responsible for day-to-day delivery of transformation programmes and operational ICT services. The SLT reports operational matters to the Strategic Portfolio Management Board on an exceptional basis, and coordinates regular monthly highlight reports for the Shared Digital portfolio to report to the Strategic Portfolio Management Board. The SLT acts as a first point of escalation for programme boards.

Option 2: a public services company

- 3.14 The three Councils can setup a publicly owned company (without requiring a procurement exercise providing they all take part in the control of the company (this is often called the 'Teckal exemption')).
- 3.15 The company can offer a proportion of its services commercially to external customers up to a maximum of 20% of its turnover. If that threshold is exceeded the company will lose its Teckal exemption and the work undertaken by the company on behalf of its owning bodies will need to be put out to tender by those owning bodies in line with public procurement regulations.
- 3.16 Legal arrangements for a company owned by local authority partners would need to be put in place and would include:
- The **articles of association of the company** which sets out the governance of the company, including issues such as decision-making arrangements for shareholders and directors.
 - A **shareholders' agreement**: this will cover arrangements between the owning partners such as mechanisms for managing changes to shareholdings; and notice periods and provisions from withdrawal from the company.
 - The **contract between the company and each of the owning authorities**, identifying the service provided and the payment mechanisms.
 - **Reserved matters**: this will include decisions (eg over major expenditure and taking on new partners) that the owning partners will not delegate to the board of directors.

- 3.17 A **board of directors would need to be established**. A local authority company's board of directors would generally include a combination of staff, directors, and/ or elected members from the owning authorities. Elected members can be nominated to sit on the board of directors for the company. If they are appointed as directors, they will have a duty to 'promote the success of the company' which may sometimes be at odds with the objectives of one or more of the shareholding owners. As a result, a separation is advisable between decisions made by the board of directors and decisions made by shareholders (eg at general meetings of shareholders).

4 WHAT ARE THE REASONS FOR THE RECOMMENDED DECISIONS?

- 4.1 This report recommends that the Joint Committee model be refined to address the issues set out in paragraph 3.4 and that the service be governed under a 'lean' Joint Committee model.
- 4.2 The Councils' Digital and ICT teams have been in a state of transition for a number of years. Ongoing uncertainty is adversely impacting staff morale, and in turn the service. It is imperative that the future governance arrangements for the shared service be confirmed and implemented.
- 4.3 The interim 'secondment' arrangement currently in place is not considered sustainable in the long term nor are long term secondments generally considered to be good practice, and such arrangements are not aligned with the Councils ambition to establish a high-performing single team that retains and attracts the best Digital and ICT staff. Both of the options discussed in this paper involve the formation and development of a single team. Delay in implementing the single team will compromise committed savings and further undermine staff morale.
- 4.4 The public services company model is not recommended at this time as it is considered on balance that the lean JC model will be able to satisfactorily develop this project at this time. Should the Councils wish to trade services in the future, a trading arm could be established to facilitate that.
- 4.5 The 'do nothing' option is not recommended for the reasons set out in paragraph 3.4 above.

5 WHAT ARE THE IMPACTS/ RISKS? HOW WILL THEY BE ADDRESSED?

- 5.1 If the Shared Digital Joint Committee approve the recommendation, Camden would be responsible for employing staff engaged to deliver the Shared ICT Service. As a result of the service transferring under this model, as stated in paragraph 3.8, it is considered likely that some Islington and Haringey staff would be eligible to transfer to Camden (as the host authority) under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Pension arrangements and liabilities arising from transferring staff will need to be determined. Haringey, Islington and Camden will be required to comply with their usual statutory obligations. The Council's respective procedures on managing change and consulting with departments, staff and the respective unions will be followed in respect of all affected staff where applicable.

6 WHAT ACTIONS WILL BE TAKEN AND WHEN FOLLOWING THE DECISION AND HOW WILL THIS BE MONITORED?

- 6.1 If the Shared Digital Joint Committee agrees the recommendation, officers will prepare a report for the consideration at the 6 December Cabinet in Camden, the 12 December Cabinet in Haringey, and the 23 November Executive in Islington.
- 6.2 The report will seek approval or delegated approval for other all of the changes needed to legally implement the recommended option so that this can be implemented as efficiently as possible once the decision is taken.
- 6.3 If the Shared Digital Joint Committee is unable to agree the recommendation, the risks associated with uncertainty for staff would continue and would be exacerbated. This could impact service delivery and resilience.

7 CONSULTATION

- 7.1 A series of stakeholder engagement sessions have taken place with senior officers and Members from Camden, Haringey and Islington, around the governance model detailed in this report and associated appendices, including:
- meetings with the Legal services on 22 and 29 September
 - meetings with the Shared Digital Delivery Board on 22 and 29 September
 - meetings with members of the Shared Digital Joint Committee on 24 July (at an informal meeting), and in a series of interviews over the second half of September
 - meetings and calls with the three Chief Executives in September and October
- 7.2 Staff across the service have been advised that this review of governance options is underway and there have been informal discussions at staff 'huddle' meetings. Further consultation with staff on transfer will take place, subject to the decision of the Joint Committee and Cabinet/ Executive.

8 LEGAL IMPLICATIONS

- 8.1 The report recommends that each Council now re-cast the current arrangements for the delivery of a joint ICT service. In summary, it recommends:
- (i) That the operation of ICT-related functions are transferred to Camden including the employment of staff (which will entail on the day this “delegation” takes effect a TUPE transfer of the relevant staff to Camden) subject to (ii).
 - (ii) That the Joint Committee is re-constituted to provide strategic oversight on behalf of the three Boroughs including monitoring and approving budgets and business plans and taking high value procurement decisions with other specified matters delegated to the Chief Digital Information Officer under the general direction of an officer Strategy and Portfolio Management Board.
- 8.2 So far as the Joint Committee is concerned, the power to make joint arrangements originates from s. 101(5) of the Local Government Act read with Part 4 of SI 2012/1019 (“the Discharge of Functions Regulations”). These provisions confer power upon the executive of each Council (reg. 4 of the Discharge of Functions Regulations) to make arrangements for the joint exercise of their powers with another authority. The functions here, ICT and related activity, are matters within the power of the executives. The ultimate form of “delegation” to a Joint Committee must be aligned with each Council’s constitution in the sense that a constitution might prevent or limit the scope of “delegation” to a Joint Committee, or might impose conditions as to the further “delegation” of decision-making power by a Joint Committee, but subject to any express provision to that effect, the power to “delegate” to a Joint Committee, and the terms on which powers may be exercised by a Joint Committee, are a matter for the executive to determine by way of the particular arrangements entered into pursuant to s. 101(5). If no express provision is made then the default position in s. 101(5)(a) and 101(2) will apply and the Joint Committee will be entitled to arrange for the discharge of its functions by a sub-committee or officer.
- 8.3 Therefore, it will be open to each authority to impose express limitations on the exercise of power by the Joint Committee in the terms of the arrangements regarding transfer of powers to the Joint Committee. Once functions have been “delegated” to the Joint Committee then their exercise is for the Joint Committee to manage subject only to the terms of that “delegation”. Hence, for example, the schemes of delegation which apply internally within each Council regarding the exercise of decision-making power by committees and officers within that Council do not apply to the delegation of power to the Joint Committee (unless they are expressly incorporated into or otherwise applied to the terms of “delegation” of power to the Joint Committee).

- 8.4 Similarly, the transfer of certain functions to Camden will be arranged pursuant to express provisions in s. 101(1)(b) of the Local Government Act 1972 and Part 3 of the Discharge of Functions Regulations. The terms on which Camden will be entitled to exercise those functions, including any relevant restrictions on “delegation” of decision-making power within Camden, depend upon the terms of the arrangements which transfer the relevant functions to Camden rather than upon the constitution of any Council. In default of specific provision, it can be expected that Camden’s scheme of “delegation” will apply to decisions taken by Camden pursuant to the transfer of functions to Camden by Haringey and Islington.
- 8.5 The proposed new model – of direct “delegation” to Camden of some functions and the re-casting of the JC to provide strategic oversight – can be achieved without the need to change constitutions (unless, exceptionally, a constitution has already made express provision which would restrict the power of the executive to “delegate” functions to the Joint Committee or the powers of the Joint Committee to exercise those functions).

Next Legal steps

1. Each Council to confirm that there are no constitutional bars to the proposed arrangements and if there are to take appropriate steps to amend those provisions or seek dispensation for these particular arrangements
2. Each Council to work up the detail around the proposed amended terms of reference for the JC and Strategy and Portfolio Management Board. The powers of this Board will need to be carefully considered and distinguished from those of the Joint Committee and Camden
3. The results of the above to feed into agreed decisions to be taken by each Executive
4. The Councils to agree a go live date for the transfer of the function to Camden and therefore the TUPE date for staff to be captured in the decisions of the Executives

9 RESOURCE IMPLICATIONS (finance comments of the Executive Director Corporate Services)

- 9.1 The implications below are agreed across Camden, Haringey and Islington.
- 9.2 The two options for proposed governance models of Shared Digital presented this paper will carry different financial implications. Whichever governance model is chosen, any costs associated should be shared equally between the three authorities, as per the agreed financial approach for Shared Digital, and additional funding will need to be identified to support this.

- 9.3 The lean Joint Committee option builds on the current governance model, and no significant cost increase would be expected. The public services company model will incur additional governance and set up costs. These are as yet unquantified but further due diligence, including professional legal and tax advice, will be needed for a detailed assessment of financial implications.
- 9.4 The transfer of staff under TUPE would result in the transfer of pension liabilities to the host employer's pension fund, with accompanying proportional transfer of assets to be determined by actuarial valuation. Cost associated with the transfer would also be shared equally between authorities as per the agreed financial approach. The arrangements for cost of staff transferred under TUPE will be covered by the wider arrangements for ongoing cost of service, and align with the funding agreements across the three councils.

10 APPENDICES

- 10.1 Shared Digital Governance Model Options Discussion Paper (Appendix 1) prepared by Activist Group.

REPORT ENDS