

TRI-BOROUGH CORPORATE SERVICES – SECTION 113 AGREEMENT

A detailed summary of the standard provisions which apply to all services is set out below:

Clause 1 - Background

This sets out the aspiration to realise economies and efficiencies through the combination and integration of services through alignment, joint working and co-location rather than through a single authority to which functions will be delegated and staff transferred. The concept of the Sovereignty Guarantee is introduced. The use of s.113 of the Local Government Act 1972 is explained.

Clause 2 – Definitions and Interpretation

Sets out the definitions used in the agreement which are contained in Schedule 1.

Clause 3 – Duration

The agreement remains in force until terminated under the termination provisions (see clause 25)

Clause 4 – The Arrangements

This, together with Schedule 2, establishes the aims, benefits and intended outcomes of the agreement and the high level principles which underpin it. These are aspirational and are not themselves legally binding. The arrangements comprise those in relation to combined teams (section 3), governance (section 4) and finance (section 5). The arrangements do not affect the liabilities of a Council to third parties.

Clause 5 (Non) Delegation of Functions

This makes it clear that the arrangements do not transfer statutory functions from one Council to another and that shared officers discharge the functions of the authority they are acting for at the time as an officer of that authority. Should the Councils wish to delegate any functions to one another in the future then this must be accomplished through a separate agreement.

Clause 6 – S.113 Arrangements

This, together with Schedule 5, establishes the arrangements for sharing staff by listing the posts being integrated and combined. It also provides a framework for the management, appraisal and supervision of the shared executive director together with a mechanism for the parties to raise any concerns in relation to their performance.

Clause 7 – Single Management Team (SMT)

This establishes a single management team for the service. Membership and terms of reference are set out in Schedule 6. It has responsibility for implementing and monitoring the arrangements and for complying with the financial protocol and

Sovereignty Guarantee. It has the power to establish further subsidiary management teams whose terms of reference are agreed by the Parties.

Clause 8 Accountability

This sets out the accountability of post holders and requires the development of detailed arrangements as to the responsibility of post holders.

Clause 9 SMT Review Meetings

This requires SMT to hold an agreed number of review meetings to discuss performance of the arrangements and the realisation of savings etc. The minutes will be submitted to the Parties.

Clause 10 Annual Review

This requires SMT to carry out an annual review of the arrangements to evaluate performance, effectiveness and outcomes etc. and produce targets and priorities for the next financial year and make recommendations to the cabinets with a view to producing an Annual Strategic Agreement summarising priorities, targets and budgets for the next financial year and any required variations to the arrangements. It is not intended to have an Annual Strategic Agreement in place for the first year.

Clause 11 Financial Arrangements for Postholders

This makes the employing authority solely responsible for payments due under contracts of employment. The non-employing Council is responsible for expenses incurred in carrying out duties for them provided they are of a nature payable under the employer's expenses policy. The non-employing Councils are also responsible for any training they require a postholder to undertake in relation to s.113 duties carried out for that Council. The sharing of savings is dealt with below.

Clause 12 Financial Protocol

This provides for the financial protocol at Schedule 4 which sets out the financial relationship between the parties and includes provisions relating to financial planning, management, reporting, risk management, audit and the sharing of savings. The financial protocol will ensure that the authorities discharge their fiduciary duties to their Council Tax payers as far as the arrangements are concerned.

Clause 13 Human Resources Protocol

This sets out, in schedule 3 the protocol for dealing with HR issues. It is not a substitute for the parties' existing HR policies and procedures.

Clause 14 Indemnities & Liabilities

Each party indemnifies the others against damage caused by that party's negligence, (excluding the contributory negligence of the other parties). As far as post-holders are concerned the non-employing party is responsible for the acts/omissions of a postholder when performing s.113 duties for that party and the employing party is responsible when they are performing duties for the employer. This puts the parties in the same position as if they were not sharing officers.

TUPE is not expected to apply but if it is subsequently found to apply (TUPE is a question of fact and law rather than intention) then the transferor indemnifies the transferee in respect of liabilities which arise due to their act or omissions and the transferee indemnifies the transferor in respect of those which arise due to their acts or omissions. Liabilities incurred as a result of the acts or omissions of more than one party shall be apportioned reasonably. Parties are under a duty to mitigate losses.

Clause 15 Insurance

The parties may, but are not obliged to, maintain insurance in respect of potential liabilities arising from the arrangements. Where they do so they must ensure that they cover liabilities incurred through their own staff performing employee duties and the staff of other parties performing s.113 duties.

Clause 16 Standards of Conduct

This requires the parties to ensure that the arrangements comply with statutory requirements and guidance in respect of conduct, probity and good corporate governance.

The parties will review and where appropriate amend their constitutions as necessary to comply with the agreement and enable the arrangements to run as smoothly as possible. This does not require a party to make alterations which it reasonably considers would be inconsistent with the Sovereignty Guarantee.

Clause 17 Conflict of Interest

This sets out the procedure for dealing with conflicts of interest arising from the arrangements. It identifies two types, private interest conflicts and combined working conflicts. The former may arise where an employee discharging s.113 duties has a private conflict with the non-employing party. In such circumstances the conflict is notified to and recorded by the employing party in accordance with their own procedures. The Joint Director and the Chief Executives are then notified (and the Leaders where the Chief Executives are conflicted). The Parties then take such action as is required to protect their interests.

In the event that a combined working conflict arises which affects the Joint Director he shall notify the Parties and the non-employing party shall appoint an interim director as necessary and appropriate. Where other combined working conflicts arise the Joint Director shall ensure appropriate steps are taken to protect the interests of all parties including the obtaining of appropriate professional advice.

Clause 18 Complaints

Third party complaints are dealt with using the complaints procedure of the appropriate party. The parties may agree a combined complaints procedure in writing.

Clause 19 Ombudsman

The parties shall co-operate with one another as required in relation to Ombudsman investigations.

Clause 20 Intellectual Property

The parties grant one another a licence to use each others' intellectual property rights for the purposes of the agreement. The parties shall agree their respective rights in relation to any IPR jointly created through the arrangements.

Clause 21 Confidentiality & Data Protection

This requires the parties to treat confidential information appropriately and sets out limited circumstances in which it may be disclosed. It provides, in Schedule 7, a Data Sharing Protocol which must be complied with and requires the parties to comply with the Data Protection Act 1998.

Clause 22 Freedom of Information

The parties shall co-operate with one another to enable them to fulfil their obligations under FOIA and shall consult one another before disclosing information relating to the arrangements.

Clause 23 Default

This provides a mechanism to deal with breaches of the agreement which are capable of remedy. The parties shall meet and agree a remedial action plan giving the defaulting party a reasonable period to remedy the breach. If a party is not satisfied that the defaulting party has complied with the plan it may initiate the dispute resolution procedure (clause 24) or terminate the agreement (clause 25).

Clause 24 Disputes

This provides a tiered mechanism for the resolution of disputes. The first stage is a meeting between the parties' representatives who will endeavour to resolve the dispute. If this is not possible within a reasonable period then the matter is escalated to the relevant Cabinet Members and if not resolved by them to the Leaders. In the event that the parties cannot resolve the dispute themselves then they must refer the matter to mediation. Legal proceedings may not be commenced unless a party has attempted to resolve the matter by mediation and it has either terminated or the other party has failed to participate.

Clause 25 Termination

This sets out the circumstances in which the agreement may be terminated. It may be terminated at any time by agreement and upon 12 months notice by any party. Individual post holders are removed from the agreement if they cease to be employed by an employing party.

The agreement may be terminated on 20 working days notice by an innocent party where another party commits a material breach incapable of remedy or one which is capable of remedy but has not been remedied in accordance with Clause 23.

The agreement may also be terminated after a reasonable period where it is no longer possible to fulfil it due to a change in law or guidance from the Secretary of State and the parties are unable to agree a suitable variation to enable the obligations to be fulfilled.

In the event of termination the parties shall use all reasonable endeavours to minimise disruption to the continued delivery of services and staff.

Clause 26 Variations

This allows the parties to propose and agree variations to the agreement.

Clauses 27-34 Boilerplate

These are standard provisions relating to the service of notices, waiver, severance and transfer etc.