



Framework for Delivering Services with Council- funded Service Providers

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Introduction & Background

Why do we need a framework?

1. While government funding to local authorities has reduced year on year, the public's expectations for good quality services has increased and there has also been an increasing interest from stakeholders in the governance of local authorities.
2. In January 2014, the 'Commission on Public Service Delivery' report (commonly called the 'Williams review') examined public service provision in Wales. The main message from this review was that things must change for public services to survive, as they cannot cope with the financial pressures and increasing demand on their resources, but that this change cannot be incremental. The report stresses that organisations need to look at new delivery models, e.g. collaboration and third party delivery but also insists that scrutiny of governance and performance needs to improve.
3. As the Council moves towards funding more organisations to deliver services on its behalf, it needs to ensure that these organisations have appropriate governance arrangements in place. In particular, this Framework relates to:
 - 'arms-length' organisations where the Council has transferred service delivery to another organisation;
 - organisations to which the Council has provided grant funding to deliver services on its behalf; and
 - delivery of services in partnership.
4. Where the Council is using Council-funded service providers (CFSPs), it needs to ensure that:

- ✓ it has guidance and consistent arrangements for setting up and recording CFSPs so that it is fully aware of all such organisations that it deals with;
- ✓ there are appropriate monitoring arrangements so that it will not fund CFSPs that do not deliver intended outcomes and it will be aware of such organisations that perform poorly, operationally and/or financially;
- ✓ there are appropriate governance arrangements over CFSPs, reducing the likelihood of failure in DCC's stewardship of public funds;
- ✓ it has early warning mechanisms through regular monitoring information, reducing the likelihood that the Council suffers financial loss due to a CFSP ceasing to exist and it should not have to step in with contingency arrangements to deliver services;
- ✓ there are business cases for approval of CFSP arrangements so that the Council can ensure that CFSPs share its values and should not bring it into disrepute through their behaviour;

- ✓ it has appropriate legal agreements and/or service level agreements to ensure that both organisations understand their roles and responsibilities and the Council strengthens its position in the event of dispute; and
- ✓ it provides robust guidance and support to its elected members and officers who sit on outside bodies to protect their interests, to improve the likelihood of robust scrutiny and clarify the legal position and conflicts of interest relating to directorships and trustees.

Some 'must dos'

5. Overall, the framework means that the Council should not suffer significant damage to its reputation due to failure of a CFSP; however, to ensure that arrangements for considering and setting up CFSPs are robust, the following points are crucial:

- ↪ The Council's officers and elected members must comply with this guidance when considering use of and developing arrangements with CFSPs shown in paragraph 3 above.
- ↪ Officers and elected members must base any decision to use a CFSP on a sound options appraisal and an approved business case, including risk assessment and EQIA (Equality Impact Assessment).
- ↪ All CFSPs should be subject to some form of legal agreement, which must include clauses to terminate or review delivery arrangements at the outset, taking into account the impact on services and their users, employees and assets.
- ↪ CFSPs should only be used to help meet a statutory need or to help deliver the Council's corporate priorities (there may be exceptions, e.g. where Welsh Government provides grant funding that the Council administers on its behalf).
- ↪ The decision to use CFSPs should consider governance at the outset to ensure that the Council and the CFSP can effectively scrutinise performance and be held accountable; monitor costs, performance and risk; and engage service users and citizens.
- ↪ Officers and elected members must clearly understand the role of boards, committees and the Council in the articles of association or other constitutional documents of the CFSP.
- ↪ The Council must set clear criteria for appointing representatives to boards of CFSPs, including skills, experience and payment.

The role of senior management and elected members

6. In addition to the above, Corporate Executive Team (CET) and elected members need to ask some critical governance questions when considering use of a CFSP and when approving business cases for their use:

- ? Are we clear about our overall expectations of the CFSP?
- ? Do these expectations align with the Council's corporate priorities?
- ? How well do we understand the financial commitment and risks flowing from the decision to use the CFSP?
- ? How do we ensure that the governance arrangements in the CFSP are sound and that those with an active role receive adequate training and advice?
- ? How will we safeguard our interests, such as assets and other resources made available to the CFSP?
- ? How will we know how well the CFSP is doing, through our scrutiny of both operational and financial performance?

Council representation on CFSPs

7. The Council must consider very carefully the question of representation on CFSP boards or committees. For example, elected members or officers who become directors will assume personal responsibilities under the Companies Act and it is possible that conflicts of interest will arise for such members and officers between the company and the Council.
8. It is crucial for the Council to provide advice and guidance to elected members and officers on their responsibilities to the Council and the CFSP. In particular, they should be fully aware of their respective codes of conduct within the Council's Constitution, which state that they have a duty to act in the Council's interests as a whole but outline the impact of becoming a director or trustee of a CFSP where they must act in the interests of the CFSP.
9. One very important point to stress is that having elected members or senior managers on CFSP boards or committees does not constitute adequate monitoring. There must be systematic and regular monitoring of service and financial performance of CFSPs, with formal reports to the relevant Council committee.
10. In particular, Council representatives on CFSPs must:

- ↪ be aware of how well the CFSP is meeting the Council's corporate priorities;
- ↪ carry out scrutiny or management roles effectively, taking action on shortcomings or under-performance;
- ↪ be risk aware and satisfied that risks to the Council and the CFSP are identified and managed effectively;
- ↪ act quickly on potential conflicts of interest;
- ↪ take action to ensure that funding is withheld or reviewed, or the agreement terminated, particularly where services or public money are at risk;
- ↪ take action where the CFSP is not meeting its intended objectives, or where they diverge from the Council's corporate priorities;
- ↪ periodically review delivery arrangements to ensure that the CFSP makes best use of resources and that robust governance is in place; and
- ↪ take action to ensure that CFSPs are reviewed or wound up where they are no longer active or effective, or contribute to the Council's priorities.

Framework Summary

11. Under CFSP arrangements, delivery of a service becomes the responsibility of a separate organisation or group of organisations and the Council loses direct control over day-to-day management of the service; however, it remains accountable for how public money is spent and the quality of services delivered.
12. There are also on-going financial and reputational risks if things go wrong. In 'A Statement on the Role of the Finance Director in Local Government', CIPFA recognises that:

'the statutory role of the finance director does not stop at the boundaries of the local authority but extends into its partnerships, devolved arrangements, joint ventures and companies in which the authority has an interest'.

13. However, it is important that the level of monitoring introduced is commensurate with the risk involved, which is mainly linked to the level of funding provided and the impact that failure of the service would have on the Council's reputation and on the public. This Framework therefore uses a risk-based approach with two categories of CFSP based on the Council's financial commitment.
14. The following sections of this Framework provide further details on the arrangements required for each category. It should be noted that these categories apply where the CFSP is delivering a service on behalf of the Council, not where the Council is just making a contribution to an organisation.

Category 1 - Services delivered through Council grant or contribution, partnership working or transfer of service >£100k per year

Category 2 - Services delivered through Council grant or contribution, partnership working or transfer of service £10k-£100k per year

Category 1 Requirements

Services delivered through Council grant or contribution, partnership working or transfer of service > £100k per year

| Set Up | Approval | Monitoring within relevant service | Reporting to elected members |
|---|------------------|---|--|
| <ul style="list-style-type: none"> •Business case (see Appendix 1) •Legal agreement, depending on type of arrangement (see Appendix 2) •Service level agreement (see Appendix 3) •Review of financial soundness to be carried out by central Finance. | Cabinet decision | Quarterly <ul style="list-style-type: none"> •<i>Financial report</i> - financial accounts, performance against budgets, forecasts for the financial year. •<i>Operational performance report</i> - performance against the service level agreement, forecasts for the financial year. | Half-yearly <ul style="list-style-type: none"> •Financial and operational performance report to Corporate Governance Committee |
| | | Annually <ul style="list-style-type: none"> •<i>Forward plan</i> - financial and operational plan for the year ahead. •<i>Financial report (in addition to the above quarterly report)</i> - external auditor's report. •<i>Governance assessment</i> - self-assessment checklist to include equalities; sustainability; HR practices; data protection and handling; FOI principles; standards and behaviour; and arrangements for engaging citizens and service users. | Annually <ul style="list-style-type: none"> •In addition to the above, an annual report on governance arrangements to the Corporate Governance Committee |

Category 2 Requirements

Services delivered through Council grant or contribution, partnership working or transfer of service £10k–£100k per

| Set Up | Approval | Monitoring within relevant service | Reporting to elected members |
|---|--------------------------|--|--|
| <ul style="list-style-type: none"> •Business case (see Appendix 1) •Legal agreement, depending on type of arrangement (see Appendix 2) •Service level agreement (see Appendix 3) | Corporate Executive Team | <p>Half-yearly</p> <ul style="list-style-type: none"> •<i>Financial report</i> – financial accounts, performance against budgets, forecasts for the financial year. •<i>Operational performance report</i> - performance against the service level agreement, forecasts for the financial year. | <p>Annually</p> <ul style="list-style-type: none"> •Financial and operational performance report to Corporate Governance Committee |

year

Appendix 1 – Business Cases

15. The content of a business case will depend on the type of service that the CFSP is providing but should fundamentally follow the Council's business case process used for projects within Verto.
16. All business cases should include:
 - a description and scope of service that the CFSP will provide, including a proposed start date;
 - aims and objectives of the service that the CFSP will provide, linked to the Council's corporate priorities;
 - the Council's financial contribution to the CFSP;
 - monitoring arrangements and responsibilities of the CFSP's governance and performance;
 - circumstances for terminating the CFSP agreement;
 - an Equality Impact Assessment (if a change to service delivery);
 - an assessment of benefits of the new service delivery arrangements using the CFSP;
 - a financial and operational risk assessment of the CFSP arrangements;
 - a three-year financial budget and operational plan of the CFSP;
 - start-up costs of the CFSP arrangements;
 - HR implications of the CFSP arrangement e.g. TUPE;
 - the Council's recurring liabilities relating to the CFSP arrangements;
 - any EU and other procurement regulation implications of the CFSP arrangements;
 - elected member and/or officer representation on the CFSP;
 - options for service delivery that have been explored, including consultation;
 - contingency plan arrangements to ensure continued service delivery in the event of the CFSP's failure; and
 - arrangements for audit access to the CFSP personnel and records.

Appendix 2 – Legal Agreements

17. Legal Services will decide on the type of agreement that is needed, depending on the CFSP arrangements being put in place.
18. Legal arrangements should include:
 - the name of the CFSP;
 - a general statement of the CFSP's aims, objectives and goals;
 - a service level agreement (see Appendix 3);
 - the extent of the Council's financial commitment to the CFSP;
 - the nature of financial relationship between the Council and the CFSP e.g. loan, grant, shareholding;
 - criteria for making and receiving payments to and from the CFSP;
 - procedures to alert the Council should any problem arise between formal monitoring stages;
 - dispute resolution arrangements;
 - the Council's criteria and arrangements for terminating the funding agreement with the CFSP;
 - the Council's exit strategy from the CFSP;
 - the level of Council representation on the CFSP i.e. elected members and/or officers;
 - details of any transfer of Council assets to the CFSP and destination of such assets;
 - Council policies to be adhered to by the CFSP, e.g. procurement policy, HR policies, equal opportunities, data protection;
 - responsibility and accountability of the 'management committee' of the CFSP;
 - access to records and accounts of the CFSP by Council representatives and auditors;
 - procedures for the Council to obtain information in respect of complaints made to the CFSP; and
 - any other relevant information, e.g. insurance arrangements at the CFSP.

Appendix 3 – Service Level Agreements

19. A service level agreement is an important document that allows the Council to monitor the CFSP's financial and operational performance and should include:
- a general statement of the aims, objectives and goals of the CFSP;
 - reporting requirements of the CFSP to the Council, including information required, timescales, responsibilities etc.;
 - the Council's monitoring arrangements, responsibilities etc.;
 - arrangements and responsibilities for the CFSP notifying the Council of any financial, performance or governance issues arising between formal monitoring periods;
 - specific measurements of achievement of the above objectives, including targets, timescales etc.; and
 - requirement for the CFSP to maintain a financial and operational risk assessment on a regular basis.