

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Executive Member for Policy and Resources
Date:	22 April 2016
Title:	Sport Hampshire and Isle of Wight Governance arrangements
Reference:	7274
Report From:	Director of Culture, Communities and Business Services

Contact name: Nicola Horsey

Tel: 845423

Email: nicola.horsey@hants.gov.uk

1. Executive Summary

- 1.1. The purpose of this paper is to recommend the arrangements under which the Sport Hampshire and Isle of Wight County Sports Partnership team will transfer to the newly formed Charitable Incorporated Organisation (CIO) named Sport Hampshire & Isle of Wight (SHIOW). This will remove SHIOW from the Executive Member for Culture & Recreation's portfolio and requires the approval of the Executive Member for Policy and Resources to the final actions and terms to complete the transfer.
- 1.2. The County Council proposes to hand over direct control of service delivery in June 2016. The Council will remain committed to the success of the new organisation. The Executive Member is asked to approve;
 - a. the timing of the grant payments proposed
 - b. the arrangements for the management of the pension liabilities relating to the transferred staff
 - c. the final terms of the legal agreement between the CIO and Hampshire County Council set out in section 5 of this report
 - d. the appointment of Councillor Andrew Gibson as the Council's nominated trustee, and
 - e. to authorise the Director of Culture, Communities and Business Services to finalise the terms for the signing of the agreements
- 1.3. This paper seeks to
 - set out the background to the project to date
 - considers the financial implications for the Council in terms of its commitments and liabilities associated with these proposals, and to

- summarise the legal agreement key terms in relation to the transferred staff, pension, grant, and Intellectual Property Rights

2. Contextual information

- 2.1. In July 2015¹, the Executive Member for Culture and Recreation approved the transfer of service, including the proposed continued funding of SHIOW, from its current HCC hosted relationship to a Charitable Incorporated Organisation (CIO). Fifteen Hampshire County Council staff will transfer under TUPE² regulations to SHIOW. The current Council funding of SHIOW's cash-limited budget is £196,000 for 2015/16. The actions required to implement this transfer have been undertaken over the interim period as listed in Appendix 1.
- 2.2. The transfer had been planned for 1 April but due to a delay in Charity registration the transfer date has been delayed to 1 June 2016. The Charity Commission extended their usual timeline for consideration of applications from 8 to 12 weeks due to volume of work. Subsequently a number of queries were discussed and resolved before the registration was finally achieved in February 2016. During the period of delay the transfer activities were progressed as far as possible awaiting the confirmation of SHIOW as a legal entity to progress the transfer.
- 2.3. Since the Executive Member Decision in July 2015, Sport England, SHIOW's primary funder, has consulted on and published a new Strategy for Sport, Sporting Future – A New Strategy for an Active Nation³. The Strategy recognises the value to local communities and the important role of county sports partnerships in promoting sport and physical activity working with local authorities, schools and the sport and health sector bodies.

3. Finance

- 3.1. The majority of grant awards made by the County Council are paid either quarterly or six monthly in advance. This recognises the fact that many of the organisations that the Council supports require adequate upfront funding in order to properly run their businesses and gives them surety of cash flow for the elements of funding that are provided by the County Council.
- 3.2. This payment method also means that the County Council is able to support the organisations in this regard whilst at the same time maintaining an element of control over the amount of funds that are released at any one point in time, which is important from the point of view of managing potential financial risks.

¹ [New Governance Arrangements for the Sport Hampshire and Isle of Wight Team](#) 16 July 2015

² TUPE refers to the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014".

³ [Sporting Future - A New Strategy for an Active Nation](#), Sport England December 2015

- 3.3. It is recognised that the CIO is in a unique position as the SHIOW staff will transfer under TUPE and the CIO will become an independent entity that will not receive any support services from the Council. The CIO itself needs to be able to satisfy both the Charity Commission and Sport England requirements for demonstrating financial management and financial stability. It will also need to have flexibility in the use of its resources in order to attract external funding to grow the business and to reduce its reliance on public funding in the longer term.
- 3.4. Given this position, the next section recommends the proposed arrangements for payment of the grant for the first three years of the CIO and also for the Council's financial commitment for the subsequent five year period through to 2023-24.

4. Funding Arrangements

- 4.1. The amount of grant that will be payable to the CIO for the first 3 years was approved by the EMCRC on 16 July 2015. For the first year of operation, it is proposed to pay the grant in two instalments on the date of transfer (proposed 1 June 2016) and 1 October 2016. The 1 October payment will be adjusted to reconcile the costs incurred during April and May.
- 4.2. The CIO is also dependent on payment of grant monies by Sport England. Part of this is core funding paid in advance but some of which has to be claimed in arrears. Hampshire County Council's payment schedule will provide the CIO with maximum stability and flexibility in their first full year of operation. It is proposed that the grant in year 2 and 3 is paid 6 monthly in advance on 1 April and 1 October.

Table A

	Core Grant which is not specified for specific allocation	Pension - LGPS employer contribution	Coaches, Officials and Volunteers Scholarship Scheme	Hampshire Talented Athletes Scheme	Total £
2016-2017	114,140	56,360	12,500	13,000	196,000
2017-2018	91,749	32,751	12,500	13,000	150,000
2018-2019	41,749	32,751	12,500	13,000	100,000
2019-2020 to 2023-24	No commitment	32,751 (estimated)	No commitment		32,751

Table B Hampshire Talented Athlete Scheme

2016-2017	£46,000 (£13,000 of this is in the core funding – see Table A)
2017-2018	£46,000 (£13,000 of this is in the core funding – see Table A)
2018-2019	£46,000 (£13,000 of this is in the core funding – see Table A)

- 4.3. The CIO will become an Admitted body of the Hampshire Pension Fund with the transferred staff retaining the right to remain within the LGPS. The Council will subsume the liabilities and act as guarantor to the Hampshire Pension Fund. Under the terms of the Funding Agreement the Council agrees to contribute to the employer pension payments under a pass-through arrangement for eight years. This is in-line with arrangements the Council has in place for other transfers, for example, the Hampshire Cultural Trust.
- 4.4. The grant payment for Years 1 to 3 includes an element for the reimbursement of pension costs which the CIO has to meet for transferring staff. (Table A) The payments for years 4 to 8 will be subject to separate reconciliation arrangements on an annual basis to ensure that the payment/reimbursements are in line with the conditions within the funding agreement.
- 4.5. SHIOW has been hosted by HCC throughout its existence to date. As the sports partnership's main funder is Sport England, it has been required by Sport England to maintain reserves. These funds have been held in the CCBS Cost of Change budget. A percentage of this ring-fenced fund will be used to meet the set-up costs with the remaining funds to be transferred to the CIO to ensure that SHIOW has operational reserves in line with its trustee approved policy and are important to the cash-flow of the new CIO. The £356,000 reserves (as at 31 March 2015) plus any underspend in the Sport cash limited budget in 2015/16 and any remaining Sport England ring-fenced project monies will be transferred to the CIO.
- 4.6. The reserves also include £50k as ring-fencing funding for the development of the Hampshire Institute of Sport. This is a concept that is being developed in association with the University of Winchester to provide high quality support for the development of talented sports people across Hampshire.
- 4.7. In addition to Hampshire County Council's core grant and pension contribution, it has been agreed that the CIO will manage the Hampshire Talented Athlete Scheme and Coaching Bursaries. The Council will provide funding as outlined in Table A and B for these schemes. This will be subject to annual confirmation. These funds are to be ring fenced for these schemes by SHIOW.

5. Legal Agreement terms

- 5.1. The drafting of the legal documents including a Funding Agreement and Commercial Transfer Agreement has been a thorough process. Both the Council and the CIO trustees have engaged legal advice to ensure that the interests of all parties are properly served. The Executive Member is now being asked to agree the principle terms leading to the formal transfer of the service and staff to the CIO.
- 5.2. The Heads of Terms are set out in Appendix 2.
- 5.3. The existing SHIOW staff will transfer under TUPE with protected contractual terms and conditions and eligibility to remain within the LGPS until the last of the transferred staff leaves the fund under a pass-through closed agreement with the Hampshire Pension Fund.

- 5.4. The Constitution of the CIO allows for the Council to nominate one trustee to the Board of Sport Hampshire & Isle of Wight. During the period of the Funding Agreement it is proposed that the Council exercise this right and that Cllr Andrew Gibson is nominated as the Council's trustee, taking up this role from the date of transfer.

6. Future direction

- 6.1. The SHIOW team have been closely involved in the development of the CIO, helping to shape the vision and the 5 year Business Plan. They have been kept informed throughout and members of the SHIOW team have led individual workstreams to find office accommodation, procure IT services, and develop the website and re-branding. The team has also worked together to develop the culture and values of the organisation for the future.
- 6.2. The Trustees have been recruited from a variety of backgrounds bringing with them a wealth of skills and experience in a range of fields. (Short biographies included in Appendix 3). They have demonstrated great commitment and vision for the future of SHIOW and are keen to establish the CIO on a sound footing. They wish to engage with other stakeholders and partners to develop the profile of SHIOW within a dynamic vision for the development of sport and healthy active physical activity across Hampshire.

7. Recommendation(s)

- 7.1. That the Executive Member for Policy and Resources;
- i) Approves the timing of the payment of the grant; that grant funding for 2016-17 is paid to the Charitable Incorporate Organisation (CIO) on the date of transfer (proposed 1 June 2016) and 1 October 2016 and that grant funding for 2017-18 and 2018-19 will be provided 6 monthly in advance.
 - ii) Approves the arrangements for the management of the pension liabilities relating to the transferred staff as set out in the report.
 - iii) Approves the timing of the payment of the pension reimbursement costs by the Council to the CIO; annually on 1 April for years 4 to 8 of the term.
 - iv) Approve the principle terms of the transfer of services and funding of Sport Hampshire and Isle of Wight county sports partnership from its current HCC hosting relationship to the CIO as outlined in the report.
 - v) Approves the appointment of Councillor Andrew Gibson as the Council's nominated trustee to the Board of the CIO (subject to the terms of the CIO's Constitution)
 - vi) Authorises the Director of Culture, Communities and Business Services to undertake any other steps that are reasonably required to finalise and implement the above recommendations including agreeing the final terms of the documentation required.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	no
Maximising well-being:	yes
Enhancing our quality of place:	no

Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Proposed New Governance Arrangements for the Sport Hampshire and Isle of Wight Team	6073	September 2013
New Governance Arrangements for the Sport Hampshire and Isle of Wight Team	6727	16 July 2015
Direct links to specific legislation or Government Directives		
<u>Title</u>		<u>Date</u>
Sporting Future: A New Strategy for an Active Nation (Cabinet Office)		December 2015

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

The equality impact assessment was published with the Executive Member Culture & Recreation Decision Report in July 2015. This impact assessment has been revised to reflect the activities to implement the transfer of SHIOW and to consider the terms of the agreements that will be in place between the Council and SHIOW.

The first stage of the project was a review of the governance arrangements for SHIOW to determine which model would be fit for purpose to enable the organisation to act with more freedom and independence, address economic pressures being experienced by the host organisation and enable new income generating opportunities, potentially unavailable through a hosted relationship.

Having identified a recommended form as a Charitable Incorporated Organisation (CIO), the next phase of the project has been the activity required to implement the transfer of SHIOW to a CIO.

The equality impacts have been considered in relation to the impact of SHIOW becoming an independent organisation for the existing SHIOW staff and for SHIOW's partners, stakeholders and its customers.

Impact for staff

There are a number of factors that may have an impact on staff. The profile of staff that will transfer under TUPE is;

Age	Male	Female		Male	Female
>55	0	1	Full time	3	7
25 - 49	2	9	Part time	0	5
< 25	1	2	Disability	0	0
Total	3	12	Ethnicity	0	1

The staff have been consulted on a new organisational structure. There are no changes to pay and grades and minimal changes to reporting lines. The staff will have different job titles but their substantial role and duties are unaffected. The staff were invited to comment on the structure and other aspects of the transfer under TUPE and these have been responded to.

Women will statistically be most affected as the team is predominantly female. However, all staff are treated equally under the terms of the transfer.

Staff will transfer under the TUPE regulations with protected terms and conditions, but other benefits and operational policies of the CIO will be subject to the decision of its Board of Trustees. It is likely that the Trustees will adopt similar policies and no significant detrimental impact is expected for the transferred staff.

SHIOW will move from its current Hampshire County Council offices but has secured a lease for offices in central Winchester. Therefore there is no anticipated disruptive impact for staff in terms of travel commitments both to work and within work and personal arrangements e.g. childcare. It is intended that SHIOW will continue to provide childcare vouchers for those staff currently using the scheme. Allowance for work-related travel is made in the CIO budget. The new offices also have some free parking available to staff.

It is agreed between the Board of Trustees and Hampshire County Council that the transferred staff will be eligible to remain within the Local Government Pension scheme with the CIO becoming an Admitted body to the Hampshire Pension Fund. Should the CIO be unable to meet the employer contributions in the future, then it may be forced to end the LGPS scheme for its staff. In this case, pension benefits are frozen in the Hampshire Pension Fund, and the CIO would need to offer an alternative scheme. This scenario is unlikely in the medium term as the Council will commit to ongoing support with LGPS employer contributions.

The staff will need to develop additional skills and knowledge and be subject to different pressures, expectations and culture when working for a charitable organisation. The workshop sessions with Oaks Consultancy, a comprehensive training needs analysis, further consultation with staff and preparation sessions have taken place before the transfer to ensure staff are prepared to operate in an independent organisation.

Impact for stakeholders and customers

SHIOW mainly operates organisation to organisation although there are some activities that are supplied directly to the end user, customer and/or Hampshire residents e.g. School Games, Hampshire Talented Athletes, coaches and volunteers and Roadshows. SHIOW's partners and stakeholders can be defined as local authorities across Hampshire and the Isle of Wight (including Public Health), National Governing Bodies of Sport, businesses, national partners such as Sport England and the English Federation of Disability Sport etc.

The new, independent organisation will have similar objects to allow it to deliver the activities that the funding bodies currently support. However, some of the activities delivered by SHIOW are currently funded by HCC and all of these activities may not continue as the Council reduces its funding over the next few years e.g. the grant programmes managed by SHIOW including Hampshire Talented Athlete and coaching bursaries. However, this outcome would be no different if SHIOW had remained within the Council.

2. Impact on Crime and Disorder:

2.1.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Appendix 1

Summary of actions taken since the EMCR Decision (14 July 2015) to enable the transfer of the Sport Hampshire & Isle of Wight County Sports Partnership out of HCC to become a Charitable Incorporated Organisation.

Activity	
Recruitment of the initial trustees of the charity	Quorate of 3 required. Four trustees currently on the Board. Open recruitment against skills assessment in 2016/17 for full Board.
Charity Commission registration to establish Sport Hampshire & Isle of Wight as a legal entity	Trustees agreed the Constitution, the objects and defined the public benefit of the charity. Registration confirmed Feb 2016.
Set-up a bank account for the CIO	Due diligence checks by the bank of the trustees as the directors of the charity.
Transfer of undertakings (TUPE)	Consultation with staff on the implications of the transfer and the proposed organisational structure
Business Planning including growth targets	Worked with consultants to develop a 5 year Business Plan identifying opportunities to grow the business
Find suitable office accommodation	Enter into a lease and plan the capital refurbishment works, IT installation and the removal from current offices
Negotiation of the terms of the funding agreement and commercial transfer terms	Heads of Terms negotiated prior to full drafting of the agreements with appropriate legal advice for all parties
Key policies approved by trustees	Essential HR policies and others including safeguarding, equalities, conflict of interest, reserves to be in place for date of transfer
Establish Governance procedures for the CIO	To establish good practice and ensure the CIO meets the requirements of the Charity Commission
HR advisers appointed	To provide Staff Handbook of policies and procedures and to advise on pay and performance review
Marketing and communications	Consultation with stakeholders on existing brand and development of new brand. Communications via newsletter throughout the transfer.
IT provider appointed	Scope the requirement of IT and procure provider of full IT and communications system.
Payroll, Financial system, HR and other support identified	Scoping of options for trustee approval on payroll, financial management, accountancy and HR support
Terms and Conditions	Develop terms and conditions for new staff. HR advisers to develop new contracts and recruitment documents.

Appendix 2

Summary of terms of the Funding Agreement

A summary of the legal terms for funding and transfer agreements between Hampshire County Council and the Hampshire & Isle of Wight County Sports Partnership as an independent Charitable Incorporated Organisation.

Issue	Summary of terms
Term	An 8 year agreement that includes 3 year funding plus further 5 years of pension contributions
Termination or review	A variety of situations to enable termination or review of the agreement (to include ability to terminate earlier if Sport England ceases funding). Provisions for any breach once identified to be addressed with an agreed action plan to prevent termination being invoked.
Grant funding and review arrangements	Three years fixed funding for 2016/17, 2017/18 and 2018/19. Funding for year 4 to be reviewed in year 2 and for year 5 in year 2 or 3. Thereafter on an annual basis during the Term. Part of the funding to be applied towards specified activities (e.g. stated amounts to be re-distributed as grants or bursaries under specified programmes)
Funding the LGPS Pensions for TUPE staff	The Council will provide 100% funding to cover the LGPS deficit on the Fund up to the point of handover. As part of the grant funding to the CIO the Council shall reimburse the employer pension contributions for transferred staff whilst it provides core grant funding to SHIOW and for 5 years beyond the end of the core grant funding period.
Timing of payments	Grant to be paid 6 monthly in advance in Years 1 to 3 to support cash-flow requirements. Pension contributions reimbursement paid annually in advance in Years 4 to 8.
Monitoring performance	The CIO will report to the Council on performance against the Business Plan in relation to the HCC funding and specific programmes on an annual basis.
Redundancies	Transfer of reserves and full liability for redundancy payments to the CIO
Insurance	The CIO will be responsible for suitable employer's liability insurance. This is a legal requirement. The CIO will also maintain public liability insurance.
TUPE	A list of the transferring staff and their contractual terms and conditions will be provided with provision for the transfer of staff in accordance with TUPE regulations.
Provision of equivalent pension	The CIO must comply with Best Value Direction and provide LGPS or an equivalent pension scheme to transferring staff. New CIO staff will not be eligible to join LGPS.
CIO Pension scheme	The CIO will set up a separate pension scheme for new staff. It is likely the pension scheme will have a defined

	employer contribution. Under auto-enrolment regulations, the CIO is required to enrol eligible staff in a pension scheme.
CIO as Admitted body to LGPS	The CIO will be a combined entity with the Council through the operation of the pass-through arrangement in relation to pension costs subject to certain exclusions (e.g. costs due to exercise of discretion by the CIO) which will not be reimbursed by the Council. It will be a closed scheme and new employees of the CIO will not be entitled to join the LGPS. The Council's funding includes employer's contributions. The Council will act as a guarantor to LGPS for any deficit in the fund associated with the transferring employees.
Transfer of assets	The Council will transfer the assets listed in an inventory to the CIO at nil cost on handover.
Intellectual Property (IPR)	The CIO will own its own brand (SHIOW and any new brand created) and any IP created for SHIOW whilst HCC has been its host except for the Hampshire Talented Athlete Scheme which the Council will retain and licence to SHIOW.
Novation of grant	Sport England funding will be novated to the CIO from Hampshire County Council.

Note: The terms are subject to final negotiation of the full drafting by the Council and the CIO and sign off with the Board of Trustees of the CIO.

Sport Hampshire & Isle of Wight – Board of Trustees

Richard Millard (Chairman)
Partnership Director, Places for People Leisure

Rich has experience in local government, leisure trusts and 20 plus years for Places for People Leisure. Rich works closely with many National Governing Bodies of Sport, partner agencies and funding agencies and is committed to the principles of Sports Development which enables local authorities to fulfil their role in increasing participation, physical activity and improved health in local communities. Rich works with the Business Development team to provide bespoke solutions for specific strategic needs of clients either within existing contracts or for new business linking with Health and Education sectors. He strategically leads the functions of Health & Safety and Training in particular, to ensure Places for People Leisure provide a consistent quality service for both our clients and customers.

Rich has previously been the Chairman of the Hampshire and Isle of Wight County Sports Partnership's Advisory Board, a fellow of CIMSPA and chairs the Sector Trailblazer Project on the future of apprenticeships in England.

James Starbuck
Chief Executive, Basingstoke Sports Trust

James has been Chief Executive of Basingstoke Sports Trust, a not-for-profit, charitable leisure organisation established in 1970, for almost four years. The Trust is independent and manages both Basingstoke Sports Centre at Festival Place and bstFitness in Newbury, West Berkshire.

The Trust is dedicated to providing local communities with the opportunity to take part in physical activity and health and wellbeing programmes. It offers a wide range of sport and leisure facilities and services and works with partners to expand the Trust's offer into other community-based settings.

James spent his formative working years in Finance before embarking upon a career in leisure which has now spanned some 20 years; 12 of those managing sport and leisure services within a local authority setting and the last 8 managing Leisure Trusts.

James is a Fellow of CIMSPA, a member of Hampshire and Isle of Wight County Sports Partnership's Advisory Board and a Company Director for Basingstoke Together – Basingstoke's Business Improvement District.

Selina Russell
Director, Cheeky Rascals

Cheeky Rascals supplies mums and dads with nursery products from across the globe. The company bring these products back to the UK for consumers to buy online, or on the high street, through Cheeky Rascals network or retailers.

As a new mum working and living in France, Selina found lots of innovative parenting products that were unavailable in the UK. Selina began sourcing bits and pieces for fellow new mums and turning this in to a business seemed an obvious next step. Soon enough, armed with a few leaflets, a van full of products and a gut full of ambition, Cheeky Rascals was born. The founding principle of the business has always been to find genuinely useful baby kit that makes family life easier. Selina is a well-known, respected member of the nursery industry and sits on the board of the Baby Products Association (BPA), the voice of the baby and nursery products industry in the UK and also sits on the European working group for child safety standards.

Outside of work Selina is constantly on the squash court and the weekends are filled with outdoor activities with husband Simon and 3 boys - sailing, walking, cycling etc. Holidays are always active ones, skiing, surfing, canoeing, or hiking.

Jon Monkcom

Jon is currently Chair of Wessex Group, a business he set up in 1992. They undertake management of insurance schemes on behalf of several major UK insurers. He qualified as a Chartered Accountant with KPMG and has many years of managing all aspects of running a business.

In the past he has been a non-executive director of the Theatre Royal Winchester, Hampshire Voluntary Housing Association and a digital arts organisation. Jon is also involved with Kingsgate tennis club in Winchester.