



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Social Services, Housing & Community Safety Cabinet Board

9th March 2023

Report of the Interim Head of Housing & Communities – Chelé Zandra Howard

Matter for Decision

Wards Affected: All

Report Title: Western Bay Area Planning Board Revised Financial Risk Sharing Agreement

Purpose of the Report:

The purpose of this report is to seek approval to enter into a revised Financial Governance and Risk Sharing agreement with the responsible authorities to the Area Planning Board (“APB”).

Executive Summary:

Responsible authorities in Wales and England have a statutory duty to formulate and implement a strategy for combatting the misuse of drugs, alcohol and other substances in the area. In 2010 the Welsh Government established APBs to discharge the Crime and Disorder duties at a regional level. The aim of the Western Bay APB is to bring

together representatives of the Responsible Authorities, to fulfil these responsibilities across Neath Port Talbot and Swansea.

The APB is not a legal entity in its own right and so Neath Port Talbot County Borough Council (“NPTCBC”) acts as the banker for the Western Bay APB. However NPTCBC is exposed to all the responsibilities and liabilities, if it enters into new or amends any contracts in respect of substance misuse services on behalf of the APB.

A financial governance and risk sharing agreement was developed to enable the risk to be shared amongst partners to the APB, and, as such each Responsible Authority needed to seek approval to the financial governance and risk sharing agreements through their respective governance frameworks. In 14 January 2022, the Regeneration & Sustainable Development Cabinet Board gave authority for NPTCBC to enter into this agreement.

However it has since transpired that the National Probation Service as a responsible authority to the APB, cannot sign-up to the risk sharing agreement. Therefore the agreement has been revised to remove Probation, and legal advice is that we seek Board approval to enter into the revised agreement. Once this is in place NPTCBC can take the lead on any new contracts or changes to existing contracts without bearing all of the risk.

Background:

The Crime and Disorder Act 1998 places a duty on responsible authorities in Wales and England to formulate and implement a strategy for combatting the misuse of drugs, alcohol and other substances in the area. In 2010 the Welsh Government established area planning boards (APBs) to deliver the Welsh Government’s Strategy, to plan treatment services and pool resources. The

composition of APBs allowed the responsible authorities to discharge the Crime and Disorder duties at a regional level.

The responsible authorities on the APB are

1. Swansea Bay University Health Board
2. City and County of Swansea Council
3. Neath Port Talbot County Borough Council
4. South Wales Police
5. National Probation Service
6. Mid and West Wales Fire and Rescue Service
7. Police & Crime Commissioner's office

The aim of the Western Bay Area Planning Board is to bring together representatives of the Responsible Authorities, and other organisations (invited members and advisors) to improve and strengthen the arrangements for the planning, commissioning and performance management of substance misuse services across Neath Port Talbot and Swansea.

The APB is an unincorporated body it has no legal powers, and will operate as a collaboration of organisations and does not have executive or statutory powers to make decisions in its own right.

The APB is not a legal entity in its own right and as such the APB itself is not able to commission work, procure goods/services, and incur costs or to enter into contracts etc. as it does not have the legal status to do so. Where such activities are proposed to be undertaken, it will be necessary for either the nominated grant recipient body and / or other named statutory partners to carry forward the proposals approved by the responsible authorities.

NPTCBC acts as the banker for the Western Bay APB, in respect of Welsh Government Substance Misuse Action Fund money (SMAF) and partner contributions from Swansea and NPT Councils.

However in the absence of an appropriate agreement, NPTCBC is exposed to all the responsibilities and liabilities as regards the receipt of the SMAF monies and in entering into contracts in respect of substance misuse services.

A financial governance and risk sharing agreement was developed by NPTCBC legal services in consultation with all partner organisations (responsible authorities) to the APB.

This financial governance and risk sharing agreement was developed to enable the risk to be shared amongst partners to the APB, and, as such each Responsible Authority needed to seek approval to the financial governance and risk sharing agreements through their respective governance frameworks. In 14 January 2022, the Regeneration & Sustainable Development Cabinet Board gave authority for NPTCBC to enter into this agreement.

However it has since transpired that the National Probation Service as a responsible authority to the APB, cannot sign-up to the risk sharing agreement.

Partners to the APB, are still supportive of this agreement being in place, to share the risk across the partnership albeit, with the exception of the National Probation Service.

Therefore the agreement has been revised to include all the partners to the agreement as listed but deleting reference to the National Probation Service. It will be for each of the Responsible Authorities to meet their own governance arrangements in respect of this revision. NPTCBC Legal advice is that we seek Board approval to enter into the revised agreement.

This revised agreement will enable risk to be shared amongst partners, and once this is in place NPTCBC can take the lead on any new contracts or changes to existing contracts without bearing all of the risk.

Financial Impacts

No implications.

Integrated Impact Assessment:

A full impact assessment is not required as this is an internal administration process only.

Valleys Communities Impacts:

No implications.

Workforce Impacts:

No implications.

Legal Impacts:

The Risk Sharing Agreement addresses the need to document that the NPTCBC is the grant recipient of the SMAF funding on behalf of the responsible authorities and will be the party to contracts commissioned with the funding. There is also the need to cover the financial management and risk arrangements/allocation as in the absence of the Agreement NPTCBC carries the legal risk in relation to the receipt of the funding and the contracts it enters into.

The Risk Sharing Agreement sets out that NPTCBC will act as the SMAF recipient and will administer it in accordance with its internal rules and procedures and will comply with the grant terms and conditions. It also requires all responsible bodies to cooperate to ensure compliance with the grant conditions. The risk associated with NPTCBC acting as grant recipient and contracting authority is fairly spread between the responsible authorities. NPTCBC and each of the responsible authorities will be responsible for liabilities resulting from each of their own acts or omissions. The Risk Sharing Agreement will be legally enforceable between the parties.

Risk Management Impacts:

The agreement sets out the financial arrangements between the Parties and provide a framework for risk sharing pursuant to the Welsh Government Guidance. This agreement once signed by all parties will reduce the risk to NPTCBC.

Consultation:

There is no requirement for external consultation on this item.

Recommendations:

It is recommended that approval is given to enter into the revised Financial Governance and Risk Sharing agreement with all the responsible authorities to the Area Planning Board with the exception of the National Probation Service.

Reasons for Proposed Decision:

- To enable NPTCBC in its role as Banker to commission, decommission, or recommission services on behalf of the APB, and to do so within an arrangement that shares the risk across all the responsible authorities.
- To enable NPTCBC to regularise existing inherited service arrangements in the form of legally binding contracts.

Implementation of Decision:

The decision is proposed for implementation after the three day call in period

Appendices:

Financial Governance and Risk Sharing Agreement

List of Background Papers:

None

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