

Decision maker:	Cabinet member finance and corporate services
Decision date:	Monday 16 September 2019
Title of report:	Approve payment for Hoople Services 2019/2020
Report by:	Acting Assistant Director for Highways and Transport

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose and summary

To approve payments to Hoople for services as specified in the Hoople service level agreement for 2019/20 and establish the overarching agreement (the Hoople Services Contract) which sets out the contract between Hoople and the council for 2019/20 onwards following the expiry of the prior agreement.

Hoople provides a range of service to the council, including revenues and benefits, finance, human resources, ICT, training and education, and reablement services, they also assist the

council in its management of ICT applications that are provided to the council by others. These services support the operation of the council across all directorates. The cost to the council of services provided by Hoople in 2019/20 is expected to be £5.699m. The services that Hoople are to deliver in each financial year are described in an annual plan, which is known as the Hoople service level agreement or the 'Hoople SLA'. As a teckal company those services are to be provided to the council at cost with no profit element. For 2019/20 the overarching agreement (the Hoople Services Contract) which sets out the contract between Hoople and the council is to be re-established following the expiry of the prior agreement. The expired agreement has been reviewed for any contractual mechanisms, which refer to processes that are still deemed to be active. These being moved into a current document overarching the annual Hoople SLA document. Amongst other things that agreement sets out the payment mechanism through which payment will be made to Hoople. That payment mechanism is entirely compatible with the arrangements that are necessary for the council to maintain the teckal exemption under which this provision must operate. As such approval of the new overarching agreement is also sought in order to enable Hoople to be paid for the services specified in the Hoople service level agreement for 2019/20, or the agreed variant thereof. This new overarching agreement will then be the subject of regular review.

The recommendations put forward enable the client/provider relationship between the council and Hoople to continue on a sound contractual footing, they enable the services that Hoople are commissioned to provide to be fully described, adjusted as may be required to support the council's operations and then paid for to the extent that they have been provided.

Recommendation(s)

That:

- (a) the acting assistant director for highways and transport be authorised to finalise the Hoople Services Contract, taking the form in Appendix 1 the term of which will run until terminated, the annual value of which will be in accordance with each year's Hoople SLA;**
- (b) the Hoople Services Contract be reviewed on a frequency no less than 5 years.**
- (c) subject to finalising the Hoople Services Contract, the acting assistant director for highways and transport be authorised to finalise and sign the Hoople SLA for 2019/20 attached at Appendix 2 at a value of c£5.669m;**
- (d) the acting assistant director highways and transport be authorised to agree, in accord with the Hoople Services Contract, and the authority obtained by relevant budget managers, any in year adjustments to the Hoople SLA for 2019/20;**
- (e) the acting assistant director for highways and transport be authorised to approve payments to Hoople in accord with the Hoople Services Contract for those services planned as the SLA for 2019/20, this within the approved annual budgets for the services therein;**
- (f) until such time as the Hoople Services Contract is signed off, the acting assistant director for highways and transport be authorised to approve payments to Hoople in accord with the contractual obligation established by the 2018/19 Hoople SLA; and**
- (g) In the event that a Hoople SLA for 2020/21 is not agreed by 1 April 2020, the acting assistant director for highways and transport be authorised to approve payments**

to the value of £2m to Hoople for the period up to end June 2020 in accordance with the Hoople Services Contract for those services that Hoople must continue to deliver to maintain the council's operational capability.

Alternative options

1. That alternative service provision for all or part of the services described in the Hoople SLA is sought from other external provider(s). This is not recommended as the council's opportunity to support partnership arrangements across the public sector through its established model for the provision of excellent business support services will be constrained. Further, it is considered unlikely that the council's costs, in regard to its back office services will be no less than that which can be provided by Hoople as an 'in house' company with no profit element. Such services would have to be the subject of regular procurement, the cost of which is avoided by maintaining a teckal exemption. An options appraisal and procurement(s) would have to be progressed before this option could be taken, with Hoople continuing to deliver services in accord with existing contractual obligation during transition.
2. That service provision for all or part of the services described in the Hoople SLA is provided in house through directly employed staff. This is not recommended as the council's opportunity to support partnership arrangements across the public sector through the provision of excellent business support services will be lost in regard to those elements of service provided in house. Further, it is considered likely that the council's costs, in regard to its back office services will increase as all associated operational overheads would have to be directly supported by the council, as opposed to overheads being shared amongst other public sector partners and Hoople's clients. An options appraisal would have to be progressed before this option could be taken, with Hoople continuing to deliver services in accord with existing contractual obligation during transition.
3. That the Hoople Service Contract is not progressed, with all contractual requirements being accommodated within each year's Hoople SLA. This is not recommended as this approach will distract from the focus on service planning through the annual SLA and detract from the ability to re-establish and maintain a robust contractual arrangement. As a consequence the council's ability to address all current and future risk will, most likely in time, be eroded by this approach.
4. In any event, Hoople will need to be paid in accord with current contractual obligation for the services that are being delivered, that obligation having been established in the 2018/19 Hoople SLA all in accord with the decision to Approve payment for Hoople services for 2018/19, taken on 14 September 2018. Whilst authority to pay in accord with this SLA is sought to ensure that the council can meet its contractual obligations, continuing to deliver in accord with the 2018/19 SLA, beyond the time necessary to enable the Hoople Services Contract and/or the 2019/20 Hoople SLA to be established, is also an alternative option. This is not recommended as a standalone option as, in anything other than the short term, the provision established by the 2018/19 Hoople SLA will not align with the needs of the council.

Key considerations

5. Hoople was created in 2011 by Herefordshire Council, the Wye Valley Trust and the then Herefordshire Primary Care Trust as a "Teckal" or "in house" company with a vision "to provide excellent business support services to the public sector and those who work with them". Since 2011, Hoople has established itself as an effective organisation and has delivered significant cost savings to the shareholders.

6. The implementation of shared services set out to:

- deliver improved quality and more efficient and effective back office support to front line services across the partner organisations;
- to release savings to deal with future financial constraints and/or for reinvestment in front line services; and
- to protect jobs and investment in the County in future.

In particular, the preferred option was to provide an opportunity for the partners to provide those services to other public services providers in Herefordshire in line with the 'localities' agenda, maintaining and building on the strong sense of place that is characteristic of the county.

7. The above objectives remain valid and Hoople provides a platform for development of "One Herefordshire" partnership arrangements across the public sector in the county and the model remains consistent with supporting joint working through the NHS Sustainability and Transformation Planning Process, schools, apprenticeships, other local authorities and the new university for Hereford.

8. A Shared Services Agreement dated April 2011 did provide for the overarching mechanisms to manage the client / provider relationship between the council and Hoople. That agreement is no longer current having expired at the end of its 5 year term, however the parties to that agreement have continued to operate in accord with the contractual provision established by it and the in accordance with approved service level agreements for each year.

9. There is a need to establish a current overarching agreement between the council, as client (as opposed to shareholder in Hoople) and Hoople, as service provider. This will provide an important part of the contractual mechanisms that are required to manage the client provider relationship well, now and in the future. That current overarching agreement can now incorporate contractual provision for various requirements that the council and its providers must now meet as a result of all relevant changes in legislation and policy since 2011.

10. The services that the council commissions from Hoople each year are described in an annual plan, which is known as the Hoople service level agreement or the 'Hoople SLA'. The Shared Services Agreement required the Hoople SLA to include: the services to be provided (the 'Service Catalogue'); the cost of the services; and any other provisions that the parties may jointly agree.

11. The range of service area covered by the Hoople SLA includes:

- revenues and benefits;
- finance;
- certain human resources (HR) services;
- ICT;
- training and education; and
- reablement services.

Hoople also assist the council in its management of ICT applications that are provided by others under separate contracts to the council, this function is also described in the SLA, as managed applications. These services support the council's delivery across all directorates.

12. The Hoople SLA is reviewed on an annual basis to adjust services in line with the requirements of the council's lead commissioners. These reviews are carried out with the aim of putting in place a new agreement by 1 April in each year. The revised SLA for 2019/20 has been substantially agreed between Hoople and each of the council's lead service commissioners.
13. Many of the services provided by Hoople, and as described in the Hoople SLA, support the ongoing functioning of the council, including its critical services. Given the value and strategic importance of these council functions, an overarching agreement which effectively regulates the relationship between the council (as client) and Hoople over all years, is in the least highly desirable. This particularly as continuity of service is key as delivery moves from one year's SLA to the next.
14. Contract procedure rules require the promotion of good purchasing practice, public accountability, transparency and probity, achievable by establishing robust contractual arrangements. This making the establishment of a Hoople Services Contract as the successor to the expired Shared Services Agreement, a necessity for the council if it is to make appropriate contractual provision for change in relevant legislation and policy since 2011 and do so in a way that provides a sound foundation for its client/provider relationship with Hoople over the coming years.
15. To meet this necessity and maintain the effective relationship that we desire, it is proposed that the Hoople Services Contract is revised to include the mechanisms that will:
 - support the objectives set at implementation;
 - enable risk to be comprehensively addressed on an ongoing basis;
 - be in accord with contract procedure rules;
 - maintain the teckal exemption; and
 - can be considered as reasonable and proportionate to the nature and value of the services that Hoople are expected to deliver.

That Hoople SLA will:

- ensure that payment is made on the basis of actual cost;
- service budgets for the services provided by Hoople are managed to the same standards required of council services;
- Hoople operate safely, with care and diligence and in cooperation with others;
- All subcontracted services are delivered with the same care and diligence;
- Hoople comply with the Equality Act 2010, when operating services for the council;
- Value for money can be assured through benchmarking;
- Business continuity arrangements are in place;
- Changes are managed, risk understood, distributed, owned and mitigated through early warning;

- Records are kept to required standards, personal data and information is managed, meeting General Data Protection Regulation (GDPR).

16. The 2019/20 Hoople SLA is currently being finalised. Continuity of service is in place, all in accordance with the contractual commitment established in the 2018/19 Hoople SLA. On the part of the council, that obligation is to pay for the services received in accord with the 2018/19 Hoople SLA, until such time a successor is established, and the adjustment made.
17. The decision taken to approve the 2018/19 Hoople SLA did not give approval for payments to be made beyond the 2018/19 financial year. As such it is proposed that, until such time as the Hoople Services Contract is signed off, that authority is given to approve payments in accord with the contractual obligation established in the 2018/19 Hoople SLA.
18. In the event that the full detail of the 2020/21 SLA is not agreed by 1 April 2020, and cannot be signed off at that time, service will need to continue. Service would then be paid for in accord with the Hoople Services Contract, which will remain throughout the term that Hoople are employed. To avoid a circumstance where no annual SLA is agreed, it is proposed that the authority to pay in accord with the Hoople Services Contract beyond 1 April 2020 is limited to approximately one third of the annual value of the 2019/20 Hoople SLA and such authority is only granted for the first quarter of the 2020/21 financial year. This to encourage the expedient finalisation of the 2020/21 Hoople SLA, in the event that it cannot be finalised before April 2020.
19. It is proposed that the Hoople Services Contract be established to run until such time as it is terminated in accord with the provisions therein. Those provisions include for a variety of circumstances, including substantial failure to provide services, persistent or material failure to perform and circumstances such as liquidation. The contract may also be terminated without reason by serving not less than 6 months' notice. This rolling contract term in recognition of vision established and commitment made to shared services. It is also proposed that this position is reviewed on a frequency no less than five years to ensure that it remains current.
20. The Hoople SLA for 2019/20 has been reviewed by the council's lead commissioners and is included as Appendix B. This SLA is to be finalised in negotiation with Hoople in parallel with the finalisation of the Hoople Services Contract. Going forward it is proposed that the services described in each year's SLA will be delivered and paid for in accordance with the overarching provisions of the Hoople Services Contract, as such the Hoople Services Contract must be finalised and in order for the Hoople SLA for 2019/20 or any subsequent year to be agreed.
21. Performance will then be monitored through regular reporting and monitoring agreed and documented in the 2019/20 Hoople SLA. The performance framework in the SLAs will be developed to ensure that it has a focus on the outcome being achieved through the council's relationship with Hoople. A formal review of the performance measurement covering methodology, any relevant volumetrics, boundaries, any applicable quality outcomes, will be undertaken and fully documented in the 2019/20 Hoople SLA. That SLA will only be signed off once it can be seen to meet with the requirements of the council's code of corporate governance.

Community impact

22. The services delivered by Hoople underpin the delivery of the service provided by the council across all directorates. Ensuring these services are provided in the most efficient and cost effective way supports the council's corporate plan aim of making the best use of the

resources available to meet the council's priorities. Hoople is also responsible for the Revenues and Benefits service which includes direct contact with council customers.

23. In addition, Hoople has become a provider to a range of community focussed organisations, offering the back office support that enables them to continue to provide services.

Equality duty

24. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

25. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Hoople is required to carry out the services that it provides to the council in accordance with the council's Equality duties.

26. The requirement to undertake an equality impact assessment (EIA) on each year's Hoople SLA will be a requirement of the Hoople Services Contract and the impact on equality of each specific organisational change or project identified as a result of changes to the Hoople SLA will be subject to an equality impact assessment also.

27. EIAs for the services in the 2019/20 Hoople SLA are provided as Appendix 3.

Resource implications

28. The Hoople SLA for 2019/20 has been approved by each of the lead commissioners of services provided by Hoople.

29. In line with the council's requirement for efficiency savings the cost of the Hoople SLA for has been set at £5.669m. The table below includes an indicative profile of the allocation to deliver the services in the 2019/20 Hoople SLA. This is based on actual costs including agreed overheads.

Service	£000s
Revenues and Benefits	1,730
Finance	1,134
Human Resources	404

ICT	1,911
Training and Education	88
Reablement Services	394
Business Costs	8
Total	5,669

30. In addition to the above, further investment in ICT services is being made in 2019/20, this leading to a total planned investment of £0.915 Million being included in the Hoople SLA as managed applications.

Managed Services	£000s
ICT Managed Applications	915
Total	915

31. Services are provided to the council by Hoople at cost with no profit element. The current expected cost of the 2019/20 SLA is entirely contained within existing support services budgets. The Hoople Services Contract will establish payment on a cost reimbursable basis, with no profit element.
32. Hoople is housed in council premises and utilises the council's ICT infrastructure and has reasonable access to council premises and ICT infrastructure and systems for the purpose of delivering service.

Legal implications

33. The shared service agreement between the council and Hoople dated April 2011 expired at the end of its 5 year term. In the commercial world, it is not unusual for contracts to expire without parties realising this and without any express statements made as to what will govern future dealings between the parties. If parties continue to perform the subject matter of an expired contract there are three possible legal outcomes:

- a) There is a new contract;
- b) The old contract continues on the same or varied terms; or
- c) There is no contract – just a duty to pay a reasonable sum.

The conduct of the parties (to the extent of its consistency with the terms of the old contract) establishes which of the above will be the outcome. The council has historically put a contract in place with Hoople to manage the commissioned services with the SLA's and KPI's set out in an annual plan. The annual plan is reviewed annually to adjust services in line with the council's requirements and for the year 2019/20, the annual plan has been updated to include an ICT SLA which sets out a detailed specification of the council's ICT requirements and caps the costs to be paid for this. Additionally, a draft overarching agreement has been prepared which covers necessary issues not covered in the previous contracts such as GDPR, business continuity, risk management etc.

34. Although these amendments seek to bolster the existing protection mechanisms, potentially streamline the contractual process for subsequent years and are altogether in the interest of the council, the downside is that they are yet to be finalised as the negotiations involved with implementing them has taken some time to conclude.

35. Not having a contract in place comes with legal risks e.g uncertainty of terms, no firm obligations on a party to provide the service or to pay for the services etc, however negotiations are already underway for the conclusion of the contract and these risks are significantly alleviated by the fact that as set out in cl 33 above, the parties will be deemed to have an implied agreement between them - terms which would be based on those previously agreed, the ongoing practices between the parties or even the recently updated provisions.

36. At worst, if it is deemed that there is no contract between the council and Hoople, the councils obligations would be to pay a reasonable sum for the services performed by Hoople.

37. The council can take comfort in the fact that if approval for ongoing payments to Hoople for the services that it is providing to the council is granted, it would be a proportionate response to the need to maintain continuity in respect of critical services and that the main legal perils are mitigated by the historical relationship and conduct of the parties, their reasonably assumed intentions, laws of contract and legal principles of equity.

38. The use of Hoople for the provision of the services, complies with the Public Contract Regulations 2015 as it falls within Regulation 12(1) to (6) of the Public Contracts Regulations 2015 which codifies the Teckal exemption. This secures significant freedom for the council to design its own arrangements. The council's contractual arrangements with Hoople have so far complied with the council's constitution and the EC treaty principles of non-discrimination, transparency and equality of opportunity. There are no immediate concerns over the mechanism adopted or compliance with relevant policies or regulations therefore the risk of a challenge from other third-party suppliers is low.

Risk management

39. The provision of back office services is essential to the continued running of the council. By approving the recommendations and confirming the SLA for 2019/20, this will ensure business continuity.

40. An audit of the 2018/19 Hoople SLA, concluded in February 2019, resulted in a Reasonable rating. Most of the areas reviewed were found to be adequately controlled. Generally, risks are well managed but some systems require the introduction or improvement of internal controls to ensure the achievement of objectives. These recommendations are being implemented and progress on this will be reported to the Audit and Governance Committee.

41. Amongst its findings our audit activity has identified that there was a requirement for a valid shared services agreement between the Council and Hoople Ltd and a formal annual process in place in support of the Council commissioning all key services. The audit

recommends that the expired shared Services Agreement dated April 2011, should be reviewed for any contractual mechanisms which refer to processes that are still deemed to be active. These contractual mechanisms should be moved into a current document overarching the annual Hoople SLA document. This document should be reviewed, amended and signed off at regular intervals not exceeding three years in order to outline key supporting actions for the SLA process.

42. The Hoople Services Contract, as at Appendix 1 is the product of the work done in response to the findings of this audit. This contract formalises the mechanisms that are required to effectively manage the client / provider relationship between the council and Hoople providing facility for risk to be apportioned and managed well. This Hoople Services Contract needs finalisation in negotiation with Hoople.

43. Key risks are summarised in the table below.

Risk / opportunity	Mitigation
The cost of provision of the service may be higher than anticipated	<p>The council will work with Hoople to stay within the agreed budget while minimising the impact of any increase in costs, looking to improve efficiency across the services or identify service reductions to minimise overall impact; the council may decide to increase its budget for Hoople services, or reduce levels of service.</p> <p>The Hoople Services Contract puts robust budget management processes on a formal footing.</p>
Performance may not meet the SLA.	<p>The Hoople Services Contract installs robust performance management processes.</p> <p>Poor performance is reported to, and resolution is monitored by, the Chief Operating Officer of Hoople Ltd and Acting Assistant Director for Highways and Transport for Herefordshire Council.</p> <p>Continuous poor performance will be escalated through the resolution processes established by the Hoople Services Contract.</p>
The council does not agree the SLA budget and the SLA is not agreed.	The Hoople Services Contract establishes the mechanisms by which Hoople will be paid for all commissioned by the council. This also in the event that each year's plan is not finalised.

<p>If current KPIs as identified within the Hoople SLA financial year 2018-19 do not have in place supporting methodologies then there is a risk that some calculations could be misinterpreted or that supporting evidence is not retained for assurance purposes.</p>	<p>Formal review of each current KPI measurement to include methodology, any relevant volumetrics, boundaries, any applicable quality outcomes, should take place and be fully documented as part of the annual planning process to ensure that all data presented in support of KPIs is sufficient, relevant, reliable and useful and any data supporting calculations should be retained for an agreed period to allow independent review, if required for assurance purposes.</p>
<p>If Business Continuity Plans (BCP) Plans are not reviewed at a minimum of every two years for currency or when senior members of management leave who are directly identified, then they may not be capable of fully supporting any disaster recovery scenario in support of the Hoople SLA</p>	<p>Each Hoople SLA identified section should have their BCP plans reviewed as a minimum of every two years or when senior managers identified within the BCP Plan leave Hoople and/or the Council.</p> <p>Each BCP plan should also have an agreed review date added to the version control section for transparency of the review process.</p>
<p>Without a valid Shared Services Agreement in support of contractual mechanisms and a formal process for commissioning key services, the council may have difficulty in resolving subsequent contractual disputes.</p>	<p>The Hoople Service Contract addresses this risk and it should be reviewed, amended and signed off at regular intervals not exceeding three years in order to outline key supporting actions for the SLA process.</p> <p>And</p> <p>The council should put into place a formal annual process in support of commissioning all key services to be provided by the service areas for inclusion within the next annual Hoople SLA and timetable supporting discussions accordingly.</p>
<p>If there is no mechanism in place in support of monitoring changes, improvements or corrective actions, then there is a risk that the Council will not have visibility of agreed actions and may not be in a position to monitor any subsequent changes.</p>	<p>The Hoople Services Contract establishes the mechanisms through which changes, improvements or corrective actions will be captured. Continuous Improvement Log usage should be widened to include other service areas such as Finance in order to formally identify and review any changes, improvements or corrective actions; root-cause analysis; responsibility; deadlines and comments on progress to enable clear visibility of any actions agreed and monitoring of subsequent changes made.</p>

Consultees

44. Political groups have been consulted and no comments or objections have been received.

Appendices

Appendix 1 – Hoople Services Contract

Appendix 2 – Hoople Service Level Agreement 2019/20

Appendix 3 – Equality Impact Assessment

Background papers

None Identified