

Cabinet

20 October 2020

Scope of services for a proposed Children's Trust

Report by Executive Director of Children, Young People and Learning

Electoral divisions: All

Summary

Following the Ofsted judgement of Children's Services in May 2019, a Commissioner was appointed by the Secretary of State for Education. His report (October 2019) concluded that the Council did not have the capacity or capability to deliver improved children's services and recommended that an Alternative Delivery Model (ADM) should be created in the form of a Children's Trust removing the direct control of the service from the County Council. The Secretary of State subsequently directed the County Council to establish a Children's Trust.

This report sets out the plans and processes for the setting up of the Trust. It covers the areas over which the County Council has discretion for the form and content of the Trust, recommends particular options for these and explains the implications of the Trust for the Council's responsibilities for Children's Services and the role of elected members.

The plans for the Trust and how it will operate will be captured in a Memorandum of Understanding (MoU) with the Department for Education (DfE) which will be finalised in due course. Some aspects are either prescribed by the DfE or may need to meet certain expectations raised by the DfE which requires assurance the Trust will have operational independence. Whilst the details will remain open for review and revision as the project develops the MoU will set the preferred direction or travel for the Trust and the approach the Council invites the DfE to agree.

The DfE will meet the costs of the set-up of a Children's Trust. These must be set out in a document for submission to the DfE which shows how they have been incurred.

Once the proposals in this report have been agreed they will be captured in a final draft MoU for agreement with the DfE. The work for the establishment of the Trust will then be carried through to the proposed implementation date.

The MoU needs to be signed off by the Secretary of State and so many of the proposals set out in the report and which will be included in the draft MoU have been prepared as part of close working with the DfE.

Recommendations

- (1) The Cabinet is invited to approve the proposals for the principal provisions for the Memorandum of Understanding with the Department for Education as the basis for the establishment of a Children's Trust in accordance with the Direction given to the Council by the Secretary of State for Education.
 - (2) That authority is given to the Chief Executive to sign the Memorandum of Understanding with the Department for Education based on the proposals for inclusion as approved by the Cabinet.
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Proposal

1 Background and context

- 1.1 Following the Ofsted inspection report on services in May 2019, the Secretary of State for Education issued the County Council with a Direction under section 497A(4B) of the Education Act 1996 and appointed a Commissioner, John Coughlan CBE, to prepare a report on how best to secure improvement in these services. The Commissioner subsequently reported on various shortcomings in the Council and in the delivery of children's services, which the County Council fully accepted and committed to address.
- 1.2 The Commissioner identified a number of areas of deficit in the Council's arrangements for and the standards of its Children's Services. His report also raised concerns about the constitutional position of the role of Director of Children's Services and about specific aspects of the Council's governance and culture which were considered to impede the Council's capability and capacity to achieve improvement to its Children's Services within a reasonable timescale. In the light of his findings, the Commissioner recommended that an Alternative Delivery Model (ADM) should be established to achieve sustainable improvement in the delivery of children's services in West Sussex. In considering options for an ADM, the Commissioner recommended that it take the form of a Children's Trust a model used in a number of other Councils across the country placed in a similar situation.
- 1.3 This is consistent with the DfE presumption that, in cases of persistent or systemic failure, children's social care service provision will be taken out of direct local authority control. The County Council accepted the Commissioner's findings, and the Secretary of State subsequently (November 2019) issued a second Direction to the Council to make preparations for the establishment of a Trust, working with the then reappointed Commissioner, John Coughlan. The Commissioner will also have a critical role in advising on and supporting the proposals for the Trust as set out in this report and so he has been engaged in the oversight of that work as a member of a Project Board chaired by the Chief Executive.

The County Council's response

- 1.4 The County Council was directed to work closely with the Commissioner and made a strong commitment to respond purposefully to the Ofsted verdict, and later to the Commissioner's report, politically, culturally and operationally. This is reflected in four key areas of activity since May 2019:

- i) To address the concern about the constitutional position of the Director of Children's Services in September 2019 the County Council brought all its Children's Social Care, Early Help and Education functions together within a new Executive Directorate of Children, Young People and Learning, with the Executive Director reporting directly to the Chief Executive. The Executive Director also holds the statutory function of the Director of Children's Services (DCS). The effect of this is to give children's services the correct profile and status at a strategic level within the Council and to ensure that the needs of children and young people receive comprehensive and holistic accountability across the Council within a single department.
- ii) The Commissioner was charged with overseeing the process of service improvement within Children's Services and this was reflected in the establishment in November 2019 of a statutory service Improvement Board, chaired by the Commissioner to replace the voluntary board that previously operated from June 2019. Hampshire County Council was appointed to be West Sussex's partner-in-practice, and a comprehensive programme of service improvement commenced, based on the twelve areas identified in the Ofsted report and overseen by the Improvement Board. The Council's Leader and lead member for Children and Young People have played an active role as members of the Board and the lead member has reported service improvement progress to each meeting of the County Council since the establishment of the Board.
- iii) At the same time, the County Council has laid plans for the comprehensive review of Children's Services, including a clear statement of the professional standards to be expected within the service; the creation of a new 'social work offer' to achieve resilience and continuity in the workforce; and the adoption of a new Service Model based on best practice. These changes are being led by a newly constituted, permanent senior management team, under Lucy Butler, the Executive Director of Children, Young People and Learning who was appointed from April 2020.
- iv) A number of initiatives were taken to address the identified failings in corporate culture and governance. Concerns over collective responsibility and transparency at Cabinet level were dealt with by the implementation from December 2019 of monthly public cabinet meeting at which key corporate decisions and plans are debated and determined. A review of the scrutiny function and the operation and role of the Corporate Parenting Panel were also undertaken and implemented. An externally led review of the Council's culture and governance (the 'good governance review') commenced in February 2020 and, after wide engagement with officers and across elected members, has led to a range of commitments to change which will support sustained improvement through openly addressing the areas of concern the Council has acknowledged.

1.5 In complying with the Secretary of State's Direction, the County Council has made initial preparations for the establishment of a Children's Trust, the subject of this report. To support this undertaking a specialist external consultancy was engaged to advise the Council and support the detailed work to set up a Trust. Specialist external lawyers have also been engaged. This has led to the drafting of a Memorandum of Understanding with the DfE which is based on the principal elements outlined within this report. Work on the proposals has been overseen by a project Board chaired by the Chief Executive and including the

Commissioner. A project working group has managed the development of the work required to bring the proposals forward.

- 1.6 In a presentation to all members of the Council on 3 September 2020, the Commissioner confirmed that he has formed a favourable view of the Council's commitment to change and the energy that has been shown in taking the Children's Services improvement agenda forward so far, and he endorses the Council's direction of travel.

2 The role and status of the Trust and its relationship with the Council

- 2.1 The Children's Trust will be a separate legal entity for the delivery of children's services in West Sussex, being a wholly owned subsidiary of the County Council, but having operational independence from the Council. The Trust will be set up in a form which allows the Council to award a service contract directly and without open competition. This means that a special relationship would be maintained between the Trust and the County Council, whereby the Council would obtain defined services exclusively from the Trust through the service contract. Its governance would be through a Trust Board, comprising executive and non-executive directors, with the Board Chair requiring to be a DfE appointment. The Trust's Chief Executive would be its executive lead.
- 2.2 The Trust would be operationally independent of the Council, with its performance being overseen by its Board. Nonetheless the County Council would retain statutory accountability for the delivery of children's services in West Sussex holding the Trust to account through a robust service level agreement and performance framework. The Council's Cabinet and lead member would retain leadership for that accountability and the Council's scrutiny function would continue to support that democratic accountability.
- 2.3 The Trust would function as an arm's length company under Council control. Through this arrangement the Council would be allowed to commission services through defined service agreements exclusively from the Trust. The same commercial arrangements would provide for the funding of the Trust and set out the checks and balances for budgetary planning and decisions by the Trust within the arrangements required to ensure Council oversight and value for money in commissioning the services.
- 2.4 It is intended that the Council will ensure that it receives value for money in these commissioning arrangements. The service contract would outline a series of key performance indicators and mechanisms for holding the company to account for the quality of delivery. This would include performance monitoring, escalation processes and termination procedures in the event of underperformance. The detail of this would be agreed during the implementation process. Whilst the contractual relationship would be between the Council and the Trust, the DfE requires rights around some critical decisions related to the contract while the Statutory Direction remains in place, for example around termination of the contract and any major service changes.

Proposals for the Scope of Services for the Children's Trust, start date and operating period - matters for decision by Cabinet

- 2.5 The DfE's Direction requires the Trust to have operational control of all of the Council's social care services for children. It is for the Council to determine whether other services for children, including early help and services within the

field of education and schools should be added so as to establish a comprehensive service model. The benefits of bringing together children's social care, early help and education services under the reforms mentioned in section 1.4 above, are already being felt in terms of developing an integrated focus on the needs of children and young people through closer partnership cooperation; the opportunity to join up services more closely to benefit children and families; streamlining the associated processes; and reframing the service model and identity. From this perspective it is therefore proposed that a Children's Trust be established to include the full range of services for children into its portfolio to reflect the current structure within the Council and to enable a focus on outcomes for children. This approach should be included in the Memorandum of Understanding. To transfer only children's social care to the Trust and retain education services and school support in the Council would place at risk the significant benefits of their integration and compromise the changes implemented in response to the Commissioner's report. The range of associated and support services to enable the effective working of the Trust's operations would remain within the Council and deliver services through service level agreements with the Trust.

Length of Trust operation and commencement

- 2.6 It is for the Council to agree how long the Trust should initially be planned to operate. The primary aim of the Trust is to secure and maintain improved children's services. The Direction from the DfE for a Trust to remain in place will only be reviewed once those improvements can be seen to be sustained. This is likely to take a period of around three to five years. In light of the need to reflect this realistic time frame for sustained improvement and to enable the Trust to have a reasonable timeframe for service planning and implementation it is proposed that the service contract would run for an initial period of five years, thereby defining the proposed lifetime of the Trust, although this timeframe could be reviewed at any point and further discussed with the DfE as service performance and its sustainability is monitored.
- 2.7 It is further proposed that the Trust becomes operational from 1st October 2021. This is sufficiently soon to demonstrate the Council's commitment to the model and its value in achieving service improvements whilst providing a realistic time frame within which to carry out the extensive consultation, engagement and implementation activity the establishment of the Trust requires. These include the staff transfers, the establishment of service level agreements and budget arrangements and the setting up of the company and its board, initially in shadow form, before the transfer of operational service control.

Trust Board, leadership, articles of association and relationship to the Council

- 2.8 The DfE sets a number of requirements to ensure the Trust has operational independence from the Council whilst recognising the overall control the Council will need to maintain to enable it properly to procure services exclusively from the company. The Board Chair will be appointed by the DfE but the Council will be involved closely in that recruitment, focusing on the skills and experience required and, as far as is possible, a local connection. The make-up of the board will include a number of executive officers to provide technical expertise and knowledge and non-executive members to ensure corporate oversight. It is however proposed that the size of the board be kept to between seven and ten to ensure optimum efficiency. It is not proposed that elected members be

appointed to the Board so as to ensure that political accountability, both executive through the lead member and scrutiny remains within the Council and to avoid any blurring of lines for operational independence. The appointment of elected members to the Board could encroach upon the executive lead and scrutiny roles which should fall within the body with statutory accountability which is the Council. It will however be important to ensure political oversight is clear and robust.

- 2.9 It is for the Council to propose the leadership of the Trust's executive and for this to be endorsed by the Commissioner and to have the DfE's support. The proposal is for the Council's Executive Director of Children's Services be appointed as Chief Executive. This reflects the proper place for operational direction and control whilst providing a direct line of accountability back to the Council's political leadership. The Executive Director would continue to act as a member of the Council's Executive Leadership Team so as to ensure the continued integration of Council business and financial planning and the collective accountability to Cabinet, scrutiny and the wider Council.
- 2.10 As the Trust will be a wholly owned company, the Council would have powers in relation to the Trust defined in the corporate Articles of Association. These would include rights in relation to strategic decisions, such as board appointments and approving the annual company business plan. For the period in which the Statutory Direction remains in force, The DfE would also have rights in relation to strategic decisions. Most significantly, these would include the appointment of the Chair of the Board and Chief Executive, and any decisions around termination or change to the services contract.

The Workforce of a Children's Trust

- 2.11 Under these proposals, the entire staff of the services specified would transfer to the Children's Trust under TUPE (Transfer of Undertakings (Protection of Employment) Regulations) and become employees of the Trust. The MoU will make it clear that the Council will retain decision-making in relation to terms and conditions of service to ensure consistency and continuity. It would be envisaged that the Trust would either secure "admitted body status" or be a "designated body" in relation to the Local Government Pension Scheme (LGPS). This would allow transferring staff and new joiners access to the LGPS. This would be determined in the implementation process
- 2.12 The Children First improvement agenda would continue unabated and the plans now being finalised for a comprehensive service review would continue to be delivered whether or not the Trust were to take effect. It is hoped that a service rebranded as a Children's Trust would promote the recruitment of further high-quality social work staff

The Memorandum of Understanding

- 2.13 The County Council is required to enter into a Memorandum of Understanding (MoU) with the DfE for endorsement by the Secretary of State. The MoU, whilst not being a legally enforceable agreement, represents a formal understanding between the County Council and the DfE to establish a Children's Trust. It sets out a clear direction of travel. The MoU will set out the proposals for:
- the proposed legal form of the Trust;
 - the scope of the services to be included in it;

- the Trust's Board and other governance arrangements;
- the Service Contract under which the performance, financial and other operational relationships between the Trust, the County Council and other stakeholders will be conducted;
- the project timetable for creating the Trust, and the 'Shadow Period' leading up to its formal commencement proposed of 1st October 2021.

Assets and Support Services

- 2.14 The Council's support services to enable the continued effective operation of the Trust will be supplied to the Trust through service level agreements.
- 2.15 Arrangements for the use of Council buildings and other assets will be included in the project planning by reference to the need to ensure the Trust obtains a separate identity alongside operational independence and that the assets made available to the Trust are such as to enable it to deliver services to the optimum. The project will need to ensure that there is no adverse impact on the resource planning of the County Council and its asset management plans.

3 Other options considered

- 3.1 The Council has no option but to meet the requirements of the Direction of the Secretary of State for the establishment of the Trust and the Council has fully accepted the rationale for its establishment based on the findings in the Commissioner's report of October 2019. A number of options are available however relating to how the Trust is established, what legal form it takes, the scope of services it includes and the timelines for its implementation. These options must however be considered in the context of the principal aim of securing a vehicle through which critical service improvements can be achieved and the expectations of the Secretary of State that the Trust has operational independence.
- 3.2 The following options were therefore considered but ruled out as the proposals for the West Sussex Children's Trust were being developed by the project team managing the work. Explanations for the proposed preferred proposals for each of these areas are given above.
- a. Scope of service – limiting the scope to children's social care. The Direction only requires the inclusion of children's social care. Early help and education services being separated and retained within the Council would create a disconnection with the aims of a fully integrated service focused on a wholistic approach to the needs of children and families. It would reverse the changes implemented in response to the clear recommendation in the Commissioner's report for a coherent single service for children.
 - b. Form of Trust model – the company could operate as limited by guarantee or as a community interest company. The former is a simpler model and given the very specific and limited scope of the business to be undertaken by the Trust it would appear to be best suited to that form.
 - c. Timetable – an earlier timeline for implementation or a slower timeline to accommodate the range of challenging tasks for setting up the company, the service agreements and preparing staff for the transition. The Council needs to demonstrate that it is both committed to the delivery of the

Trust at the earliest practical date whilst ensuring the timeline can realistically be delivered.

- d. Trust Board and Governance include options for a larger company board and with a range of political non-executives rather than limiting the board to those focusing on the operational management of the Trust. The proposal seeks to secure a board focused on operational delivery of an improved service rather than one which seeks to broaden its role or purpose or include provision for political oversight which can be better achieved within the Council's governance. The roles of elected members in being accountable for outcomes and in scrutinising the performance against those outcomes would not be compromised. Members would be holding to account and scrutinising the service quality of the service provider just as it would an in-house provider.
- e. Leadership - a chief executive dedicated to the role and appointed only to that position could be preferred over the proposed appointment of the DCS. This would be to take the DCS away from operational control and accountability for service performance and the associated partnership relationships critical to success.

4 Consultation and engagement

- 4.1 In advance of the decision by Cabinet, a group of members from the Children and Young People's Services Scrutiny Committee making up a Scrutiny Task and Finish has been invited to consider the proposals against the other options available, to consider and comment on the implications for the Council's governance and the role of scrutiny in the oversight of the Trust and to assist the Cabinet in understanding the implications of the proposals for the ambition of the improvement to children's services for the residents of the County. The report of the group will be passed to the Cabinet ahead of the Cabinet's deliberations – see Appendix.
- 4.2 A communications plan is being put together to address the arrangements for communicating the proposals for the Trust with the staff of the Council directly affected, with those indirectly affected and with partners, especially the school community and other partners directly working across the range of children's social care and early help services. Wider member engagement will also be included in the communications plan once the principal areas of the Trust plans are settled.
- 4.3 Due to the significance of the proposals requiring endorsement by elected members of the Council as a first step, given the very direct and significant impact on staff in the affected services, plans for engagement with external partners including schools has been planned for the period following the consideration of the proposals in this report.

5 Finance

- 5.1 Delivering the mechanisms to ensure adequate funding for the operations of the Trust are necessarily complex and will be subject to further elaboration by the Trust Project Group. This is not required for the completion of the MoU and will be the subject of further information to elected members as the project develops. There is an underlying intention that the service will be as well financed as it currently is. Additionally, a Trust may experience greater

flexibility, outside the County Council’s normal financial operating model, to enable it to generate funds to increase investment in the service.

- 5.2 The cost of implementing a Children’s Trust falls to be met by the Department for Education. A cost model has been developed and has been fully described in the cost analysis and proposal to be passed to the DfE for approval.

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
Slippage of timetable	1. Dedicated senior leadership time has been arranged through the employment of the Children First Transformation Director. 2. The contract partnership with external consultancy and legal team will add capacity and expertise in the setting up of the Trust.
Disruption to focus on service improvement	1. The Improvement Board will maintain a strong focus on the improvement plan. 2. The Senior Leadership Team will maintain the delivery of the improvement plan as the priority. 3. External resources will be used to undertake the main tasks for the establishment of the Trust.
Disruption to relations with key service partners	A programme of engagement and information sharing with the full range of partners will be carried through.
Adverse impact on Council assets and resources	Plans for the use of Council assets by the Trust will be assessed against the core aims for service improvement and operational independence whilst ensuring no adverse impact on the County Council’s plans and resource needs.

7 Policy alignment and compliance

- 7.1 At the time of the publication of the Commissioner’s report, the County Council publicly committed at the highest level to rededicate itself to the needs of vulnerable children, young people and families in West Sussex, and to restore the reputation of the service. This proposal is consistent with that aim.

Lucy Butler

Executive Director of Children, Young People and Learning

Contact Officer: Vince Clark, Children First Transformation Director;
 Tel: 07402 338396 - vince.clark@westsussex.gov.uk

Appendix A: Report of the Proposed Scope of Services for Children's Trust
 Scrutiny Task and Finish Group

Background papers

None