

Report to Cabinet

7 December 2016

Subject:	Formation of a Children’s Trust to Deliver Children’s Social Care Services in Sandwell – Memorandum of Understanding (Key Decision Ref. No. CS084)
Presenting Cabinet Member:	Leader of the Council Cabinet Member for Children Services

1. Summary Statement

- 1.1 At its meeting on 19th October, Cabinet was advised of the Government’s Statutory Direction (under Section 479A of the Education Act 1996) to set up a new arrangement in the form of a children’s trust to deliver children’s social care services for a period of time.
- 1.2 The Statutory Direction sets out the requirement on the Council to agree a Memorandum of Understanding (MoU) with the Commissioner (appointed by the Secretary of State) to be signed in December 2016. This will include arrangements for establishing a Trust to deliver children’s social care services. Following agreement between the Commissioner and the Council to the content of the MoU, the Commissioner will report to the Secretary of State.
- 1.3 The key elements of the MoU are set out in Section 6 of the report. All matters that form the basis of the draft MoU have been progressed and agreed with the Commissioner, apart from the employment model. The Council’s preferred option for the employment model is a secondment arrangement. A secondment proposal was put forward to the Commissioner. The Commissioner has formally responded stating that secondment does not meet the Government’s test of achieving operational independence as set out in the Statutory Direction. This means that the only employment model that would meet the Government’s requirements is TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2014).

- 1.4 The Council accept the imposition of a TUPE employment arrangement as part of agreeing the draft MoU. The Council intends to address issues of concern and will seek to put in place additional safeguards that will apply to employees who transfer under TUPE.
- 1.5 The Council continues to share the desire with the Minister for Vulnerable Children and Families to see rapid and sustained improvement in children's social care and to this end is committed to continue to work jointly with the DfE to achieve the best possible outcomes for vulnerable children and young people in Sandwell.

Further details are attached for your information.

2. **Recommendations**

- 2.1 That the key elements of the draft Memorandum of Understanding between the Commissioner (appointed by the Secretary of State) and the Borough Council of Sandwell, based on TUPE, be accepted as the basis for submission to the Secretary of State, which will allow the existing Statutory Direction to remain in place.
- 2.2 That the Chief Executive, Director of Children's Services and Interim Director of Resources (as appropriate), in consultation with the Leader of the Council and Cabinet Member for Children's Services be authorised to negotiate and agree the content of the final Memorandum of Understanding prior to signature.
- 2.3 That once the Memorandum of Understanding has been signed by the Secretary of State, the Leader of the Council be authorised to commit the Council to delivering the Memorandum of Understanding including the safeguards over and above TUPE as set out in paragraph 6.13 of this report.
- 2.4 That Cabinet commit to work with the Secretary of State's appointed Commissioner and with the Children's Trust once it has been incorporated, to deliver the additional Pledges as set out in paragraph 6.14 of the report.

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3. Strategic Resource Implications

- 3.1 The establishment of a Trust and the imposition of TUPE will incur set up and transition costs as well as additional running costs. This is likely to include, but not limited to, the cost of implementation, more expensive management arrangements, establishment of a contract management function and VAT implications.
- 3.2 Furthermore, with TUPE the Council believes there is an increased risk of industrial action that may lead to service disruption and additional costs being incurred to ensure service cover and dispute resolution. It would be the Council's expectation that the Government will assist in managing the implications of industrial action.
- 3.3 The parties shall enter into a written agreement which will identify each party's contribution to the funding of the transition costs for the set-up and establishment of the Trust. It is too early to identify what the contributions will be as the baseline costs are still being established and validated.
- 3.4 The overall budget provision must enable the Trust to be viable and to deliver the Service Contract and to also reflect the Council's future resource base. The Trust's budget will be subject to approval by Council in March 2017.
- 3.5 The Council's corporate risk management strategy has been complied with to identify and assess the risks associated with the transfer of services to a Trust and the risks associated with the successful delivery of the shared objectives which include securing high quality children's social care services for children and families in Sandwell, to set up the Trust in a timely fashion and to ensure operational independence of the Trust.

- 3.6 The identification of risks and suitable mitigations is a fluid and continual process and risk workshops have been held with the Trust Project Board and with workstream leads to capture the risks associated with the set up and operation of the Trust as well as the risks relating to the end of the service contract. These risks have been captured in various risk registers including the Council's strategic risk register and the project risk register.
- 3.7 The current key risks associated with the decisions being sought are detailed at Appendix 1, together with the mitigations that are in place or will need to be put in place to manage the risks. These risks are being reviewed and monitored by the Trust Project Board on a regular basis to ensure that mitigations are being implemented on a timely basis and to ensure that where necessary, risks are escalated to the Trust Implementation Board and Commissioner Monitoring Board for further consideration.

4. Legal and Statutory Implications

- 4.1 Under Section 479A of the Education Act 1996, the Secretary of State has the power to give a local authority such directions as the Secretary of State thinks fit to enable the functions under this legislation (children's social care functions) to be performed to an adequate standard.
- 4.2 The Statutory Direction sets out that a newly created body is established to deliver the Council's children's social care services, to be called a children's trust. Although operational control of the service transfers to the children's trust, the statutory responsibility for children's services remains with the Council.
- 4.3 The proposed corporate model for the Trust is a company limited by guarantee wholly owned by the Council and "Teckal" compliant. This means that for the purposes of procurement law, the Service Contract to the Trust and support services can be bought from the Council by the Trust without undertaking a procurement process.
- 4.4 The transfer of 'in-scope' employees' from the Council to the Trust is a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2014 ('the Regulations').
- 4.5 TUPE will protect employees' existing terms and conditions of employment when social care functions transfer from the Council to the Trust. Employees who are in-scope for the transfer, automatically become employees of the Trust as the new employer on the same terms and conditions. Continuity of service and all other contractual and statutory rights for transferring Council staff are all preserved.

4.6 In the Statutory Direction the Secretary of State has asked the Council to develop a draft MoU. The MoU is a non-legally binding agreement between the Secretary of State and the Council setting out the intentions and understandings (including communication protocols, timescales, governance) between the parties in respect of establishing the Trust and related matters. The Council can utilise the power in Section 2 of the Localism Act 2011 in order to enter into the MoU and Service Contract.

4.7 The Council will also have to enter into a Service Contract with the Trust. This is a legally binding contract by which the Trust will agree to provide children services functions on behalf of the Council and which, by its terms and conditions (including a detailed service specification and performance management framework), will seek to ensure the Children's Trust is meeting the Council's statutory duties.

5. Implications for the Council's Scorecard Priorities

5.1 The Council is committed to working constructively with the DfE in the formation of the Children's Trust in order to achieve the best outcomes for Sandwell's vulnerable children and young people and in doing so delivering its priority "our children – Sandwell's future".

6 Background Details

6.1 The draft MoU between the Secretary of State and the Council will set out:

- The agreed vision in respect of the establishment of the Children's Trust and the delivery of high quality children's services to children and families within Sandwell;
- The agreed principles regarding the proposed legal form, corporate governance and operational strategy for the Trust and the development of the proposed budget and the Service Contract between the Trust and the Council;
- The process and timetable for establishment of the Trust and the commencement of the service.

6.2 A significant number of areas have been progressed with the Commissioner and will form the basis of the draft MoU. These are set out for approval by Cabinet as follows:

Vision and Operating Principles

- 6.3 The Statutory Direction sets out the requirement to establish the Sandwell Children's Trust as a new and distinct legal entity to provide high quality children's social care services in Sandwell on behalf of the Council. The Trust shall have day-to-day operational independence in the management and delivery of these services and it will be managed by a board of executive and non-executive directors.

The following vision statement is suggested:

- 6.3.1 "The creation of a Trust provides a fresh start for Sandwell's children's social care services. The Trust will aspire to deliver outstanding social care services for children and young people in Sandwell. The Trust's aim will be to measurably improve the lives of children and their families in Sandwell with a focus on ensuring a positive impact on those children most in need of protection and care. It will deliver targeted prevention services and work as a key partner within local communities through a neighbourhood working approach; ensuring families receive early help to prevent difficulties escalating.

The Trust will create an environment that enables and supports staff to be innovative and creative. The Trust will be a centre of social work excellence where outcomes for improving the lives of vulnerable children and young people are achieved."

- 6.3.2 The Trust will operate in accordance with the following principles:

- Providing strong and compelling leadership of children's social care and a clarity of vision and purpose which demands the highest quality practice;
- Seizing the opportunity to develop innovative and effective approaches which have a positive impact on children's lives and improves their outcomes;
- The wishes of vulnerable children and young people will be at the heart of the Trust's approach and the voices of children and young people will inform their mission and ways of working;
- Ensuring that as an organisation, all the ingredients are in place which promote and support the professional practice of social workers and that the Trust becomes an employer of choice within the region;
- Providing the highest quality services, value for money and within the agreed resources available, using commissioning, collaboration, innovation and partnerships to drive down costs;

- Ensuring the effectiveness of interventions are evidence based and grounded in national best practice and knowledge of what works and what children and young people need;
- To work openly and transparently with the Council and its partners about performance and outcomes, so that elected Members are able to exercise their democratic and statutory accountabilities to their communities;
- Ensure effective governance is applied in line with the CIPFA/SOLACE Delivering Good Governance in Local Government document (April 2016);
- Ensuring good risk management is implemented and aligning this to the three year budget strategy in order to manage risks and pressures over the medium term.

Governance arrangements

6.4 It is suggested that the board of directors of the Trust will comprise the following:

- A Chair (non-executive director) as appointed by the Secretary of State in consultation with the Council;
- Three executive directors comprising the Trust's Chief Executive and two other members of the executive management team;
- Three non-executive directors with collective knowledge and expertise across children's services, public services;
- Two additional non-executive directors appointed by the Council (e.g. members and /or officers);
- The board of directors shall make their decisions on a majority basis

6.5 The Council's Executive (Cabinet) and the Lead Member for Children's Services will retain their statutory responsibilities. The Trust will commit to contributing to the development, review and implementation of Council policy and early involvement in the Council's scrutiny process.

Scope of services to be included

6.6 The proposed scope of those services that should be transferred to the Trust is outlined below:

Functions	Description
Children's Social Care	Front-door and assessment services
	Children in Need
	Children in Need of protection
	Children that are looked after (including placements)
	Children with Disabilities
	Adoption
	Fostering
	Care Leavers
	Independent Reviewing Officers
	Quality Development Unit
	Children's residential placements
	Emergency Duty Services (Black Country Service being developed in partnership with Wolverhampton)
	Multi Systemic Therapy (MST)
	Family Group Conferencing (FGC)
Early Help/Targeted Services (not universal services)	Community Operating Group (COG) coordinating role
	Targeted Support
	Family Support Team (FST)
Youth Offending Services	Youth Offending Services
Safeguarding Board	Safeguarding Board Business Unit

Functions	Description
Infrastructure Services	Business Support/Administration
	Policy, Performance and Data
	Business Systems Administration
	Commissioning

Arrangements for buy-back of support services

- 6.7 It is proposed that for the first 12 months, infrastructure and support services (for example Finance, HR, ICT and Property Services) will be provided to the Trust, under a Service Level Agreement, following which the Trust will have the ability to procure such support services it deems appropriate.

Contract length

- 6.8 It is proposed that the contract length is for five years, with a provision to extend for a further five years, following a review.

Implementation timescale

- 6.9 The suggested programme covering the establishment of the Trust and service commencement under the Service Contract is a “Go Live” of Spring/Summer 2017.

Employment model

- 6.10 As stated above, all matters that form the basis of the draft MoU, have been progressed and agreed with the Commissioner apart from the Employment Model. The Council’s preferred option for the employment model is a secondment arrangement. A secondment proposal was put forward to the Commissioner. The Commissioner has formally responded stating that secondment does not meet the test of achieving operational independence as set out in the Statutory Direction. The formal response is attached in Appendix 2. Although secondment remains the Council’s preferred option, the only way forward to achieve operational independence is on the basis of TUPE.

6.11 Consequently, the two scenarios are therefore:

- Firstly, if the Council continues to be committed to the secondment arrangement, the Secretary of State may be minded to issue a new Statutory Direction which could potentially remove all control and strategic decision making authority from the Council in relation to children's social care and the employment model imposed would be TUPE. This scenario would delay the establishment of the Trust.
- Secondly, if the Council continues to work within the scope of the current Statutory Direction and proceeds on the basis of TUPE, the Council will continue to have strategic decision making authority concerning the Trust, which would be a wholly owned company with the Council being the sole owner. This scenario enables the Trust formation to continue at the pace we require to ensure outcomes for our most vulnerable children are improved.

6.12 In order for the Council to continue to have a role in shaping the Trust, this report recommends that Members should accept the imposition of TUPE as part of agreeing the draft MoU within the context of the existing Statutory Direction.

6.13 TUPE protects employees existing Terms and Conditions of employment when business is transferred from one body to another. The protections offered through TUPE legislation will apply to employees transferring to the Trust. Over and above this, the Council intends to put in place additional safeguards that will apply to employees who transfer and will make every effort to secure these at the earliest opportunity. The three key pledges that will provide safeguards over and above TUPE are set out below:

Pledge 1 - An application will be made for the Trust to be included on the Redundancy Modification Order (The Redundancy Payments (Continuity of Employment in Local Government etc.) (Modification Order 1999). This will have the effect of preserving continuous service benefits for employees both current and new. This will be of particular benefit to employees who subsequently move from the Trust into other local authority employment, allowing accrued continuous service to be maintained.

Pledge 2 - Admitted Body Status in the Local Government Pension Scheme will be established for the Trust. This will secure ongoing pension scheme membership and benefits for

employees who transfer, allowing them to remain in or join the pension scheme.

Pledge 3 - The benefits of the Council's existing Job's Promise agreement will be applied to the Trust, including no compulsory redundancy, supported redeployment and job role flexibility.

6.14 The safeguards above have been included in the draft MoU. In addition, the Council, working alongside the Commissioner, is committed to delivering a number of additional pledges that demonstrate the commitment to employees. Our intention is to establish a Trust that:

Pledge 4 - Focuses on improving outcomes for children, not disadvantage employees pay or pension arrangements

Pledge 5 – Will invest in its employees by providing learning and development as part of the day job with high quality supervision and support

Pledge 6 - Provides a working environment that employees will enjoy being in and that helps them do their job

Pledge 7 – Actively encourages employees to maintain a healthy work/life balance by providing a range of flexible working options to help with this

Pledge 8 – Invests in the right technology and tools to do the job

Pledge 9 – Values all employees, will listen to ideas and concerns and act on them

Pledge 10 - Will be a good employer for all employees that transfer and committed to nurturing good employee relations with employees and Trade Unions

6.15 Further benefits will be considered following consultation with Trade Unions.

6.16 Cabinet are asked to approve the key elements of the MoU as set out above as the basis for the submission to the Secretary of State.

Source Documents

1. Notification letter from Minister for Vulnerable Children and Families, dated 6th October
2. The Statutory Direction to Sandwell Council in relation to children's services