

Birmingham City Council

Report to Cabinet

Date: 9 February 2021



Subject: **CONTRACT WITH CHILDREN TRUST**

Report of: Chris Naylor, Interim Chief Executive

Relevant Cabinet Member: Cllr Ian Ward, Leader

Relevant O &S Chair(s): Cllr Carl Rice, Co-ordinating O&S Committee

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 00xxx/2018		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		
4. Information relating to any consultations or negotiations or contemplated negotiations in connection with any labour relations matter arising between the authority or a minister of the Crown and employees of, or office holders under, the authority.		
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings		

1 Executive Summary

- 1.1 The Council has a statutory duty pursuant to section 18 of the Children Act 2004 to appoint an officer as its Director of Children's Services ("**DCS**") for the purpose of discharging (or overseeing the discharge of) statutorily specified education and children's social care functions of the Council (the "**Relevant Functions**"). The Council's current DCS, Dr Tim O'Neill, is due to leave office on 31st January 2021 and, due to the Council's abovementioned statutory duties, the Council has an urgent need to appoint a person to replace the DCS when he leaves office.
- 1.2 The Council has identified Andy Couldrick, the Chief Executive of the Birmingham Children Trust ("the **Trust**"), as a person with the required skills and experience to perform the duties of the DCS on an interim basis of up to 12 months.
- 1.3 The purpose of this Report is to set out the terms and conditions of this arrangement with the Trust.
- 1.4 The proposals are subject to the approval of the DfE in connection with the arrangements that are in place in respect of the statutory intervention into the Council's children's social care services. Informal conversations have taken place between the Council, the Trust and the DfE, which have been positive. A formal letter has been sent to the DfE requesting its approval in writing.

2 Recommendations

- 2.1 That the Cabinet:
 - 2.1.1 Authorises the entering into of the Commissioning Agreement with the Trust to provide the statutory functions of the DCS and line management services as set out in this Report.
- 2.2 Authorises the City Solicitor (or delegate) to negotiate, execute and complete all necessary documentation to give effect to the above recommendation.

3 Background

- 3.1 The Council is required to appoint a DCS as required by Section 18 of the Children Act 2004 ("**CA 2004**").
- 3.2 The DCS has professional responsibility for the leadership, strategy and effectiveness of the discharge of the Relevant Functions and is responsible for securing the provision of services that addresses the needs of all children and young people within the Council's administrative area. The DCS will have a key leadership role both within the Council and with other local agencies and organisations to improve outcomes for children and young people.

- 3.3 The current DCS's appointment is due to formally end on 31 January 2021 and there is an urgent need for the Council to appoint a replacement DCS to be in office on and from 1 February 2021.
- 3.4 The Council has identified the Chief Executive of the Trust, Andy Couldrick, as an individual with the required skills, expertise and experience to perform the duties of the DCS on an interim basis. Andy Couldrick and the Trust's board of directors support this proposal.
- 3.5 Andy Couldrick has worked in Birmingham since August 2017. Prior to this he was Director of Children's Services in a borough council where, when he took on the role, children's services were judged 'inadequate' by Ofsted, and which improved rapidly under his leadership. He went on to be appointed Chief Executive of that authority, a role he held for four years prior to joining Birmingham City Council and then the Children's Trust
- 3.6 Birmingham Children's Trust has made good progress in delivering improved social care services on behalf of the City Council. A key strength of the arrangements in Birmingham has been the way the Council and Trust have worked together, strategically and operationally, to drive improvement across the wider children's services system. Similarly, joint work with partners in the NHS and West Midlands Police are stronger, as are the Trust's working relationships with Birmingham's schools
- 3.7 The Children's Trust has an established, permanent and strong leadership team. For the period of this arrangement, the Trust's leadership team will be asked, and will be able, to maintain the improvement work going on in the Trust and ensure all statutory accountabilities held in the Trust are discharged effectively
- 3.8 This arrangement will also enable the statutory requirement of the DCS, that of 'system leadership', to be discharged by a single leader and his leadership teams to enable closer joint work that supports the longer-term aspirations of the Council
- 3.9 Under the proposed arrangement Andy Couldrick will continue to act as Chief Executive of the Trust.
- 3.10 Note the Trust is a wholly-owned subsidiary of the Council, which it voluntarily established in connection with a statutory direction by the Secretary of State for Education in 2018 to effectively discharge the performance of specified children's social care functions of the Council on the Council's behalf. The Trust effectively took over the Council's performance of such functions on 1 April 2018 pursuant to a service delivery contract dated 29 March 2018 between the Council and the Trust.
- 3.11 Andy Couldrick's appointment as DCS will be governed by a legal agreement between the Council and the Trust, this agreement will contain appropriate provisions to enable any actual or potential conflicts of interest to be managed effectively.

- 3.12 Andy Couldrick will be appointed to the office of DCS by the Council and, when performing the role of DCS, will be under the direct management of, and will report and be accountable to, the Chief Executive of the Council.
- 3.13 However, when Andy Couldrick is performing the role of Chief Executive of the Trust he will continue to be directly accountable to the board of the Trust in that capacity.
- 3.14 The agreement that the Trust and the Council will enter into will clearly define these roles and accountabilities and will include processes for any actual or potential conflicts of interest to be appropriately and effectively managed.

4 Options considered

- 4.1 Do Nothing – This is not an option; the Council must appoint a DCS
- 4.2 Act up an internal officer into the position – the current Education & Skills Management Team does not have capacity to support this approach.
- 4.3 Appoint an Interim DCS through an agency – The timescales to interview and find the right person are not feasible. Additionally, there is a significant risk that bringing in an external interim candidate will mean someone has to spend time understanding the city, its services, partnerships, risks and strengths. Andy Couldrick has taken a prominent role in the leadership of wider children's services in the city, through the Birmingham Children's Partnership and an array of partnership groups involving Education and Skills. As such he will be able to take on the role with a detailed understanding of the key issues and challenges, ensuring no loss of momentum in the improvement journey in services for children and families across Birmingham

5 Consultation

- 5.1 The Deputy Leader, Councillor Rice, Councillor Booth, Councillor Francis, JNC Panel and the DfE and have been consulted regarding the preparation of this report.

6 Risk Management

- 6.1 All identified risks have been assessed and mitigations are in place. Further information is set out in the Exempt Appendix.
- 6.2 A key risk relates to the availability of Andy Couldrick to fulfil both requirements. The mitigations are as follow:
- Andy Couldrick's engagement across the system over the past three years, his understanding of the key issues and risks and his established track record in improving services for children and families

- The strength of leadership in the Children's Trust enabling, for the period of this arrangement, improvement momentum to be maintained while the DCS role is being fulfilled
- The capacity in place in Education and Skills that enable ongoing resolution of some of the key outstanding risks and issues

6.3 Should further mitigation be identified as necessary; this will be addressed through the reporting line Andy Couldrick will have to the Council's Chief Executive and Cabinet Members

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 The proposals set out in this report will support the delivery of the Council Plan 2018-2022 (as updated in 2019) specifically:

- Birmingham is an entrepreneurial city to learn, work and invest in;
- Birmingham is an aspirational city to grow up in

7.2 Legal Implications

7.2.1 The Council has a statutory duty pursuant to section 18 of the Children Act 2004 to appoint a DCS for the purpose of discharging the Relevant Functions.

7.2.2 Legislation does not require that the DCS be an employee of the local authority.

7.2.3 The contract arrangements between Birmingham Children Trust and the Council will clearly set out: role and responsibilities; how conflict of interest are appropriately dealt with, etc. Further information is in Exempt Appendix.

7.2.4 The recommendations in this report facilitate the Council's discharge of its functions set out in section 18 of the Children Act 2004.

7.3 Financial Implications

7.3.1 Costs associated with these proposed arrangements, for both the Council and the Trust, will be met from within the existing Education & Skills directorate budget. The Council shall pay the Trust a fee for the services provided. This will be set out in the Commissioning Agreement.

7.4 Procurement Implications (if required)

7.4.1 The services are being commissioned from the Council's wholly-owned subsidiary therefore the "In house Exemption" under Regulation 12 of the PCR 2015 applies which means no direct procurement issues.

7.5 Human Resources Implications (if required)

7.5.1 The appointment of the interim DCS will be set out in a personal contract between the Council and Andy Couldrick, it will deal with matters such as:

- Andy Couldrick's appointment to the role;
- An overview of Andy Couldrick's responsibilities in that role;
- Andy Couldrick's line management in that role – i.e. reports to and is management by C/E of the Council;
- A process for managing any conflicts;
- Termination provisions etc.

7.6 Public Sector Equality Duty

7.6.1 There are no adverse impacts associated with this report.

8 Background Documents

8.1.1 Exempt Appendix – Legal Advice