

THIS MEMORANDUM OF UNDERSTANDING is made on

2017

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Great Smith Street, London, SW1P 3BT (the "**Secretary of State**") acting through Dave Hill of County Hall, Market Road, Chelmsford, CM1 1QH in his capacity as the Commissioner for Children's Social Care in Birmingham; and
- (2) **BIRMINGHAM CITY COUNCIL** of Council House, Victoria Square, Birmingham, B1 1BB (the "**Council**"),

each a "**Party**" and together the "**Parties**".

1 BACKGROUND AND PURPOSE

- 1.1 Following a series of earlier statutory directions, on 25 November 2016 the Secretary of State issued a statutory direction (the "**First Direction**" for the purposes of this Memorandum of Understanding) to the Council pursuant to Section 497A(4B) of the Education Act 1996 (a copy of which is set out in Appendix A). The purpose of the First Direction is to secure improvements in the performance of the Council's children's social care functions. Pursuant to the First Direction the Secretary of State also appointed a new Commissioner for Children's Social Care in Birmingham (the "**Commissioner**") for the specific purposes specified in the First Direction.
- 1.2 The intention of the Secretary of State is to issue a second statutory direction under Section 497A(4B) of the Education Act 1996 (the "**Second Direction**") immediately prior to the completion of the Service Delivery Contract (as defined in paragraph 1.4 below). In view of the agreed position set out in this Memorandum of Understanding ("**MoU**"), the intention of the Second Direction is to acknowledge that the Council has voluntarily elected to transfer the provision of the relevant children's social care functions to the Trust. For the purposes of this MoU, the First Direction and Second Direction are referred to collectively herein as "**the Directions**".
- 1.3 As part of the Council's initiative to secure improvements in the performance of its children's social care functions, and in consultation with the Commissioner and the Department for Education, the Council has elected to voluntarily establish a wholly-owned and '*Teckal*' compliant company to perform specified children's social care functions on behalf of the Council in the city of Birmingham (see paragraph 6 below for further detail on '*Teckal*' compliance).

- 1.4 Notwithstanding the new organisation being a wholly-owned '*Teckal*' compliant company, it will have day-to-day operational independence from the Council in respect of the day-to-day management and performance of these functions, which will be managed and regulated pursuant to an arm's length contract to be entered into between the Council and the new organisation for these purposes, as more particularly described in paragraph 7 below (the "**Service Delivery Contract**"). The Council shall remain statutorily responsible and accountable for the performance of its children's social care functions and shall correspondingly hold the new organisation to account for any such functions it is performing on the Council's behalf pursuant to the terms of the Service Delivery Contract.
- 1.5 On 24 January 2017 the Council's Cabinet approved outline proposals for the voluntary establishment of the new organisation, to be called Birmingham Children's Trust Community Interest Company (herein referred to as the "**Trust**"), to deliver specified children's social care functions within the ambit of the First Direction (the "**Relevant Functions**") on behalf of the Council. The proposed new organisational model of the Trust and the current list of children's social care services that the Council proposes to transfer to the Trust are more particularly described in paragraphs 6 and 7.2 respectively.
- 1.6 On 9 May 2017, and for present purposes, the Trust was incorporated as a company limited by guarantee with the Council as its sole member and the Chair (as defined in paragraph 3.4(a) below) as its sole director.
- 1.7 The Parties have now agreed to enter into this MoU to record the following matters:
- (a) the establishment of the Trust to enable the development and delivery of high quality and innovative children's social care services that meets the requirements of the Directions and the needs of children, young people and their families in the city of Birmingham;
 - (b) the overarching agreed principles regarding the proposed:
 - (i) legal form of the Trust;
 - (ii) corporate governance of the Trust; and
 - (iii) operational framework within which the Trust shall operate and be held accountable, which will address key aspects of the proposed Service Delivery Contract, including matters relating to agreeing the Trust's proposed budget and the scope of children's social care services that it will be delivering;

- (c) the proposed timetable from the signing of the MoU, through to the formal operation of the Trust on 1 April 2018 (the "**Service Commencement Date**"), when it will formally commence the performance of the Relevant Functions on behalf of the Council pursuant to the Service Delivery Contract; and
- (d) the commitments of each Party in relation to the transition of children's social care and related services to the Trust (the "**Programme**") and the processes and structures that they will put in place to periodically and effectively review, monitor and manage progress in accordance with the agreed timetable.

1.8 The MoU is intended to be *inter alia* a high-level roadmap for the Programme which outlines the key stages of the Programme, its key milestones and its key documental outputs.

1.9 The Parties do not intend this MoU to be legally binding or to create legal relations between them. The Parties agree that they will use all reasonable endeavours to comply with the terms and the spirit of this MoU.

2 TERM

2.1 This MoU shall come into effect on the date set out at the beginning of it, which shall be the date that it is signed by both Parties and, subject to paragraph 1.9, shall remain in full force and effect until the earlier of:

- (a) the Service Commencement Date; or
- (b) the date on which this MoU is terminated by either Party notifying the other Party of such termination in writing,

the "**Term**".

3 KEY REPRESENTATIVES

3.1 During the Term the Parties shall (and shall procure that their key representatives for this Programme, as identified in this paragraph 3) work closely together in good faith, and in a collaborative and cooperative manner, in order to achieve the establishment of the Trust and the delivery of the Programme in accordance with the timetable set out in paragraph 10.

3.2 The key representatives of the Secretary of State for this Programme shall be:

- (a) the Commissioner (who shall perform the role as set out in the First Direction); and
- (b) a senior civil servant in the Department for Education (as notified to the Council by the Department for Education from time to time).

- 3.3 The key representatives of the Council for this Programme shall be:
- (a) Stella Manzie (in her capacity as Chief Executive of the Council and Senior Responsible Officer for the Programme); and
 - (b) Colin Diamond (in his capacity as the Director of Children's Services).
- 3.4 The Parties acknowledge and agree that the key representatives of the Trust for this Programme shall be:
- (a) Andrew Christie in his capacity as Chair of the Trust (or his replacement from time to time during the Term) (the "**Chair**"); and
 - (b) Andy Couldrick in his capacity as Chief Executive of the Trust (or his replacement from time to time during the Term) (the "**Trust Chief Executive**").

4 KEY STAGES OF THE PROGRAMME

- 4.1 The Programme has two distinct key stages:
- (a) the "**Shadow Period**" – being the period from 1 April 2017 up until the Service Commencement Date; and
 - (b) the "**Operational Period**" – which is the period on and from the Service Commencement Date when all relevant staff will be transferred to the Trust and the Trust will become fully operational and responsible for the performance of the Relevant Functions pursuant to the Service Delivery Contract.

The Shadow Period and Key Documents

- 4.2 During the Shadow Period the Council shall work collaboratively with the Trust (and in consultation with the Secretary of State) to:
- (a) create an environment to enable the development and delivery of high quality and innovative approaches to meeting the needs of children, young people, and their families, that is aimed at meeting or exceeding the service outcomes that will form part of the Service Delivery Contract;
 - (b) enable the Council and the Designated Trust Board (as defined in paragraph 4.5 below) to test and validate any proposed ways of working to ensure that:
 - (i) the Trust will become a robust organisation in order to be able to achieve the necessary improvements in the services and be ready to commence the performance of the Relevant Functions at the Service Commencement Date; and

- (ii) the Council designs, establishes and develops an appropriate internal contract management function (the "**Intelligent Client Function**") that is tasked with monitoring the Trust's performance of the Relevant Functions pursuant to the Service Delivery Contract but which does not serve to fetter the operational independence of the Trust;
- (c) test and refine proposed governance, assurance and commissioning arrangements ahead of the Service Commencement Date so that such arrangements are sufficiently mature and developed for inclusion in the Service Delivery Contract;
- (d) define a set of behaviours and values to underpin the way the Council and the Trust will work together in respect of the Trust's performance of the Relevant Functions during the Operational Period, and which supports the development and establishment of a collaborative relationship between the Council and the Trust which achieves an appropriate balance between the need for:
 - (i) the Council to be satisfied that the Trust is appropriately performing the Relevant Functions on its behalf as the Council remains statutorily responsible and accountable for the performance of such functions; and
 - (ii) the Trust to have unfettered day-to-day operational independence in respect of its performance and discharge of the Relevant Functions; and
- (e) develop the following key documents:
 - (i) an appropriately balanced Service Delivery Contract pursuant to which the Trust will commence the performance of the Relevant Functions on and from the Service Commencement Date;
 - (ii) a set of revised articles of association of the Trust (the "**Articles**") which will *inter alia* regulate the internal affairs of the Trust and in particular will govern the relationship between the Council (as member of the Trust) and the Trust's board of directors in respect of the operation and management of the Trust; and
 - (iii) a business plan for the Trust (which shall incorporate the proposed service improvement actions of the Trust as an important component) (the "**Business Plan**").

4.3 In addition to the development of the Service Delivery Contract, the Articles and the Business Plan as described in paragraph 4.2(e) above, during the Shadow Period the Parties shall also develop the Governance Side Agreement (which is more particularly described and defined in paragraph 6.15 below).

- 4.4 Although the Service Delivery Contract, the Articles, the Business Plan and the Governance Side Agreement are developed between the Council, Trust and the Secretary of State (as applicable) during the Shadow Period, these documents shall only have legal effect once agreed and/or executed (as applicable) by the relevant parties, which shall be on a date on or around the Service Commencement Date.

The Designated Trust Board

- 4.5 During the Shadow Period the constitution of the board of directors of the Trust will commence in accordance with paragraphs 6.5 and 6.6 below, and individuals will be appointed to their designated posts on the board of directors of the Trust (the "**Designated Trust Board**"). Subject to paragraphs 4.6 to 4.8 (inclusive) below, the Council will continue to directly perform and discharge the Relevant Functions, and such functions will not be performed and discharged by the Trust (or the Designated Trust Board) until the Service Commencement Date and the Trust will not be operational during the Shadow Period.
- 4.6 During the Shadow Period the Council shall, pursuant to a scheme of delegation in accordance with section 101 of the Local Government Act 1972, delegate the discharge of the Relevant Functions to the Trust Chief Executive. The scheme of delegation will deal with *inter alia* the relationship between the Trust Chief Executive and other council officers in respect of the discharge of the Relevant Functions during the Shadow Period. The Council acknowledges that the Designated Trust Board has a vital role to play in the designing and shaping of the children's social care services that the Trust will be performing on behalf of the Council on and from the Services Commencement Date and that the Designated Trust Board will have an advisory role to the Trust Chief Executive in his discharge of the Relevant Functions during the Shadow Period.
- 4.7 The arrangements relating to the Trust Chief Executive and the Designated Trust Board described in paragraphs 4.5 and 4.6 above are intended to ensure that the Trust Chief Executive and the Designated Trust Board have appropriate and sufficient:
- (a) input into the delivery and performance of the transferring children's social care services in order for such individuals to influence and shape the delivery and performance of such services to enable an effective transition of such services to the Trust so that the Trust is able to 'hit the ground running' at the Service Commencement Date;
 - (b) oversight of the Programme and to keep the general progress of the Programme under review;

- (c) representation, input and attendance at the Programme Management Boards (as defined in paragraph 8.1 below) and the Council's statutory and/or democratic meetings/boards, including (without limitation) the Corporate Parenting Board, the Birmingham Safeguarding Children Board, the Council's cabinet meetings and the meetings of the relevant scrutiny committees of the Council.

4.8 Notwithstanding paragraphs 4.5 to 4.7 (inclusive above), the Trust will not be operational and/or responsible for the performance of the Relevant Functions during the Shadow Period and this will remain the full responsibility of the Council during the Shadow Period.

The Operational Period

4.9 During the Operational Period the Trust will be fully operational and responsible for the performance of the Relevant Functions on behalf of the Council pursuant to the Service Delivery Contract, and the Service Delivery Contract, the Articles and the Governance Side Agreement will have legal effect during this period.

4.10 It should be noted that, pursuant to paragraph 2.1(a), this MoU will terminate on the Service Commencement Date at the latest and therefore will not be in effect during the Operational Period, unless otherwise agreed by the Parties in writing.

5 AGREED KEY OBJECTIVES

5.1 The Parties' agreed key objectives for the establishment of the Trust are to create a new and distinct legal entity that is operationally independent of the Council, to secure improvements in, and to develop and deliver to a high quality, social care services to children and young people in the city of Birmingham and, in conjunction with partner agencies, to ultimately secure the following outcomes:

- (a) families are supported and strengthened to enable them to parent and care for their children well so that they develop into resilient, happy and successful young people and adults;
- (b) children and young people are protected from significant harm;
- (c) children and young people only enter the care system when that is the best option for them, once all other options have been considered and only then for the shortest possible time to allow for plans to be implemented which provide stable and secure attachments and care arrangements or safe return to family; and
- (d) children, young people and their families consistently receive purposeful and effective support that positively contributes to improving their quality of life.

5.2 The Parties acknowledge and agree that:

- (a) the Trust will have a key role to play in pursuing the key objectives set out in paragraph 5.1 above with the Council and other key stakeholders; and
- (b) the Council and the Trust shall work collaboratively and effectively with all key stakeholders to pursue these key objectives,

and, during the Shadow Period, the Council and the Trust will work together in good faith to further develop the key objectives and agree an appropriate and balanced 'shared vision' in respect of the delivery of children's social care services to be set out in the Service Delivery Contract.

6 THE NEW ORGANISATION MODEL

Form of the Trust

- 6.1 The Trust has initially been incorporated in a dormant and 'shadow form' as a wholly-owned subsidiary company of the Council limited by guarantee, with the Council as its sole member and the Chair as its sole director. The Trust shall remain in a dormant and 'shadow form' during the Term and Shadow Period (as applicable) and shall not be considered operational until it formally enters into the Service Delivery Contract and commences the performance of the Relevant Functions on behalf of the Council.
- 6.2 During the Term (and Shadow Period) and prior to the Trust becoming operational, the Trust's constitutional documents shall be developed and amended so that it is a '*Teckal*' compliant (for the purposes of the Public Contracts Regulations 2015) wholly-owned subsidiary of the Council, that is a community interest company limited by guarantee. The Council will remain the sole member of the Trust for these purposes and the constitution of the board of directors of the Trust shall be as set out in paragraph 6.4 below.
- 6.3 The Parties agree that the model for the new Trust must:
- (a) comply with the requirements of the Directions to secure the improvement in the performance of the Relevant Functions and to provide confidence to the Parties regarding the future delivery of high quality children's social care services in the city of Birmingham;
 - (b) establish a new and distinct legal entity which has day-to-day operational independence from the Council in the management and performance of the Relevant Functions that the Trust is performing on behalf of the Council in the city of Birmingham through a strong board of executive and non-executive directors;

- (c) enable the effective discharge by the Council and its elected members of their local democratic accountability in relation to the performance of the Relevant Functions that the Trust is performing on behalf of the Council in the city of Birmingham through an appropriate and balanced contractual governance and quality assurance framework in the Service Delivery Contract, which is sufficiently:
 - (i) **robust** to enable the citizens of the city of Birmingham to know that their children and young people will have access to a range of good quality children's social care services that will effectively support them in meeting their individual needs; and
 - (ii) **flexible** enough to enable the directors and executive management of the Trust to be innovative and independently develop services to meet the changing demands of children and young people in the city of Birmingham and which do not compromise the Trust's operational independence;
- (d) provide a structure that is lawful and within the scope of the Council's legal powers, in particular in accordance with the Council's contracting out powers pursuant to Section 1 of the Children and Young Persons Act 2008 and which complies with the Public Contracts Regulations 2015 and associated State Aid rules. The Parties agree that, prior to the Service Commencement Date, the Trust will register as an independent fostering agency and as an adoption agency, such that any such registrations are completed before the Service Commencement Date; and
- (e) provide the most tax-efficient structure possible in order to minimise any additional costs arising under the new model.

Constitution of the Trust Board

- 6.4 Subject to paragraphs 6.5 to 6.14 (inclusive) below, the board of directors of the Trust shall comprise the following:
- (a) a chair (non-executive director with the first such appointment being the Chair as defined in paragraph 3.4(a) above and hereinafter referred to as the "**Chair**");

- (b) up to four (4) executive directors comprising the Trust Chief Executive, and three other executive roles (expected to be the Director of Resources, the Director of Operations and the Director of Commissioning and Development) (the posts of Trust Chief Executive, Director of Resources, Director of Operations and Director of Commissioning and Development are collectively referred to for the purposes of this MoU as the "**Executive Posts**");
 - (c) up to five (5) non-executive directors with collective knowledge, expertise and experience across children's social services, finance, HR and other relevant areas plus appropriate local knowledge of the city of Birmingham and its associated partner agencies; and
 - (d) an additional non-executive director nominated by the Council.
- 6.5 During the Shadow Period any appointments to the Designated Trust Board shall be as follows:
 - (a) the Secretary of State, in consultation with the Council, shall select the person who will have the role of Chair of the Trust; and
 - (b) subject to paragraph 6.7 in relation to the post of Trust Chief Executive, all other appointments to the Designated Trust Board shall, subject to paragraph 6.6 below, be made *via* an appointments panel comprised of the Chief Executive of the Council, the Lead Cabinet Member for Children, Families and Schools, the Chair and the Commissioner (the "**Appointments Panel**").
- 6.6 Prior to any person being referred to the Appointments Panel for consideration pursuant to paragraph 6.5 above, the Council shall obtain the prior written approval of the Secretary of State of the proposed candidate for such appointment. For the avoidance of doubt, for this purpose the prior written approval of the Secretary of State is not required in respect of the appointment of the Trust Chief Executive, whose appointment during the Shadow Period shall be made pursuant to paragraph 6.7 below.
- 6.7 During the Shadow Period any appointment of a Trust Chief Executive to replace Andy Couldrick or his successor(s) (where applicable) shall be made *via* the Appointments Panel which, in addition to those persons listed in paragraph 6.5(b), shall include a representative of the Secretary of State as notified by the Secretary of State from time to time.
- 6.8 Subject to paragraphs 6.11 and 6.12 below, during the Operational Period and for so long as the Directions (or any subsequent statutory direction of the Secretary of State that replaces the Directions) remain in force (the "**Intervention Period**") the following principles shall apply in respect of the appointment and/or removal of the directors of the Trust:

- (a) the Secretary of State shall nominate the Chair of the Trust who will be a non-executive director and whose formal appointment to the board of directors of the Trust shall be made by the Council following such nomination by the Secretary of State; and
- (b) the Council shall obtain the prior written consent of the Secretary of State in relation to any decision to appoint or remove the Trust Chief Executive, as more particularly described in paragraph 6.14 below.

Decision-Making and Reserved Matters

6.9 Subject to paragraph 6.10 and paragraphs 4.5 to 4.8 (inclusive) in respect of the operation of the Designated Trust Board during the Shadow Period, during the Operational Period the board of directors of the Trust shall:

- (a) be fully empowered to manage the Trust's day-to-day business and affairs in accordance with the approved business plan (from time to time – see paragraph 4.2(e)(iii) above and paragraph 6.9(d) below);
- (b) make decisions on a majority basis only, and in the case of an equality of votes the Chair shall have a second or casting vote;
- (c) be expected to comply with their duties under the Companies Act 2006 in relation to their decision-making; and
- (d) in consultation with key stakeholders:
 - (i) redraft the Business Plan every three (3) years (the "**Revised Business Plan**") and submit the Revised Business Plan to the Council for approval;
 - (ii) on an annual basis, refresh and update the Business Plan or Revised Business Plan (as applicable) (in either case the "**Updated Business Plan**") and submit the Updated Business Plan to the Council for approval;

in accordance with paragraph 6.10(b) and 6.14(b)(i) below.

6.10 In addition to its statutory rights under the Companies Act 2006 (and associated legislation) and subject to paragraphs 6.11 to 6.14 (inclusive) below, during the Operational Period the Council shall have a right of approval over the following key decisions of the Trust:

- (a) subject to paragraphs 6.8 and 6.14(a)(i) of this MoU, the appointment and removal of the Chair and the Trust Chief Executive or any change to the membership of the Trust;

- (b) the approval of the Business Plan, Revised Business Plan and Updated Business Plan;
- (c) any changes/amendments to the articles of association of the Trust;
- (d) the voluntary winding up of the Trust (save where the Trust is insolvent or and action is necessary by the directors of the Trust in order to comply with their statutory duties or to avoid potential civil or criminal liability);
- (e) any proposal for the Trust to enter into any new third party contracts for the provision of services by the Trust to third parties above a pre-agreed value threshold (which are outside the scope of the Service Delivery Contract);
- (f) any proposal for the Trust to enter into any other contractual arrangement with the Council for the provision of other services to the Council following the service commencement date of the Service Delivery Contract (unless otherwise expressly provided for in the Service Delivery Contract); and
- (g) any proposal by the Trust to form or procure the formation of any other legal entity or undertaking which the Trust would be a member, shareholder or hold any analogous position in any jurisdiction,

together the "**Reserved Matters**".

6.11 The Parties acknowledge and agree that, during the Shadow Period, the Council and the Trust may collaboratively identify and agree upon additional matters that should be added to the list of Reserved Matters set out in paragraph 6.10 above ("**Additional Reserved Matters**"). When identifying and agreeing any Additional Reserved Matters with the Trust, the Council shall:

- (a) always have regard to the fundamental principle of the operational independence of the board of the Trust, which shall not be fettered by the Council; and
- (b) subject always to paragraph 6.12, consult the Secretary of State (or her nominee, where applicable) prior to agreeing any Additional Reserved Matters with the Trust.

- 6.12 Following consultation with the Secretary of State (or her nominee) pursuant to paragraph 6.11, the Secretary of State shall be entitled to request consent or consultation rights over any Additional Reserved Matters to the extent that the Secretary of State reasonably believes that such rights are necessary. Following any such request by the Secretary of State, the Parties shall agree (acting reasonably and having due regard to the principles set out in paragraphs 6.11(a) and 6.15 of this MoU) such consent/consultation rights over any Additional Reserved Matters and such rights shall be exercisable by the Secretary of State during the Intervention Period. No Additional Reserved Matters can be agreed between the Council and the Trust until the process set out in paragraph 6.11(b) and this paragraph 6.12 has been followed.
- 6.13 The Reserved Matters (including any Additional Reserved Matters agreed between the Council and the Trust pursuant to paragraphs 6.11 and 6.12 above), and the Council's rights in respect of the same, will be set out in the Articles.

The consent/consultation rights of the Secretary of State in respect of any Reserved Matters

- 6.14 During the Intervention Period, the Secretary of State shall have:
- (a) **consent rights** in respect of the following Reserved Matters:
 - (i) the appointment and/or removal of the Chair and/or the Trust Chief Executive;
 - (ii) the voluntary winding up of the Trust (save where the Trust is insolvent and action is necessary by the directors of the Trust in order to comply with their statutory duties or to avoid potential civil or criminal liability);
 - (iii) any change to the membership of the Trust; and
 - (iv) any other consent rights agreed between the Parties pursuant to paragraph 6.12 above;
 - (b) **consultation rights** in respect of the following Reserved Matters:
 - (i) the approval of the Business Plan, Revised Business Plan and Updated Business Plan;
 - (ii) any changes/amendments to the articles of association of the Trust;
 - (iii) any proposals for the Trust to enter into any new third party contracts for the provision of services by the Trust to third parties above a pre-agreed value threshold (which are outside the scope of the Service Delivery Contract);

- (iv) any proposal for the Trust to enter into any other contractual arrangement with the Council for the provision of other services to the Council following the service commencement date of the Service Delivery Contract (unless otherwise expressly provided for in the Service Delivery Contract);
- (v) any proposal by the Trust to form or procure the formation of any other legal entity or undertaking which the Trust would be a member, shareholder or hold any analogous position in any jurisdiction; and
- (vi) any other consultation rights agreed between the Parties pursuant to paragraph 6.12 above.

6.15 The consultation/consent rights of the Secretary of State described in paragraph 6.14 above (or any additional consultation/consent rights requested and afforded to the Secretary of State pursuant to paragraph 6.12 above) are intended to preserve the integrity of the intervention pursuant to the Directions, and shall be set out in a legally binding agreement between the Council and the Secretary of State (the “**Governance Side Agreement**”) to be entered into on or before the commencement of the Service Delivery Contract. The Governance Side Agreement will *inter alia* manage the exercise by the Secretary of State of such consultation/consent rights.

7 THE SERVICE DELIVERY CONTRACT

7.1 On or around 31 March 2018, the Council will enter into a long-term arm's length Service Delivery Contract with the Trust in accordance with the in-house public procurement exemption pursuant to the Public Contracts Regulations 2015. The Service Delivery Contract will be the sole means through which the Council (including Council members through overview and scrutiny) will manage the Trust's performance of the Relevant Functions during the Operational Period.

7.2 Under the Service Delivery Contract, the Trust (in the capacity of a 'supplier') will be required to perform the Relevant Functions on behalf of the Council (in its capacity as 'customer'). The current proposed scope of the children's social services (the “**Core Services**”) that will be delivered by the Trust is set out in Part A (*Core Services*) to Appendix B to this MoU. In addition, Part B (*Relevant Support Services*) to Appendix B of this MoU sets out the current proposed scope of relevant support services that the Trust will require in order to provide the 'Core Services' in Part A, and during the Shadow Period the Council and the Trust will collectively determine which of these support services will be directly performed by the Trust and which will be purchased by the Trust from the Council via a support service arrangement.

- 7.3 An outcomes-focused service specification and associated performance regime for the Service Delivery Contract in respect of the transferring children's social services will be jointly developed and agreed by the Council and the Designated Trust Board (including the Trust Chief Executive), in consultation with the Commissioner and the Secretary of State.
- 7.4 During the Intervention Period, the Secretary of State shall have the following rights in respect of the Service Delivery Contract:
- (a) **consent** rights in respect of any proposal:
 - (i) to terminate the Service Delivery Contract;
 - (ii) to extend the Service Delivery Contract;
 - (iii) to make a major variation to the Service Delivery Contract (outside pre-agreed thresholds);
 - (iv) by the Trust to subcontract a substantial part of the provision of the services to a third party;
 - (v) by the Trust to assign, novate or otherwise dispose of its rights under the Service Delivery Contract;
 - (vi) by the Council to exercise any agreed step-in rights pursuant to the Service Delivery Contract; and
 - (b) a **consultation right** in respect of any proposal by the Council to issue a step-out notice under the Service Delivery Contract.
- 7.5 The consultation/consent rights of the Secretary of State described in paragraph 7.4 shall be capable of being exercised by the Secretary of State through the 'Third Party Rights' provision to be contained within the Service Delivery Contract. Further, the exercise of these rights shall be governed by the Governance Side Agreement. This Governance Side Agreement will *inter alia* manage the exercise by the Secretary of State of such consultation/ consent rights.

TUPE/Employment and Pensions

- 7.6 The persons on the Designated Trust Board who have Executive Posts shall be employed by the Council during the Term and on the commencement of the services under the Service Delivery Contract such persons will transfer to the Trust pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").

- 7.7 In addition to the transfer of the Executive Posts as described in paragraph 7.6, on the commencement of the services under the Service Delivery Contract there shall be a transfer of relevant and appropriately assigned staff from the Council to the Trust pursuant to TUPE. The scope of the transferring services and the design of the Council's retained Intelligent Client Function will determine the scope of this TUPE transfer. The Council will be responsible for all pre-transfer employment liabilities of the transferring staff and the Trust will be responsible for all post-transfer employment liabilities of such transferring staff insofar as they relate to their employment by the Trust following the relevant transfer date.
- 7.8 The Trust shall secure "admitted body status", or alternatively shall be a "designated body" (for the purposes of part 2, schedule 2 of the Local Government Pension Scheme Regulations 2013), in relation to the Local Government Pension Scheme ("LGPS") on or prior to the Service Commencement Date. It is anticipated that the scope of this admission will be open to both staff who transfer from the Council to the Trust pursuant to TUPE and also any 'new' staff recruited by the Trust after the relevant transfer date (to the extent that the Trust elects to offer such admission to any new recruits) to ensure that the Trust is in a position to recruit high quality personnel. The Council shall enter into a guarantee in favour of the relevant LGPS fund in respect of the Trust's liabilities to that fund.

8 MANAGEMENT OF THE PROGRAMME

- 8.1 During the Term the management of the Programme is currently comprised as follows:
- (a) Children's Trust Steering Group (CTSG) (meets once every 4 weeks);
 - (b) Design Authority (meets twice every 4 weeks);
 - (c) Programme Board (meets once every 4 weeks – and there are individual workstream meetings as required); and
 - (d) Trust Chair meetings (meets weekly),
- together the "**Programme Management Boards**".

- 8.2 The Children's Trust Steering Group (CTSG) provides the strategic direction and drive and acts as a point of escalation for the whole Programme. This group is chaired by the Chief Executive of the Council in her capacity as the Senior Responsible Officer for the Programme. To ensure all the key stakeholders are represented, the attendees include: the Chief Executive of the Council; the Lead Cabinet Member for Children, Families and Schools; the Director of Children's Services; the Commissioner; a representative(s) of the Secretary of State; representative(s) of partner agencies; the Chair and other Trust representative(s); the Council's Executive Director for Children's Services; Programme Director/Manager; and key workstreams (as required).
- 8.3 During the Term Council oversight will continue to be provided *via* existing Council meetings/reviews/reports for the Council, Cabinet and Scrutiny and other Members and officers as required.
- 8.4 The day to day running of the Programme will be via the Programme Board under the direction of the Programme Director and Programme Manager. The Programme Board will report into the Steering Group. Delivery will be via a number of workstreams, which currently includes: Governance and Commissioning; Intelligent Client Function; Communications and Engagement (including consultation, in conjunction with HR, for staff and unions); Legal; Finance; People (HR); Property; and ICT and Data.
- 8.5 Overall governance of the Programme will be *via* the Programme structure outlined above and includes a Design Authority. The Design Authority is jointly chaired by the Director of Children's Services and the Chair or Trust Chief Executive (as applicable), and has a standing membership of the service leads of the following key workstreams: Communications; Finance; People (HR); and Legal, with other representatives from the key workstreams (or other workstreams) attending as required. The purpose of the Design Authority is to oversee the design aspects of the Programme and as such spans both the Council and Trust activities. The work of this group has and will continue to cover things like Cabinet Reports, Options Appraisals, the production and implementation (as applicable) of the Memorandum of Understanding, the production and development of the Articles of Association and the Service Delivery Contract.
- 8.6 In parallel with this, the Chair leads a group of Council officers and external advisors overseeing activities such as Trust recruitment, Designated Trust Board and management team governance (for the Shadow Period), establishing the Trust HQ, establishing the Trust target operating model for support services and ensuring that the Trust is ready to receive the transitioned staff and services at April 2018.

9 FINANCE

Transition Costs

- 9.1 The Council's costs for the establishment of the Trust have been provided by the Secretary of State and the Secretary of State does not intend to provide any additional costs in respect of the Programme (other than as described in the MoU), including following the successful implementation of the Programme

The Trust's Budget

- 9.2 The Council has agreed that it will maintain its current financial plan and priority in respect of the funding of the Core Services through to at least 2020 in accordance with the principles agreed at the meeting of the Council on 14 June 2016. This means that, although this funding includes planned savings for future years in accordance with the Council's 'Business Plan and Budget 2016+', the Council will continue to maintain its current level of investment/committed funding in/to the Core Services in accordance with the principles agreed at the meeting of the Council on 14 June 2016 through to at least 2020.
- 9.3 The Council acknowledges that, although there is currently a piece of work being undertaken to calculate and disaggregate the costs of support services across the Council to identify those that will transfer to the Trust and those that will be provided to the Trust by the Council as a support service, this work (including the realisation of any savings that may generate from it) will be completed by the Council prior to the Service Commencement Date and the Council will fund the costs of such work (including any costs required to generate any savings).
- 9.4 Subject to paragraph 9.3 in respect of the funding of this work, the Council will work collaboratively with the Designated Trust Board during the Shadow Period to design how support services will look at and from the Service Commencement Date and to deliver any associated savings. The resulting cost of support services following this exercise (i.e. whether they are transferred to the Trust or provided to the Trust by the Council) will then form part of the Trust's budget (and any Trust budget considerations) on and from the Service Commencement Date.

- 9.5 The Council has further agreed that, having regard to the principles in paragraphs 9.2 to 9.4 (inclusive) above, the Trust's budget following the Service Commencement Date will be agreed pursuant to a 'budget-mapping' exercise, whereby the Trust will align its own budget setting process with that of the Council's such that the Trust's budget is reviewed annually to ensure that the Trust is sufficiently funded having regard to all relevant factors, including (without limitation) the Council's commitment in respect of the funding for the Core Services described in paragraph 9.2 above. The exact process to be followed will be set out in the Service Delivery Contract.

Approach to VAT

- 9.6 The Council has received its own advice on the VAT implications of the Trust. The Parties will come to an agreement so that the Council and the Trust are not liable for any unrecoverable VAT costs associated with the Trust.

10 KEY PROGRAMME MILESTONES

- 10.1 The Parties shall use all reasonable endeavours to achieve the following key milestones as part of the proposed timetable for this Programme:
- (a) **Commencement of the Shadow Period:** the Trust to be established, the Designated Trust Board and management team appointments in progress and plan for the Shadow Period by April 2017;
 - (b) **Cabinet Report:** Council agreement to the Trust budget and the shape of support services to be transitioned to the Trust at the Service Commencement Date and the 'sign off' of the MoU by end of July 2017;
 - (c) **Designated Trust Board established:** the matters referred to in paragraphs 4.5 to 4.8 (inclusive) above in place by September 2017;
 - (d) **Road Test Agreed Key Processes:** key processes that are relevant to the Service Delivery Contract to be agreed by January 2018 and during the period from January 2018 to March 2018 these processes be tested and refined for the purpose of their incorporation into the Service Delivery Contract – this will include the testing and refining (where necessary) of the Council's Intelligent Client Function;
 - (e) **Service readiness review:** a service readiness review to be carried out in the final three months of the Shadow Period, commencing in January 2018, to ensure that everything is in place or planned to be in place for transition at April 2018; and

- (f) **Execution of the Service Delivery Contract & Go-Live:** by 1 April 2018 the Service Delivery Contract is executed and on and from this date the Trust to become fully operational and responsible for the performance of the Relevant Functions on the Council's behalf, accompanied by the TUPE transfer of all staff in scope to the Trust. Support Services running, including those buy-back services from the Council (e.g. ICT). From this point, the Trust provides the services to the Council (as commissioner) under the Service Delivery Contract.

- 10.2 The implementation of this Programme and the achievement of the key milestones set out in paragraph 10.1 above shall be monitored and effectively managed by the Programme Management Boards.

11 MISCELLANEOUS

- 11.1 Subject to clause 1.9, both Parties agree to act all times in good faith and in the spirit of mutual trust and co-operation in relation to the delivery of the Programme in accordance with the terms of this MoU.
- 11.2 The Parties shall agree the scope and confidentiality of the information sharing which shall take place during the Term, including access to the Council's financial and management reporting records and systems.
- 11.3 The Parties agree that the Council shall lead on all public statements and/or announcements in respect of this Programme during the Term in consultation with the Secretary of State and the Commissioner. Save for the purposes of public decision making and/or where required by law, neither Party shall issue any public statements or announcements in respect of this Programme without the prior written agreement of the other Party (such agreement not to be unreasonably withheld or delayed).
- 11.4 The Parties may vary the terms of this MoU at any time by the agreement of both Parties in writing (such agreement not to be unreasonably withheld or delayed).
- 11.5 Any dispute that may arise as to the interpretation or application of this MoU shall be settled by discussion between the Parties. Both Parties agree to use all reasonable endeavours to seek to resolve any such dispute.

Signed _____

Dave Hill

The Commissioner for Children's Social Care in Birmingham (on behalf of the Secretary of State)

Signed _____

Stella Manzie

Interim Chief Executive

Birmingham City Council

APPENDIX A - The Direction

Birmingham Commissioner for Children's Social Care Direction

**DIRECTION UNDER SECTION 497A (4B) OF THE EDUCATION ACT 1996
TO BIRMINGHAM CITY COUNCIL**

WHEREAS

1. The Secretary of State for Education ("the Secretary of State") issued a direction to Birmingham City Council ("the Authority") on 18 March 2013 pursuant to section 497A(4B) of the Education Act 1996 ("first direction") in the light of inadequate performance by the Authority of its children's social care functions;
2. The first direction was revoked and replaced by a direction issued to the Authority by the Secretary of State on 8 September 2014 ("the second direction") which inter alia required the Authority to cooperate with the Commissioner for children's social care in Birmingham, Lord Warner, and to take certain other actions with a view to improving children's social care functions;
3. The second direction was revoked and replaced by a direction issued to the Authority by the Secretary of State on 17 December 2015 ("the third direction") which inter alia required the Authority to cooperate with the replacement Commissioner for children's social care in Birmingham, Andrew Christie.
4. On 25 November 2016, Andrew Christie stepped down as Commissioner to take up post as the Chair-designate of the proposed Birmingham Children's Services Trust. The Secretary of State now intends to appoint Dave Hill as the new Commissioner for Children's Social Care in Birmingham ("the Children's Social Care Commissioner") in accordance with, and for the purposes of, the terms of reference ("the Terms of Reference") set out in Annex A to this direction.
5. The Secretary of State has carefully considered Ofsted's report, in respect of the Authority, of its inspection carried out between 12 September 2016 and 6 October 2016. The Secretary of State is satisfied that the Authority is not yet performing to an adequate standard, or at all, some or all of the functions to which section 497A of the Education Act 1996 ("the 1996 Act") is applied by section 50 of the Children Act 2004 ("children's social care functions"), namely;
 - a) social services functions, as defined in the Local Authority Social Services Act 1970, so far as those functions relate to children;
 - b) the functions conferred on the Authority under sections 23C to 240 of the Children Act 1989 (so far as not falling within paragraph a. above);

and

- c) the functions conferred on the Authority under sections 10, 12, 12C, 120 and 17A of the Children Act 2004.

- 6. The Secretary of State, having considered representations made by the Authority, considers it expedient, in accordance with her powers under section 497A of the 1996 Act, to direct the Authority as set out below in order to ensure that the Authority's children's social care functions are performed to an adequate standard.

NOW THEREFORE:

- 7. Pursuant to her powers under section 497A(4B) of the 1996 Act, the Secretary of State directs that the Authority shall, to the satisfaction of the Children's Social Care Commissioner, do the following:

- a. comply with any instructions of the Secretary of State or the Children's Social Care Commissioner in relation to the improvement of the Authority's exercise of its children's social care functions and to provide such assistance as may be required;
- b. cooperate with the Children's Social Care Commissioner, including on request allowing the Commissioner at all reasonable times access:
 - i. to any premises of the Authority;
 - ii. to any document of or relating to the Authority; and
 - iii. to any employee or member of the Authority

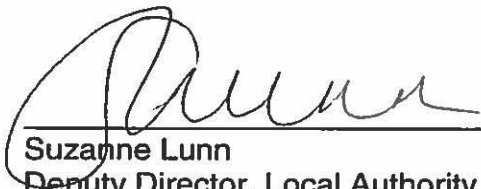
which appears to him to be necessary for achieving the purposes of, and carrying out the responsibilities set out in the Terms of Reference;

- c. provide the Children's Social Care Commissioner with such amenities, services and administrative support as he may reasonably require from time to time for carrying out his responsibilities in accordance with the Terms of Reference, including:
 - i. providing officers' time or support; and
 - ii. providing office space, meeting rooms or computer facilities;
- d. through the accountable body ("the Quartet") as defined in the second direction, continue to oversee and drive improvements to children's social care services in Birmingham. The Quartet

must comprise the following individuals:

- i. the Lead Member for the Authority;
 - ii. the Lead Member for Children's Services;
 - iii. the Chief Executive; and
 - iv. the Director for People.
- e. ensure that the Quartet meets the Children's Social Care Commissioner at least once every two calendar months and provides such reports to him as he may require, and that the Quartet seeks formal assurances from the Authority's Cabinet on an annual basis as to the provision of adequate resources to deliver improvements in children's social care;
- f. cooperate with the independent improvement partner, Essex County Council, to support service improvement;
- g. implement the Improvement Plan for Early Help and Children's Social Care (2015-17), the Children and Family Services Commissioning Plan (2015-2017); and the Operating Model for Birmingham Children's Services (2015), and develop plans for further, sustainable improvements to the long-term delivery of children's social care services";
- h. secure an appropriate budget to support the delivery of improved services in accordance with the above plans;
- i. cooperate with government officials in relation to implementing the direction.

Signed on behalf of the Secretary of State for Education:



Suzanne Lunn
Deputy Director, Local Authority Performance and Intervention
Department for Education

Date: 25th November 2016

ANNEX A

Commissioner for Children's Social Care Terms of Reference

- 1. The Commissioner is expected to provide independent strategic oversight of the Authority's progress under this Direction by:**
 - a. instigating and leading reviews of the Authority's implementation of its Improvement Plan for Early Help and Children's Social Care (2015-17), Children and Family Services Commissioning Plan (2015–2017) and Operating Model for Birmingham Children's Services (2015) with a particular focus on the:**
 - i. Authority's capability and capacity to maintain long-term improvements to Birmingham's children's services;**
 - ii. Ability of senior managers to ensure that appropriate financial and human resources are made available to allow planned improvements to be delivered; and,**
 - iii. Authority's ability to manage effectively the overlap between safeguarding and education.**
 - b. Providing an assessment of capability and capacity of senior council leaders to ensure that improvements continue beyond this Direction, and are sustainable beyond the Authority's current improvement plans, acting as an interface between the Authority, the Department and the Department for Communities and Local Government led Improvement Panel, with the specific remit of ensuring that the corporate improvements being taken forward by the Panel serve and align with the improvement plans for children's social care services.**
- 2. The Commissioner will report quarterly on the Authority's progress to the Secretary of State, with the first report due at the end of February 2017.**

APPENDIX B - The List of Trust Services

Part A – Core Services

Adoption
Assessment and Short-Term Intervention (ASTI) teams
Child Protection chairs and Independent Review Officers, LADO (Local Authority Designated Officer), Disclosure team
Children in care teams
Complaints service; quality assurance; policy; research; Principal Social Workers
Disabled Children's Social Care (DCSC)
Family Support – intensive interventions with disadvantaged families
Fostering
Leaving Care teams
No Recourse to Public Funds team; Homeless young people's team; Edge of Care teams; Rights and participation, Family group conferencing and contact/ specialist assessment service
Partnership management and development
Residential care homes for disabled children
Safeguarding teams
Single point of entry for all contacts and referrals
Therapeutic Emotional Support Service (TESS)
Workforce Development Team
Youth Offending Service (YOS)

Part B – Relevant Support Services

Birmingham Safeguarding Children Board (BSCB) support team
Children's HR
Commissioning, Contracting and Placements
Communications/Engagement Team
Finance Directorate Support
IT Support
Performance Data and Analysis Function
Professional Support Services
Programmes and Projects
Children's Legal Advice
Corporate HR
Corporate Legal Advice
Finance Shared Services
Financial Systems Support
Internal Audit
IT Services (Corporate)
Media Support and Corporate Design
Procurement
Property Management