

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET
Report of:	INTERIM CHIEF EXECUTIVE AND INTERIM CORPORATE DIRECTOR , CHILDREN & YOUNG PEOPLE
Date of Decision:	25 July 2017
SUBJECT:	BIRMINGHAM CHILDREN'S TRUST
Key Decision: Yes	Relevant Forward Plan Ref: 003514/2017
If not in the Forward Plan: (please "tick" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member:	Cllr Brigid Jones – Children, Families and Schools
Relevant O&S Chairman:	Cllr Susan Barnett – Schools, Children and Families
Wards affected:	All

1. Purpose of report:

1.1 This report seeks Cabinet approval for:

- the proposed children's social care and related support services required by the Birmingham Children's Trust as the basis for formal consultation and for negotiation between the Council and the Trust to agree the Service Delivery Contract.
- the indicative 2018/19 Trust budget.
- the approach to the transfer of staff from the Council to the Trust at April 2018.

1.2 This follows Cabinet approval in January 2017 to create the Trust as a wholly owned company model and as a community interest company (CIC) and put in place a shadow period (from April 2017 to March 2018) to test the governance arrangements between the Council and the Trust prior to full transition (go-live) at April 2018.

2 Decision(s) recommended:

That Cabinet:

- 2.1 Agrees the proposed services required by the Trust as the basis for commencement of formal consultation with staff affected and recognised trade unions and for negotiation between the Council and the Trust to agree the Service Delivery Contract (Appendix 1 – Birmingham Children's Trust: Proposed Trust Services).
- 2.2 Notes the indicative budget for the Trust at 4.2. This will inform Council budget planning and decisions for 2018/19.
- 2.3 Agrees TUPE as the preferred option for transfer of staff (Appendix 2 – Birmingham Children's Trust: Transfer Approach Options Appraisal) and that the staff so affected transfer to the Trust at April 2018 following formal consultation.
- 2.4 Agrees the Memorandum of Understanding (Appendix 3) between Birmingham City Council and the DfE setting out the intention and understandings between the parties in respect of establishing the Trust and related matters.
- 2.5 Notes the high level milestones at section 10.1 of the MoU for full establishment of the Trust and agrees delegation to the Council's Chief Executive and the Cabinet Member for Children, Families and Schools, in liaison with the Trust Chair, authority for full transition (go-live) at April 2018.
- 2.6 Delegates to the Council's Chief Executive and the Director for Children's Services (DCS) jointly with the Cabinet Member for Children, Families and Schools agreement of the Service Delivery Contract between the Council and the Birmingham Children's Trust and all implementation steps to ensure the transition of services from the Council to the Trust by April 2018, including the final TUPE arrangements.
- 2.7 Delegates to the City Solicitor the novation of all necessary Council contracts to the Birmingham Children's Trust.
- 2.8 Authorises the City Solicitor to enter into and to affix the Council's Seal to all contracts and agreements that may be necessary to give effect to recommendations at 2.1 to 2.7.

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3. Consultation

3.1 Internal

In advance of consultation in accordance with TUPE (Transfer of Undertakings [Protection of Employment] Regulations) 2006, there has been engagement with service users, affected employees, trade unions and Elected Members. This has included potential Trust models, staff transfer approach and the scope of services to transfer to the Trust. Outcomes of this process have informed preparation of this report.

There has been engagement with staff including face-to-face information and engagement sessions. A Staff Reference Group has helped shape discussions and thinking. There has been support from staff, based on recognition of the potential benefits of a Trust model including a single focus on children's social care.

This is set alongside an emphasis on the need for transparency in responding to staff uncertainty and anxiety during transition to the Trust, and the need to adhere to the Council's principle on not being distracted from already secured and planned improvement work.

There have been commitments and support from partners for the proposal and its potential to facilitate more effective joint working, and all-party support from the respective group leaders.

Trade union consultation so far has focused on the model for transfer of staff and union involvement in Trust governance arrangements.

Officers from Children's Social Care, Legal, Finance, Corporate Procurement and HR have contributed to the production of this report.

3.2 External

Engagement has included strategic partners and stakeholders from health, police, the voluntary sector, the Birmingham Safeguarding Children Board, the Children's Strategic Leaders Forum, the Department for Education (DfE) and Birmingham's Commissioner for Children's Social Care.

There has also been direct liaison with other local authorities (Doncaster, Slough, Kingston-Upon-Thames, Richmond and Sunderland) where Trust arrangements exist or are being developed and learning from this has been taken into account.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

Establishment of the Trust is consistent with the Council's priorities of protecting children and ensuring Birmingham is a safe city for them to learn and grow in, as set out in the Council Business Plan and Budget 2017/18. Appraisal of options included consideration of the design principles agreed by the City Council in June 2016 and Cabinet in July 2016.

4.2 Financial Implications

4.2.1 One of the design principles agreed by the Council in June 2016 was that the current financial plan and Council priority must be maintained through to at least 2020. This position is also confirmed in the Memorandum of Understanding at Appendix 3.

4.2.2 The scope of services to be included in the Children's Trust is shown in Appendix 1. Section 2

of Appendix 1 outlines the core services in scope to transfer to the Trust. The recurrent revenue funding (net revenue budget) for the confirmed core services is shown below. This excludes support services.

2017/18	£162.5m
2018/19	£160.8m
2019/20	£158.4m
2020/21	£157.4m

These figures include planned savings for future years approved in March 2017 in the Council's Financial Plan 2017+.

- 4.2.3 Work has been undertaken to calculate and disaggregate the costs of support services across the Council and those that would transfer into or be purchased by the Trust. An agreed baseline 'As-Is' position between the Council and the Trust is shown in Appendix 1. An initial baseline budget of £20.928m has been identified for the Trust to deliver or purchase support services.
- 4.2.4 However, the Council budget requires the delivery of support services cost savings as approved in the Council budget planning for 2017/18 and beyond. As a result the Trust will be required to achieve minimum savings of £1.79m, in line with the overall profile of the Council's savings target, from the budget it will receive to deliver support services.
- 4.2.5 Furthermore, a saving of at least £1.3m will be required from the support services that the Trust will purchase from the Council in line with reductions in posts across frontline and corporate services. It will be the Council's responsibility to deliver these savings in negotiation with the Trust and to ensure this does not prejudice the outcomes agreed by the Council and the Trust.
- 4.2.6 It is expected that the cost of any redundancy payment to staff who leave the organisation as a result of any reorganisation to achieve the above-mentioned cost savings up to the point of the Trust go live in April 2018 will be paid by the Council. The cost of any future redundancy payments to staff incurred as a result of any structural reorganisation within the Trust, and consequent pension strain, will be the subject of discussion between the Council and the Trust, to be concluded and finalised by agreement with the Cabinet Member for Children, Families and Schools, the Chief Executive and the Chief Financial Officer, as part of the negotiation of the Service Delivery Contract.
- 4.2.7 The Trust will operate from a number of existing Council buildings under a lease arrangement. As a result the Trust will receive an equivalent budget, currently estimated to be £1.9m to pay the Council for the space it uses. The overall impact of this will be cost neutral with the Council receiving an equivalent income for the space being used. Clarification of the exact space to be utilised will form part of the detailed discussions to be had between the Trust and the Council during the shadow period.
- 4.2.8 Children's services are currently provided by the Council and the Council is able to reclaim VAT costs. VAT is a significant consideration for the creation of the Trust and is a matter that continues to require clarification, not just for Birmingham but in a wider national context for local authorities which are voluntarily pursuing alternative models for delivery of children's services. DfE has been seeking a resolution with HMRC with regard to the VAT treatment for Children's Trusts generally and Birmingham specifically. Pending further progress on that the Secretary of State has agreed to meet any additional costs arising from the VAT treatment of the Birmingham Children's Trust. Currently, the council are advised by external tax advisors that the Trust will incur a liability of approximately £5m for core services and up to £3m for support services. The Council is continuing to liaise closely with the DfE.
- 4.2.9 The contractual arrangements between the council and the Trust will be designed to ensure that the Trust receives sufficient income to meet the costs of service provided to the Council. It is required that the Trust will live within its financial means. There will be no expectations for the Trust to make surpluses, nor will the Trust operate with the intention of doing so. Notwithstanding this the Trust will be potentially liable for Corporation Tax on any taxable surpluses that it makes. Professional tax advice has been received advising how the risk of a

corporation tax liability might be mitigated.

- 4.2.10 The Trust is required to obtain admitted body status to the West Midlands Pension Fund within the Local Government Pension Scheme (Fund) to maintain existing pension terms and conditions for transferring staff. The Council will be required to act as guarantor for the Trust's liabilities to the Fund. The contribution rate to be paid by the Trust to the Fund to meet future and past service pension liabilities is dependent upon the age profile and other demographics of the staff to be transferred. An actuarial assessment of the liabilities attributable to the staff to be transferred to the Trust is required (this will provide an overview of the scale of the liabilities, and costs, which relate to the transferring staff). It is the intention that at the point of transfer the overall financial impact of the pension costs between the Council and the Trust will be cost neutral. Thereafter, under the applicable Local Government Pension Scheme regulations, the Trust is responsible for funding the liabilities to the Fund attributable to the transferring staff. The detailed arrangements will be negotiated between the Trust and the Council during the shadow period.
- 4.2.11 The Council and the Trust will use the indicative figures as above to form the basis of negotiations of the financial mechanism under the Service Delivery Contract during the shadow period. It is anticipated that the budget for each financial year of the Service Delivery Contract will be agreed annually between the Council and the Trust based on a set of assumptions that will be agreed as part of the negotiations.
- 4.2.12 The Trust will receive income through payments made by the Council pursuant to the Service Delivery Contract. As such, a detailed financial mechanism will need to be agreed as part of the Service Delivery Contract negotiations, which recognises that the Trust will be dependent on such payments from the Council to run the services, but also requires the Trust to deliver the services in a financially prudent manner in line with the agreed mechanism.

4.3 Legal Implications

- 4.3.1 The Trust facilitates the discharge of a range of local authority functions under Part III and Schedule 2 Children Act 1989, the Children Act 2004, the Children and Families Act 2014 and the Adoption Act 2002. Section 111 Local Government Act 1972 allows the local authority power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions. As a local authority in intervention and subject to direction from the Secretary of State the current Children's Commissioner relationship will continue whilst the Trust is developed and implemented and the DfE will continue to hold the Council to account for improvements in delivery and outcomes.
- 4.3.2 The Council will remain accountable for the welfare and wellbeing of children and young people and for improving outcomes. Through a Service Delivery Contract with the Council the Trust will be responsible for determining how those outcomes of most relevance to its work are achieved and also for the day-to-day running of Children's Services. This will be a legally binding contract by which the Trust will agree to provide children's services functions on behalf of the Council and which, by its terms and conditions (including a service specification and performance framework), will seek to ensure the Children's Trust is meeting the Council's statutory duties. It is proposed that the contract length is for five years, with a provision to extend for a further five years, following a review. The contract will include DfE third party rights whilst the local authority remains in intervention (meaning some decisions, for example, termination of the contract, would require agreement with the DfE).
- 4.3.3 The Council will continue to hold the statutory remits of the Director of Children's Services (DCS) under Section 18 Children Act 2004 and Lead Member for Children's Services under Section 19 Children Act 2004. The Council will be the body held accountable by Ofsted. The Council has agreed a principle covering wide accountability of the Trust. That includes the role of the Lead Member, responding to relevant queries and casework from Members, all Councillors exercising their corporate parenting responsibilities and the Trust Chair and senior Trust managers reporting to the relevant Scrutiny Committee and others as appropriate.
- 4.3.4 The Birmingham Safeguarding Children Board retains its role in ensuring the effectiveness of co-operation between agencies in safeguarding and promoting the welfare of children and

young people. This recognises that the development of the Trust sits within a wider outcomes framework that must have regard for the wellbeing of all Birmingham's children and young people and for the associated outcomes to which all agencies, including the Trust, will contribute.

- 4.3.5 A key principle of assurance is that the Council, DCS and the Trust have a shared understanding of the wider outcomes framework for children and young people and the outcome focus of the contract. That needs to be expressed in a commitment to put in place actions that enable the experiences of children and young people who receive services to be understood and improved in order to achieve best outcomes. Implementing the principle requires effective and comprehensive arrangements to be outlined in the contract between the Council and the Trust that enable the quality, effectiveness and impact of services to be monitored and evaluated. The Trust will be required to develop and maintain an effective performance management capability that will enable up-to-date information on the volume, quality and effectiveness of services to be available at a child level basis. In addition, the Trust will have a programme comprising audit, dip sampling and other means of evaluating the quality and impacts of services that will demonstrate the overall effectiveness of services and their impact upon outcomes for children and young people. Ofsted monitoring visits will be another important source of evidence of progress. This information will be available to the DCS and periodically subject to scrutiny by council members and the DCS when required.
- 4.3.6 A memorandum of understanding has been agreed between the City Council and DfE covering the shadow period (Appendix 3). This provides a roadmap and key milestones to establishment of the Trust by April 2018. The MoU is a non-legally binding agreement between the Secretary of State and the Council setting out the intentions and understandings between the parties in respect of establishing the Trust and related matters including, for example, the appointment or removal of the Chair.
- 4.3.7 Under domestic legislation in order for an employee of one gender to claim that they are receiving differential pay compared to comparators of another gender, they must be employed by the 'same employer' or 'associated employer' on the 'same terms and conditions' and at the 'same establishment'. The legislative provisions that govern pay and reward are set out in the provisions of domestic and European legislation including the Equality Act 2010. Employers are "associated" if one directly or indirectly controls the other, or if a third person directly or indirectly controls both. Therefore, the Council and the Trust are likely to be determined as an 'associated employer' for employment matters including liability for equal pay. To protect both the Council and the Trust against any liability accruing to the Council or the Trust and specifically as a result of changes to pay and reward in either organisation, then appropriate provisions will need to be included in the Service Delivery Contract.

4.4. Public Sector Equality Duty

The Full Assessment (Appendix 4) has included children and young people as service users and staff. Consideration of age, disability, gender and race as protected characteristics have been considered. The principal potential impact of the Trust identified to date has been that upon staff. The Council will seek to minimise any impact upon staff through its TUPE negotiations and contract with the Trust.

5. Relevant background/chronology of key events:

- 5.1 The Council has been rated as inadequate in the delivery of its responsibilities to children for some years and, following the September/October 2016 Ofsted inspection, remains inadequate (though some improvements have been recognised and some areas are graded more highly). The Council therefore remains in intervention pending a further full inspection which can be anticipated by early 2019.
- 5.2 On 24 January 2017 Cabinet agreed the establishment of the Trust based on it offering:
- an opportunity to develop and consolidate changes and improvements already underway.
 - a sole focus on children's social work and the ability to tailor ways of working to support best practice.

- a greater focus on service delivery and securing the best conditions for great social work.
- wider experience and expertise brought to bear through the Board and its leadership.
- a strong and clear voice – including the voice of children - to the Council, partners and the city.
- a clean break with the past.
- an opportunity to design strong staff engagement into the governance arrangements.
- clarity about the Council as place leader – holding the ring for children with credibility.
- a single locus with partners about shared responsibility for children and families with highest needs.
- clarity in communicating the work of the Trust.

- 5.3 That decision also took account of a range of key challenges and considerations included the longstanding issues with the sustained delivery of children's services in Birmingham by the Council; serious structural, practice and governance issues affecting children's services in Birmingham as identified by Professor Julian Le Grand in 2014; and, as identified in the July 2016 report 'a case for change', six key 'root causes' which challenged the Council's ability to deliver a sustainable and improved children's service at pace.
- 5.4 The Trust has now been incorporated based on a wholly owned company model, to be converted to a community interest company by April 2018. The Chair is its sole director and the Council its sole member.
- 5.5 The agreed model was considered most likely to secure the conditions for sustainable improvement and meet the strategic objectives (eg. accommodating the scope, providing independence, commissioner/provider split, reflecting the City Council's principles), minimise risk (complexity, market gaps) and relative affordability.
- 5.6 The services required by the Trust are set out in Appendix 1 – Birmingham Children's Trust: Proposed Trust Services. Subject to further Council/Trust discussions these will be transferred to the Trust, purchased or secured via a mix of these models.
- 5.7 An appraisal of the TUPE and secondment options for transfer of staff to the Trust has been undertaken and is attached at Appendix 2. This concluded that TUPE is the preferred and recommended option. A key consideration in proposing TUPE as the model of transfer is the need to demonstrate operational independence. 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 of transferring Council staff are all preserved.
- 5.8 With respect to the Trust Board, Andrew Christie was appointed Chair Designate on 25 November 2016 in accordance with the all-party appointments procedures of the Council. The Trust Chief Executive has been recruited and will start on 14 August 2017. Once the new Chief Executive has commenced in post, line management of some internal posts will change on the run up to becoming a Children's Trust. Five non-executive directors have been appointed. The Director of Resources will be the next senior post to be filled and initially this will be on an interim basis in order to secure this input as soon as possible.
- 5.9 Membership of the Board is based on:
- a Chair.
 - a Chief Executive.
 - a Director of Resources.
 - a Director of Operations.
 - a Director of Commissioning and Development
 - up to six non-executive directors, including a Council-appointed representative, with social work, finance, HR and legal expertise and experience and knowledge of Birmingham and partner agencies.
- 5.10 The Trust, through its governance arrangements, is committed to and will develop mechanisms for strong staff and union engagement. It is committed to nurturing good employee relations with employees and trade unions including examining a range of options which will include Board

representation.

- 5.11 In regular meetings since Summer 2016 with representatives from health, police, education and the voluntary sector, partners have indicated support for the Trust as an opportunity for better integration and collaborative working. Partners have been involved in programme management and shadow governance arrangements (the independent Chair of the Birmingham Safeguarding Children Board is a member of the Steering Group and the Design Authority) and they have contributed to the appointments of the Chair Designate and the Chief Executive. Recognising that the Trust would be part of a wider system of agencies and partners which share the aim of securing better outcomes for children and young people, there is a commitment to building stronger relationships and behaviours around a shared vision, values and leadership of the system.
- 5.12 The next key work within the programme is to establish the Intelligent Client Function within the Council to hold the Trust to account (for example, contract management) and to draft and agree the Service Delivery Contract between the Council and the Trust and this work is scheduled to commence from August 2017.
- 5.13 The programme is on schedule to ensure that the Trust implementation achieves the April 2018 date.

6. Evaluation of alternative option(s):

- 6.1 The range of options for voluntary development of a Trust model were evaluated throughout 2016. Cabinet agreed, in January 2017, creation of the Trust based on the wholly owned company option and as a community interest company.

7. Reasons for Decision(s):

- 7.1 To secure formal support for the full implementation of the Trust, services to transfer or be purchased and the model of staff transfer at April 2018.
- 7.2 To address longstanding failures, to consolidate changes and improvements already underway, and to secure the greater agility and focus required to deliver excellent social work in an effective and sustainable way.

Signatures

Date

Cabinet Member, Children, Families and Schools:
Cllr Brigid Jones

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Interim Corporate Director, Children & Young People:
Colin Diamond

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Interim Chief Executive:
Stella Manzie

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List of Background Documents used to compile this Report:

Report of the Improvement Quartet to City Council 14 June 2016.
Cabinet Reports 26 July 2016, 20 September 2016 and 24 January 2017 – Voluntary Children's Trust.

List of Appendices accompanying this Report (if any):

1. Birmingham Children's Trust: Proposed Trust Services.
2. Birmingham Children's Trust: Transfer Approach Options Appraisal.
3. Birmingham Children's Trust: Memorandum of Understanding between the Secretary of State for Education and Birmingham City Council.
4. Birmingham Children's Trust: Equality Analysis – Full Assessment.

Report Version

FINAL

Date

13 July 2017