

Report to:	CABINET
Report of:	CHIEF EXECUTIVE AND STRATEGIC DIRECTOR FOR PEOPLE
Date of Decision:	20 September 2016
SUBJECT:	VOLUNTARY CHILDREN'S TRUST
Key Decision: Yes	Relevant Forward Plan Ref: 002275/2016
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 Following Cabinet approval in July 2016 of the “case for change” this report describes the outcomes of the proposed children’s trust scoping and options appraisal, sets out governance developments and seeks Cabinet approval for the next phase of detailed design work.

2. Decision(s) recommended:

That Cabinet:

- 2.1 Agrees the draft scope of the proposed Trust as suitable for consultation with staff affected, service users and partners and as the basis for further detailed design (Appendix 1 – Draft Scope of Services).
- 2.2 Notes the result of the appraisal of alternative delivery models and agrees that both (1) the wholly owned company option and (2) the employee owned mutual option proceed to design work (Appendix 2 – Alternative Delivery Model Options Shortlisting).
- 2.3 Agrees the high level Phase 2 (Design) Programme Structure/Governance Plan described at 5.8 and 5.9 and in Appendix 3 and delegation to the Chief Executive/Strategic Director for People of utilisation of the agreed implementation/set up funding and establishment of the delivery Programme, including appointment to key positions as outlined in the Appendix.
- 2.4 Agrees that work on the shadow governance and Trust Board arrangements is delegated to the Chief Executive/Strategic Director for People, including appointment of the Chair Designate in accordance with the all-party appointments procedures of the Council and appointment of the Trust’s Chief Executive.
- 2.5 Agrees to receipt of a January 2017 report with the recommended Trust service scope and delivery option, shadow governance/Board arrangements and process for creation of the Trust

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3. Consultation

3.1 Internal

There has been initial engagement with affected staff, trade unions and Elected Members in respect of the scope of services that would transfer to a Trust delivery model.

Officers from Legal, Finance, Corporate Procurement and HR have been consulted on the production of this report.

Further consultation, including statutory consultation obligations, will be undertaken with service users, all affected employees, trade unions, Elected Members, stakeholders and partners (including the Birmingham Safeguarding Children Board) as models proceed to design work, with outcomes of the consultation process considered as part of any subsequent decision regarding a final Trust delivery model.

Early phases of engagement have seen a degree of staff support based on recognition of the potential benefits of a Trust model.

3.2 External

Engagement has included strategic partners, the Department for Education (DfE) and Birmingham's Commissioner for Children's Social Care, Andrew Christie. There has also been direct liaison with other local authorities (eg Doncaster, Slough, Kingston-Upon-Thames, Richmond and Sunderland) where Trust arrangements exist or are being developed and learning from this will be taken into Phase 2 (Design), if agreed.

4. Compliance Issues:

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

Exploration of a trust model is consistent with the Council's priorities of children's safeguarding, making children in need safer and improving the wellbeing of vulnerable children as set out in the Council Business Plan and Budget 2016+ . Appraisal of options has included consideration of the design principles agreed by City Council in June 2016.

4.2 Financial Implications

One of the six design principles agreed by the Council is that the current financial plan and Council priority must be maintained through to at least 2020. A detailed assessment of the financial implications of the two options will be undertaken as part of design work.

Substantial costs are anticipated to support necessary work to design and develop a preferred trust model including appropriate resources/programme management and transition requirements. It is anticipated that these costs would be met from a bid for resources to the DfE.

The DfE bid will cover the design, programme management and transition costs incurred during 2016/17, 2017/18 and, as necessary, full establishment of the trust.

This report seeks a delegation to enable the Chief Executive to complete negotiations for funding support with the DfE, in consultation with the Cabinet Member, and to utilise the 2016/17 funds, once notified or awarded by the DfE. There will be further reporting on the application of the DfE funding for further transition and implementation costs in the January 2017 report to Cabinet.

It will be necessary to calculate and disaggregate costs of services across the Council and those transferring into the Trust and details will be included in the January 2017 report to Cabinet.

4.3 Legal Implications

The proposal 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.

The Government's policy position on Trusts was reinforced in the July 2016 policy paper Putting children first: our vision for children's social care:

"The current system, where the vast majority of children's social care services are delivered by in-house local authority teams, is not delivering consistently excellent practice... Whilst structural change is not an end in itself, in the right circumstances it may be the key to unlocking improvement and responding to budgetary pressures as well as new threats to our children and young people."

As a local authority in intervention the current Children's Commissioner relationship would continue whilst the Trust is developed and implemented and the DfE would continue to hold the Council to account for improvements in delivery and outcomes.

In both options, the Council would remain accountable for the effective delivery of services for children, promoting their welfare and wellbeing, and improving outcomes. Through a contract with the Council the Trust would be responsible for determining how those outcomes were achieved and also for the day-to-day running of the children's services. The Council would continue to hold the statutory remits of the Director of Children's Services under Section 18 Children Act 2004 and Lead Member for children's services under Section 19 Children Act 2004 and the Council would be the body inspected by Ofsted.

The Birmingham Safeguarding Children's Board would retain its role in ensuring the effectiveness of co-operation between agencies in safeguarding and promoting the welfare of children and young people.

The Council has agreed a principle covering wide accountability of the Trust and that includes all Councillors exercising their corporate parenting responsibilities and senior Trust managers reporting to the relevant Scrutiny Committee and others as appropriate.



4.4. Public Sector Equality Duty

An Initial Assessment (Appendix 4 Equality Analysis – Initial Screening) has been carried out. It identifies a high level strategic view of the situation and trust delivery models under

consideration. A review of the EA will be undertaken at the design stage.

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 is now due a further Ofsted inspection. The Council has come to a decision that exploration of a Trust offers greater agility and focus which would improve the chances of delivering excellent social work in an effective and sustainable way. The challenge facing the Council is to sustain the current improvement work and build around that a proposed Trust model to take on and further develop the task.
- 5.2 In considering which delivery model best secures long term sustainability and improvement of children's services, a number of key factors challenge the 'in house' model as a preferred model and therefore it is not a recommended option. These challenges and considerations are discussed below:
- 5.2.1 Since 1999 there have been longstanding issues with the sustained delivery of children's services in Birmingham by the Council and whilst improvement is progressing it still has a way to go before the service becomes excellent.
- 5.2.2 In 2014, Professor Julian Le Grand, on behalf of the then Minister, concluded that there were serious structural, practice and governance issues affecting children's services in Birmingham.
- 5.2.3 In June 2016, a report of the Improvement Quartet acknowledged both the significant improvement progress since Le Grand in 2014 and the need to explore a structural and cultural change so as to provide better sustainable outcomes for children in Birmingham.
- 5.2.4 Deloitte, commissioned by the Council, identified in their July 2016 report 'a case for change' six key 'root causes' challenging the Council's ability to deliver a sustainable and improved children's service at pace. The Trust design needs to be able to facilitate positive responses to these root causes. In summary these are:
- focus on children: time spent interacting with other council functions caused a lack of attention on children's services.
 - partnering and commissioning: a lack of shared visions across council functions and with key partners; more collaboration and single focus needed.
 - recruitment and retention: impact of reputational and legacy issues, unattractive/uncompetitive reward package and lack of dedicated/focussed support service functions impacting on successful and sustained recruitment and retention of qualified social workers.
 - workforce capability: the need to align workforce capability with service delivery, the need to build a strong framework for learning which is peer led and embedded into day-to-day practice.
 - organisational agility: the need to become demand led versus the need to respond to budgetary cuts and the distraction of responding to external pressures.
 - technology, digital and analytics; the need for an exclusive IT focus, unencumbered by corporate processes and initiatives in order to provide a better understanding about the needs of children and young people.
- 5.2.5 The Council has embedded a new 'Early Help and Children's Social Care Improvement plan 2015- 2017' with a strong focus on operational practice. The improvement journey is well underway. However, preparing for years beyond this plan and achieving sustained improvement is critical and requires the ability to innovate and to implement change at pace with a clear singular focus on providing the best outcomes for children in Birmingham.
- 5.2.6 All of the 4 main strategic objectives set out below in Paragraph 5.5 cannot be met by an in-house model as there would be no independent delivery of children's services.
- 5.3 On 26 July 2016 Cabinet agreed the "case for change" and that this would be used to inform the appraisal and development of options for a trust model.
- 5.4 The draft scope of services to be covered by a trust model is attached as Appendix 1 - Draft

Scope of Services. The scope was drafted to enable appraisal to be undertaken. It is recognised that in any further agreed appraisal of options the scope will be open to modification. It will continue to be possible to consider changes to the scope where that is deemed appropriate. Any changes identified during the review of the two options will be reported to Cabinet in January 2017.

- 5.5 The outcome of the options appraisal is described in Appendix 2 - ADM Options Shortlisting. Two models have emerged from this as most likely to secure the conditions for sustainable improvement: a wholly owned company and an employee owned mutual. These 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 These models are recommended to proceed to design work to identify the preferred model for implementation and that will include considering elements of each of the "pure" models and the value of combining those in a "best fit" arrangement. This would be in the context of agreeing the best starting point from a pace and pragmatism perspective, with the model able to develop and evolve over time. Both of these models would enable future consideration of evolving into a community interest company in which the primary purpose is community benefit. This would mean that the wholly owned company or mutual as appropriate would become a community interest company. There is a process for achieving this starting with the company/mutual passing a special resolution. The process is more complex for a mutual. The process can be considered in more detail at the design stage. A community interest company (CIC) is a limited liability company, designed for social enterprises that want to use their profits and assets for the public good. A CIC has the specific aim of providing a benefit to a community and must use its income, assets and profits for the community it is formed to serve. The primary purpose of a CIC is to benefit the community and not its shareholders, directors or employees.
- 5.7 Nationally, the Government has recognised that VAT presents barriers to broadening the range of models available to local authorities. Although this is of interest in the longer term the immediate focus is on adding pace a Trust could offer to our improvement plan by being in shadow form by April 2017. Therefore models likely not to enable recovery of VAT in our timeframe have been ruled out.
- 5.8 Appendix 3 - Phase 2 (Design) Programme Structure/Governance Plan sets out the high level Phase 2 (Design) programme of work necessary to design and develop a preferred trust model with appropriate programme management and full consideration of transition requirements. With respect to programme governance a Programme Board and related architecture will now be established comprising a Programme Director, Programme Manager and workstream leads. The Programme Board would oversee establishment of the proposed Trust and its membership will include the City Council, DfE, Children's Commissioner and a partner representative.
- 5.9 As agreed by Cabinet in July 2016 a search has been undertaken to identify possible interest in Chair/Non-Executive membership of a shadow Trust Board. This is to begin to put into place in Phase 2 (Design) shadow governance arrangements and to ensure that the proposed Trust has its own voice in the next significant phase of design and development. This is distinct from the Programme Board and its remit.
- 5.10 The continued engagement of partners in the next phase becomes more critical. In the short term, for example, that would include work on the scope and involvement in the programme management and shadow governance arrangements. Beyond that, and recognising that the proposed 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 important work required to build stronger relationships and behaviours around a shared vision, values and leadership of the system.
- 5.11 Phase 3 (Transition, April 2017 – March 2018) will comprise – subject to necessary approvals – full implementation and transition to the new delivery model.

6. Evaluation of alternative option(s):

- 6.1 The range of options for voluntary development of a trust model have been evaluated and reduced to only viable options for delivery, with the aim of detailed design, implementation

and transition to a single model.

6.2 An in-house option has been ruled out for the reasons set out in 5.2.

6.3 If the Council is not able to demonstrate that it can deliver, at pace, an improvement journey beyond 2017 for its children's services, it will remain in intervention.

7. Reasons for Decision(s):

7.1 To secure formal support for the scope, design work on the preferred options and related governance requirements.

Signatures	<u>Date</u>
Cabinet Member, Children, Families and Schools: Cllr Brigid Jones
Strategic Director for People: Peter Hay
Chief Executive Mark Rogers

List of Background Documents used to compile this Report:

Report of the Improvement Quartet to City Council 14 June 2016.
Cabinet Report 26 July 2016 – Voluntary Children's Trust
Putting Children First: Our vision for Children's Social Care – DfE July 2016

List of Appendices accompanying this Report (if any):

1. Draft Scope of the proposed Birmingham Children's Trust - discussion paper August 2016
2. Birmingham Children's Services Model - Alternative Delivery Model Options Shortlisting
3. Phase 2 (Design) Programme Structure/Governance Plan
4. Equality Analysis – Initial Screening

Report Version	8	Date	7 Sept 2016
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