Birmingham Children's Services
Alternative Delivery Model Options Shortlisting

September 2016

Contents

1 Executive summary

Having set out the "case for change" in a previous July 2016 report to Cabinet, this document (which is Appendix 2 to the September 2016 Cabinet Report) describes the process adopted for filtering the longlist of 19 alternative delivery model (ADM) options for the Children's Trust to a shortlist.

For the reasons described at 5.2 of the main report the 7 in-house related options were removed at the first stage of evaluation (filtering).

The Steering Group (City Council, DfE, Children's Commissioner and external support from Deloitte) then discounted those options where there were considerable risks to deliverability (including complexity and long timescales for implementation).

Finally, options were discounted where there were significant and unavoidable financial implications which would make the option unsustainable within existing levels of funding (the main issue here was VAT).

This left a shortlist of two options.

The two options which remain are to establish:
1. **a company limited by guarantee or shares which is owned wholly by the Council; or**
2. **a company limited by guarantee or shares which is owned by its employees**

The two options both satisfy an agreed set of pass/fail criteria and provide the legal wrapper for an organisation that can be designed in a way that enables a single and unwavering focus on providing the best services to children, young people and families – now and in the future.

There are benefits of each of the options and during the **design phase** the preferred model would seek to blend the most beneficial characteristics of each option (based on agreed scope and a viable delivery plan).

Each of these two options would also be able to apply to be described as a Community Interest Company (CIC) and the merits of doing this will be explored during the design phase**. A CIC is a special type of limited company.** It is quick, easy and inexpensive to set up and can reassure the public, as the community purpose of the organisation is regulated by law.

2 Alternative delivery model shortlist

Initially 19 alternative delivery model options were considered.

The list was developed by the Birmingham Children's Trust steering group (the steering group) and they are described in the table in Appendix A.

The list lays out the alternative models that are possibilities for the delivery of a local authority service.

The options are not all mutually exclusive. It may be that the design of the service is a blend of some of the options.

To move from the longlist of 19 options down to a shortlist which will be explored during detailed design, the steering group developed a set of key pass/fail criteria and applied these criteria (in a filtering process)to narrow down the range of options to a shortlist.

The steering group decided that these criteria were so important (mandatory) that the chosen options must be able to pass each of the criteria.

The criteria were:

- can the model accommodate the scope as detailed in Appendix 1 of the main Cabinet paper?
- does the model provide the conditions for operational independence?
- are there risks associated with adopting this model which make it undeliverable?
- will the option incur significant and avoidable financial implications which would make the option unsustainable within existing levels of funding?

Applying the criteria gradually excluded options to leave a feasible and manageable number of options to take into design.

The following table and footnotes explain the rationale for why options were eliminated.

ADM options	Criteria			
	Scope[1]	Operational independence[2]	Risks[3]	Financial implications[4]
1. Continuation of in house improvement activity	√	x		
2. Managing agent	√	x		
3. Improvement board / advisors	√	x		
4. Shared service	√	x		
5. Joint delivery	√	x		
6. Collaboration with other LAs	√	x		
7. Executive commissioners	√	x		
8. Wholly owned council limited company (LATC)	√	√	√	√
9. Wholly owned public sector joint venture (JV)	√	√	x	
10. Independently owned limited company (i.e. owned by the Board)	√	√	√	x
11. Community Interest Company	√	√	√	√
12. Employee owned limited company (i.e. mutual)	√	√	√	√
13. JV between LA and not for profit provider	√	√	x	
14. Mutualisation: JV between LA and newly established company	√	√	x	
15. Multi-party joint venture	√	√	x	
16. Charity	√	√	√	x
17. Commission by contract	√	√	x	
18. Commission parts or whole service by grant	√	√	x	
19. Joint commissioning	√	√	x	

Key criteria and explanations

[1]Scope:
All 19 options can accommodate the specified scope, as specified in the draft Birmingham Children's Trust scope paper, whilst being flexible enough to adapt to future emerging responsibilities and new forms.

[2]Operational Independence:

A number of key factors challenge the 'in house' model as a preferred model and therefore these options are not considered as per section 5.2 of the Cabinet report.

[3]Risk:

The delivery models which involve any kind of joint venture are complex and therefore it is not possible to be confident in successful implementation or implementation in any realistic timescales.

The implementation of a joint venture (whether between public sector bodies, not for profits, a newly established company or a mixture of all of these options) would require significant development in relationships and would complicate the establishment of already complex effective governance arrangements.

This is true of the joint commissioning option too.

The options involving commissioning fail this criteria as there is a significant risk that a mature market does not currently exist to provide this type of commissioned service.

For the part-commissioning option there is the added risk of fragmenting the service since, as stated in the draft Birmingham Children's Trust draft scope paper, effectiveness is dependent upon close collaboration throughout the system to achieve the desired outcomes.

[4]Financial implications:

A wholly independent organisation which provides children's welfare services to the Council would likely make VAT exempt supplies against which no VAT incurred on related costs could be recovered.

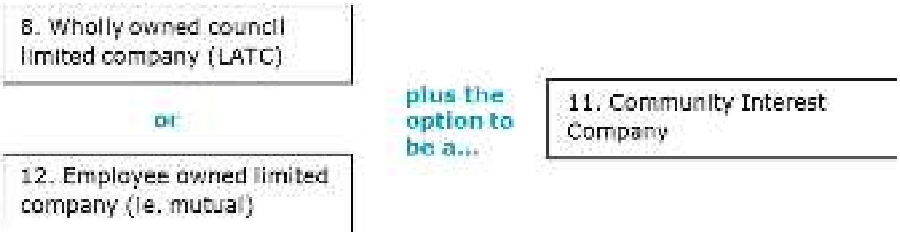
However, if the Council is able to commission the delivery of the management and administration of its continued provision of Children's Services (with the Council remaining the Ofsted regulated body), such that the chosen vehicle makes supplies subject to VAT, the VAT incurred on the chosen vehicle's costs should be recoverable in as much as it is attributable to taxable supplies made to the Council.

A wholly independent vehicle, such as a charity or independently owned (i.e. owned by the Board) limited company, would not allow the Council to exert sufficient influence or control over its design, such that it is more likely that the Council would require that vehicle to be regulated by Ofsted in order to reach the level of confidence that the services will be delivered as the Council requires. In that circumstance, either a charity or an independently owned limited company, would be more likely to be making

VAT exempt supplies and incurring irrecoverable VAT. These options are therefore ruled out.

More detail on VAT considerations is available in Appendix B.

After applying the criteria, three options from the longlist of 19 ADM options are left. However, these options are not mutually exclusive and the remaining decision to be made in the next phase of work can be described as follows:



Two of the options define the ownership and control for the arrangements for the delivery and control of the organisation (wholly owned council limited company and employee owned limited company). These options would both be able to apply to be described as a Community Interest Company.

The two options can accommodate the specified scope whilst being flexible enough to adapt to future emerging responsibilities and new forms. They do not have considerable deliverability risks and satisfy the requirement for operational independence.

During the next phase of work it is proposed that the design of the organisation for both options is progressed.

The design process will highlight which of the two ownership and control options allows the best conditions for children's services to achieve sustainable improvement. There are benefits of each of the options and during the design phase the detailed model would seek to blend the most beneficial characteristics of each option.

The next phase will also include work to decide whether applying for the status of Community Interest Company will help create a system that enables further improvement.

Within the detailed design phase governance and scrutiny arrangements will be agreed. Whatever form of company is established, there will be an expectation that the Chief Executive of the new company and the Executive Director of Children's Services would meet with the BCC overview and scrutiny committee and other Members and officers as required.

There will be a contract in place that will set out the outcomes required from the services to be delivered by the company to the Council. This contract will also set out an approach to poor performance of the company and the role that the Council has in monitoring day-to-day operation of the company.

The governance arrangements of the company, whether employee owned or Council owned, will be designed taking into account the Council's statutory accountability for children's services.

The identification and appointment of the board members and management team who will control the company and how they exercise that responsibility as a group will be established in the design phase.

Summary of shortlisted options to be taken into the design phase:

1. **A company limited by guarantee or shares which is owned wholly by the Council**

2. **A company limited by guarantee or shares which is owned by its employees**

Each of these options would be able to apply to be described as a Community Interest Company

3 Appendix A - Alternative delivery model options

The 19 ADM options listed below have been considered during this phase of work.

	ADM	Detailed description	Reason for failing criteria and model considerations
1	Continuation of in house improvement activity	Continuation of the services already provided in house by the local authority	Reason for failing criteria: • Service remains 'in-house' and therefore does not best secure long term sustainability and improvement of children's services, as per challenges and issues in paragraph 5.2 of the Cabinet report Other considerations: • Stays within Council control • Would require internal transformation to achieve continued improvement and cultural change to address some of the barriers to improvement • Staff terms and conditions are likely to need to remain in line with BCC terms and conditions
2	Managing agent	Individuals or a company manage the service, but it is still delivered in house. They have a contract to manage the service for the Council	Reason for failing criteria: • Service remains 'in-house' and therefore does not best secure long term sustainability and improvement of children's services, as per challenges and issues in paragraph 5.2 of the Cabinet report Other considerations: • Staff remain within the Council • A contract is let with a company or individuals to manage the service and they are held accountable for performance • Requires strong contract management and a managing agent who is committed and invested to improve • Payment by results for the managing agent could be considered • Does not necessarily create the cultural or organisational transformation and the managing agent may have limited influence in the Council and with partners • The infrastructure that supports children's services would not change • Staff terms and conditions are likely to need to remain in line with BCC terms and conditions
3	Improvement board / advisors	Advice to officers and members about the best running of the service	Reason for failing criteria: • Service remains 'in-house' and therefore does not best secure long term sustainability and improvement of children's services, as per challenges and issues in paragraph 5.2 of the Cabinet report Other considerations: • Advisers and national experts who can support the

			Council to identify issues and manage the service differently • This is similar to previous interventions • This needs to be thoughtfully managed to have the right advisors for enough time to be useful • Advisors only advise, managers and the leaders in the service need to implement this • The infrastructure that supports children's services would not change • Staff terms and conditions are likely to need to remain in line with BCC terms and conditions
4	Shared service	Shared services provided by another LA through agreement or contract	Reason for failing criteria: • Service largely remains 'in-house' and therefore does not best secure long term sustainability and improvement of children's services, as per challenges and issues in paragraph 5.2 of the Cabinet report Other considerations: • The other LA takes on the risk for the delivery of services • Control would be through the contract or agreement rather than direct day to day management • TUPE may apply – would need further details • Staff terms and conditions are likely to need to remain in line with BCC terms and conditions
5	Joint delivery	Partnership with another body e.g. another LA - each one provides services to both under agreement or contract	Reason for failing criteria: • Service largely remains 'in-house' and therefore does not best secure long term sustainability and improvement of children's services, as per challenges and issues in paragraph 5.2 of the Cabinet report Other considerations: • Other body takes on part of the risk for the delivery of services • This could offer new expertise, innovation and additional resources • Pooled resources could bring in greater economy/efficiency/effectiveness • Allows each partner to play to their strengths • TUPE may apply – would need further details • Staff terms and conditions are likely to need to remain in line with BCC terms and conditions
6	Collaboration with other LAs	Each LA is responsible for their own service delivery but informally share some aspects e.g. training	Reason for failing criteria: • Service largely remains 'in-house' and therefore does not best secure long term sustainability and improvement of children's services, as per challenges and issues in paragraph 5.2 of the Cabinet report Other considerations: • Council retain control of children's services delivery but collaborates on certain aspects • Staff would not change organisation but may deliver services for another authority • Quality may improve in certain areas of collaboration, there may also be efficiencies • The infrastructure that supports children's services would not change • Staff terms and conditions are likely to need to remain in line with BCC terms and conditions
7	Executive commissioners	Political control and executive authority rests with these individuals,	Reason for failing criteria: • Service remains 'in-house' and therefore does not best secure long term sustainability and improvement of

		service delivery is still through LA	children's services, as per challenges and issues in paragraph 5.2 of the Cabinet report Other considerations: • Political control is taken from the Council for children's services • Staff remain within the Council • The infrastructure that supports children's services would not change • Local accountability is reduced for children's services • Staff terms and conditions are likely to need to remain in line with BCC terms and conditions
8	Wholly owned council limited company (LATC)	A company, registered with Companies House and subject to companies' legislation, and wholly owned by the Council. The operations, assets and staff are transferred into the company.	• Stays within Council ownership • Can incentivise better cost control and surplus/profit generation • Can continue to use existing staff • Is likely to meet teckal exemption and thus avoid the need for procurement • Hard to realise change when management structure remains unchanged, albeit in a new entity - a clear strategic direction needs to be set with the effective leadership who are able to deliver change • TUPE would apply if staff transfer employment • Need to Establish Material Factor Defence to justify difference in pay as compared to other BCC employees • Note this ADM would be regarded as an 'associated employer' for the purposes of determining 'same employer' test
9	Wholly owned public sector joint venture (JV)	Joint venture with other public sector bodies (e.g. LA+LA) to deliver services	Reason for failing criteria: • The delivery of models which involve any kind of joint venture are complex and therefore it is not possible to be confident in successful implementation • The implementation of a joint venture (whether between public sector bodies, not for profits, a newly established company or a mixture of all of these options) would require significant development in relationships and would complicate the establishment of already complex effective governance arrangements. Other considerations: • Risks and rewards are shared • Can keep existing staff • Partner's and Council's objectives can be difficult to align • Can be costly to set up • May not release cost savings without innovation and/or cost reduction • It is sometimes difficult to ensure surplus is transparent, i.e. the Council may not benefit as much as it should • TUPE would apply if staff transfer employment • Provided BCC did not have 'controlling' interest (less than 50%) and then **may** be able to lawfully change T &Cs of employees in this Company as compared to BCC employees • Would need to satisfy Art 157 – ' that BCC and this Company were not a 'Single Source' for the purposes of pay and reward' • Need to establish Material Factor Defence to justify difference in pay as compared to other BCC employees • Note this ADM would be regarded as an 'associated employer' for the purposes of determining 'same

			employer' test
10	Independently owned limited company (i.e. owned by the Board)	Establishment of a new company limited by shares or guarantee	Reason for failing criteria: • A wholly independent vehicle would not allow the Council to exert sufficient influence or control over its design, such that it is more likely that the Council would require that vehicle to be regulated by Ofsted in order to reach the level of confidence that the services will be delivered as the Council requires. In that circumstance, an independently owned limited company, would be more likely to be making VAT exempt supplies and incurring irrecoverable VAT Other considerations: • Model is not wholly owned by a public sector entity • TUPE would apply if staff transfer employment • Provided BCC did not have 'controlling' interest (less than 50%) and then **may** be able to lawfully change T &Cs of employees in this Company as compared to BCC employees • Would need to satisfy Art 157 – ' that BCC and this Company were not a 'Single Source' for the purposes of pay and reward'
11	Community Interest Company	Community Interest Companies were introduced by the Companies (Audit, Investigations and Community Enterprise) Act 2004. This is the structure that to date has been quite widely adopted by health provider entities that have been externalised as social enterprises. A CIC cannot have charitable status and therefore is unable to access the full range of tax advantages of charitable entities.	• Can reassure public, as the community purpose is regulated • Asset lock in place. If CIC is wound up under Insolvency Act 1986 any residual assets, after satisfying creditors, will be transferred to another asset-locked body (charity or another CIC) • Has transparency of operation • TUPE would apply if staff transfer employment • Company format can be tailored to a specific organisation structure, governance or membership because it is not a company form in its own right • Quick, easy and inexpensive to set up (once company has already been set up) • Provided BCC did not have 'controlling' interest (less than 50%) and then **may** be able to lawfully change T&Cs of employees in this Company as compared to BCC employees • Would need to satisfy Art 157 – ' that BCC and this Company were not a 'Single Source' for the purposes of pay and reward'
12	Employee owned limited company (i.e. mutual)	New entity taking the form of a workers' cooperative An independent business established by a mutual community who have a common interest in the goods and services the mutual provides. Members can be employees, customers or 'a mixed membership' model. Mutuals are funded from revenues from goods and services provided and / or contract fees.	• Some mutuals experience lower absenteeism and staff turnover than non-employee owned organisations • Some mutuals better protect staff terms and conditions • Can deliver greater customer satisfaction • Can present opportunities for innovation, turning a profit and being resilient to changes in the economic climate • A big mutual organisation may mean some members are distanced from the decision making process • Smaller organisations may find that 'one person, one vote' may delay decision making process • Employee committees can be used to make decisions • Unlikely to release cost savings without innovation and/or cost reduction and can be costly to set up • TUPE would apply if staff transfer employment • Provided BCC did not have 'controlling' interest (less than 50%) and then **may** be able to lawfully change T &Cs of employees in this Company as compared to BCC employees

13	JV between LA and a not for profit provider	A company, under companies legislation, owned by the Council and a JV partner, which is used as a vehicle for pursuing external business, the risks and rewards of which would be shared with the JV partner. What transfers into the company would be determined by commercial considerations in negotiation with the JV partner.	Reason for failing criteria: • The delivery of models which involve any kind of joint venture are complex and therefore it is not possible to be confident in successful implementation • The implementation of a joint venture (whether between public sector bodies, not for profits, a newly established company or a mixture of all of these options) would require significant development in relationships and would complicate the establishment of already complex effective governance arrangements Other considerations: • Council keeps a share of the service • Not for profit providers can bring expertise to improve service and operational delivery • Risks and rewards are shared • Can keep existing staff • Partner's and Council's objectives can be difficult to align • Can be costly to set up • May not release cost savings without innovation and/or cost reduction • It is sometimes difficult to ensure surplus is transparent, i.e. the Council may not benefit as much as it should • TUPE would apply if staff transfer employment • Provided BCC did not have 'controlling' interest (less than 50%) and then **may** be able to lawfully change T &Cs of employees in this Company as compared to BCC employees • Would need to satisfy Art 157 – ' that BCC and this Company were not a 'Single Source' for the purposes of pay and reward'
14	Mutualisation: JV between LA and newly established company	This model involves setting up an entity which is jointly owned by the parent entity (say a local authority), interested beneficiaries, e.g. staff bring something needed by the other parties to address the parent organisation's objectives, e.g. a commercial provider which could (for example) bring investment, skills, market channels or branding, etc.	Reason for failing criteria: • The delivery of models which involve any kind of joint venture are complex and therefore it is not possible to be confident in successful implementation • The implementation of a joint venture (whether between public sector bodies, not for profits, a newly established company or a mixture of all of these options) would require significant development in relationships and would complicate the establishment of already complex effective governance arrangements Other considerations: • Give staff a share of the ownership of the company • Can help protect staff terms and conditions • Can encourage innovation and improve profitability • Employee owners and Council's priorities and goals may be difficult to align • Can be costly and take time to set up and establish effective employee ownership • May entail additional risk • May not release cost savings without innovation and/or cost reduction • TUPE would apply if staff transfer employment • Provided BCC did not have 'controlling' interest (less than 50%) and then **may** be able to lawfully change T &Cs of employees in this Company as compared to BCC employees • Would need to satisfy Art 157 – ' that BCC and this Company were not a 'Single Source' for the purposes

			of pay and reward'
15	Multi-party joint venture	New entity that enters into a joint venture with partners across the public, private and voluntary sectors. Accordingly, requires a complex set of contracts and agreements to be established.	Reason for failing criteria: • The delivery of models which involve any kind of joint venture are complex and therefore it is not possible to be confident in successful implementation • The implementation of a joint venture (whether between public sector bodies, not for profits, a newly established company or a mixture of all of these options) would require significant development in relationships and would complicate the establishment of already complex effective governance arrangements Other considerations: • Council retains a degree of control over the new entity • Partners can bring a wide range of expertise to improve service • Potential for sharing risks and rewards • Can keep existing staff • Partner's and Council objectives might be difficult to align • Can be costly, complicated and time consuming to set up • TUPE would apply if staff transfer employment • Provided BCC did not have 'controlling' interest (less than 50%) and then **may** be able to lawfully change T &C's of employees in this Company as compared to BCC employees • Would need to satisfy Art 157 – ' that BCC and this Company were not a 'Single Source' for the purposes of pay and reward'
16	Charity	A type of non-profit distributing organisation (NPDO). It differs from other types of NPDOs in that it centres on non-profit and philanthropic goals as well as social well-being. Most charities take the legal form of having a company limited by guarantee to process any fund generation, and a charitable trust to retain grants and reserves.	Reason for failing criteria: • A wholly independent vehicle would not allow the Council to exert sufficient influence or control over its design, such that it is more likely that the Council would require that vehicle to be regulated by Ofsted in order to reach the level of confidence that the services will be delivered as the Council requires • In that circumstance, a charity would be more likely to be making VAT exempt supplies and incurring irrecoverable VAT Other considerations: • Recognised legal form • Can allow finance to come from grant funding and other non-public sources • Reassurance to stakeholders, as the asset and community purpose are regulated • No imperative to drive a profit – can break even • There are some tax benefits of having charitable status • TUPE would apply if staff transfer employment • Provided BCC did not have 'controlling' interest (less than 50%) then **may** be able to lawfully change T &Cs of employees in this Company as compared to BCC employees
17	Commission by contract	Commissioning of parts or whole of the service to another existing entity by contract The Council would commission a service	Reason for failing criteria: • There is a significant risk that a mature market does not currently exist to provide this type of commissioned service • For the part commissioning option there is the added risk of fragmenting the service since, as stated in the Birmingham Children's Trust discussion paper,

<table>
<tr><td></td><td></td><td>currently provided in house to an external provider.</td><td rowspan="3">effectiveness is dependent upon close collaboration throughout the system to achieve the desired outcomes
In addition, the joint commissioning model would require significant development in relationships and would complicate the establishment of already complex effective governance arrangements
Other considerations which apply to options 17-19:
The most common way to externalise the delivery of local authority services
Widely adopted by local authorities
Maintain oversight of the service
Has the potential to achieve significant costs savings in certain service areas
Potentially time-intensive contract management
Relies on a diverse provider market
TUPE would apply if staff transfer employment</td></tr>
<tr><td>18</td><td>Commission parts or whole service by grant</td><td>Commissioning of parts or whole of the service to another existing entity by grant</td></tr>
<tr><td>19</td><td>Joint commissioning</td><td>Commissioning of outcomes/delivery together with another body (e.g. Health) to commission outcomes/delivery</td></tr>
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4 Appendix B – Delivery Model references and VAT considerations

The relative merits of the shortlisted delivery options is a relatively complex thing to describe in a short document.

Therefore the references below provide full explanations and narrative regarding each type of delivery model.

They have similar characteristics and the design phase will ensure the preferred model will deliver the required outcomes.

The important thing to note is that 16 of the 19 options are viewed as not viable, based on the evaluation criteria applied. The two shortlisted ones, plus the possible Community Interest Company development, are viable and will be taken into detailed design (subject to Cabinet approval).

The final model may well be a blend of both and the preferred model needs to be something which can satisfy the outcomes but also be up and running in a reasonable timescale. Starting with one type of model does not mean that it cannot be changed into something else in the future (i.e. if it is necessary to do so, to continue the drive on improvements and take the services out of intervention).

Running a limited company:
https://www.gov.uk/running-a-limited-company

Setting up a wholly owned council company:
http://www.local.gov.uk/c/document_library/get_file?uuid=f8aaa25f-81d6-45c9-aa84-535793384085&groupId=10180

Example of a wholly owned council company limited by shares
Optalis: http://www.optalis.org/about-us

A guide to mutual ownership:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31678/11-1401-guide-mutual-ownership-models.pdf

Example of a mutual:
EPIC: http://www.epiccic.org.uk/about-epic

The benefits of a community interest company (CIC):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223722/10-1388-community-interest-companies-benefits-of-a-cic-leaflet.pdf

Example of a CIC:
Achieving for children: http://www.achievingforchildren.org.uk/

Different VAT treatment outside of Local Government provision

The establishment of a separate legal entity to deliver children's welfare services is likely to result in an additional VAT cost when compared with the cost of operation of those services within the Council.

That is principally because the Council benefits from rules which usually allow it to claim all the VAT charged by suppliers (on goods and services) from HMRC. An organisation such as a wholly owned subsidiary or other independent legal entity would not usually benefit from these rules.

Therefore, assuming such an entity charges for the delivery of regulated children's welfare services, it is not entitled to recover the VAT incurred on its costs from HMRC – although it may of course be able to increase its charges to the Council to recoup the irrecoverable VAT cost. However, the Council would then suffer the additional cost.

As an example, the most significant VAT-bearing cost that will be incurred in children's welfare services is likely to be temporary social workers. A local authority will not suffer a VAT cost on the purchase of temporary social workers, but a separate organisation which makes supplies of children's welfare services will.

It is understood that the Council incurs £14m pa of costs relating to agency social workers. If the model adopted involves a separate legal entity incurring those costs in the course of it providing children's welfare services, there is a potential increase in the budget requirements to allow for irrecoverable VAT of approximately £2.8m pa.

Potential Solutions

In principal, there are three broad approaches to reducing this irrecoverable VAT cost:

1. Ensure that the incidence of incurring VAT on costs is minimised

A simplistic (and idealistic) approach would be to convert all agency staff to permanent staff, employed by the organisation delivering the welfare services. As a result, there would be no VAT charged by the agency (other than on, for example, introduction fees, etc).

Alternatively, it may be possible to design a model which leaves the temporary staff being procured by the Council. As a result, the Council would recover the VAT charged from HMRC under the special rules. However this needs to bear in mind that this may conflict with the overall requirements for control and independence.

In addition it may be possible to have a number of overhead costs remain within the control of (and being procured by) the Council, such that those elements of the budget remain VAT free due to the Council's ability to recover the VAT incurred on those costs.

2. Commission the management of the Council's continued provision of Children's Services

It may be possible to adopt a model which has the Council continuing in its responsibility to provide children's services, thus maintaining the Council as the regulated body and commissioning the management of the Council's children's services by a new provider (either a newco or existing provider). The independent legal entity would supply services of administration and management of children's services – as opposed to being legally responsible for the delivery of the services themselves.

The advantage of this model (whilst acknowledging that this approach may not completely satisfy other objectives of the Council) is that it enables the independent legal entity to recover VAT on costs such as temporary staff. This is because it would be required to charge VAT on its services to the Council. The Council would be able to reclaim the VAT from HMRC and so neither the entity nor the Council would suffer an irrecoverable VAT cost.

This model has been adopted in the case of Achieving for Children, as we understand it.

3. Independent entity to be granted same rules as the Council

On the basis that the entity will be funded predominantly by the Council, one option is to approach ministers/HM Treasury to seek a change in legislation that allows entities such as these to enjoy the same VAT refund rules as local authorities.

This has precedent - a number of activities that have been 'spun out' of public bodies, such as academies, museums, and hospice charities now enjoy similar VAT rules to local authorities.