

# Birmingham City Council

## Report to Cabinet

21<sup>st</sup> March 2023



**Subject:** BIRMINGHAM CHILDREN'S TRUST CONTRACT RENEWAL

**Report of:** Sue Harrison, Director for Children and Families

**Relevant Cabinet Member:** Cllr Karen McCarthy, Children, Young People & Families  
Cllr Yvonne Mosquito, Finance & Resources

**Relevant O &S Chair(s):** Cllr Kerry Jenkins, Education and Children Social Care  
Cllr Akhlaq Ahmed, Resources O&S Committee

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 011065/2023		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:		

### 1 Executive Summary

- 1.1 This report provides an overview of the impact of the Birmingham Children's Trust over the last 5 years

- 1.2 This report sets the strategic direction in respect of the future contracting position for Birmingham Children's Trust
- 1.3 The report details the options explored and the underpinning rationale and need for the Trust to be offered a 10-year contract to enable greater partnership working and reduce instability and loss of skilled and experienced staff.
- 1.4 These recommendations support the delivery of statutory children's services, which remain a responsibility for the Council whatever the future Trust arrangement. The focus remains to support and enable all children and young people in Birmingham to thrive.

## **2 Recommendations**

That Cabinet

- 2.1 Authorises the Director of Children and Families in conjunction with the Director of Council Management and in consultation with the relevant Cabinet Members, to enter into a 10-year contract with Birmingham Children's Trust, following the conclusion of contract negotiations, for the period 1<sup>st</sup> April 2023 – 31<sup>st</sup> March 2033, with a break clause at Year 5.
- 2.2 Pursuant to recommendation 2.1, delegates authority to the Director of Children Services to exercise the break clause at Year 5 in accordance with the Contract should this be required.
- 2.3 Authorises the City Solicitor and Monitoring Officer (or their delegate) to execute, seal and complete all necessary documentation to give effect to the above recommendations.

## **3 Background**

- 3.1 Children's social care services in Birmingham are delivered by Birmingham Children's Trust. The Trust is owned by, but operationally independent from, Birmingham City Council – it is a Community Interest Company (CIC), governed by an independent board. A detailed service delivery contract which includes finance, performance and governance is also in place. Andy Couldrick, the Chief Executive of the Trust and the three Trust Directors are responsible for the delivery of the contract. The Director of Children's Services, Sue Harrison, is responsible for the commissioning of the Trust.
- 3.2 The Trust was established by the Council in 2018 following a long and high-profile period of time when its Children's Services were judged 'Inadequate' by Ofsted.
- 3.3 The Trust also buys back certain back-office services from the Council, such as HR, & Insurance, to support its day-to-day functioning.
- 3.4 The Trust is commissioned by the Council to provide the following services:
  - Early Help Services
  - Families Together

- CASS and MASH
- Social Work Teams
- Contextual Safeguarding Hub EmpowerU
- Services for Disabled Children: social work; short breaks
- Adoption (Regional Adoption Agency) and Fostering
- Residential Care
- Unaccompanied Asylum-Seeking Children, No Recourse to Public Funds, Homelessness service, Edge of Care, Family Group Conference service
- Care Leavers' Service
- Youth Offending Service
- Family Drug and Alcohol Court
- Independent Review and Child Protection Chairs
- Support Services (including Finance, Legal Services, Commissioning, ICT, HR and Business Services & Support, Customer Relations)

3.5 The Trust delivers services to the most vulnerable and challenged families and children in Birmingham (data March 2022)



3.6 The Operational Commissioning Group meets monthly and reviews Trust performance against the key performance indicators (KPIs) in the contract. Performance has been generally on target or within appropriate tolerances over the last 12 months.

PI	Measure	Number of months where target met or within tolerances last 12 months	% where target met or within tolerances last 12 months
1	% of all referrals with a decision within 24 hours	11/12	92%
2	% of re-referrals to children's social care within 12 months	12/12	100%
3	% assessments completed within 45 working days	11/12	92%
4	% Initial CP conferences held within 15 working days	12/12	100%
5	% of children who became the subject of a CP plan for a second or subsequent time within the last 2 years	12/12	100%
6	% of children (under 16 years) who have been looked after for 2.5 years or more, and in the same placement (or placed for adoption) continuously for 2 years or more	12/12	100%
7	% children experiencing 3 or more moves in a year	12/12	100%
8	% of children in care reviews held on time	12/12	100%
9	% of care leavers who are in education, employment, and training (EET)	12/12	100%
10	% of care leavers who are living in suitable accommodation (19-21)	12/12	100%
11	Average time between a child coming into care and being placed with an adoptive family (A2)	0/12	0%
12	Number of children who have been adopted in year or who leave care	N/A	73 against a target of 85
13	% of agency social workers (including team managers)	0/12	0%
14	Average caseload of qualified social workers	12/12	100%
15	% of social workers who have had supervision (in month)	10/12	83%

3.7 An improved Ofsted judgement is a critical milestone on the Trust's, and the Council's, journey. A full ILACS inspection is anticipated imminently, and the interim focused visits in January 2020 & October 2021, have indicated that the improvement trajectory is being maintained and is on course to be judged as Good. A recently published Ofsted report (Jan 2022) judged Birmingham Children's Trust's Adoption agency to be Good, with Outstanding leadership and management. It is an obvious ambition for Birmingham that the Improvement Direction is rescinded. Maintaining effective collaboration, alongside ongoing service improvement, will be key to achieving this ambition.

#### 4 Options considered and Recommended Proposal

- 4.1 The Trust is now in its fifth year of the contract and performance to date has consistently improved to the Councils satisfaction. The contract includes a presumption of an extension for a further period of five years from April 2023 to March 2028, which can only be rebutted in certain circumstances. Given there are no performance issues and grounds for rebuttal do not exist, the contract will automatically extend at the end of March 2023 for the full available term.
- 4.2 However, there is considerable risk to the Council by not having a sustainable and viable contract arrangement for the ongoing provision of a statutory function, beyond the 5-year extension period. An options appraisal has been undertaken (see **Appendix 1**) and it is submitted that a further 10-year contract rather than 5-year contract arrangement provides the mechanism for a longer-term strategic partnership between BCC and BCT to support children, young people and their families.
- 4.3 The primary gain is the ability to provide greater stability to an already fragile and difficult recruit into workforce and improving staff retention. This will in turn improve the outcomes and experience for children, young people and families enabling a stable, secure, and skilled workforce able to provide continuity and consistent support.
- 4.4 In order to support a new 10-year contract a light touch contract review has also been carried out between the Commissioners and the Trust across the contract

schedules, support service agreement and KPIs to ensure fit for purpose for the future contracting period. Changes to the current contract include: -

- Updating the terms of the agreement to ensure it continues to remain relevant over the proposed longer term.
- Creation of a new governance group, (Finance to Finance) to strengthen financial reporting
- Removal of support service specifications that are no longer provided
- Updating support service specifications to reflect current and future delivery expectations
- Refreshing the financial framework across support services and service specifications provided by both parties.

4.5 The recommendation is to extend the contract by a further ten years running from April 2023 to March 2033 with a five-year review in 2028. KPIs and any key contract concerns will be reviewed on an annual basis throughout the 10-year term.

## **5 Consultation**

5.1 We have consulted with the Cabinet Member for Children, Young People & Families, the Cabinet Member for Finance & Resources and the Chief Executive of Birmingham Children's Trust regarding the proposed approach.

5.2 We have also held meetings to discuss this recommendation as follows:

- BCC/BCT 'Operational Commissioning Group'
- BCC/BCT (senior) meeting of Children's Trust Partnership Governance Group, which includes the Cabinet Member, Trust Chair, BCC Chief Executive and DCS
- Children's and Families Directorate Children's Senior Leadership Team
- with all Council departments and internal specialist teams who have an interest and/or role in delivering a support service for the Trust to socialise our proposed approach (e.g., Legal Services, Procurement, Finance, Property, IT&D etc).
- Department for Education

5.3 The unanimous view from all BCT governance groups & Cabinet Members consulted was to progress the option for a 10-year contract arrangement as it provides stability and greater opportunities to work in a partnership of considerable mutual benefit.

## **6 Risk Management**

6.1 There is considerable risk to the Council by not having a sustainable and viable contract arrangement for the ongoing provision of a statutory function. We have

carried out an options appraisal (see **Appendix 1**) and believe a further 10-year rather than 5-year contract arrangement provides the mechanism for a longer-term strategic partnership between BCC and BCT to support children, young people and their families.

- 6.2 The primary gain from this change is the ability to provide greater stability to an already fragile social work workforce and improving staff retention. This will in turn improve the outcomes and experience for children, young people and families enabling a stable, secure, and skilled workforce able to provide continuity and consistent support.

## **7 Compliance Issues:**

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

- 7.1.1 There is a clear alignment between the aspirations of the Council Plan and Priorities 2018-2022 and the delivery of statutory children's services, which remain a responsibility for the Council whatever the future Trust arrangement. The focus remains to support and enable all children and young people in Birmingham to thrive.
- 7.1.2 The provision of a stable 10 year contracting arrangement ensures that all children, young people, and their families are Safe, Healthy, Included, Confident and Achieving. Putting Children at the Heart of Birmingham.

### **7.2 Legal Implications**

- 7.2.1 The proposal facilitates the discharge of a range of local authority functions under Part III and Schedule 2 of the Children Act 1989, the Children Act 2004, the Children and Families Act 2014 and the Adoption Act 2002. Section 111 of the Local Government Act 1972 allows the local authority power to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any of their functions.
- 7.2.2 As a local authority in intervention, the DfE will continue to hold the Council to account for improvement in delivery and outcomes under this proposal.
- 7.2.3 The Council will retain statutory responsibility for the welfare and wellbeing of children and young people and for improving outcomes. Through the proposed 10-year contract with BCT will continue to be responsible for determining how those outcomes are achieved and the day to day running of children's services. Equally, the proposed contract will retain DfE third party rights whilst the local authority remains in intervention (meaning some decisions, like the appointment of the Chair, would require DfE agreement. The Council will also 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 and the Council would be the body held accountable by Ofsted.

- 7.2.4 The Birmingham Children and Young People's Partnership Board will also retain its role in ensuring effective co-operation between agencies in safeguarding the promoting the welfare of children and young people.
- 7.2.5 The governance accountability and assurance framework (which has been strengthened with the inclusion of a further governance group – see para 4.4) will continue to apply over the proposed 10-year contract reflecting outcome-focused performance management and the other relationships between the Council, Trust, DfE and partners.

### **7.3 Financial Implications**

- 7.3.1 The Trust's financial position for 2022/23 has been challenging: demand for services and complexity of demand have grown exponentially. Care numbers have risen in line with forecasts, but care costs have risen much more sharply
- 7.3.2 BCT reports the 2022/23 forecast position as of 31<sup>st</sup> October 2022 is a net pressure of £26.8m in relation to placement costs which represents a 1.7% increase on placement budgets and 0.7% in respect of the overall Trust budget.
- 7.3.3 The Finance Mechanism will be updated as part of the contract renegotiation process, this work is due to conclude in February 2023. The revised Finance Mechanism will be signed off by the S151 Officer of the Council and the Chief Executive of the Trust.
- 7.3.4 All financial processes will be covered within this Finance Mechanism, including the process for budget setting and budget monitoring, which will be in line with the Medium-Term Financial Plan (MTFP) and budget monitoring processes of the Council.

### **7.4 Procurement Implications (if required)**

- 7.3.5 Birmingham Children's Trust (BCT) provides a statutory service. The Council will not be seeking to move the current provision away from the Trust or go out to market with a procurement exercise to replace the Trust, nor look to bring the service in-house, as any change of this nature carries significant risk & substantial TUPE implications and would only come about if the service was failing, which it is not.
- 7.3.6 The decision to enter into a new 10-year contract with BCT is in effect a direct award. The Trust has Teckal status, and as such this direct award is exempt from the Public Contract regulations 2015. The justification for a direct award has been stated and the legal risks are considered low as detailed in section 7.2.
- 7.3.7 The Council's constitution sets out the procurement and governance rules and section 1.10 refers to expenditure with wholly owned council companies such as BCT. No further procurement process is required as this contract

award is considered out of scope of the procurement and governance rules due to the Teckal status of BCT.

- 7.3.8 The approval of this Cabinet report will allow negotiations with BCT to conclude, and it is recommended that the approval of the final award of the contract to the Trust is delegated via the Delegated Procurement Reports process.

#### **7.4 Human Resources Implications (if required)**

- 7.4.1 There are no human resource implications identified in the report at this moment in time.

#### **7.5 Public Sector Equality Duty**

- 7.5.1 The original Equality Impact Assessment undertaken for the establishment of the Trust has been reviewed for quality assurance and remains appropriate as we are not proposing any changes to the structure or services provided by the Trust. There are no negative implications associated with the recommendation to increase the contract term from five to ten years.

#### **7.6 Environmental and Sustainability Implications**

- 7.6.1 There are no environmental or sustainability implications resulting from the change, we are not materially changing the approach to the relationship between BCC and BCT that would impact this area

### **8 Appendices**

- 8.1 **Appendix 1:** Options Appraisal for Birmingham Children's Trust contract from April 2023

### **9 Background Documents**

- 9.1 Report to Cabinet of 24<sup>th</sup> January 2017 – Voluntary Children's Trust, Forward Plan Reference 002890/2017