

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET
Report of:	CHIEF EXECUTIVE AND STRATEGIC DIRECTOR FOR PEOPLE
Date of Decision:	24 January 2017
SUBJECT:	VOLUNTARY CHILDREN'S TRUST
Key Decision: Yes	Relevant Forward Plan Ref: 002890/2017
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 model, its scope, and the implementation plan and governance arrangements.
- 1.2 This work is based on Cabinet approval in July 2016 of the “case for change” and Cabinet approval in September 2016 of further work on the proposed Trust.

2. Decision(s) recommended:

That Cabinet:

- 2.1 Notes the outcome of the appraisal of the wholly owned company (WOC) option and the employee owned mutual option (Appendix 1 – Birmingham Children’s Services Model - Options Appraisal).
- 2.2 Agrees the Trust is now created based on the wholly owned company model and as a community interest company (CIC).
- 2.3 Agrees the scope of the proposed Trust services as suitable for formal consultation with staff affected and recognised trade unions, service users and partners and as the basis for establishing the shadow Trust from April 2017 (Appendix 2 – Scope of Services).
- 2.4 Receives a further report in July 2017 to reflect any modifications in the scope in the light of formal consultation and early experience of the shadow Trust, to inform Council budget planning for 2018/19, to determine the model for transfer of staff and to clarify any VAT and corporation tax implications.
- 2.5 Agrees the process set out at Appendix 3 for creation of the Trust and its full implementation with final details to be approved by the Chief Executive in liaison with the Trust Chair Designate.
- 2.6 Notes the governance, accountability and assurance arrangements at 4.3.
- 2.7 Notes the shadow governance and Trust Board arrangements at 5.13 – 5.16 and the appointment of the Chair Designate (Andrew Christie) in accordance with the all-party appointments procedures of the Council.
- 2.8 Authorises the City Solicitor to enter into and to affix the Council’s Seal to all agreements that may be necessary to give effect to those recommendations at 2.2, 2.3 and 2.5.

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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 covered the possible Trust models and the scope of services that would transfer to a Trust. Outcomes of this process have informed preparation of this report.

During this engagement over 600 staff have attended face-to-face information and engagement sessions and a Staff Reference Group has been formed to help 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 work, and all-party support from the respective group leaders. Subject to today's decision there is a commitment to regular and formal consultation in the next phases.

Trade union concerns have focused on the model for transfer of staff (different models including TUPE and secondment will be appraised for July's report to cabinet) and union engagement in governance arrangements.

Officers from 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, Andrew Christie (who became Trust Chair Designate on 25 November 2016). 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 has been taken into account.

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 and Cabinet in July 2016.

4.2 Financial Implications

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.

The recurrent revenue funding for the confirmed core services in scope for transfer to the Trust is shown in the table below and excludes support services.

	2017/18 £m	2018/19 £m	2019/20 £m	2020/21 £m	2021/22 £m
Net Revenue budget	163.2	157.8	154.4	153.4	153.4

These figures include planned savings for future years approved in March 2016 in the Council's Business Plan and Budget 2016+ and also the effect of the budget 2017+ proposed savings (presently subject to consultation). They exclude the effect of certain workforce savings commencing in 2017/18, the distribution of which is being finalised.

Work is being undertaken to calculate and disaggregate the costs of support services across the Council to identify those that would transfer into or be provided to the Trust. This work has regard to the implications of savings in support services costs approved in the Council budget planning for 2017/18 and beyond. The outcome of this work will be included in the July 2017 report to Cabinet. The finalisation of this will determine the main financial elements of the Trust's budget and the related reductions in the Council's budget. The Council will then make payment to the Trust for service provided.

On 20 September Cabinet agreed 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. Costs have been estimated at £7.5m in 2016/17 and 2017/18 to support necessary work to design, develop and set-up the Trust model including appropriate programme management resources and transition requirements and the engagement of external advisers. On 10 January 2017 the Council received notification that these costs will be met in full by the DfE in the form of a Section 31 grant allocation. The grant will cover set-up costs to the point at which all services transition.

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. There will not be Council budgetary expectations set for the Trust to make surpluses. Notwithstanding this the Trust will be potentially liable for corporation tax on any taxable surpluses that it makes. Professional external tax advice is currently being received, to determine how the risk of a corporation tax liability might be mitigated by such an organisation.

Children's services are currently provided by the Council, which is able to reclaim VAT costs. VAT represents a significant consideration for the creation of the Trust and is a matter that requires further 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. The Council is continuing to liaise closely with the DfE, which is working to understand the VAT implications of Trust models in general. If there are VAT implications for the new model, an agreement about funding will need to be reached with DfE. Further clarification of the VAT position will be contained in the July 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 and subject to direction from the Secretary of State 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.

The Council would remain accountable for the welfare and wellbeing of children and young people and for improving outcomes. Through a contract with the Council the Trust would 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. The contract would include DfE third party rights whilst the local authority remains in intervention (meaning some decisions, like the appointment of the Chair, would require agreement with the DfE). The Council would 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.

The Birmingham Safeguarding Children 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. 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.

The Council has agreed a principle covering wide accountability of the Trust. That includes 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.

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 in the contract between the Council and the Trust that enable the quality, effectiveness and impact of services to be monitored and evaluated.

As part of the contract 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.

A governance, accountability and assurance framework will be designed, reflecting the above and the contractual, outcome-focused performance management and other relationships between the Council, Trust, DfE and partners.

4.4. Public Sector Equality Duty

The Initial Assessment was updated in December 2-16 (Appendix 4 – Equality Analysis – Updated Initial Assessment). The principal potential impact identified to date has been that upon staff. Based on initial thoughts about the Trust's scope, an initial estimate is that this could affect as many as 2,000 members of staff currently employed by the City Council. As proposals become clearer a Full Assessment will begin and this will include children and young people as service users and consideration of age, disability and gender as protected characteristics.

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 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 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. This is based on the proposed trust 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 On 20 September Cabinet agreed further work on two alternative delivery models from an initial list of 19. Cabinet considered which delivery model would best secure long term sustainability and improvement of children's services. Account was also taken 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 two models agreed for further appraisal were a wholly owned company and an employee owned mutual. These were 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. The outcome of the options appraisal is described in Appendix 1 – Birmingham Children's Services Model - Options Appraisal.

5.6 The wholly owned company model is recommended to proceed to implementation. It is clear in evaluating both models that a number of barriers are not dependent on the delivery model (ie. WOC or mutual). The main factors for many barriers are the shape, design and scope of core and support services and how these service are provided to (and within) the Trust in the future.

5.7 The WOC is the preferred model because:

- it scores higher in the options appraisal.
- the mutual has some significant risks around:
 - operational independence (potentially too independent, making, for example, "step in" difficult in the event of any poor performance).
 - time, cost and complexity to implement. There are no children's social care mutuals, this would be the first one and it would take longer and be more complex to set up (there are many types of mutual model and each would need its own appraisal).
 - the initial 3 year contract term restriction for which competition can be reserved just to mutuals and, in addition, the risk of open procurement at the end of the term (which could be happening in the same timeframe as another Ofsted inspection).
 - potential disruption to service improvement resulting from transition, one of the key design principles. A mutual would take more resources and time to set up, there is a risk this would be a distraction, a risk that decision-making could be slower within a mutual and key improvement changes which are needed could be hindered or blocked.
- finally, a WOC can become a mutual, if the Council so determines, but the other way round would be difficult. This would indicate that a WOC would be the safe, proven and quick option and would avoid all the significant risks of a mutual.

5.8 The WOC needs to be set up with sufficient operational independence to be able to deliver its outcomes via its own company structure (board) and management team. This would be achieved by shaping the core and support services properly and having an appropriate governance, accountability and assurance framework in place.

5.9 It is proposed the WOC would have elements of the employee owned mutual model, in particular the opportunity to build into the model strong staff and union engagement including a role in governance arrangements, something that could be tested in the shadow year.

- 5.10 The case for making the WOC a community interest company is that it counters some of the issues around accountability, control and operational independence. It establishes a clear intent from the very outset about the purpose of the Trust and establishes an asset lock. In summary:
- it would protect its assets for community purposes.
 - surpluses would be re-invested in the company or in the local community (cannot be returned to the Council).
 - it would have an asset lock so that its assets can only be used for the good of the community; they may only be sold to another CIC or, if sold at full market value, the proceeds from the sale must be used for community purposes.
 - it would be obliged to pursue the community interest and has to report annually on how it does this to the CIC Regulator. A company satisfies the community interest test if a reasonable person might consider its activities are being carried out for the benefit of the community.
- 5.11 The scope of services to be covered by a Trust model is attached as Appendix 2 - Scope of Services. A further report on the scope will be submitted to Cabinet in July 2017 to reflect any modifications in the light of consultation and early experience of the shadow Trust and to inform Council budget planning for 2018/19.
- 5.12 The implementation plan for creation of the proposed Trust is attached at Appendix 3 and covers the steps to create the Shadow Trust and then move to transition.
- 5.13 With respect to the shadow Trust Board and to ensure that the proposed Trust has its own voice in the next significant phase of transition a Chair Designate was appointed on 25 November 2016 in accordance with the all-party appointments procedures of the Council. The next key appointment, subject to a decision today, will be the Trust Chief Executive and the aim is to appoint for April 2017.
- 5.14 The Board will be constituted to ensure its maximum effectiveness by adopting the following principles:
- it will be small with a straightforward democratic voting process to enable transparent and agile decision-making.
 - it will work optimally by recruiting members with a mixture of skill sets and experience from both children's social care and a range of professional knowledge including finance, HR and legal.
 - it will support and challenge the performance of the Children's Trust and share progress publically via an annual report.
 - membership will be reviewed annually to ensure a balanced membership and that the Board is refreshed and has the members it needs to best support and challenge the Trust.
 - it will work in partnership with key agencies in the city and its own workforce.
 - it will be independent: the Council will have no employee or elected member places on the board to avoid conflict of interest but, given the importance of the Trust and the Council's statutory duties, there will be a Council-appointed representative.
- 5.15 The Board's remit will be to:
- set the vision and objectives of the Trust and children's services.
 - bring professional and personal expertise to discussions.
 - demonstrate strategic vision, independent judgement and an ability to think creatively.
 - focus on ensuring the long term success of the Trust and sustainable good outcomes for children and families.
 - provide focus, leadership and innovation to the delivery of children's services in Birmingham.
 - drive a sustainable model of delivery and improvement designed to bring good and excellent services to the city.
 - innovate where possible and bring the freedoms of a Trust approach to develop a new and sharper focus to the difficult issues children's services face.
 - secure the ongoing commitment of senior and political leaders across Birmingham to work to significantly reduce harm and promote the wellbeing of children and young people in Birmingham.

5.16	Membership of the Board will be based on: <ul style="list-style-type: none">• a Chair.• a Chief Executive.• a Director of Resources.• a Director of Operations.• four 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.
5.17	The Board will have a sub-committee arrangement and this will facilitate strong staff and union engagement.
5.18	Partners have indicated support for the proposal as an opportunity for better integration and collaborative working. Partners have been involved in programme management and shadow governance arrangements. 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 a commitment to building stronger relationships and behaviours around a shared vision, values and leadership of the system.
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 the recommended model.
7.	Reasons for Decision(s):
7.1	To secure formal support for the full implementation of the recommended Trust model, its scope, implementation and related governance arrangements.
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	
Cabinet Member, Children, Families and Schools: Cllr Brigid Jones	
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Strategic Director for People: Peter Hay	
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Chief Executive Mark Rogers	
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<p>List of Background Documents used to compile this Report:</p>
<p>Report of the Improvement Quartet to City Council 14 June 2016. Cabinet Reports 26 July and 20 September 2016 – Voluntary Children's Trust. Putting Children First: Our vision for Children's Social Care – DfE July 2016. Birmingham children's services model - 'Case for change' – July 2016.</p>

List of Appendices accompanying this Report (if any):			
1. Birmingham Children's Services Model - Options Appraisal			
2. Scope of Services.			
3. Creation of the Trust and its full implementation.			
4. Equality Analysis – Updated Initial Assessment.			
Report Version	Final	Date	13 January 2017