

4 Other Implications

Financial

- 4.1 There are likely to be significant financial risks to the Council as a result of the externalisation of Children's Services. The Council and the Secretary of State will carry out due diligence to identify these risks and to mitigate them if possible.
- 4.2 There are very significant interim costs to the Authority as a result of having to comply with the terms of the Direction as well as the additional running costs of the new external provider. These will include and arise from the overheads of the new organisation, the reduction in economies of scale for the Council, the scale or scope of services externalised and the necessary project capacity to enable the design, establishment and transfer. These costs, if borne by the Council, could have an impact on its financial viability. The Secretary of State has confirmed that such costs will not have to be borne by the Council and local taxpayer. The Council will act rigorously and fairly in securing this outcome.
- 4.3 The Council will be expected to fund the new organisation to a similar level as the current service although taking account of the Council's savings targets. Being a separate organisation the Council will have to ensure it avoids any state aid implications arising from any funding or budget setting arrangements.
- 4.4 Similarly, under the New Burdens Doctrine, there will need to be an assessment of any additional strain on council tax resources, over and above the initial set up costs as a result of any new burden being imposed by the Secretary of State from externalisation of children's social care functions. It would be expected that any shortfall will be met by central government and not by the local authority itself. .

Risk Management

Risk	Mitigating action	Opportunities
Legal There are a number of legal risks arising from the externalisation. These include risks that the governance arrangements, scope and the nature of the organisation adopted, client arrangements etc do not allow the Council to exercise its statutory accountability effectively. There are also risks to the Council arising from a Direction which requires the Council to bypass procurement routes or bypass good practice in public sector appointments.	The Council has sought that the MoU sets out the means by which the risks arising from the nature of the arrangements will be reduced and how the Council will be protected against the procurement and employment risks See 4.7 and 4.10 below.	

Risk	Mitigating action	Opportunities
Property Accommodation for the new body will be a key issue.	The MoU sets out the means by which this will be agreed	
Human Rights See below		
Health and Safety		
Employment Issues Council staff will be transferred to the new organisation and will be concerned about their future and future terms and conditions	This will be a TUPE transfer of employees. Staff will take with them their current terms and conditions, their pensions and continuous employment rights. A programme of staff engagement and communication will be undertaken. The draft Memorandum of Understanding provides for this.	
Equalities Issues See below		
Community Support The understanding and engagement of the community and particularly of stakeholders and partners will be critical to the success of the venture	A programme of community and stakeholder consultation will be discussed with the DfE.	
Communications As above		
Community Safety		
Financial See above at 4.1 to 4.4		
Timetable for delivery The Council's experience of major externalisation suggests that 18 months will be the necessary period to manage and minimise the risks of externalisation	The Council will seek to negotiate a realistic timescale for the design and establishment of the new organisation and transfer to it. The draft Memorandum of Understanding provides for how and when the timetable will be agreed.	
Project Capacity The Council's experience of major externalisation is that a full project team involving a range of senior professional officers will be required to support the design and establishment of the new organisation and transfer to it. The	A project team is being established by the Council led by the Strategic Director of Customer and Community Services who has considerable experience in this field. It will be populated by existing staff or appointees dedicated to the project. Staff roles will be backfilled where necessary. The reasonable costs	

Risk	Mitigating action	Opportunities
Council does not have the capacity to support a project of this scale in addition to the other projects the Council has in programme including the budget programme	of the project team will met by the Secretary of State.	
Other		

- 4.5 There are a number of significant risks arising from the creation of an independent organisation for the delivery of Children’s Services. However, there is the potential to create an organisation entirely focused on Children’s Services and this may bring innovation and new expertise which the Council within its resources alone may not achieve. Similarly, the Council continues to make steady improvement in delivery of Children’s Services and needs to remain focused on improvement whilst not becoming distracted on the work to externalise the services. There is the potential that a hiatus in improvement will be created by the transfer to and launch of the new organisation and we need to guard against that. The test of the new organisation will be whether it can in the medium term deliver greater and more sustainable improvement than can the Council through its slow and steady approach.

Human Rights Act and Other Legal Implications

- 4.6 The Secretary of State has exercised her powers under The Education Act 1996 in relation to the Council’s children’s service functions. The full scope and extent of these functions has not been finalised.
- 4.7 The legislative provisions allow either the Secretary of State to exercise the functions or give the Council such directions as the Secretary of State thinks expedient to enable the functions to be performed to an adequate standard.
- 4.8 Through the Direction, the Secretary of State has directed that a separate organisation be set up to carry out, what will be some of the Council’s children’s services functions. There will be no procurement exercise for the design or selection of the new organisation. The Council has therefore sought the necessary assurance that it will not be liable for any breach of procurement requirements.
- 4.9 It is expected that this organisation will then have a contract with the Council to deliver children’s social care functions. Although there is reference to this body as a “Trust” in the Direction, it is not expected that such a body would take the legal form of a trust.
- 4.10 Pending the set up of this external organisation, the Secretary of State has appointed a Commissioner, Ms Eleanor Brazil to establish the new organisation. The Commissioner is also tasked secure improvement in the Council’s performance of its children’s social care functions.
- 4.11 With the external organisation model, the Council would retain all its legal liabilities for the statutory duties. However, since the Secretary of State has made it very clear that he expects to see the services “out of council control”, the Council may have limited control over how the children’s social care functions are delivered or indeed to be able to hold to account the new organisation any failings. However, it

will not be until details over the nature of the new organisation, the services that are to fall in scope and the nature and extent of the Council's legal relationship with the new body have all been agreed, that the full legal implications for the Council will be known. Reports will be brought back to Cabinet to approve each key step at which time there will be a full assessment of the legal implications of such step.

- 4.12 Being public bodies, the Council and DfE must comply with the Public Sector Equality Duty (PSED). The implications the PSED will be covered in the key step reports to Cabinet.
- 4.13 The Memorandum of Understanding is not a legally binding document. However, the Department of Education have maintained their position that the Secretary of State is able to terminate the Memorandum of Understanding. This is not accepted. Should the Secretary of State (or indeed the Council) terminate the Memorandum of Understanding it is likely that the Secretary of State will take direct control of children's services.

Equalities Impact Assessment

- 4.14 An EIA is needed and will be carried out once the outcome of detailed discussions confirms the exact nature and extent of services that are to be impacted.

Workforce

- 4.15 There will be significant implications for the Council's workforce. The externalisation of the service area will involve a transfer of current employees to the new organisation which will take over the running of the service. There may be implications for other staff that currently undertake a support function for the service area. Until the Secretary of State confirms the scope of the functions to be externalised, the Council is unable to start any consultation processes. The draft Memorandum of Understanding provides for a TUPE transfer.

Outstanding concerns

- 4.16 The Board members are likely to be remunerated for their services and that this cost will fall on the contract payment. Whilst it will be important to attract good quality members, the Council will also be concerned to ensure that remuneration practice is within the guidelines for good practice in public sector appointments.

5 Supporting Information

- 5.1 In November and December 2013, Ofsted undertook an inspection under Ofsted's new inspection regime of the services for children in need of help and protection, looked after children and care leavers as well as a review of the effectiveness of the local safeguarding children board. On the 11th February 2014 Ofsted published its report and gave an overall judgement of Inadequate.
- 5.2 As a result, the Secretary of State appointed a review team to consider what arrangements should be in place for the future. The Review Team produced a report ("OPM report") in May 2014 with a set of recommendations. The terms of reference for the Review included "Which organisation arrangement outside the control of the Slough Borough Council should be implemented to provide the greatest likelihood of securing improvement" (page 5 OPM Report).

- 5.3 The Council submitted its detailed comments on the OPM draft report and proposed that a “Commissioner” model would be better than a Trust Model, whilst still meeting the Secretary of State’s criterion of putting the services outside of the Council’s control.
- 5.4 The Secretary of State confirmed that following all considerations they wished to pursue a Trust Model.
- 5.5 The Secretary of State issued a Direction dated 7th October 2014 which requires the Council’s children’s social care function to be delivered by an external body. Although there is reference to a set up of a “Trust” to deliver the services, in reality the legal entity to be created will not be a trust.
- 5.6 The Direction also provided for the appointment of a Commissioner to secure improvement in the Council’s performance of its children’s social care functions. The Commissioner is also tasked with establishing the new organisation.
- 5.7 The Secretary of State originally required that the parties agree a Memorandum of Understanding by 3 November 2014. However the DfE then recognised the necessity for Cabinet sign off and in practice it has taken longer to agree mutually acceptable document.
- 5.8 Since the appointment of the Commissioner senior officers have been working with the Commissioner and representatives of the DfE to develop a Memorandum of Understanding which helps to set out some key principles as well as the first steps in an implementation timetable for delivery of the new organisation.
- 5.9 The draft Memorandum is contained at Appendix A. The Memorandum sets out in general terms the nature of the way forward on the creation and delivery of the new organisation, its governance structure, where it is to operate from, agreeing the scope of the services that will be contracted out, as well as agreeing a timetable for the delivery of the contract. It also provides for the allocations of budgets and sets out some key targets in relation to the delivery of improvements to the contracted out services.
- 5.10 The DfE has confirmed that they will be starting their procurement processes for their professional teams shortly and hope they will in place by the new year. These teams will undertake both the due diligence and legal work for the Secretary of State to enable this project to move forward.

6 Other Options available

- 6.1 The Secretary of State has the power to remove children’s social care functions and the statutory accountability from the Council. This option has been considered by the Secretary of State and by the Council but is not being pursued. It is however an option that is still available to both parties should the programme of work now being embarked upon fail to reach a mutually satisfactory conclusion.

7 Conclusion

- 7.1 It is recommended that the Council proceeds with completing the Memorandum of Understanding to enable compliance with the Secretary of State’s Direction. There will be a range of key decisions that will flow from the implementation of the

requirements of the Memorandum. Reports will be brought outlining the key decisions being sought to ensure both scrutiny and transparency.

8 Appendices Attached (if any)

'A' Draft MOU

9 Background Papers

'1' OPM Report dated May 2014

'2' Direction dated 7.10.2014

'3' Covering Letter dated 7.10.2014

'4' Leader's response to the Secretary of State 23.9.2014