

SLOUGH BOROUGH COUNCIL

REPORT TO: Overview and Scrutiny Committee **DATE:** 5th February 2015

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PART I **FOR COMMENT AND CONSIDERATION**

CHILDREN'S SERVICES TRANSITION PROJECT

1 Purpose of Report

The purpose of this report is to provide the Overview and Scrutiny Committee with an update on the work to date, work currently being undertaken and that planned for the transition of Children's Services to a new organisation.

2 Recommendations

The Committee is requested to:

- Note the Direction dated 7.10.2014 from the Secretary of State for Education directing the Council to set up an external provider to deliver the Council's children's services functions.
- Note the progress of the transition project to date
- Request regular updates on the progress of transition of Children's Services to a new organisation

3 Community Strategy and the JSNA

- 3.1 The aim of externalising Children's Services is to secure sustained quality and improvement in the service so securing the wellbeing of vulnerable children and young people. This should achieve outcomes under the Wellbeing Strategy's priorities of Safer Slough Communities, Health and potentially Economy and Skills and Housing.

4 Other Implications

(a) 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 Secretary of State will carry out due diligence to identify these risks with mitigating action wherever possible.
- 4.2 There are very significant interim costs to the Authority as a result of having to comply with 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. At present the Secretary of State has confirmed that some of these costs will not have to be borne by the Council and the local tax payer however, there is no indication of how long these costs, once agreed will be met by the Secretary of State. The Council will continue to 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 provision. However, the parties have agreed that the due consideration will need to be given to the Council's savings targets when agreeing and setting the new organisation's budget. Being a separate organisation, the Council will have to ensure it avoids any state aid issues and consider any possible implications which may arise from any new funding or budget setting arrangements.
- 4.4 Similarly, under the New Burdens Funding, there will need to be an assessment of any additional strain on council tax resources, over and above the initial set up costs which 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.

(b) Risk Management

Risk	Mitigating action	Opportunities
<p>Legal</p> <p>There are a number of legal risks arising from the externalisation. These include risks relating to the governance arrangements, scope, service delivery vehicle, and client arrangements which will prevent the council from exercising its statutory accountability effectively.</p> <p>There are also risks directly to the Council arising from a Direction which instructs the Council to bypass the required procurement routes / good practice in Public Sector appointments.</p>	<p>The Council has sought to address this through the Memorandum of Understanding (MOU) which was approved by Cabinet in November. The MOU sets out the means by which the risks arising from the nature of arrangements will be reduced and how the Council will be protected against the procurement and employment risks that are presented as a result of compliance with the Direction.</p>	

<p>Property</p> <p>Accommodation for the new organisation will require a detailed and robust options appraisal</p>	<p>The MOU sets out the means by which this will be agreed.</p> <p>Accommodation is also identified as a key project work stream and due consideration will be given to the financial and legal implications of any proposed options.</p>	
<p>Human Rights</p> <p>See below</p>		
<p>Health and Safety</p>		
<p>Employment Issues</p> <p>Council staff will be transferred to the new organisation and will naturally be concerned about their future and future terms and conditions of employment</p>	<p>The MOU also addresses this risk.</p> <p>Directly affected Council staff will be transferred under the TUPE regulations. Staff will transfer under their current terms and conditions of employment, pension rights and continuous employment rights.</p> <p>A programme of staff engagement and consultation will form part of the Transition Project teams key work stream – Stakeholder Engagement. Workshops have already taken place to compile a detailed Stakeholder and Engagement plan.</p>	
<p>Equalities Issues</p> <p>See below</p>		
<p>Community Support</p> <p>The understanding and engagement of the community and particularly of stakeholders / partners will be critical to the success of transition</p>	<p>As above, workshops have already taken place with the DfE's professional services team to identify all key stakeholders to ensure that information, communication and engagement are carried out in a consistent</p>	

	and timely manner.	
Communications	As above	
Community Safety		
Financial		
See above 4.1 – 4.4		
<p>Timetable for delivery</p> <p>The Council's experience of major externalisation suggests that 18 months will be an indicative timeframe within which any risks can be mitigated and managed effectively.</p>	<p>The MOU provides for how and when the timetable will be agreed.</p> <p>The parties are developing a project plan that seeks to establish a realistic timescale for the design and establishment of the new organisation, along with the transition of the service to the new organisation</p>	
<p>Project Capacity</p> <p>The Council's experience of major externalisation demonstrates the need to mobilise a full project team involving a range of senior professional officers to support the transition process.</p> <p>The Council does not have the required capacity to support a project of this scale in addition to other projects the council has programmed including the budget programme</p>	<p>A project team has been established to oversee the transition of the Council's children's services to a new organisation. The project is led by the Strategic Director of Customer and Community Services who has considerable experience of transitioning services and is supported by an experienced in house team. Where required, staff roles will be backfilled and recovery of costs associated with any backfilling will be met by the Secretary of State.</p>	
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 functions. The Secretary of State believes that a new organisation solely focussed on the improvement of Children's Services provides the right potential to bring innovation and expertise which the Council within its existing resources is not able to. The Council does however continue to make steady improvements in the delivery of Children's services and needs to remain focused on improvement whilst continuing to support the transition process. There is the potential that there may be some impact on the improvement programme during the transition phase and this has been identified as a possible risk, and one which will involve safeguarding and mitigation wherever possible.

(c) Human Rights Act and Other Legal Implications

- 4.6 The Secretary of State has exercised her powers under The Education Act 1966 in relation to the Council's children's services functions. The full scope of these services has yet to be finalised although an outline has been agreed in accordance with the terms of the MOU
- 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 should 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 assurances 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 the new organisation, the Secretary of State has appointed a Commissioner, Ms Eleanor Brazil to establish the new organisation. The Commissioner is also tasked with securing improvements in the Council's performance of its Children's social care functions.
- 4.11 With the new organisation model, the Council would retain all its legal obligations 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 is only once the details of the new organisation, the scope of the services and the extent of the Council's legal relationship have been agreed will there be a much clearer understanding of the full legal implications.
- 4.12 The Memorandum of Understanding is not a legally binding document. However, the Department of Education have maintained their position that the Secretary of State alone 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 functions.

Equalities Impact Assessment

- 4.13 An EIA is needed and will be carried out once the outcome of detailed discussions confirm the exact nature and extent of services that are to be impacted by this externalisation.

4.14 Workforce

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. There may be implications for other staff that currently undertake a support function for the service area in question. Until the Secretary of State confirms the scope of functions to be externalised, the Council is unable to assess the true impact and commence any TUPE consultation process with affected staff. The MOU provides for a TUPE transfer.

Outstanding concerns

- 4.15 The Board members of the new organisation are likely to be remunerated for their services and this cost will need to be considered as part of the contract payment. Whilst it will be important to ensure that the new organisation attracts good calibre members, the Council will also be concerned to ensure that remuneration remains within the parameters of good practice in public sector appointments.

5 Background Information

- 5.1 In November and December 2013, Ofsted conducted an inspection under Ofsted's new inspection regime of the services for children in need of help and protection, looked after children, care leavers and 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 Board included "Which organisation arrangements 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 Following representation from the Council and the Secretary of State a Direction was issued on the 7th October 2014 which required the Council's Children's services function to be delivered by an external body.
- 5.4 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.
- 5.5 The Secretary of State requested that the parties agree a Memorandum of Understanding which 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 will 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.
- 5.6 Cabinet approved the Memorandum of Understanding on the 17th November 2014.
Signed Memorandum of Understanding is appended to this report at Appendix A

Progress on Transition

- 5.7 Members are asked to note that the Transition Phase of this Project effectively went live at the beginning of January 2015 and good progress has been made in the first month.

Project Team

- 5.8 The DfE have appointed their Project and Legal Services partners. They will act on behalf of the DfE to undertake both due diligence and legal work to support the transition process.
- 5.9 To ensure capacity to support the transition process, the Council has mobilised a core project team led by the Strategic Director of Customer and Community Services, who along with the project team has considerable experience of successfully executing major externalisations of this scale.

Project Planning Work stream

- 5.10 Joint workshops have taken place to help inform the detail of the draft high level project plan, Stakeholder Engagement Plan, Risk Management Matrix and the Governance arrangements of the project.
- 5.11 Introductory meetings have taken place between the DfE and the Council's project team to initiate the joint transition arrangements. There is an agreed ethos by which both teams will work in collaboration to support the transition process and as such joint transition meetings have been scheduled on a fortnightly basis to support the detailed development, monitoring and delivery of the Transition Project Plan, management of the Risk Register as well as working within the governance arrangement to report progress against the agreed milestones.

Governance Work stream

- 5.12 The overarching Steering Board has been established with agreed Terms of Reference in place. The board is responsible for providing the strategic overview for the transition of children's social care services to comply with the Secretary of State's Direction.
The Terms of Reference for the Steering Board is appended to this report at Appendix B
- 5.13 Draft Terms of reference have been established for the Joint Project Transition Group and are subject to sign off by the Steering Board at the end of January. This group will be responsible for managing the overarching project plan, risks and issues. As well as supporting the transition of operational and support services to the new organisation.

Scope

- 5.14 The Steering Board have agreed the outline services in scope of the transition; however discussions remain ongoing to define the full scope.

Legal Services Work stream

- 5.15 An introductory meeting has taken place between the Council's Head of Legal Services and the DfE's Project and Legal leads to commence discussions on an

outline options appraisal for possible service delivery models for the new organisation, fundamentals on contract development for the new organisation and initial discussions to ascertain the current strategic contracts the Council has in place for support services that may impact the scope of services transferring to the new organisation as well as organisational arrangements.

- 5.16 The Council have appointed external lawyers to lead on negotiations pertaining to the drafting of a contract for the new organisation and to protect the interests of the Council for strategic partnerships already in place with external providers.
- 5.17 Early Introductory meetings have been scheduled to engage with our external partners, arvato and Cambridge Education to ascertain any potential impact on the services in scope of the externalisation
- 5.18 The Initial due diligence information requests have now been released to the Council and the Council's project team are in the process of collating the required information to help inform the work streams identified in the outline high level project plan. The collation of information along with scheduled individual 1-2-1 meetings with the work stream leads will help in determining the current 'as is position' for those services in scope of the externalisation and support the work to be undertaken as the service is transitioned to a new organisation.

Communications Work stream

- 5.19 Effective communication and the cascading of timely information remain paramount for the Transition Project Team and as such the development of the Stakeholder Engagement Plan and an overarching Communications Strategy will inform the key milestones of communication and the appropriate and timely release of information. To date, all staff (both directly affected and retained) and Members have been advised of the services confirmed in scope of the transition and the services that have been identified as subject to further discussion.
- 5.20 Further communication has been circulated to all key stakeholders on the appointment of the interim Director of Children Services.
- 5.21 A dedicated intranet page has been set up for Transition which will act as the main vehicle of providing up to date information to staff on progress and to make available any decisions that have been agreed for the project as key milestones have been reached. Further mechanisms of communication will be detailed within the Communications Strategy relevant to the target audience.

HR Work stream

- 5.22 Internal preparations are underway to collate the provisional TUPE information for all staff confirmed in scope of the transfer as part of the due diligence requirements,
- 5.23 Meetings are also due to be scheduled to update and engage with Trade Unions on the progress and potential timescales once the project plan has been confirmed.
- 5.24 Early consideration is being given to the Consultation process which will form an integral part of the staff transfer process.

Finance Work stream

- 5.25 Corporate Finance are currently collating the due diligence information relating to budgets, salaries, insurance, accommodation, support service costs for those services in scope of externalisation as per the due diligence requirements.

6 Comments of Other Committees

None

7 Conclusion

Much progress has been made over the first month of transition in terms of establishing the governance and core principles of project management, however over the coming months there is an expectation that the project will pick up speed as the Transition Project Team focus on the following key activities:

- Detailed project planning and risk mitigation
- Finalising the scope of services to be transitioned
- Completion of the Stakeholder analysis
- Development of an overarching Communications Strategy
- Introductory meetings with the Councils key third party suppliers
- Release of the due diligence information
- Consideration of the vision and operational design of the new organisation

8 Appendices Attached

- ‘A’ Memorandum of Understanding dated 21st November 2014
‘B’ Steering Board Terms of Reference

9 Background Papers

- ‘1’ -OPM Report dated May 2014
‘2’ -Direction dated 7.10.2014
‘3’ -Cabinet Report dated 17th November 2014