

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Cabinet **DATE:** 13th July 2015

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**WARD(S):** All

**PORTFOLIO:** Councillor PK Mann; Commissioners for Education & Children

### **PART I** **KEY DECISION**

#### **CHILDREN'S SERVICES TRANSITION PROJECT DECISIONS AND UPDATE**

1. **Purpose of Report**

The purpose of this report is to update the Cabinet on the progress to date on the Children's Services project and also to seek approval for the scope of services to be transferred and also to agree the key pension principles for the new organisation.

2. **Recommendation(s)/Proposed Action**

The Cabinet is requested to resolve that the Chief Executive, following consultation with the Leader of the Council and Commissioner for Children's Services, be given delegated authority to agree the heads of terms of the pension arrangements, namely:

- (a) Admission to the Berkshire LGPS Pension Fund ("the Fund"), should be on an open and not a closed basis, and;
- (b) The Council will provide a Guarantee to the Fund in relation to the Trust meeting its liabilities under LGPS during the term of the Service Delivery Contract ("the Contract"), and;
- (c) On transfer of the services back to the Council at the end of the Contract the Council will assume the Trust's pension liabilities.

subject to the provisos and protections set out in the attached Appendix B

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

3a. **Slough Joint Wellbeing Strategy Priorities**

Priorities:

- Health
  - By identifying and prioritising services for vulnerable groups in the Slough population and by targeting support to meet the needs of children and young people.
  - Through focusing on the needs of the most vulnerable children, young people and their families, and providing targeted services through partnership working primarily with the NHS to secure measurable health improvements.

- **Economy and Skills**
  - By offering early education and family support to parents of young children so that they can focus on meeting their children's needs and overcoming personal and family difficulties that affect their ability to care for their children.
  - By promoting educational achievement which gives children and young people in care and leaving care enjoyment in learning and increased opportunities for success in adult life.
  - By maintaining high levels of Education, Employment or Training (EET) for young people who are looked after beyond 16 years of age.
  - By promoting vulnerable young people's social and emotional development alongside advances in educational achievement.
- **Safer Communities**
  - By offering effective support to families to help them do their best for their children so that children and young people are safe in their families and communities.
  - By recognising that parents are the main carers for their children, and by offering services that enable them to continue to care for their children successfully so that children can grow up within their own families and communities wherever possible.
  - By carrying out respective roles across the local authority and partner agencies to ensure that the most vulnerable children in our community are protected from harm and they are enabled to live with their families.
  - By carrying out our statutory role as a local authority to provide services for children in need, to safeguard them and look after children whose parents are unable to do so.
  - By working effectively with partner agencies so that they also contribute to safeguarding children and young people and demonstrate improved outcomes for those children and young people and their families.
  - By ensuring that children and young people who are looked after have the standards of care and life opportunities that we would want for our own children, with contributions from partner agencies.

### 3b **Five Year Plan Outcomes**

Children and young people in Slough will be healthy, resilient and have positive life chances – The improvement programme aims to make Slough children's services one of the best providers of children's social care in the country, providing timely, purposeful support that brings safe, lasting and positive change.

### 4. **Other Implications**

#### (a) **Financial**

- 4.1 The Memorandum of Understanding (MOU) dated 21<sup>st</sup> November 2014 provided the Council with an assurance that all costs of transition would be borne by the DfE, and this included the reasonable costs of the Authority, its project team including the Council's professional costs in relation to complying with the Direction and the MOU (para 30). The MOU also provided that it would not be expected to or required to meet the set up costs of the CSO nor any of the additional costs incurred as a result of the transfer of the children services (para 28 MOU).

- 4.2 However, the Council have been informed that there will be a cap on the overall recoverable costs, with certain costs being capped at set levels, and that there will be no reimbursement until the contract with the CSO goes live. This means that Council has to meet all its interim costs and some of these costs will not be recovered if they are beyond the allocated cap for that cost.
- 4.3 In addition to transition costs there will also be the additional running costs to the Council as a result of working with the CSO. These will include and arise from the overheads of the CSO as well as the reduction in economies of scale for the Council.
- 4.4 The Secretary of State had 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. In light of the cap on transition costs, it is likely the commitment on ongoing costs may also be capped. Although the Council will continue to act rigorously and fairly in securing a cost recovery outcome, the Council will need to consider the financial impact on resources if, as may be likely full cost recovery is not achieved.
- 4.5 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.
- 4.6 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. However again there is no guarantee that these will not fall to the Council.

**(b) Risk Management**

- 4.7 There are a number of significant risks arising from the delivery of the expected go live date in light of where progress on the work streams current sit.

| <b>Risk</b>  | <b>Mitigating action</b>  | <b>Opportunities</b> |
|--|---|----------------------|
| <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>The Council 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</p> |                      |

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|   | <p>compliance with the Direction. However, the MOU is being replaced with a contract for services and this legally binding document will now govern and manage the contractual relationship between the Council and the CSO.</p>   |  |
| <p>Property</p> <p>Accommodation is identified as a key project work stream.</p>  | <p>Accommodation still remains unresolved and is a major risk to the CSO's intended go live date.</p>  |  |
| <p>Employment Issues</p> <p>For those services in scope of the Direction, all relevant Council staff will be transferred to the CSO. Staff are concerned about their future and also their future terms and conditions of employment.</p> <p>There is a delay in the start of the TUPE consultation at the request of the Dfe and this presents a high level risk since the suggested start of the consultation period will coincide with most staff summer holidays.</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 was a work stream for the Transition Project Team.</p> <p>The agreement on the pension arrangements will help to ensure that the CSO remains an attractive option for those wishing to move from a local authority.</p> <p>The Council continues to place pressure on the DfE to agree an early start.</p> |  |

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| <p>Timetable for delivery</p> <p>The DfE have put in place an ambitious project plan, however, there have been slippages against key task dates. There is now a concern work streams will not be all completed by the go live date.</p> | <p>The Council continues to place pressure on the DfE to ensure those critical matters to enable a go live for the CSO are addressed.</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 project is led by the Strategic Director of Customer and Community Services and is supported by an experienced in house team and external resources.</p> |  |

(c) Human Rights Act and Other Legal Implications

- 4.8 The Secretary of State has exercised her powers under The Education Act 1966 in relation to the Council's children's services functions.
- 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 has been no procurement exercise for the design or selection of the new organisation. The Council has sought the assurances that not liability will rest with it for any breach of procurement regulations.
- 4.9 The Council will enter into a legally binding contract for services with the CSO to deliver children's social care functions.
- 4.11 By contracting with the CSO, the Council would retain all its legal obligations for the statutory duties. However, since the Secretary of State has made it very clear that the services will be "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 CSO for any failings. This is currently a matter under

discussion in relation to the services contract. Although there will be no legal relationship between the Council and the DfE, it is understood the DfE will have a direct relationship with the CSO to ensure the terms of the Direction in relation to improvement to children's services continues.

(d) Equalities Impact Assessment

- 4.12 An EIA is needed and will be carried out once the outcome of detailed discussions around the final list of services that are to be impacted by this externalisation are known.

(e) Workforce

- 4.13 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 CSO. There are 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 a complete TUPE consultation process with affected staff.

5. **Supporting Information**

- 5.1 In January 2015, following the appointment of the Department of Education's (DfE) support services team, a governance structure was set up to manage the transition of the services. A joint Project Group made of both Council Officers and DfE officials and service support partners was set up, along with a high level Steering Group again made up of the DfE, CSO and the Council as the strategic decision making body.
- 5.2 The DfE have recruited a Chairperson, Elaine Simpson and a Chief Executive, Nicola Clemo for the new organisation. There are currently pending permanent appointments to the CSO's Board and an Interim Finance Director has been appointed.
- 5.3 Cabinet on the 9<sup>th</sup> March 2015 agreed that the Chief Executive in consultation with the Leader of the Council and Commissioner for Children's Services be given delegated authority to determine:
- a. Finalise the scope of children's services that will transfer to the new Children's Organisation
  - b. Finalise the legal model for the new Children's Services company and to its incorporation
- 5.4 Therefore the key milestones for March 2015 were for the parties to agree the scope of the services to transfer, the model of organisation and to incorporate the new organisation. Although, the final scope of the services has not been finally agreed, the parties have agreed the majority that now will transfer. Pending final agreement in accordance with the delegation given in March, Appendix A now sets out the current position.

- 5.5 The Council required the DfE to sign a Non Disclosure Agreement to ensure the Council's 3<sup>rd</sup> party data was protected and this was completed on the 10<sup>th</sup> March 2015.

### **Operating Model of CSO**

- 5.6 The model of the organisation is a private company, limited by guarantee with no share capital. The Company was incorporated on the 12<sup>th</sup> March 2015 and is called "Slough Children's Services Trust Limited" (Co Number: 09487106), its registered address is in Bristol. Although it wishes to refer to itself as "the Trust" it is not a legal entity of a trust.

- 5.7 The description given for the company is:

"the Company will be a not-for-profit organisation limited by guarantee that is being established to secure improvements to Slough Borough Council's performance in respect of its children social care functions pursuant to a statutory direction issued by the Secretary of State for Education on 7 October 2014 in accordance with Section 497A(4B). The objects of the Company are to provide social care and youth offending services to children, young people and their families for the advancement of the community in Slough."

- 5.8 The longer term aspiration is for the Company to convert to a Community Interest Company (CIC), but this will be a matter for the CSO. Although the Council has no control over the model there are some issues that it does need to consider that may affect the Council in the longer term as a result of the choice of this model. The Council is ensuring that these issues are raised and managed to protect the Council.

### **Fit for purpose transfer date**

- 5.9 There have been substantial discussions between the parties over what needs to be in place to enable a go live date for the CSO. The Council has and continues to express concerns around a go live date of September 2015.
- 5.10 The Steering Board agreed in March a set of principles that underpinned what need to be place to meet the September 2015 deadline. Namely:

|   | <b>Requirement</b>  | <b>Council Comment</b>  |
|---|---|---|
| 1 | The scope of services to be externalised should be confirmed by the end of April 2015                         | This still has not been finally agreed although substantial progress has been made.   |
| 2 | The offer of SBC support services to the new organisation to be agreed by the end of April 2015               | This is still in the process of being agreed.   |
| 3 | The new organisation contracts with SBC for the delivery of the services currently delivered by Arvato to SBC | The principle has now been agreed but this is still subject to contractual agreement. |

|    |  |   |
|----|--|---|
| 4  | SBC remains the data owner and the new organisation acts as the data processor   | This is still in the process of being agreed and finalised.   |
| 5  | The new organisation initially remains in SMP  | This is still in the process of being agreed.   |
| 6  | Due diligence around the nature of the contractual provision by 3 <sup>rd</sup> party providers to be completed by end April 2015 and appropriate action agreed and taken so that relevant services can be supplied to the new organisation through either contract novation or assignment by September 2015 | This is still in the process of being agreed.   |
| 7  | A senior management team to support the Chief Executive of the new organisation is in place in good time to understand the service area and is in a position to operate fully in shadow form (no later than July 2015)   | A management structure has not been sent to the Council.  |
| 8  | The senior management team do not amend any key decisions made previously on behalf of the organisation by the Chair and Chief Executive that could delay the timeline   | Council is seeking assurances that it remains the case.   |
| 9  | Staff terms and conditions along with pensions are agreed in good time to allow a proper TUPE consultation and transfer  | The Council have significant concerns around the Dfe's delays on this and the impact it will have on our staff. |
| 10 | A client team has been recruited and is in place at SBC to monitor the new organisation's contract before go live  | This is still in the process of being agreed once the Outcomes Specification is drafted.                        |
| 11 | In the development of the services contract, enough time is allowed for transition work to occur to enable a go live in September 2015. The key provisions of the contract need to be broadly agreed in July 2015 time to enable this transition work to happen  | This is still in the process of being agreed.   |
| 12 | Members are well informed and communicated with throughout the project to enable them to be familiar with the project and understand the financial transactions and budget changes so that the transfer is approved  | Project slippage as this far prevent an updated report being bought   |



## **Project Plan's Forward Plan for Council decisions**

5.11 The Council and the Dfe have agreed a forward plan for decisions, which takes into account Cabinet, O/S and Children's O/S and Full Council.

5.12 It was anticipated that a report to the June Cabinet would be bought to cover:

- Scope of Services
- Pensions
- Member/Officer involvement in the CSO Board
- Contract governance principles

The parties were not in a position to bring a report for decision sign off on the matters listed.

5.13 July Cabinet was expected to sign off matters relating to:

- Financial risk sharing

The parties are unlikely to be in a position to bring a report for decision sign off on the matter listed.

5.14 September Cabinet is expected to sign off matters relating to:

- Update on draft services contract
- Trust budget
- DfE provision of additional costs
- Delegated authority to sign contract

5.15 It is anticipated as a result of the staged sign off process not occurring as anticipated by the Project plan, that September Cabinet will be required to cover that matters originally expected to be signed off in June and July.

5.16 It is then anticipated that there will be Full Council sign off following Cabinet in September.

## **Key Terms**

### **Scope of Services**

5.17 As set out above the scope of the services was agreed in principle in March, but no final sign of all the exact services transferring over has been agreed. The current status of the parties' discussions is set out in Appendix A: Scope of Services Table. Those services that have been agreed as being in scope are referred to as green, those that will not transfer are referred to as red, and those services that are still under discussion are referred to as amber. The blue services are those that are currently provided by 3<sup>rd</sup> parties.

### **Pensions**

5.18 The Council have been asked to agree an Open Pension Scheme to enable existing public sector employees to move across to the CSO without jeopardising

their current LGPS pensions. Although this is not custom and practice for the Council, it has been felt that there are special circumstances that would warrant a different approach. The parties have agreed the main heads of terms for the pensions agreements and Appendix B sets those out. Agreement on these terms are designed to which protect the Council while at the same time enabling effective recruitment of permanent staff.

### **Costs recovery**

5.18 The MOU confirmed that the Council would be reimbursed for all costs:

“30. In relation to the costs of compliance with the Direction The Secretary of State will meet the costs of the Commissioner, the professional services and legal services and the DfE project team costs. The Secretary of State will also meet all the reasonable costs of the Authority, its project team including the Authority’s professional services costs in relation to complying with the Direction and the MOU.”

5.19 To this end all Council officers involved in the project have been keeping a time record of their time spent to enable recovery of those costs from the DfE. All the Council’s 3<sup>rd</sup> party costs, such as external spend was also expected to be recoverable.

5.20 The Council were assured that a monthly grant would be made available to cover the Council’s costs but to date these costs have not been reimbursed. The Council have now been advised of a cap on costs of £615,000 which is expected to cover more than the Council’s project and professional services costs. Council officers recorded time currently has a value of approximately £200,000. Once the Council is in a position to understand the CSO set up and organisation costs, we anticipate that there may be a substantial shortfall against all the costs of transition. Areas of concern include accommodation fit out, ICT set up costs, client management costs.

### **Board remuneration**

5.21 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.

5.22 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.

5.23 Officer’s view of the status of the project to date is Amber.

### **Service Improvement**

5.24 There is a separate report that deals with the improvements that are being made to the provision of children’s services.

## **6. Comments of Other Committees**

None

7. **Conclusion**

The purpose of this report is to update members on progress to date and therefore there are no decisions required as a result of this report.

8. **Appendices Attached**

- 'A' - Scope of Services Table
- 'B' - Pensions Heads of Terms

9. **Background Papers**

1. Direction dated 7.10.2014
2. MOU dated 21.11.2015
3. NDA dated 10.3.2015
4. Cabinet reports: November 2014, March 2015
5. Overview & Scrutiny reports: February, July 2015
6. Children's Scrutiny reports

## Appendix A: Services in Scope Table

### Key:

**Green** transferring to CSO  
**Red** remaining with SBC  
**Amber** under discussion  
**Blue** being provided by 3<sup>rd</sup> parties

| Service Area   | Area and Assistant Director  | FTE                        | RAG - green        |
|--|--|----------------------------|--------------------|
| Early Help   | Children, Young People, and Families – Kitty Ferris  | 36                         |                    |
| Assessment and Children in Need  | Children, Young People, and Families – Kitty Ferris  | 29                         |                    |
| Child Protection and Looked After Children   | Children, Young People, and Families – Kitty Ferris  | 69.28                      |                    |
| Placement and Resources (1)  | Children, Young People, and Families – Kitty Ferris  | Part of 61.4<br>TBC        |                    |
| Safeguarding and Quality Assurance – IRO etc   | Children, Young People, and Families – Kitty Ferris  | 10                         |                    |
| Administrative and business support for all services rated 'green' above   | Children, Young People, and Families – Kitty Ferris  | 36.35<br>Pro rata to above |                    |
| Learning and professional development  | Kevin Gordon<br>Assistant Director Professional Services   | 1                          |                    |
| IT and information systems – professional support role   | Kitty Ferris<br>AD C&F   | 1                          |                    |
| Safeguarding and Quality Assurance LSCB functions  | Children, Young People, and Families – Kitty Ferris  | 3                          |                    |
| Operational commissioning for children's services  | Children, Young People, and Families<br>Alan Sinclair<br>Assistant Director Adult Social Care and Commissioning; matrix arrangements to Kitty Ferris | TBC                        |                    |
| Children with Learning Difficulties and Disabilities (LDD)   | Children, Young People, and Families – Kitty Ferris  | TBC                        |                    |
| Placement and Resources (2) (Mallards Children's Home and Breakaway Respite Centre)  | Children, Young People, and Families – Kitty Ferris  | Part of 61.4<br>TBC        |                    |
| Youth Offending Team   | Children, Young People, and Families – Kitty Ferris  | TBC                        |                    |
| <b>Total FTE</b>   |  |                            |                    |
| Children's centres   | Delivered through contract with Mott McDonald / Cambridge Education  |                            |                    |
| IT and information systems   | Roger Parkin<br>Strategic Director   | 0                          |                    |
| <b>Service Area</b>  | <b>Area and Assistant Director</b>   | <b>FTE</b>                 | <b>RAG - amber</b> |
| Virtual School   | Consultant reporting to Jane Wood/Kitty Ferris; other posts within Placement and Resources Service   | TBC                        |                    |
| Performance management   | Joseph Holmes<br>Assistant Director Finance & Audit  | 1                          |                    |
| SEN Assessment Team  | DCS  | TBC                        | Amber/Green        |
| <b>Service Area</b>  | <b>Area and Assistant Director</b>   | <b>FTE</b>                 | <b>RAG - red</b>   |
| Education functions (including school places, education client function and out-sourced provider of school support and related services) | DCS  | N/A                        |                    |
| Troubled Families  | Kitty Ferris   |                            |                    |
| Strategic commissioning for children's services  | DCS  |                            |                    |
| Youth Services   | Community and Skills   |                            |                    |

## **Appendix B: Pensions Heads of Terms**

### **Transfer of Children's Services**

#### **From Slough BC ("the Council") to Slough Children's Services trust Ltd ("the Trust") Pensions – Principles and Caveats for the basis of Report to Cabinet: June 2015**

### **Recommendations**

That, subject to the provisos set out below:

- (d) Admission to the Berkshire LGPS Pension Fund ("the Fund"), should be on an open and not a closed basis, and;
- (e) The Council will provide a Guarantee to the Fund in relation to the Trust meeting its liabilities under LGPS during the term of the Service Delivery Contract ("the Contract"), and;
- (f) On transfer of the services back to the Council at the end of the Contract the Council will assume the Trust's pension liabilities.

The Provisos being:

- (1) That the Council receives satisfactory written confirmation from the Fund that it will treat the Trust as a "sub-set" of the Council for LGPS purposes such that the Trust's contribution rate and deficit accrual rate shall be the same as the Council's; and
- (2) That the Council is satisfied that the granting of a Guarantee, in the Form required by the Fund is permissible by law or that the Council is satisfied that the granting of such a Guarantee does not expose the Council to an unacceptable level of risk; and
- (3) That the Council is not exposed to any increased risk, either to the scope of any Guarantee provided by to the Fund or in relation to exit liabilities because necessary protections, as set out below, are in place to prevent this risk materialising.

The necessary protections being:

- (1) That the Trust commits to operating a workforce structure commensurate with its allocated budget; the mechanism by which the trust will be funded having been agreed as part of the settlement of the Contract; and
- (2) That the Trust commits to operating all policies which may effect the scope of any Guarantee given by the Council and/or the pension liabilities assumed by the Council at the end of the Contract, (including but not limited to early retirement, benefit augmentation, salary increases, redundancy and the recruitment of new permanent employees), in terms which either mirror those policies of the Council as they exist from time to time during the term of the Contract or do not expose the Council to any element of additional risk in relation to LGPS, unless specifically agreed otherwise by the Council.
- (3) That the extent of any Guarantee provided by the Council to the Fund and the assumption by the Council of pension liabilities on transfer of the services back to it from the Trust, shall be limited to the extent to which the Trust operates a workforce commensurate with its allocated budget and shall not extend to any additional liabilities resulting from the recruitment of additional employees, such additional employees being funded in any way other than by utilisation of the allocated budget, unless specifically agreed by the Council.