

# Report of the Director of Children's Services to the meeting of the Council Executive to be held on 19<sup>th</sup> July 2016.

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**Subject:**

Proposed Educational Psychology Team Spin-Out from LA from 1<sup>st</sup> November 2016

**Summary statement:**

This is a progress report on the proposal to spin out the Educational Psychology Team as an Employee Owned Mutual.

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**Portfolio:**

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**Overview & Scrutiny Area:**

**Children's Services**



## 1. SUMMARY

- 1.1 **This report provides a background to the proposed spin out of the EPT with the requested updates. The Council Executive is requested to approve the final sign off of spin-out of the EPT as an employee owned mutual.**
- 1.2 It is recommended that the Spin-Out is a Community Interest Company (CiC), reflective of the council's 'New Deal' agenda.
- 1.3 The CiC will be a Mutual, owned and run by its employees, but with assets locked for community benefit. Employees will be represented on the board, and consultation mechanisms will be put in place to communicate with service users and stakeholders
- 1.4 In line with the New Deal, the Spin-Out will provide the opportunity for the LA to develop its role as commissioner of previously centrally held services, and add social value to the district through attracting more skilled and experienced Educational Psychologists to the area.
- 1.5 Through its constitution, the Community Interest Company will add social benefit to Bradford, through any surplus being used to provide additional psychological services to children and their families across the district. These services will be established and co-created in collaboration with service users, partners and other stakeholders.
- 1.6 The proposal was shared with the Chief Executive's management team in January 2016 and they similarly agreed that it should be progressed. At a meeting with Joint Management Team on 29th February 2016, it was agreed that this should be progressed and key issues addressed, prior to being presented to council exec for final approval.

## 2. BACKGROUND

- 2.1 The LA currently employs a team of 21.4 Educational Psychologists (EPT), including trainees and assistants. The role of the EPT is to improve educational outcomes and life chances for children and young people by ensuring they have maximum success in school.
- 2.2 The LA currently funds approximately 75% of the cost of the team, in order to provide statutory advice for children undergoing Education Health and Care assessments under the Children and Families Act (2014). In addition this funding provides early intervention work for schools across the district and a critical incident response linked to the LA's emergency planning duties. The remaining 25% of the cost of the team is funded through traded work with schools and other external partners such as Healthy Minds and Born in Bradford.
- 2.3 There is a strong market for educational psychology, but in the context of a national shortage of EPs it is becoming increasingly difficult to attract new psychologists to



Bradford. The EPT is currently carrying three permanent and two temporary vacancies and a recent recruitment yielded only one applicant. This situation puts at risk the statutory and other services required by the LA.

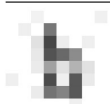
- 2.4 In response to this, an options appraisal was undertaken to look at ensuring the long term sustainability of educational psychology services within Bradford. Three options were considered including remaining as is, a wholly owned company and a Spin-Out. The preferred option is that the EPT should spin out of the Local Authority as an Employee Owned Mutual.
- 2.5 This proposal is supported by the Association of Educational Psychologists (Professional Association) and by team members. Stakeholders have also been informally consulted and they expressed support for the idea.
- 2.6 A business proposal was drawn up and scrutinised by the LA's 'Alternative Delivery Vehicle Project Group' in November 2015. This group, comprising of representatives from Finance, Legal, Commercial and HR pronounced that the proposal was sound and should be progressed.

### **3. OTHER CONSIDERATIONS**

- 3.1 This will be the first Spin-Out from Bradford LA in recent years. Based on the past successful trading of the EPT, the venture is low risk and likely to succeed. The Spin-Out could provide valuable experience of developing such arrangements and an effective model for future Spin-Outs.

### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1 Initially the Spin-Out will look very similar to the existing EPT. The LA will enter into an initial three year contract with the CiC to provide a similar level of statutory and early intervention services. This will be provided at a cost which is will be no more than the existing budget spent on the EPT.
- 4.2 Over an agreed timescale the Spin-Out will expand its trading with schools and other partners (for example Public Health) in order to generate increased income. Any surplus will be reinvested into the Bradford District to enhance existing or provide new services.
- 4.3 As a Spin-Out, the CiC will in time provide a secure income stream for the council through the buying back of accommodation and other back office functions which were previously provided to the EPT through corporate recharge.
- 4.4 During the establishment of the CiC and for the period of the initial contract, it is expected that BMDC will transfer physical assets and staff to the company, enter into arrangements for the provision of facilities to the company and novate any existing contracts held by the Educational Psychology Team. Assets currently consist of psychological test equipment and resources (approximate value £30,000)



and IT equipment (approximate value £15,000)

4.5 In order to support the Spin-Out, it is proposed that the LA authorises any surplus generated by the EPT in the pre Spin-Out phase to be used to support the development of the CiC.

4.6 Due diligence has been carried out by Raj Singh, May 2016 and confirms the financial viability of the mutual being created, a contract being issued and operational robustness for 3 – 5 years

## **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

5.1 The main risk to the LA relates to ensuring sufficiency of EPs to carry out the required statutory work.

5.2 Careful negotiation of the core contract with the CiC will be a key tenet in reducing this risk. Staff recruitment and retention within the CiC should be enhanced by the Spin-Out, enabling it to fulfil the requirements of any contract entered into. Should these anticipated benefits not materialise, the CiC may struggle to deliver the required statutory work. This situation is however no less favourable than remaining as is.

5.3 As with any new business, there is a chance that the CiC will fail, and this will impact negatively on the LA's capacity to access sufficient statutory psychological advice. Working with the CiC to ensure its best possible chance of success will mitigate against this. In the worst case scenario of the CiC failing, then the option remains for the LA to re-employ a team of psychologists directly in order to fulfil their statutory and other requirement.

5.4 At the end of the three year contract the LA will need to enter into competitive tendering for Educational Psychology Services. This introduces a potential risk to service security. However, it is anticipated that the CiC will maintain a strong link to Bradford and will be keen to bid for any tendered contract and ensure best value for the district.

Progress has been made with the cohort of staff subject to change as a result of transferring into the mutual. This has been pursued by Michelle Moverley and Darren Whitelaw (May 2016). There are no perceived risks (including from unions)

Progress has been made for the establishment of the mutual and plans are in place for a formal launch from November 1<sup>st</sup> 2016. Market testing and awareness is in place and demonstrates a welcome from existing client and key LA departments.

## **6. LEGAL APPRAISAL**

6.1 The initial contract entered into with the LA will be a contract "reserved" under Regulation 77 and will run for the maximum allowed 3 years. After this period the LA will enter into competitive tendering for Educational Psychology Services.



- 6.2 All staff currently within the EPT will transfer from BMDC to the new company under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) with indemnity for predicted redundancy, sickness etc provided initially by the LA in line with other outsourced contracts.
- 6.3 The CiC will request admitted body status to West Yorkshire Pension Scheme and in the first instance, the LA will provide a bond to support the new company with potential responsibilities around sickness and redundancy.
- 6.4 A modification order will be sought by the CiC to ensure continuity of service for all members of staff joining the CiC.

## **7. OTHER IMPLICATIONS**

### **7.1 EQUALITY & DIVERSITY**

The proposal will advance equality of opportunity for people who share a protected characteristic. As a CiC, the Spin-Out will have a community interest statement requiring it to use any surplus to provide additional services to the community. By their nature, psychological services are focused on those with disabilities and with other barriers to educational success eg poverty. As such, the proposal will advance equality of opportunity for these groups.

The proposal will have a positive impact and help to eliminate discrimination against people who share a protected characteristic. The reinvestment of any surplus into the community will ensure that those with disabilities and other barriers to education will have enhanced access to educational psychology, which in turn will improve outcomes for these groups.

### **7.2 SUSTAINABILITY IMPLICATIONS**

This proposal seeks to secure a viable, financially robust, long-lasting response to ensuring educational psychology service delivery within the Bradford District.

The proposal is positioned within the wider changes to public services and co-creation of personal and social wellbeing in line with New Deal outcomes and principles. It will contribute to enhancing the overall prosperity, well-being and resilience of people, communities and future generations within Bradford.

The proposal recognises that robust and agile structural, governance and organisational changes create the foundations for the future and are part of the solution to more efficient, effective and ethical ways of supporting children, young people and their carers throughout the District.

### **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**



There is no impact on the Council's own and the wider District's carbon footprint and emissions from other greenhouse gasses.

#### **7.4 COMMUNITY SAFETY IMPLICATIONS**

There are no Community Safety Implications

#### **7.5 HUMAN RIGHTS ACT**

There are no implications in relation to the Human Rights Act

#### **7.6 TRADE UNION**

The Association of Educational Psychologists (AEP) has been fully engaged throughout the options appraisal and drafting of the business proposal. It is fully supportive of the move.

UNISON is aware of the proposal and has had sight of the business proposal.

Full consultation will be undertaken as part of the TUPE process..

#### **7.7 WARD IMPLICATIONS**

Under the proposal, all wards will continue to access Educational Psychology support via the core contract drawn up between the LA and the CiC.

Community stakeholders will be engaged in order to establish how and where services provided through the 'community interest statement' will be delivered.

### **8. NOT FOR PUBLICATION DOCUMENTS**

- 8.1 Background document - Yorkshire Educational Psychology Partnership (Bradford) Business Proposal (not for publication paragraph 3 (financial or business affairs) of schedule 12A of the Local Government Act 1972 as amended)

### **9. OPTIONS**

The following options were previously presented to JMT, giving the main advantages and disadvantages:

#### **Option 1: Retain current structure (The "as-is," no change)**

Advantages

- Provision of statutory services secure (within limits of staffing)

Disadvantages

- Deterioration in terms and conditions linked to efficiency savings impacts negatively on capacity to attract and retain staff



- Increased pressure on remaining staff due to recruitment issues impacts on retention and capacity

**Option 2: Establish EPT as a ‘wholly owned’ TECKAL company**

Advantages

- LA maintains decisive influence over the strategic objectives and key decisions of the EPT
- TECKAL exemption avoids need for competitive tendering

Disadvantages

- TECKAL is generally seen as a transition arrangement to incubate fledgling businesses. As the EPT has been trading successfully for 6 years, this seems unnecessarily bureaucratic
- As the EPT currently trades in excess of 20% with external partners, the EPT would not pass the TECKAL status test
- Working as a quasi-LA department, the EPT would reduce flexibility to offer more favourable terms and conditions in order to attract staff

**Option 3: EPT spins out of the LA as an Employee owned Mutual, in the form of a Community Interest Company.**

Advantages

- Allows freedom and flexibility for EPT to attract new EPs to the team, and retain existing team
- Ethically bound through Community Interest statement, so any surplus is put back into the district through co-constructed community based initiatives
- In line with New Deal, the core contract with the CiC ensures provision of statutory and other services, but from perspective of commissioner, not provider
- Potential income stream opened up, through CiC paying for services currently provided by LA

Disadvantages

- After initial protected term, EP services will need to be procured through competitive tendering
- Failure of CiC would put at risk delivery of statutory services

Option 3 was agreed as the preferred option, having most financial, organisational and social benefits for the district, as well as addressing the retention and recruitment issues.

Option 3 is in line with the ‘New Deal’ ethos. As a commissioner the LA will have more flexibility over what services it purchased from the CiC offering a potential



budget saving. This option will also provide an income stream for the council through the buying back of accommodation and other back office functions which were previously provided through corporate recharge. Further benefits include de-risking the LA through reducing directly employed staff and providing a valuable learning experience relating to spinning services out of the LA

In addition, Option 3 has benefits for the wider District. The CiC community interest statement will ensure that a significant proportion of any surplus is put back into the community. In this way, through consultation with the LA and community groups, initiatives such as parenting classes and community consultations for vulnerable groups, which have been casualties of budgetary reductions, could be reinstated.

## **10. RECOMMENDATIONS**

- 10.1 Executive is requested to approve final sign off of the proposal that the EPT spins out of the LA as an Employee owned Mutual, in the form of a Community Interest Company, from 1<sup>st</sup> November 2016.

## **11. APPENDICES**

- 11.1 None

## **12. BACKGROUND DOCUMENTS**

- 12.1 Yorkshire Educational Psychology Partnership (Bradford) Business Proposal (not for publication paragraph 3 (financial or business affairs) of schedule 12A of the Local Government Act 1972 as amended)

