

Report of the Strategic Director of Health and Wellbeing to the meeting of the Executive Committee to be held on 5 October 2021

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SUBJECT:

Service delivery options to transfer the day services currently operated by 'Home Farm Trust' to council control in the short term and to deliver transformation in the long term.

SUMMARY STATEMENT:

This report relates to the delivery of day services for people with learning disabilities currently operated under contract by Home Farm Trust (HFT) which is under notice to terminate on 31 March 2022. The Council wants to move forward with offering personalised services and our ambition is outlined in the 'Bradford Metropolitan District Council Market Position Statement' (April 2020) which supports the 'left shift' for services that focus on prevention, empowerment, independence and positive outcomes for people in our localities.

By creating an array of services that support the diverse communities of Bradford district, what is today a traditional offer of building-based support will become a dynamic offer that supports people with the services they want.

By opening the market from one majority provider and to new models of local community-focussed support, learning disability day services can become a positive contributor to the health and social care economy, creating new local opportunities and local jobs.

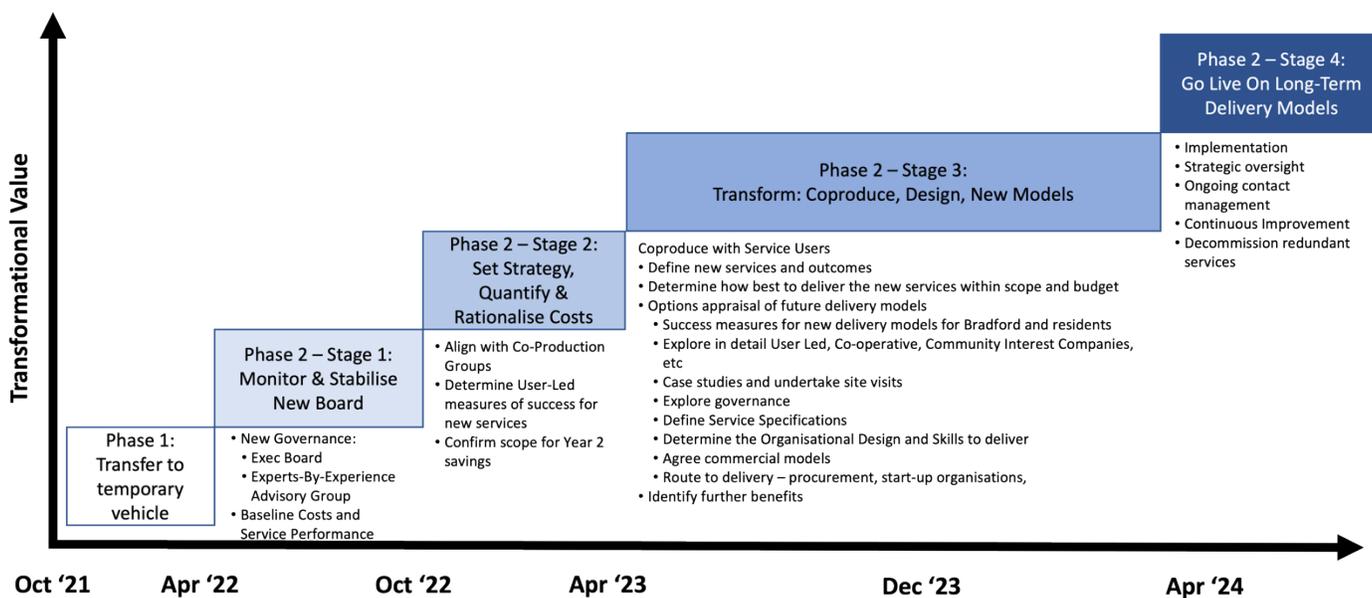
Over recent years there has been a push to ensure day opportunities empower people and encourage people's independent use of leisure and community services and assist people to find volunteering or employment options where desirable.

A modern service should have the people who use it governing its offer and its operation. The strategic objective is to ultimately move the service to a number of user-led organisations (ULO) that empower service users by bringing the service user voice to the fore through co-ownership of the future direction of day services and offering real choice and control as what services they want to utilise to achieve their goals and outcomes. User-led organisations can include Community Interest Companies (CIC), social enterprises, cooperatives, mutuals, charities, limited companies with guarantee, amongst others. Aspects of the service may also lend themselves to procurement.

To achieve the transformation, the Council needs to first understand both the operating costs of the service today and to quantify the costs for the future. Also, the programme needs to ensure there is sufficient time for service users to engage, understand the options (including being introduced to other successful similar organisations), appraise their suitability for Bradford, and to be confident in undertaking their new roles.

However, because of the significant data baselining challenges of the current HFT service and the need to consult with many people on the aspirational future service, a step change approach is required to manage financial and reputational risk whilst ensuring continuity of current services for service users and their families.

It is proposed that the step change needs to be done in two key phases. They are ‘transfer’, to create a period of stabilisation for validation, and then ‘transform’ to build on the current service user engagement activity and progress the design and implementation to the new delivery models. The phases and stages of transformation are shown in the diagram below.



The purpose of this report is to:

- Present a high-level analysis of the various Phase 1 temporary Special Purpose Vehicle (SPV) to achieve a period of stabilisation, validation and engagement to provide a platform from which to transform the service to one or more ULOs and/or alternative delivery models
- Provide an update on the data challenges for the Council and HFT in readiness for handover of service from HFT.
- Present a high-level plan to transition services from HFT to the Council and to a transformed service to ensure minimal disruption in service.
- Make proposals and recommendations to authorise and delegate to the Strategic Director of Health and Wellbeing to put these arrangements into effect.

RECOMMENDATION FOR CONSIDERATION BY THE EXECUTIVE COMMITTEE:

The recommended option is for the establishment of a temporary service of a Special Purpose Vehicle (SPV) as a vehicle to bring the service back under council control quickly to minimise risk and create a robust platform from which to transform. This will allow the Council to stabilise the current service and allow time to develop strategies for transformation before onward consideration, with the Director of Finance and City Solicitor, of a series of different ULOs and any procurement from the market. Then the Council can deliver on its strategic objectives of establishing choice and control for people, in a new care market where they can spend their personal health and care budget to best meet their needs and achieve their potential.

EQUALITY & DIVERSITY:

A full equality impact assessment can be found in Appendix 1.

This project contributes to the Council's equalities objectives through the 'Community' objective specifically to understand future demand growth and the 'Service Design' objective. It ensures we have acted on people's feedback, specifically from older and disabled service users, so that future services are designed and commissioned with user input to support their aspirations and meet their future needs.

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Overview & Scrutiny Area:
Health and Social Care

1. BACKGROUND

- 1.1 HFT have been operating a large contract for learning disability day services for the last 10 years. Prior to that, the service was operated by the then newly formed Bradford Care NHS Trust. The contract accounts for approximately 80% of the learning disability day service offer in Bradford, supporting 63% of all the working age adults who use those services.
- 1.2 Over recent years the budget for the service, which contractually operates on a 'cost plus 5%' model, has had a spiralling cost base and thereby margin. Whilst the service being offered has not aligned to the national direction of day support for people with learning disabilities, nor is it delivering on the Council's 'Reimagining Day Services' strategy or the provision of personalised funding arrangements for people in receipt of Council-funded support.
- 1.3 Despite attempts to work together with HFT over several years to transform the HFT service, it has remained largely traditional at increasingly higher cost. The council and HFT both agree that the current commercial contract constrains HFT from taking the risks to transform their offer and mutually agreed to end the current contract on 31 March 2022.
- 1.4 The current contract value with HFT is £7.4m and their latest projection for 2021/22 is £8.4m. HFT employs 303 staff (250 full-time equivalents) in the contracted service. It serves approximately 515 people with learning disabilities for different frequencies during the week. They operate from 24 buildings, 7 of which are owned by the Council. Not all of the buildings have occupation arrangements with readily quantifiable costs.
- 1.5 The Council aims to protect day opportunities for people with learning disabilities and needs to both transform the service and bring it within budget. Both parties want to ensure a smooth transition for staff, people who use services and their families that provides reassurance of what lies beyond transfer. This will avoid any unintentional loss of valued and skilled workforce and minimise any uncertainty for people who use the service.
- 1.6 Post-pandemic, regular social work reviews are underway, and some people who use the service are already taking the opportunity to make other support decisions to achieve their outcomes in the way they want. This is reducing some demand on traditional support and will contribute to the reducing the cost of the service.

2. KEY ISSUES

Long term issues faced within the service:

- 1.7 **Putting people who use services in control:** national evidence shows that the most successful and sustainable day opportunities have the people who use the service at the heart of governing and constantly evolving that service. User Led Organisations (ULO), enable people with learning disabilities (with appropriate support) to decide the direction of the organisation to ensure it continues to deliver what people want. This is consistent with the Care Act 2014 in giving people choice and control of how and where they spend their adult social care personal budget.

1.8 Choice from other providers: To enable the transformational change that supports independence and choice for people, the Council needs to migrate away from a 'block contract arrangement' such as the one with HFT towards a more personalised payment structure. In such a model, people are assigned a budget to manage their care and individually purchase the support they want. A new day care opportunities framework has been implemented to deliver this to all individuals whose needs are supported by the Council. Other day care providers in Bradford district (including HFT's Culture Fusion 'non block' day service) have signed up to this new agreement and the standard commercial terms and pricing. A number of new entrants to the market have also signed up to the framework.

1.9 What people want: To start to inform the transformational direction of the service, a large-scale consultation exercise was undertaken with people who have learning disabilities and their families during 2019 and early 2020 called 'The Big Conversation'. A series of events sought the insight of people with lived experience of learning disabilities and asked what how they wanted to live their lives and what activities they wanted to undertake to feel happy and fulfilled. The conclusion of that exercise was that people said they wanted:

- Somewhere to live where they feel safe and have their own front door
- Paid employment in an interesting job where they have colleagues and friends
- Someone to love, a relationship, marriage, children, grandchildren
- The opportunity to talk about their hopes and dreams and make these happen

1.10 Reimagining day services: A modern day service should be local, encourage people to make links into their own local communities, help people to find employment and have other opportunities to be more independent – and be co-producing new activities and progressive programmes to keep them fresh, interesting and relevant. The commissioning objectives will be set by people who use the services, and they will be co-owners of setting the direction for those services. The transformation phase will ensure there is a real choice of services from a range of providers so people who use those services should be able to choose from options based on their interests, locality, preferences and perceived value.

The Council has been working to move towards a more person-centred community-based model of support and encourage personal budgets and Direct Payments to support that objective. The intention being to offer people more of what they want, to promote greater independence and encourage community engagement in order to improve outcomes for people with learning disabilities. However, the Care Act specifically prohibits the use of personal budgets for in-house services thus creating a barrier to achieving those statutory objectives.

Short term issues impacting best value, operational efficiency and service excellence

1.11 The services within the block contract continue to provide very traditional support whilst other market offers provide more personalised, local, experience-based and outcome-centric support that services users are valuing. The implication of this is that there is a reducing demand for the HFT offer with supported services users having reduced from 900 people at the start of the contract to 515 today. A reduced demand leads to a reduced requirement for staff. This leads to either a significant overstaffing and significantly reduced value for money for the council, or a need for staff reduction. The transformation

seeks to redesign the service and thereby reposition its appeal in the market, uptake of those new services and minimise the potential for job losses.

1.12 HFT did not agree to transition from the block contract to the new framework terms and pricing models. In the short term the Council needs to address these inequality issues in order to mitigate the risk of challenge from potential new providers.

1.13 The Council and HFT have commenced a financial data gathering exercise to better understand contract performance. This includes analysis of costs, staffing, demand on the service and service level standards. This will help to establish a baseline of the service before transition.

2 Demand

In 2011 when the service was outsourced to HFT, the service supported circa 900 service users (to varying levels of support).

As the Council stimulated more services in the market, younger adults have mostly opted for services outside of the HFT block contract – including service users opting for HFTs Culture Fusion service.

The council strategy is working in that, when service users reach a life stage or review, many are taking up alternative new service offers, the service had dropped to supporting 600 people in 2016. The number of people supported today is now circa 550 and still reducing.

The statutory social care reviews are identifying more service users who want different support to those offered by the HFT block contract.

This shows a reducing demand for the services offered by the HFT block contract.

3 Value For Money

As the cost of the block contract increases whilst there is clearly a diminishing demand, this jeopardises both jobs and value for money. With 80% of the Council's learning disability day services spend committed to the HFT block contract, and 38% over a council-set target budget, the ability and funds to transform the service across the sector is seriously hampered.

4 OPTIONS APPRAISAL

5.1 User-Led Organisation – the recommended transformed solution

Service user empowerment is a fundamental part of what the Council wants to achieve going forward. User-led Organisations such as Community Interest Companies, mutuals, charities, co-operatives, should all be considered by way of the ultimate delivery models to support people who use learning disability day services to co-own their services along with appropriate support. By way of a ULO overview:

The Department of Health (DH, 2007) design criteria describes what a ULO looks like. Its design criteria covers three broad areas:

- the values of a ULO (for instance, promoting the social model of disability).
- how a ULO is governed and managed (for example, that 75% of the members of the management committee are people who use services).
- the sorts of services ULOs provide

A ULO is an organisation that is run and controlled by people who use support services, controlled by disabled people and has a minimum membership of 75% of disabled people on their board.

It actively demonstrates its commitment to the Social Model of Disability and employs disabled staff and volunteers.

It's an organisation based on clear values of independence, involvement and peer support. Unlike other voluntary sector organisations, people who use services control the organisation. ULOs are uniquely identified by their knowledge, which is based on direct, lived experience.

However, to segment the current provision to adopt more outcome-based and user-led delivery models requires a sure financial footing from the start and therefore need the same initial dependencies as the risks associated with a procurement route as outlined below. Also, to achieve an effective ULO, the Council needs to ensure the experts of the service, those with lived experience of learning disabilities, are afforded the time and opportunity to understand the ULO options, experiences of different models elsewhere and their suitability to deliver the types of service and support wanted by the people of Bradford.

5.2 Special Purpose Vehicle (SPV) – recommended temporary vehicle

A temporary SPV allows the Council to transfer the current service into an aligned organisation that is an arms-length service delivery arm fully controlled by the Council. It allows the Council to maintain current employment terms and conditions for staff whilst it evaluates the optimal longer-term delivery models for a more diverse service to meet the needs of the community.

This temporary vehicle allows for flexible governance that can include leadership, including from people who are supported by services. People can also use their personal care budget to purchase support from the temporary model as a semi-independent company of the Council.

Moving the service into one entity in April 2022 reduces the perceived risks for the workforce, service users and the Council. The desired transformation of services can then take place with future user-led options in mind and in step with our strategy around early help and prevention.

The temporary vehicle would seek to bring service costs in line with the other providers in the market, reducing the barriers to adopting the other delivery models in the future and ensure compliance and level competition with the new Dynamic Purchasing framework signed up to by other providers.

5.3 Procure again in the care market – not yet recommended

There are two options to procure – either to outsource the current service as-is to a new provider, or to break the service up and outsource the different elements to different providers. This option provides the opportunity and risk on one or several third-party providers to bid and be awarded on cost reduction and service improvement.

There are three crucial dependencies to be able to procure either as a block or in parts. They are to:

1. Understand what service users and the Council want, and the impact on and allocation of care staff.
2. Recognise that any new provider will be mindful and resistant to carry the protected (TUPE) staff overheads and compete on the dynamic purchasing system for individual care packages without the guarantee of extra funding to mitigate these financial risks.
3. Recognise that any new provider would undertake due diligence on the cost base it would inherit and the scope of delivery to be achieved with that cost base. A Due Diligence financial review has yet to be undertaken by the Council to baseline HFT's actual costs.

The procurement approach therefore only serves to make new providers the custodians of already known problems with the HFT contract, which have already led to not achieving strategic objectives or resolve the underlying issues of the current contract.

On point 3, the continued risk could only be mitigated by either a higher financial margin to offset contingencies in a provider's pricing, or, as with now, the Council underwrites the risk. This delivery model would only serve to move the problems currently being faced elsewhere, rather than resolve them.

5.4 Bring Services In-House – not yet recommended

The model currently operating at HFT is not something which is fit for the future so it would be wrong to seek to perpetuate that model through a lift and shift as it is into the council. The future vision for day opportunities in Bradford are a series of smaller independent organisations which are user-led and are purchased by people from their personal care budgets to maximise their choice and control. The Care Act specifically prohibits the use of personal budgets for in-house services.

It may be that some functions may be brought into the council once the new model is devised but at this stage before the full review has been undertaken, it is not yet possible to decide this. Any future model must as a prerequisite have its users in charge.

5.5 Do Nothing

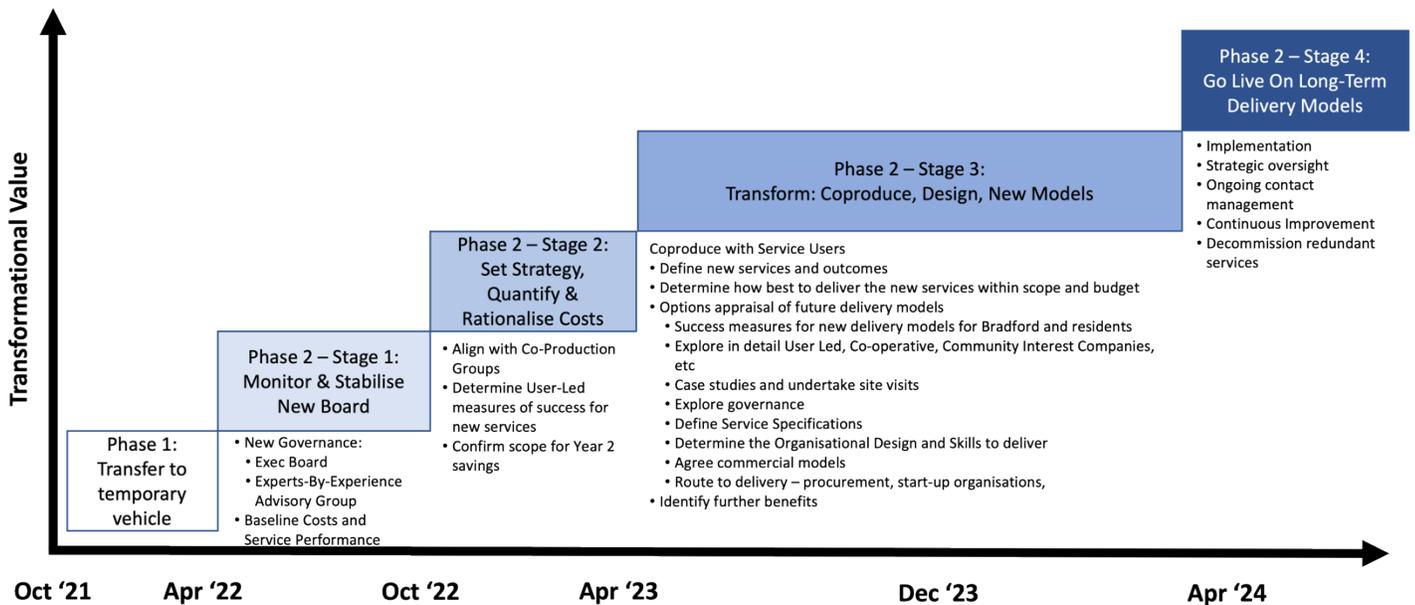
It is recognised by both the Council and HFT that the current commercial arrangement causes a conflict of interest that stifles HFT's ability to innovate or reduce costs.

5 High-level plan to transition services from HFT to the SPV

It is proposed that there is a phased approach to transition the service from HFT to where the service ultimately needs to be, to deliver the services that people want, that support aspirations and outcomes, and to do so within a Council agreed financial envelope.

Whilst the longer-term objective is to transform the service, for the reasons given above, a temporary vehicle is required to move the service back under Council control, allow both service and staffing to stabilise until reliable performance monitoring data emerges that can be used for strategic decision making.

This proposal envisages a transformation roadmap with tentative timelines, as follows:



The Phase 1 objective is to move the service and ensure a full and complete handover of data, service and staffing from HFT to temporary SPV, prior to the commencing the transformation of services, wherever possible, to ULO delivery models.

5.1 Workforce

The Council and HFT staff recognise that the current commercial arrangements limit the ability to be flexible and transform its service. The move of the service to a SPV, in the short-term, offers stability and security to staff and service users. In this time, we will:

- Work directly with the affected HFT workforce, the appropriate workforce representatives and trade unions.
- Be transparent and provide reassurance through clarity of intentions and legal compliance.
- Continue to value the expertise and innovation in the HFT workforce and welcome it.
- Define organisational changes that may be required, when we understand what

services people want and how the Council can enable their presence and availability in the market.

- Protect jobs and employment terms and conditions.
- Move to fairness and equality of terms and conditions across the day services sector as mandated by the Options Appraisal
- Commit to no redundancies in the transfer from HFT.
- In the event of any individual not wanting to TUPE, HFT with the Council will explore the alternatives that may be available.

5.2 Company Set Up Costs

The SPV is a limited liability company that is owned or controlled by a local authority and which it uses to undertake specific functions. In order to establish a new future model of delivery the Council needs to be confident that the model can operate lawfully and in accordance with all the requirements imposed by statute and governance. The Council has retained legal advisors to enable it to establish the necessary compliance framework; which must be in place before any trading activities can commence. The Council is also currently developing an operating budget and estimates of start-up and service transition costs to deliver the changeover from HFT to the Council control of the service via a temporary corporate structure. This is principally related to costs of ensuring the service has access to the necessary systems and other arrangements to be provided via a series of service level agreements with the Council. The incurred operating cost areas which will be incurred are listed below. The following paragraphs also identify issues that will need to be developed into detailed plans for consideration by the Strategic Director of Health and Wellbeing before the temporary option can become formally approved by him under delegated powers following the Executive's acceptance of the recommendation in this report.

5.2.1 HFT, employee liabilities

In considering such liabilities, the following working assumptions have been made:

- That all HFT employees and workers who spend more than 50% of their HFT employment within the current HFT Day Services contract will transfer to the new delivery model under TUPE (the Transfer of Undertakings, (Protection of Employment) Regulations).
- That in order to avoid distorting the market, the standard terms and conditions of employment of employees will be broadly comparable to those of similar employees of other private companies operating in the adult care sector.
- That the terms and conditions will also need to be taken into consideration by the SPV when it determines employee entitlement to such matters as vocational pensions, annual leave, and sickness pay.

5.2.2 Support Functions

Support functions for the operation of the service would be provided through a Service Level Agreement (SLA) with the Council so that it receives no net subsidy from the Council. In addition to the standard SLAs for operational costs (staffing management, occupation of premises, IT services, access to expert advice and financial management, etc) the new

service will also need to apply for, and gain admitted body status within the Local Government Pension Scheme (LGPS) for those staff on LGPS protected by TUPE and to NHS Pensions for those on NHS protected conditions. A separate pension arrangement will need to be made for employees currently on the People Pension, circa 61% of the current workforce, and for future employees and this will need to comply with pension regulations. These arrangements may involve further financial and legal commitments by the Council, which will need to be kept under careful review and factored into the delegated decision-making of the Strategic Director of Health and Wellbeing in relation to the adoption of this service provision option.

The following support functions will be provided initially via SLAs with the Council; and the Council will need to ensure that it can audit the value of such services to demonstrate that it is not providing a net subsidy to the SPV in relation to them.

- HR – transactional HR including safer staffing requirements.
- Recruitment services.
- Certain training (i.e. safeguarding).
- Payroll.
- Finance – transactional finance functions and financial controller activities.
- Provision of IT equipment and services and IT support.
- Insurance.
- Audit.
- Communications.
- Property services.
- Legal support.
- Tax.
- Travel and expenses.
- Pensions.
- Bank account investment/working capital.
- Advice on company compliance and submissions.
- IT, website and domain name.

5.2.3 Use of External Suppliers

It is not anticipated that the SPV will need to enter into any new significant contracts with external suppliers. However, it may be necessary for the service to procure goods and services such as IT software and support. Where possible the services' procurement and purchasing arrangements could mirror those the Council has in place for other shared services providers e.g. schools.

5.2.4 Accommodation

The SPV will look to use Council-owned property and would need to review its use of office accommodation on an ongoing basis to ensure premises are fit for purpose and cost-effective. The cost of office accommodation will need to be accounted for on the same basis as any other provider even where this is within premises owned by the Council. Some rental/lease agreements for existing private premises will novate or be terminated between HFT and the landlord and then re-contracted with the SPV. It is not currently envisaged that the SPV would seek to acquire land or buildings.

5.2.5 Policies and Procedures

It is envisaged the SPV for the service would use relevant Council policies and those adapted and developed by the Council for other Council-owned operational entities as may be modified to meet its specific circumstances.

5.2.6 Information Sharing

An Information Sharing Agreement would be put in place between the SPV and the Council that mirrors agreements used with other external suppliers.

5.2.7 Data Protection / GDPR

The SPV would need to comply with the relevant legislation and guidance concerning data protection, including adopting suitable policies and practices to ensure data is adequately stored and safeguarded.

5.2.8 Freedom of Information

Arrangements made at its formation will ensure that the SPV will comply with any requests made to the Council for the disclosure of information relating to the SPV under the Freedom of Information Act 2000. As such, it will maintain a records management system that complies with the relevant guidance concerning the maintenance and management of records.

5.2.9 Training

The SPV could access Council training via SLAs that will be put in place with the Council, operate its own training services or commission in where required. This would be operated and funded in a manner consistent with other care providers.

6.2.10 Care Quality Commission

The SPV would not currently need to register with the CQC given that day services are not at present a regulated service.

6 CONTRIBUTION TO CORPORATE PRIORITIES

6.1 Bradford Council Plan 2021–2025. ‘Better Health, Better Lives’ – The Council will help people from all backgrounds to lead long, happy and productive lives by improving their health and socioeconomic wellbeing. Creating A Sustainable District - by making it easier for individuals, households, and businesses to adapt, change and innovate to address the challenges presented by climate change.

6.2 The “Joint Health and Wellbeing Strategy for Bradford and Airedale 2018–2023 to connect people and place for better health and wellbeing”, in particular contributes to the following outcomes:

- Outcome 2 – People in Bradford have good mental wellbeing.

- Outcome 3 – People in all parts of the District are living well and ageing well.
- Outcome 4 – Bradford District is a healthy place to live, learn and work.

6.3 Home First – The Council's vision for Wellbeing January 2017 is to help people to be independent and have a better quality of life by meeting their care and support needs within their own home, keeping them near their friends and family for as long as possible.

6.4 The SPV provides the service with the means to deliver against the objectives for day services in line with the Bradford Metropolitan District Council Market Position Statement (April 2020).

7 FINANCE AND RESOURCES

7.1 The current annual contract value with HFT is £7.4m with a forecast cost of £8.4m for the year. HFT employ circa 323 staff (266 FTE). They operate from 24 leased buildings, seven of which are owned by the Council. The current contract operates on a 'cost + 5%' basis and management and staffing arrangements can be rationalised in line with transformation without the need for compulsory redundancies. The current contract value also includes a contribution to overheads and head office costs at HFT which can be ameliorated in a new delivery model.

7.2 Significant efforts have been made to understand the operational performance of the contract and obtain sufficient and reliable financial and payroll reports to facilitate the handover of service. Validation of this information will continue during the implementation and at the start of the SPV.

7.3 The lack of reliable data from HFT hinders the Council's ability to consider, and determine the risk of, any other future delivery model. Thereby, the initial move to bring under council control through an SPV, is to baseline actual costs and liabilities is considered the lower-risk approach,

7.4 The options provided below include high-level financial implications. The proposed option offers the most financially economic position in the short to medium term because risks will be underwritten but controlled by the council. To mitigate these risks the phase 1 finance activities are organised into two workstreams as follows:

Phase 1 Workstream 1

Obtain a full and complete dataset to support the move

- Obtain an understanding of HFT's financial and operational performance
- Obtain employee and payroll data
- Identify staffing adequacy levels
- Obtain accounting records and financial reports

Phase 1 Workstream 2

Review performance to mitigate end of contract liabilities

- Identify areas of cost overruns
- Perform sample reviews of areas of concern
- Obtain evidence from HFT to substantiate cost overruns
- Evaluate HFT's billing methodology
- Identify potential areas of overpayment or disputed costs

8 RISK MANAGEMENT AND GOVERNANCE ISSUES

- 8.1** It is recognised this option represents an innovation for the Council, and that establishing such an entity will require careful preparation and communication with the affected staff by both HFT and the Council's HR teams.
- 8.2** Potential corporate liability issues will mandate the development of a proper governance structure that supervises the independent company's compliance with its regulatory and legal obligations; whilst at the same time ensuring that the risks (both legal and financial) associated with wholly controlled corporate vehicles are recognised and properly managed. Browne-Jacobson are advising on this.
- 8.3** Other Councils have successfully established vehicles for transformation or to protect skills and capacity in the event of provider failure. They allow the council complete control over the operation whilst providing the option to re-establish the business in the private or independent market in the future.
- 8.4** The SPV adds legal and governance complexity and will require additional financial and internal controls to ensure effective operation. It is also considered a subsidiary company for purposes of group accounts and will attract external audit scrutiny due to risk and materiality. The risks, costs and benefits of this structure will be fully considered in designing and implementing an effective corporate governance structure to oversee company performance.

9 LEGAL APPRAISAL

- 9.1** The external legal advisors appointed by the Council are Browne-Jacobson Solicitors (B-J). They have particular expertise in this area and were initially selected by Legal for this reason. Browne-Jacobson continue to be engaged, as agreed by Legal but with suitable oversight and review by the Council's own legal officers. In support of this report B-J have

provided legal advice in to establishing such an entity and, a standard form of due diligence questionnaire to be modified as required then applied to the staff transferring from HFT to quantify employee liabilities for which either the Council or the temporary vehicle may become liable. These are high-level documents that will guide the Council in identifying its legal obligations and liabilities arising from the formation of the temporary vehicle and then the transfer of HFT staff into it. It must be emphasised that this the first phase in a detailed due diligence exercise that will be completed as a precursor to the decision being taken by the Strategic Director of Health and Wellbeing to proceed with this option; and which will inform the risk register for this activity.

9.2 Should the recommendation be accepted, their terms of engagement will be widened to advise on the set-up of the SPV. This advice will include details of current best practice, official guidance, proven case studies and specialist documentation. The purpose of this engagement will be to test the proposal that, on the setting up of the SPV, in consultation with the Director of Finance and City Solicitor, Day Services can be delivered via an independent corporate entity that is wholly controlled by the Council, and fully compliant with (including):

- HMRC compliance (Corporation Tax and VAT Exemption)
- Local Government & Housing Act (1989)
- Local Government Acts (1999 & 2003)
- Companies Act (2006)
- Local Government Order (Best Value & Value to Trade) (2009)
- Localism Act (2011)
- Public Contracts Regulation (2015)

9.3 The City Solicitor has been and will continue to be regularly consulted in relation to this matter in order to provide legal oversight and to ensure that the specific requirements of the Council (in relation to both its constitutional and governance arrangements) remain satisfied. The establishment of the SPV will also be used as an opportunity for the Council to formulate its own corporate strategy policy to ensure all its other controlled vehicles are under effective corporate, financial and legal governance. This step is required as a high priority given that the status of the SPV involves the Council in wide-ranging liabilities for its debts and commitments; and that its failure or financial misgovernance could also have adverse reputational consequences for the Council.

9.4 The Council is also required, when commissioning services, to consider the effect of its commissioning decisions (including those of its subsidiary companies) on the wellbeing of the people using the services. It follows that the decision to establish a SPV is one that must not only take into account a wide range of objective factors; financial, legal, contractual and governance; but also, be one that is clearly in the interests of service users.

9.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) are likely to apply to the transfer of employees from HFT to the SPV, as a service provision change. HFT will be the transferor and the SPV will be the transferee. The contracts of employment of those employees employed by HFT immediately before the transfer and “assigned to the organised grouping of employees that is subject to the transfer” will automatically transfer to the SPV and the SPV will assume all the rights, powers, duties and liabilities in connection with those contracts of employment, and the acts or

omissions of HFT in relation to those employees are treated as having been done by the SPV. Employees who object to the transfer do not become employees of the SPV and their contracts of employment will terminate by operation of law. The SPV takes on the transferring employees on their existing terms of employment and can only make changes to those terms in limited circumstances. Specific legal advice will need to be sought on the pension issues arising.

Both HFT and the SPV must inform and consult with the recognised trade unions (or elected employee representatives if there is no recognised trade union) in relation to any of their own employees who may be affected by the transfer or any measures taken in connection with it. A failure to comply with these obligations exposes the party to compensation claims.

It is not possible at this stage to advise on the employment law implications of the future arrangements from 1 April 2022.

10 OTHER IMPLICATIONS

11.1 Equality & Diversity

10.1.1 The Public Sector Equality Duty under the Equality Act 2010 requires the Council when exercising its functions to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it
- relevant protected characteristics include age, disability, gender, sexual orientation, race, religion or belief.

10.1.2 A full Equality Impact Assessment (EIA) is attached at Appendix A.

10.1.3 The impending transfer of some learning disabilities services from HFT to a Council controlled new delivery vehicle is to enable positive change in the future. It is not designed to deliver change at the point of transfer. The transfer is to cause minimal change to staff and the individuals who use the current service whilst giving the council the ability to stabilise the cost and have the right platform from which to then transform the service.

10.1.4 The staff and service user engagement events happening over September and October 2021 will inform the subsequent required transformation of the service. It is envisaged that the eventual model will consist of user-led and staff-led longer-term delivery options that supports individuals in the way they want to be supported and within an affordable envelope.

11.1.5 Through the statutory reviews of people who require Council funded support, staff are encouraging service users and their families and representatives to consider a more creative means of meeting their needs than traditional day services.

10.2 Greenhouse Gas Emissions Impacts

Developing a more locality-working approach is designed to reduce the demand on commissioned transport and the length of journeys. The programme will also review the use of service owned vehicles and contracting of 3rd party transport services.

10.3 Community Safety Implications

People with learning disabilities are among the most vulnerable people in the community. Providing high quality care and appropriate environment is consistent with the Council's statutory duty to safeguard vulnerable adults.

11.4 Human Rights Act

11.4.1 The Human Rights Act 1998 makes it unlawful for any public body to act in a way which is incompatible with an individual's human rights. Where an individual's human rights are endangered, Local Authorities have a duty to balance those rights with the wider public interest and act lawfully and proportionately. For this report, the most relevant rights from the 16 covered in the Human Rights Act (1998) are:

- the right to respect for private and family life
- the right to peaceful enjoyment of your property (if this were interpreted broadly as enjoyment of one's home)
- the right to freedom from inhuman and degrading treatment
- the right not to be discriminated against in respect of these rights and freedoms.

11.4.2 The definition of adult abuse, in guidance issued under statute, is based on the concept of human rights: "Abuse is a violation of an individual's human or civil rights by any other person or persons". (No Secrets, Department of Health, 2000).

11.4.3 As with the equal rights considerations, the proposed changes are expected to have negligible impact on service users as the change relates to the transfer of the existing service from HFT to the SPV. In line with legal requirements and Council policy, vulnerable individuals and their friends, families and advocates have been and will continue to be involved in any consultation process and planning of changes, and that planning of change is fair and proportionate, and seeks to mitigate any identified adverse impacts of decisions made.

11.5 Trade Unions

All changes to staff employed by the Council are fully consulted with all trade unions via the Council's industrial relations agreements. No staff redundancies or changes to terms and conditions are anticipated by any of the developments outlined in this report.

11.6 Ward Implications

All ward Councillors are either currently involved or will be briefed and involved in any of

the developments or changes described in this report.

11.7 Area Committee Action Plan Implications (For reports to Area Committees only)

Not applicable

11.8 Implications for Corporate Parenting

Not applicable

11.9 Issues Arising from Privacy Impact Assessment

Not applicable

11 RECOMMENDATIONS / DECISIONS REQUIRED AND ALTERNATIVES

11.1 Recommended Decision

- i. It is recommended that CBMDC Executive supports the proposed transition of the current HFT Day Services contract to a temporary Special Purpose Vehicle (SPV) on 31 March 2022 as a temporary vehicle from which to launch the Reimagining Day Services Strategy on 1 April 2022 as set out above; and
- ii. Agree to delegate the establishment of the proposed temporary vehicle, its governance and strategic oversight to the Strategic Director of Health and Wellbeing and the Portfolio Holder for Health & Wellbeing, in consultation with the Director of Finance and City Solicitor, subject to compliance with the Council's wider Corporate Strategy.

11.2 Rationale For Recommendation

The recommendation proposed by this report is to adopt the proposal for a temporary SPV to enable the Council to quantify potential liabilities, establish the necessary contractual and organisational infrastructure and undertake service design of the new service with a view to taking it forward following the end of the HFT arrangements.

The existence of complex and uncertain staffing costs, and the need to establish potential liability with much greater precision than currently exists, mandates against any final decision at this time as to the model for future delivery. At the same time, it creates a danger that by using another model the Council may either create new liabilities or fail to address opportunities to mitigate them. The SPV option effectively creates a 'safe haven' for the liabilities whilst the additional work proceeds; and no other option offers this facility.

The Strategic Director of Health and Wellbeing will continue to explore the User Led Organisation (ULO) options such as Community Interest Companies, mutuals, charities, co-operatives, until a final recommendation is made following a full understanding all avenues of investigation under the due diligence process; and the decision will be made as directed by Executive in its final decision. It follows that new options may arise, or current options become more, or less attractive, and these will be taken into account when the final delegated decision is made.

13 APPENDICES

Appendix 1
Equality Impact Assessment

14 BACKGROUND DOCUMENTS

None