

Report of the Chief Executive to the meeting of Executive to be held on Tuesday 21 February 2023

BD

Subject: Update on the establishment the Children's Trust

Summary statement: The report provides an update on the progress to date of establishing the Bradford Children and Families Trust, including an update on progress towards agreeing commercial arrangements and sets out the proposed draft governance arrangements. The report also outlines the critical next steps and makes a number of recommendations to the Executive.

EQUALITY & DIVERSITY:

Equality assessments – There is no direct equality impact assessment from this report additional to the prior report to Executive in June 2022. Equality of access to services will be an essential component of these new children's social care arrangements and a condition of the Service Contract.

Report Contact: Joanne Hyde, Strategic
Director Corporate Resources Phone:
(01274) 43 2131
E-mail: joanne.hyde@bradford.gov.uk

Portfolio: Children & Families

Overview & Scrutiny Area:
Corporate & Children's Services

1. SUMMARY

- 1.1** This report sets out the background to the establishment by the Council of a children's services company (which is referred to in this report for purposes of convenience as a "Children's Trust") in accordance with the terms of the statutory Direction issued by the Secretary of State for Education. It provides an update on progress made to date, and summarises the proposed draft contractual governance arrangements. Governance arrangements within the current Council process, such as Scrutiny committee, are not covered within this report, the governance arrangements referred to in this report are in relation to the management of the contracts. The paper also outlines progress in relation to agreeing commercial arrangements and the critical next steps for the programme, and makes a number of recommendations in order to complete the set up arrangements for the Trust at go-live date.

2. BACKGROUND

- 2.1** Following agreement by the Council to voluntarily enter into the development of a Trust the Department for Education (DfE) issued a revised Statutory Direction to the Council on 9 February 2022, which set out, pursuant to his powers under section 497A(4B) of the Education Act 1996 Act, that the Secretary of State directs the Council:

'to work with the Children's Services Commissioner in establishing the children's services trust and transferring operational control in relation to children's services from the Council to the trust to deliver high quality children's social care functions. This should be completed within a reasonable timeframe'.

- 2.2** An updated Direction will be issued by the DfE immediately prior to the establishment of the Children's Trust to take into account the implementation of the contractual arrangement between the Council and the Children's Trust. In this report (unless it is stated to the contrary) references to "Direction" mean the Direction of 9th February 2022.
- 2.3** The Department for Education and the Council agreed a Memorandum of Understanding (MoU) which set out the anticipated implementation of the Direction. The MoU provided a blueprint for how the Council will implement the Direction arrangements, and formed an initial basis for the development of the Service Delivery Contract (SDC). The MoU provisions have been set out in a previous report to the Executive dated 7 June 2022.

- 2.4 The Children's Trust has been established as a wholly owned company Limited by guarantee and registered with Companies House. The Children's Trust will discharge the Council's children's social care operational functions on its behalf and in line with terms that will be set out in a Service Delivery Contract to be entered into with the Council, statutory responsibility for Children's Services remains with the Council. The resultant model is that of a collaborative council-owned trust.

3.0 LEGAL ARRANGEMENTS

- 3.1 The statutory framework for the establishment of the Children's Trust is set out in the Children and Young Persons Act 2008, which provided legal authority for the issue by the Secretary of State for Education of the February 2022 Revised Statutory Direction.
- 3.2 The establishment of the Children's Trust as a company limited by guarantee will require the Council to make formal arrangements within the company's constitution to enable it to operate with operational autonomy from the Council, with strategic and financial governance arrangements remaining as a collaborative working partnership.
- 3.3 The Council remains the lawful accountable body for the effective delivery of services for children, for promoting their welfare and wellbeing, and for improving outcomes. The Council is progressing the establishment of the Children's Trust, and contractual commissioning and service support arrangements which will facilitate the discharge by the Children's Trust of a wide range of children's social care functions including key functions under the Children Act 1989 in line with the Direction.
- 3.4 The Bradford Safeguarding Partnership retains its role in ensuring the effectiveness of co-operation between agencies in safeguarding and promoting the welfare of children and young people.
- 3.5 The proposed governance arrangements relating to the Council and Trust interaction for the Service Delivery Contract (SDC) are set out in draft in Appendix 1 and have been developed in line with the principles set out in the MoU. As the MoU is not a legally binding document, on the establishment of the Children's Trust the MoU will 'fall away'.
- 3.6 The continuing relationship between the Council and the Secretary of State in the delivery of Children's social care services will be described in a

Governance Side Agreement (GSA) between the DfE and the Council. The GSA will automatically terminate on the expiry of the Intervention Period.

- 3.7 The GSA sets out how the reserved matters will be operated during the intervention period, both with regard to the service contract for the delivery of the social care services, and how the Council and Secretary of State will approach the corporate governance of the Children's Trust company.
- Reserved powers continue during the intervention period and will include rights that will relate to the appointments of the Chair and the Chief Executive, the Council's "reserved matters" under the Articles of Association and also to specific reserved matters arising under the Service Delivery Contract between the Children's Trust and the Council.
- Discussions on the GSA have started and continue with no major points of difference.

4.0 PROGRESS MADE TO DATE

- 4.1 A robust programme was set up to deliver the Children's Trust, with activities arranged into 11 work streams, each with a Council and Trust lead and a work stream plan. The focus of the plans are on project deliverables that have been identified as critical to the success of establishing the Children's Trust by the 1st April 2023 and co-ordinated by a series of work stream meetings. An operational programme board, supported by PricewaterhouseCoopers LLP (PWC) who are providing programme management support and the provision of Subject Matter Experts with experience of establishing Children's Trust and in relation to ERP systems, their support has been agreed and financed by the DfE. A monthly steering group is chaired by the Associate Commissioner and attended by senior officers from the Council, the Children's Trust and the DfE.

Overall progress to date is on track and in line with the programme plan and a programme rhythm has been established which allows critical oversight from key stakeholders, this is proving effective in monitoring progress and mitigating key risks and issues. The programme is now moving into the mobilisation stage and is finalising the remaining legal and commercial issues.

- 4.2 The Children's Trust has been established with Companies House as a wholly owned company limited by guarantee and it is proposed that the Company will then be registered post 1st April 2023 as a Community Interest Company (CIC).

The Children's Trust is now formally named and registered as "The Bradford Children and Families Trust" (BCTF) with the relevant domain name secured. Branding and logo work has been completed.

4.3 The Children's Trust Board is now fully established and its committee structure is in place. The Trust Board members are:

- Eileen Milner – Chair of the Board
- Nigel Richardson – Non - Executive Director
- Tracey Dennison – Non - Executive Director
- Anne Longfield – Non - Executive Director
- Stuart Proud – Non - Executive Director
- Darra Singh – Non - Executive Director
- Sarah Muckle – Director of Public Health (Council nominated Non - Executive Director)
- Fazeela Hafejee – AD Adults with disabilities (Council nominated Non - Executive Director)
- Chief Executive: Sally Hodges (interim) Charlotte Ramsden (Perm 20 February 23)

Other Executive officer appointments will be made as the Trust appoints to other key roles.

Key officer permanent appointments have also now been made in the Trust:

- Charlotte Ramsden – Chief Executive
- Julie Crellin – Finance & Resource Director.

4.4 The Children's Trust Scheme of Delegation is in development and work is ongoing between the Children's Trust and Council in relation to contract procedure rules and financial regulations.

4.5 Work continues to progress in relation to Ofsted registration for children's homes, fostering and adoption.

4.6 Good progress is being made in respect of contractual arrangements and legal documentation, with the majority of commercial terms now agreed between the Council and the Children's Trust. It is anticipated that the final outstanding matters will be agreed by the end of February 2023.

4.7 Work continues in relation to staff TUPE and this is on track to be completed in the required timescales. Discussions with staff groups and trade unions are constructive.

4.8 The Trust HQ has been agreed as Sir Henry Mitchell House and work is taking place to ensure occupation in the lead up to the 1st April 2023.

5.0 Finance and Commercial agreement

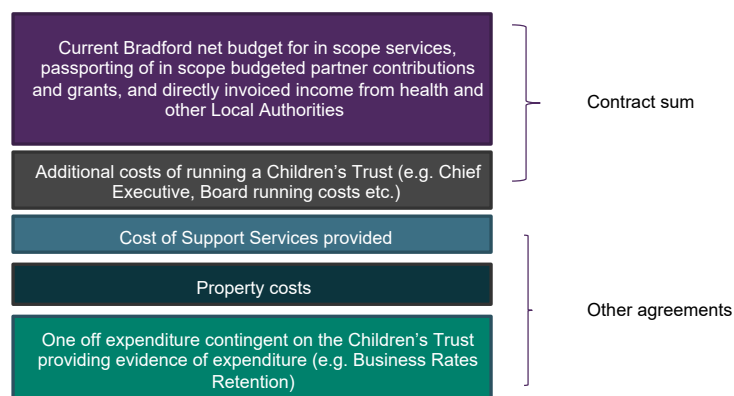
5.1 Finance and commercial arrangements have been identified as a high risk area within the programme of work. It should be noted that this is a common situation when compared with other Children's Trust programmes at a similar timescale.

5.2 All practical financial arrangements (bank account, registrations, insurances, pensions etc.) are at a good state of progress and the principles of how the contract sum will be calculated have been agreed, as set out in the diagram below:

Developing the Contract sum



The Children's Trust budget is made up of the following components:



5.3 There is on-going concern in relation to the cost of establishing the Trust and appropriate commercial arrangements (contract sum) given the rising pressures on Council funding in respect of the cost of living crisis, rising energy and other costs and continuing demand pressures in both Children's and Adult social care which has to be carefully balanced to ensure other services can continue to be delivered effectively to residents across the

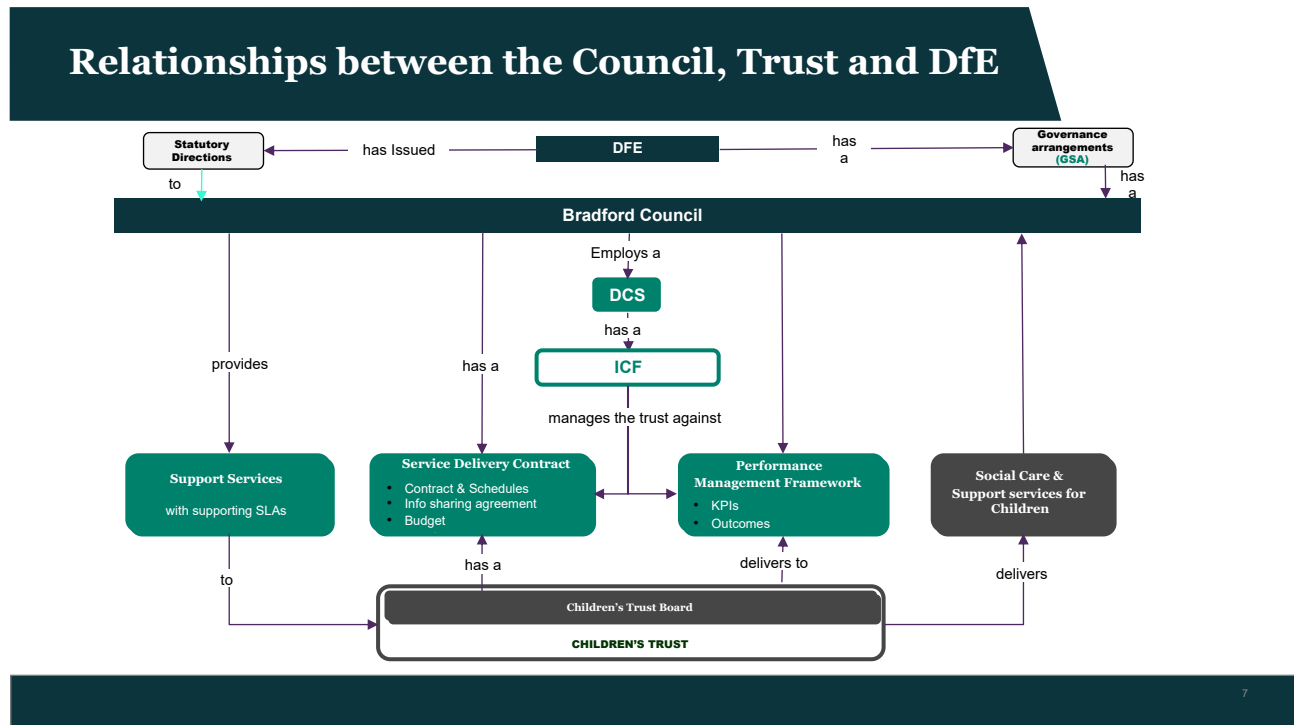
district. Therefore, commercial negotiations continue with the Trust and DfE and supported by colleagues from DLUHC.

- 5.4 These negotiations will continue and will be considered as part of the Councils on-going budget proposals for 23/24.

6 Children's Trust proposed future governance arrangements

- 6.1 The Children's Trust will be a wholly-owned subsidiary company of the Council, with operational independence from the Council in respect of the day-to-day management and performance. The Trust will be overseen, managed and regulated by the Council in line with the contract that is being developed and that will be entered into between the Council and the Trust. The Council will remain the statutory body responsible for children's services and will be the accountable body in relation to Ofsted inspections.

- 6.2 The following diagram sets out the relationships between the Children's Trust, Council and the DfE:



- 6.3 Under the Service Delivery Contract (SDC), the Trust will act as the operational provider and will primarily deliver specified children's social care services for which the Council remains statutorily responsible (the scope of which will be set out in the SDC and related DfE Statutory Directions). The SDC consists of a set of core legal terms and conditions setting out how the provision of the Services will be managed and monitored during the term of the SDC.
- 6.4 There are four fundamental schedules, namely the:
- Services Specification, which details the services to be delivered by the Trust.
 - Governance Arrangements, including joint meetings and other reporting requirements.
 - Performance Framework, which specifies performance measures and associated targets, their reporting frequency and escalation process for when performance issues occur; and,
 - Financial Mechanism, which set out the management of financial arrangements.
- 6.5 These primary schedules are fundamental to governing the relationship between the Council and the Trust, monitoring the activities of the Trust, the management of the financial arrangements and facilitating the Trust's role in the Council's democratic process. The proposed Governance Schedule is set out in draft at Appendix 1, and are subject to final agreement between the Council and the Trust.

7.0 ACTIONS FOR THE NEXT PHASE

The final phase of the Children's Trust development programme has commenced and an update is set out below.

8.0 Planning for mobilisation of the new arrangements

Mobilisation planning needs to include core activities both in the Children's Trust and the Council. For the Council this will include putting in place Intelligent Client / commissioning arrangements to oversee the SDC and to coordinate Trust related activities. The Council will also need to undertake some mobilisation activity for a number of support services, where these are being provided by the Council to the Trust through SLAs. Mobilisation activities for the Trust will include parallel payroll runs, preparation for staff TUPE and oversight of the required changes to the ERP systems.

Mobilisation planning and oversight is being coordinated through the current programme governance arrangements.

9.0 Finalisation of the remaining commercial and legal issues

There are a number of remaining commercial issues relating to the contract arrangements which will continue to be subject to negotiations over the coming weeks.

10.0 Establishment of the commissioning (intelligent client function) in the Council

The establishment of the Children's Trust requires a set of new arrangements, including governance and reporting within the Council. The intelligent client function (ICF) or commissioning function, is responsible for ensuring effective governance in line with agreed governance arrangements, reviewing capacity and demand in the system and strategic alignment. The aims of the ICF is to ensure the delivery of required outcomes as well as providing an understanding of the service areas and subject matter expertise to the Council. Work is currently taking place to assess best options and approaches to fulfil these functions

11.0 FINANCIAL & RESOURCE APPRAISAL

The Council budget for 2023/24 includes £170m for the provision of Children's Services. Discussions continue with the Trust and the DfE to agree the level of and the funding for the contract sum.

12.0 RISK MANAGEMENT AND GOVERNANCE ISSUES

12.1 The main risk management and governance issues, and their current mitigations are identified below at paragraphs 12.2 to 12.6.

12.2 **Slippage:** PWC will play a critical role in managing the overall programme and applying their specific skills, knowledge and expertise in managing complex programmes and establishing trusts/company arrangements

12.3 **Appointments to Critical roles in the Children's Trust:** the appointment of the right people to both critical roles within the Trust and as specialist advisors to it, will be essential for the success of the Trust in delivering

Children's Services improvement. Recruitment processes have been established in order to attract and appoint the right candidate.

12.4 **Workforce stability:** over the past 3-years there has been significant volatility and turnover of employees and agency workers within the service. Targeted recruitment campaigns are planned which will emphasise the opportunities within a new Children's Trust, these have already been established and progressed with success within the Council.

12.5 **Slippage in improvement programme:** the establishment of the Children's Trust may potentially divert attention and resource away from delivery of the improvement programme. Separate roles and responsibilities have been established to focus upon business as usual; the improvement plan and establishing the Trust to mitigate this risk.

12.6 **Interim leadership in service:** the current leadership team has a number of interims, although recruitment has already commenced to secure permanent resource.

13.0 **LEGAL APPRAISAL**

13.1 This report summarises the legal arrangements for the Children's Trust and outlines progress for the delivery of the relevant Council's child-centred statutory functions. The legal arrangements include:

- Creation of the new Children's Trust as a company limited by guarantee that will be wholly owned by the Council;
- Provision of an effective corporate governance structure to ensure governance of its activities by both the Council and DfE;
- Provision of a contractual commissioning framework enabling delivery by the Children's Trust of their responsible services and the necessary corporate support from the Council's resources to enable the Trust to effectively undertake this role.
- The transfer to the Trust of the employment contracts of appropriate Council staff under the provisions of TUPE
- Virement of the Council's current relevant supplier contracts to the Children's Trust
- The grant of any leases and tenancies of properties required to enable delivery of the transferred services.

13.2 The proposed governance arrangements for the Trust in respect of the contractual arrangements are set out in draft at Appendix 1 of this report and comply with relevant local government statutory requirements constitution and general administrative law principle's such as transparency.

13.3 Additionally, this report requests delegations to officers to approve the adoption of the new Articles of Association, which are near agreement, and sign any required written resolution which will enable adoption of the Articles of Association for the Children's Trust.

14.0 OTHER IMPLICATIONS

15.0 SUSTAINABILITY IMPLICATIONS

There are no direct implications from this report.

16.0 GREENHOUSE GAS EMISSIONS IMPACTS

There are no direct implications from this report.

17.0 COMMUNITY SAFETY IMPLICATIONS

There are no direct implications from this report.

18.0 HUMAN RIGHTS ACT

There are no direct implications at this time. The Convention rights of the children, their parents and their carers in relation to the services to be provided to them by the Children's Trust will be protected in all the arrangements described in this report. Compliance with the United Nations Convention on the Rights of the Child (as a reference document for assessment of compliance with the Human Rights Convention) will be kept under review by the Council during the development process, and consideration will also be given to the need for any formal assessment such as the Child Rights Impact Assessment proposed by UNICEF.

19.0 TRADE UNION

The Trade Unions have been consulted as part of considerations regarding the potential scope of services to be transferred to the Children's Trust. A series of regular meetings have taken place and formal consultation is due to complete.

20.0 WARD IMPLICATIONS

There are no direct implications from this report.

21.0 IMPLICATIONS FOR CORPORATE PARENTING

There are no direct implications from this report. Corporate Parenting issues will be subject of specific arrangements between the Council and the Children's Company.

22.0 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

There are no direct implications from this report. A privacy impact statement will be undertaken as part of the arrangements to establish the Children's Trust

23.0 NOT FOR PUBLICATION DOCUMENTS

None

24.0 OPTIONS

24.1 This report is an update further to that agreed by the Executive on 7 June 2022 where the options were considered.

25.0 RECOMMENDATIONS

Executive are requested to:

- Note the update report and note the progress undertaken to date.

- Delegate to the Chief Executive in consultation with the Leader and the Portfolio Holder for Children and Families authority to take all steps to enable the Council to enter into the Service Delivery Contract and the Support Services Agreements, leases and all necessary associated agreements to enable the establishment of the Bradford Children and Families Trust and commence of the delivery of services.
- Delegate to the Chief Executive in consultation with the Leader and the Portfolio Holder for Children and Families authority to approve the adoption of the new Articles of Association and sign any required written resolution.

26.0 APPENDICES

Appendix 1: Draft proposed Trust Governance arrangements

27.0 BACKGROUND DOCUMENTS

7 June 2022 Executive report – Bradford Childrens Trust