



Doncaster Council

Report

To the Chair and Members of
Cabinet

Date: 12 March 2019

TO RECONFIGURE THE DONCASTER CHILDREN'S TRUST AS AN ARMS LENGTH MANAGEMENT COMPANY

Relevant Cabinet Member(s)	Wards Affected	Key Decision
Councillor Nuala Fennelly, Cabinet Member	All	Yes

EXECUTIVE SUMMARY

1. This paper outlines the proposal to change the governance of Doncaster Children's Services Trust (DCST) to an Arm's Length Management Company wholly owned by Doncaster Council and amend the existing contract to deliver specified children's social care services functions on behalf of the Council.
2. Following a review of the governance arrangements conducted by the Department for Education parties have reached a consensus over the options to change the company structure, which are detailed in this paper.

EXEMPT REPORT

3. The report does not contain exempt information.

RECOMMENDATIONS

4. It is recommended that the contents of this report are noted and that the following are recognised and agreed to:
 - a. Change the current Articles of Association of Doncaster Care Services Trust (DCST) and create an Arm's Length Management Company.
 - b. Revise the underpinning contract to support provision of a sustainable social care offer.
 - c. Delegate to Director of Corporate Resources and Director of People in consultation with the Cabinet Member for Children and Young People the final amendments to the contract prior to contract sign off.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

5. The OFSTED re-inspection of services for children in need of help and protection, children looked after and care leavers in November 2017 reported Children's Services in Doncaster are 'Good'. Children and young people are reported to be safe. The quality of social work is good and is supported by a well-embedded model of social work practice.
6. The Trust continues its continuous improvement programme with plans in place to increase quality and performance on the steps towards delivering an outstanding service.
7. As a strategic partner, Doncaster Children's Services Trust jointly develops the necessary systems leadership and further opportunities for innovative practice to continue to improve outcomes for Doncaster children, young people, and their families.
8. This organisational structural change brings closer alliances between DCST and the Council at a point where it can build on the mutual strengths of each organisation, examine where efficiencies made possible at the same time as provide the focus on achieving the best outcomes for children and families.

BACKGROUND

9. The Secretary of State Direction of November 2013 requiring the Council to contract with Doncaster Children's Services Trust for the provision of its Children's safeguarding services remains in place.
10. Due to the Ofsted judgement of inadequate at the inspection of services for children in need of help and protection, children looked after and care leavers in 2013, The Secretary of State for Education commissioned a review of Children's Services in Doncaster and subsequently on the 15th of July, issued a Direction requiring the Council to transfer its social care services to an independent Trust. In September 2013 it was agreed for the Council to retain its statutory duty in respect of children's social care services and to commission these services to a new establishment - Doncaster Children's Services Trust.
11. A Memorandum of Understanding was drawn up between the Council and the Department for Education to steer the implementation of the Doncaster Trust in November 2013 setting out the governance requirements of the Board and detailing functions to transfer to DCST.
12. Doncaster Children's Services Trust became operational on 1st October 2014 as a company limited by guarantee, an autonomous organisation, and independent of the Council with the responsibility for the day to day delivery of children's social care services on behalf of the Council.
13. Doncaster Children's Services Trust achieved a 'Good' judgement at the Ofsted re-inspection of services for children in need of help and protection, children looked after and care leavers took place in November 2017. Ofsted reported that since the last inspection, when services were judged to be inadequate, there have been significant improvements in the quality of support for children in Doncaster. In 2018 DCST has received Ofsted Outstanding for two Children's Homes and for its Fostering and Adoption services.

14. The focused Visit for Children with Disabilities report in January 2019 stated that Ofsted “continues to see Doncaster Council and DCST focusing highly effectively on improving its services. They have a challenging ambition of being recognised as outstanding by the next Full Ofsted inspection”.
15. Despite the ‘Good’ Ofsted judgement the 2016/17 Annual Contract Review of the contract highlighted a significant revenue funding gap. The Trust is not alone in these challenges and it has been widely reported that Children’s Services across the country and the South Yorkshire sub-region have been experiencing similar cost pressures. Significant measures have been taken to arrest this increase and Children in Care numbers reduced to 559 in December 2018 down from an all-time high in September 2018 of 593.
16. In January 2018 a core strategic group meeting of Senior Officers was established to review and progress a sustainable business model and associated company structure. These matters were then picked up as part of the Department for Education review of the governance arrangements of DCST from August 2018. The review sought to gain assurance about whether a new delivery model can continue delivering sustained improvement and positive outcomes for children and young people.
17. In November 2018 recommendations were provided to the Parliamentary Under-Secretary of State for Children and Families Nadhim Zahawi MP. These include changes to the Articles of Association, contract and governance side agreement and to confirm to that any revised arrangements retain the operational independence of the Trust.
18. The proposals contained within this report will be considered by the Secretary of State consequently are subject to that confirmation and ratification.
19. The aspiration of the parties is for the new arrangements to be in place by 1 April 2019.

KEY PROPOSAL

Articles of Association

Existing Company Arrangements

20. DCST was originally established as a Company Limited by Guarantee which is owned by its Members. Each of the Directors is classed as a Member and has personal responsibility for the operation of the Company and for any financial losses which the Company may sustain. Members are appointed by the Secretary of State (acting through the DCST Chair). The Council may recommend two members, whilst other members were recruited from Team Doncaster partners and national social care figures.
21. DCST, DMBC and DfE have agreed that the current board structure be revised, and a smaller, more focused board is proposed with recruitment of board members designed to add particular areas of challenge to the governance. Three senior DCST executives will be represented on the board, together with two staff representatives (as observers), two DMBC appointed non- executive Directors and a further two non- executive Directors appointed by the Chair to supplement the organisation’s governance.

Proposed Company Arrangements

22. DCST will remain a Company Limited by Guarantee but will be wholly owned by DMBC. The Company will be structured to meet the “so called” *Teckal exemption*. This will mean that the Council will be able to award DCST a longer contract for the provision of services without the need for a further procurement exercise. Without these changes, at such point as the Secretary of State Direction is lifted, the current contract with DCST will cease and the services would either revert to the Council or require a fresh procurement exercise. These changes mean that DCST may plan for a longer term future and thus staff and services have certainty going forward.

Service Contract

23. The original contract signed in 2014 is being updated to reflect changes in law and practice and to reflect the changes in the relationship between the Council and DCST. As set out in the Financial Implications below, the changes in ownership shift the financial relationship between the parties and the updated contract reflects this.
24. The proposed service contract will be for an initial 5 year term with two potential two-year extensions.

OPTIONS CONSIDERED

25. Options were considered prior to the DfE’s review. The recommendation for the future delivery model were supported by Parliamentary Under-Secretary of State for Children and Families and confirmed in writing to the council on the 17 December 2018. This report outlines the Council’s commitment and execution of the Parliamentary Under-Secretary of State for Children and Families expectations.

REASONS FOR RECOMMENDED OPTION

26. The approach being outlined satisfies the DfE expectations to maintain a children’s social care services delivery model which is capable of continuing to deliver sustained improvement while maintaining operational independence.

IMPACT ON THE COUNCIL’S KEY OUTCOMES

27.

	Outcomes	Implications
	<p>Doncaster Working: Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"> • Better access to good fulfilling work • Doncaster businesses are supported to flourish • Inward Investment 	<p>Further development of a sustainable, professional workforce to ensure continuity of a quality service delivery</p> <p>Investment in local workforce to decrease reliance on agency workers</p>
	<p>Doncaster Living: Our vision is for Doncaster’s people to live in a borough</p>	<p>Strengthened working relationships and support for</p>

	<p>that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> • The town centres are the beating heart of Doncaster • More people can live in a good quality, affordable home • Healthy and Vibrant Communities through Physical Activity and Sport • Everyone takes responsibility for keeping Doncaster Clean • Building on our cultural, artistic and sporting heritage 	<p>organisations working with young people will ensure a high quality delivery offer where young people enjoy spending time</p>
	<p>Doncaster Learning: Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> • Every child has life-changing learning experiences within and beyond school • Many more great teachers work in Doncaster Schools that are good or better • Learning in Doncaster prepares young people for the world of work 	<p>Increased opportunities for life-changing experiences through the increase in the range and availability of opportunities locally for young people</p>
	<p>Doncaster Caring: Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> • Children have the best start in life • Vulnerable families and individuals have support from someone they trust • Older people can live well and independently in their own homes 	<p>Doncaster children will be safe and protected from the risk of harm by strengthened safeguarding policies and procedures which ensures timely and targeted support for the most vulnerable families</p>
	<p>Connected Council:</p> <ul style="list-style-type: none"> • A modern, efficient and flexible workforce • Modern, accessible customer interactions • Operating within our resources and delivering value for money • A co-ordinated, whole person, whole life focus on the needs and aspirations of residents • Building community resilience and self-reliance by connecting community assets and strengths • Working with our partners and residents to provide effective leadership and governance 	<p>Strengthened working relationships and partnership with Team Doncaster</p> <p>Easily accessible information on pathways and availability on services to families and opportunities for families to thrive and feel connected to their local community</p>

RISKS AND ASSUMPTIONS

- 28. Risk 1: Strategic Relationship** –The movement to a new structure could potentially impact upon joint working relationships.
Mitigation – There is a desire in both organisations to continue to develop joint working relationships, and forums in which to do this.
- 29. Risk 2: Financial** – There is a cost pressure to the Trust budget that has a real impact upon the Council finances. If this continues moving forward there is an on-going cost pressure to the Council.
Mitigation – Both the Council and the Trust are committed to reducing the cost pressures through a number of joint initiatives. This includes out of area placements, reducing the number in the care system and shared resources/costs.
- 30. Risk 3: Workforce and Culture** – There may be a legacy risk for some employees of the Trust who will now be more closely aligned to the Council. This may demotivate some staff who feel they are going back to the Council.
Mitigation – Children and Young People services at the Council are in a much different place to where they were at the time of transfer. Significant improvements have been made and the vast majority of staff are aware of this. If any staff raise any concerns then jointly these can be allayed.
- 31. Risk 4: Reputational Risk** – If the Trust fail to achieve the required levels of performance and quality there is a reputational risk to the Council.
Mitigation – The Trust were rated as good in Nov 2017 and have a number of other good and/or outstanding judgements. In addition the Council and Trust will work in partnership to develop key performance and quality indicators that will allow effective monitoring. This will ensure any under-performance is identified early.

LEGAL IMPLICATIONS Name: SRF date: 05/02/19

- 32.** In originally establishing Doncaster Childrens Services Trust, (“DCST”), the Secretary of State for Education used legal powers under Section 497A(4) of the Education Act 1996 to issue a Direction instructing the Council to transfer the delivery of children’s safeguarding functions to DCST. That Direction still exists until such time as the Secretary of State may revoke it and the changes envisioned by this report are consistent with the terms of that Direction.
- 33.** This report proposes that the ownership of DCST will transfer to the Council and new Company Articles and Memorandum of Association will be agreed which will reflect the new ownership of DCST. DCST will continue to provide the services. The Services contract between DCST and the Council is also subject to amendment in order that it reflects changes in law and practice which have occurred since the contract with DCST was originally established.
- 34.** The ownership changes will have no effect on staffing structures and no transfer under TUPE will occur. DCST remains the employer of the staff providing the services and remains liable for their pension provision.
- 35.** The Services currently carried out by DCST are caught by the EU Procurement Regulations and would normally be awarded following a full EU Procurement exercise. The Secretary of State Direction meant that Procurement was not required, however the contract was originally drafted so that contract with DCST

would terminate at any point that the Direction was lifted. The amended contract states that in the event of the Direction being lifted DCST will now continue to provide the services and the contract with DCST will continue. The changes to the ownership of DCST will ensure that DCST will meet the “Teckal” exemption for the purposes of the Public Contracts Regulations 2015 (the “Regulations”) and therefore the Council will be permitted to award work and services to DCST without the need to conduct a procurement exercise in accordance with the Regulations.

- 36.** As before, despite the Secretary of State Direction, the legal powers and duties in relation to safeguarding children remain with the Council and court proceedings will continue to be brought in the name of the Council. Ultimately the financial risk associated with these services also sits with the Council via its legal duties
- 37.** Doncaster Children’s Services Trust Limited (“the Trust”) is a Company Limited by Guarantee. The Council may appoint 2 Directors to the Company & must be consulted with in relation to the appointment of both the Chair and the Chief Executive of the Trust. Directors of the Trust will be registered at Companies House and are legally obliged under the Companies Act 2006 to act in the best interest of the Company (the Trust). The Council will need to carefully consider who to appoint to these positions given that there is a possibility of conflict between the day-to-day Council roles of such appropriately qualified candidates and their required duties as a Trust Director.
- 38.** DCST will continue to be a Contracting Authority for the purpose of the European Procurement Regulations and so will be expected to procure any goods and services it buys in the same manner as the Council does.

39. Contract Provisions

As set out in the draft contract, the Trust will provide the services and in exchange the Council will make payments to the Trust in accordance with an agreed payments profile.

- 40.** The Trust is restricted from assigning the services to another provider. Although the use of third party providers is acceptable, major sub-contracting arrangements must be in consultation with the Council.

41. Contract Monitoring

The Contract requires the Trust to provide the Council with monthly monitoring reports showing achievements against the performance levels set out in the Contract. There will also be an Annual Review process carried out each Contract Year to assess whether the Agreement is operating in the most satisfactory manner and whether the Services are being delivered to the standard set out in the Contract. The amended contract also requires “open-book accounting” and provides the Council with increased visibility on the financial position of DCST.

42. Contract Term, Termination & Step In

The contract with the Trust is for an initial period of 5 years with two further two year extensions. As currently drafted at the time of writing, the Council may terminate the contract (having first received the consent of the Secretary of State) in the instance of either “Consistent Failure” (the issuing of 3 rectification notices during a rolling 12 month period) or “Catastrophic Failure” (serious failure to deliver services which either breaches the Councils Statutory duties or in the Councils reasonable opinion results in increased risk of harm to Children and young people in Doncaster). At the end of the contract term, the Council will need to either arrange alternative provision

or return the Services to the Council. The staff employed by the Trust at that point will be subject to the provisions of TUPE and if they meet the TUPE test will transfer accordingly.

FINANCIAL IMPLICATIONS Officer Initials...AB Date 06/02/19

43. The Trust is a significant budgetary pressure to the Council. The budget for 2019/20 is to be rebased to £53.3m, an increase of £6.735m, this includes the effect of increased demand/complexity of cases that will continue into 2019/20, and is projected to support an average of 1,216 children in the care of others. The increased budget also includes £250k for additional resources to manage Special Guardianship Orders (SGOs). The increased budget reflects the national position where Children's Services across the country are experiencing similar cost pressures. It is still subject to formal agreement by the Council with the Cabinet meeting planned for 12th February 2019 and final Council approval on 4th March 2019.
44. The Council and the Trust are committed to reducing the cost pressures. Collaborative joint work will continue to be undertaken to understand, forecast and manage the demand. A Future Placement Needs Strategy group with members from the Council, Doncaster Children's Services Trust and Doncaster CCG has commenced to consider what joint commissioning work and decisions are needed in regards to the service provision that is required in Doncaster moving forward to meet the needs and complexities of the current and future children in the system. The group are aiming to have recommendations by the end of February 2019. Additionally, joint work is progressing on strengthening collective commissioning arrangements to support improved care outcomes and better value for money.
45. The change in governance arrangements will convert the Trust from its current form of being owned by its members to an Arm's Length Management Company wholly owned by Doncaster Council, which will be fully responsible for the company's costs. The contract between the Trust and the Council has been updated to reflect the change in ownership.

HUMAN RESOURCES IMPLICATIONS Officer Initials...AT..... Date: 08/02/19

46. There are no Human Resources Implications.

TECHNOLOGY IMPLICATIONS Officer Initials: AM... Date: 11/02/19

47. There are no technology implications, as the current arrangements will continue.

HEALTH IMPLICATIONS: Officer Initials: CH..... Date: 11/02/19

48. If a child is known to social services we know that they are at greater risk of poor health and wellbeing outcomes. Any changes to the governance structure of the Children's Care Trust should try to ensure minimal disruption to front line service delivery and impact on young people to ensure risk to those children and young people are not increased.

EQUALITY IMPLICATIONS Officer Initials: DH... Date: 11/02/19

49. There are no direct equality implications arising from this report.

CONSULTATION

50. These organisational changes arise from the DfE review and are intended to strengthen arrangements for children and families. Consultation has taken place with existing DCST board members however as there are no direct changes to service delivery this hasn't been extended to children and families in receipt of services.

BACKGROUND PAPERS

Previously presented reports include:

November 2013 Cabinet report [Memorandum of Understanding November 2013.pdf](#)

February 2014 Cabinet report [Services to be transferred](#)

April 2014 Cabinet Report [April 2014 Project Plan doc.pdf](#)

July 2014 Cabinet Report [4148 DCST Progress Report 2 July 2014.htm](#)

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