

CABINET
15 NOVEMBER 2018**DEVELOPMENT OF WORCESTERSHIRE CHILDREN FIRST**

Relevant Cabinet Members

Mr A C Roberts

Mr M J Hart

Relevant Officer

Chief Executive

Recommendation

1. **The Cabinet Member with Responsibility for Children and Families recommends that Cabinet:**
 - (a) **approves the proposed changes to the reserved matters to include in the Articles of Association for Worcestershire Children First;**
 - (b) **subject to agreement from the Minister, notes the proposed changes to broaden the scope of services and responsibility transferred to Worcestershire Children First;**
 - (c) **notes the programme implications related to broadening the scope of responsibility transferred to Worcestershire Children First;**
 - (d) **authorises the Chief Executive, in consultation with the DfE appointed Children's Commissioner, Leader of the Council and Cabinet Member with Responsibility for Children and Families, to re-profile and implement a revised programme plan; and**
 - (e) **agrees to receive a further report in Spring 2019 on the final decision around scope and transfer of services to Worcestershire Children First.**

Background

2. In March 2018, Worcestershire County Council's (WCC) Cabinet agreed to the development of a wholly owned council company as the chosen delivery model to deliver children's social care. This decision was in direct response to the statutory direction published on the 19 September 2017. The aim being at the point of transferring services into the Company, the Service will be performing well and the Company will have a positive platform in which to sustain the improvement as well as further improve outcomes for children and young people.

3. The decision taken in March 2018 was informed by a full business case which followed the 'Five Case Model' contained within HM Treasury's guidance. The business

case was tailored to the timescale and resource available in WCC and covered the following key components:

- The **strategic case** - this sets out the case for change, together with the supporting investment objectives for the arrangement
- The **economic case** - this demonstrates that the organisation has selected the most economically advantageous offer, which best meets the existing and future needs of the service and optimises value for money
- The **commercial case** - this sets out the content of the proposed 'deal', i.e. that the alternative delivery model is commercially feasible for WCC to implement
- The **financial case**– this confirms funding arrangements, affordability and the effect on the balance sheet of the organisation, and
- The **management case**– this specifies the plans for the successful delivery of the programme of work to cost, time and quality.

4. From April 2018, the programme entered the implementation phase and a detailed programme plan was developed. Decisions since then include Cabinet agreeing the name and legal form of the Company in July 2018 (the Company has been registered as Worcestershire Children First and a company limited by guarantee), along with the Parliamentary Under Secretary of State for Children and Families agreeing to extend the implementation programme and move the formal launch of Worcestershire Children First to the 1 October 2019. This now allows the better management and predicted overload on social work business throughout the early part of 2019 and will allow for a proper shadow period from 1 April 2019.

Reserved Matters for Worcestershire County Council

5. As a wholly owned council company, WCC retains a number of reserved matters that will require Worcestershire Children First to seek approval from WCC prior to implementation. These reserved matters were outlined initially in the business case and have been used to develop the Articles of Association of the new company. As part of the development of the Articles, it is recommended that Cabinet approves the consolidated list of reserved matters outlined below. (See the Appendix for the original list).

The following matters will require prior written approval from WCC pursuant to the Articles:

- (a) approving or amending the Business Plan or Interim Business Plan;
- (b) amending the Articles;
- (c) agreeing any changes to the membership of the Company or any changes to the company name, trading name or registered office of the Company or physically relocating the headquarters of the Company;
- (d) the appointment and removal of the executive directors and Independent Non-Executive Directors and the terms of such appointments or any changes to the terms of such appointments;
- (e) commencing the voluntary winding-up or dissolution or appointing any liquidator, administrator or administrative receiver of the Company or any of its assets (save

where the Company is insolvent, or where any action is necessary for the directors to comply with their statutory duties or to avoid potential civil or criminal liability);

- (f) forming any legal entity or undertaking in which the Company would be a member, shareholder or hold any analogous position in any jurisdiction of the Company or acquiring shares in any other company or participating in any partnership or joint venture, whether incorporated or not or amalgamating or merging the Company with any other company or business undertaking;
- (g) any changes to the terms and conditions of employment of any of the Company's employees including agreeing terms that fall outside of the Council's remuneration policy;
- (h) selling or disposing of in any way whatsoever, any part of the business (including assets) of the Company;
- (i) dealing with any surpluses of the Company, other than those surpluses which are agreed, pursuant to the Services Delivery Contract, shall be retained by the Company;
- (j) the Company giving any guarantee, suretyship or indemnity outside the ordinary course of its business to secure the liabilities of any person or assume the obligations of any person (other than the Company or a wholly owned subsidiary of the Company) or the Company creating any encumbrance over the whole or a significant part of its undertaking or assets; and
- (k) the Company commencing, settling or defending any significant claim, proceedings or other litigation brought by or against it, except where they are a part of the Company's ordinary course of business and/or operations and to the extent that any settlement or determination in respect of such claims proceedings or other litigation is reasonably likely to exceed £[TBC].

The following matters will require prior written approval from WCC pursuant to the Articles to the extent that they fall outside of the approved Business Plan or Interim Business Plan of the Company:

- (a) the Company's entry into any other contractual arrangement with WCC for the provision of other services to WCC following the Service Commencement Date;
- (b) approval of all contracts, transactions, borrowing, credit facility, acquisition of any freehold or leasehold interest or licence over land (except where WCC is the seller, lessor or licensor) and investment arrangements (other than trade credit in the ordinary course of business) entered into between the Company and third parties with a capital value greater than £[TBC] or revenue value greater than £[TBC]; and
- (c) carrying out any new business of the Company.

Proposed change in scope for Worcestershire Children First

6. As part of the implementation phase, all aspects of the business case have been reviewed in order to finalise the scope and budget required for the successful delivery of Worcestershire Children First. This review has been carried in context of the wider improvement agenda (e.g. special educational needs and/or disability (SEND) inspection

and improvement plan) for children's services, the change in senior management structure of the County Council and the current financial context of the Council.

7. This has resulted in a recommendation to widen the scope of the functions and services transferring into Worcestershire Children First to include broader children's services. The proposed list of additional functions is listed below:-

- Education Services (including provision planning, accommodation, commissioning and safeguarding advice)
- Early Help Services (including those provided by the Council and not those commissioned by Public Health)
- Commissioning of services for vulnerable children and families
- Commissioning of community health services (subject to agreement from Worcestershire's Clinical Commissioning Groups)
- Virtual School
- Services for children with special educational needs and/or disabilities
- Participation and engagement
- Facilitation of the implementation of Worcestershire's Children and Young People Plan (this Plan is still signed off by the Health and Wellbeing Board and Full Council).

8. Services commissioned by Public Health (i.e. 0-19 Services) that are outside of the proposed wider scope will remain in their current arrangements. The organisation of these services will be considered as part of the wider business case and remodelling work across the Council and planned commissioning activity.

9. If the scope of services is broadened a reassessment of support services needed for the company would be required. Further corporate support service staff who are dedicated to Education, Early Help and SEND would likely be in scope for transfer to the Company or form part of a support service agreement.

10. Widening the scope of functions transferred into Worcestershire Children First has a number of benefits:

- Firstly, and most importantly, it strengthens the focus on improving outcomes for children and young people as Worcestershire Children First's Board of Directors will have a single unwavering focus on children and young people. With a broader scope, this focus will cover the full range of services for children and young people thus supporting a more inclusive and integrated approach. There will also be opportunities, which otherwise would not have existed, to integrate service provision together, such as services for children with SEND
- Broadening the scope of responsibilities for Worcestershire Children First will also keep the focus on improvement in one place as both Children's Social Care and services for children and young people with SEND are subject to Ofsted monitored improvement plans. The operational implementation of the improvement plans will be the responsibility of the Company and will be led by the Board of Directors and Senior Leadership Team
- There are also financial benefits to widening the scope of functions transferred given the opportunity to integrate service provision. There are also economies of scale to be made in provision of support/back office services and the Company's executive

leadership team. However, these benefit, whilst important, are considered secondary to those that focus on improving outcomes for children and young people.

Programme Implications

11. The review of the business case has highlighted the implementation implications of broadening the scope of responsibilities for Worcestershire Children First. The current vision, mission, values and outcomes identified for Worcestershire Children First are based on the scope of children's social care only. These will need to be updated following the approval to widening the scope. In addition the inclusion of wider children's services improvement plans (e.g. SEND Written Statement of Action and Troubled Families Recovery Plan) will mean that the success measures of the Company will also need to be updated.

12. The Business case proposed a Board make-up of 9 members. Consideration will need to be given to the size of the Board and whether to increase the number to include the Executive Director who will take responsibility for the additional functions placed in scope.

13. An increase in membership of the Board would not represent an increase in Board costs as the additional Executive Director post is likely to be an existing member of staff. Given the proposal to broaden the scope, consideration also needs to be given around the skills and experience of the three Independent Non-Executive Directors as it may be favourable that one has experience of the education sector.

14. A number of reserved matters are included in the Memorandum of Understanding, where the DfE have consent or consultation rights during the period of intervention. With the broadening of scope, the majority of reserved matters would remain. However, there are a number of reserved matters which may require confirmation from the DfE that will be considered once the scope has been agreed.

15. As part of the development of Worcestershire Children First, the Council is developing a Commissioning and Partnership Management Function (otherwise referred to as the Client Function) which will perform a 'strategic commissioning and intelligence' function setting the expectation of the Company, monitor the Company's performance against the Service Delivery Contract, and ensure the Council is performing its duties and obligations under the Contract. Currently this function has been built for Children's Social Care only and will need to expand in remit to cover the wider aspects of children's services included in scope.

16. The broadening of scope will also require a reassessment of support service needs against the new services. It is likely that further corporate support service staff who are dedicated to Education, Early Help and SEND may become in scope for transfer to the Company or form part of a support service agreement. It is also likely the Support Service Agreement content would grow in volume; however, it is unlikely that many new support services would need to be bought back. Transactional services such as Finance, HR and IT are the most obvious support service agreements that would grow in volume.

17. The current support service agreements are due to be draft in full by December 2018 ready for negotiation with the Company in January 2018. With the new scope of services

the timescales for negotiations will need to be pushed back/extended by one or two months to allow for extra work to be completed.

18. The approved Business Case assumed that the headquarters of the Company would be within Wildwood, with a number of locality bases. This was mapped against Children's Social Care staff only. With a broader scope of services, a number of further staff (to be determined) would require desks at the Company headquarters if it continues to be assumed that the majority of Company staff will be in one main building. Further usage of Wildwood, as well as exploring the option of multiple Company bases, will need to be explored.

19. The communications and engagement plan will be reviewed to ensure that all stakeholders, including those impacted by the change in scope, are informed and engaged appropriately as the implementation of Worcestershire Children First progresses.

20. As a result of the scope change, the Programme will require approximately 2-3 months of further design work to incorporate the new scope of services if they are approved. The major areas this would impact are:

- Negotiations are currently due to commence on the 26 November 2018. These will be pushed back to 28 January 2019
- Shadow period is currently due to commence on the 1 April 2019. The Chairperson and wider Company Board Members would all be appointed by this point meaning the phasing from the 1 April 2019 is likely to grow to a full operation during July 2019 onwards once the Board have tested leadership and governance arrangements
- Development of the budget to be in line with the amended negotiations period, aiming to be signed off by Cabinet (in draft/principle) in May 2019 instead of February 2019. However it is recognised that the budget setting process for the Council is during February, this work needs to align to this as much as possible
- The property is currently due to be ready for move in April 2019. This is currently at risk regardless of the scope change. This will be pushed back to the 1 July 2019.

Legal, Financial and HR Implications

21. The intention is that the Company will remain a wholly owned Council company and it is not expected that the broadening of the scope of the Company's activities will have a direct or material impact on the application of the Teckal exemption pursuant to Regulation 12 of the Public Contracts Regulations 2015 (Regulation 12). The material issue remains that of the activities being undertaken on behalf of the Council and that the various Regulation 12 requirements continue to be met rather than the subject matter of those activities.

22. The proposed broadening of scope would mean there are a number of functions where the formal exercise of statutory discretion (contrasted with the professional work) cannot be delegated by the Council (such as commencement of prosecutions for non-school attendance). Further work will identify what decision-making will be retained in the Council's commissioning unit to ensure compliance with the law.

23. The financial analysis in the business case outlined that there are increased costs in developing and delivering a Company for Children's Social Care. These increased costs relate to one-off implementation costs (currently estimated at £3.15 million) as well as recurrent costs for both the Company and the Council. The recurrent costs to the Company and Council have been reviewed. It is anticipated that these costs will reduce from those included in the original business case – this will be taken into account as part of budget planning for 2019/20.

24. A further recurrent cost to consider is VAT. Pre-business case the DfE committed to covering the costs of irrecoverable VAT that arises as a result of delivering through an Alternative Delivery Model (ADM) rather than the Council, whilst under direction. There was no commitment to covering VAT costs if not under direction

25. At the time of writing the initial business case, the concern was for a potential VAT liability in the post-intervention period, as under VAT rules the activities of the Company would be subject to a welfare exemption and therefore not recoverable to the Company. In effect this would mean that the Company irrecoverable VAT costs would need to be added to the contract price.

26. A new interpretation of VAT rules (not a change to VAT rules) has been agreed by HMRC and the DfE. The new position is that welfare exemption only applies to elements of service 'actively regulated' (i.e. registered) by OFSTED. The activities of the Company therefore fall into two categories – some that are subject to welfare exemption, and others that are not. HMRC retain ability to look at each case on its merits but accept the argument in relation to existing Trusts (and the current plan for Worcestershire) that their primary activity for the Local Authority is assessing needs of children, planning to meet need, and ensuring those needs are met. On that basis, registered services i.e. Adoption/fostering being delivered are incidental. Therefore, the Company can class all services as a single, VATable supply and can therefore invoice the Council at standard rate, recovering the VAT on their purchases.

27. Similarly, the Local Authority can recover the VAT on invoices from the Company. DfE commitment to covering liability for irrecoverable VAT that arises as a result of delivering through an ADM rather than the Council still stands, however, if Worcestershire were to now pursue a model that was different to the previously agreed arrangement, this would require a new discussion with the DfE and HMRC. Whilst this discussion is yet to take place, the Council will proceed on the basis that the Council will be no worse off as a result of any potential change in scope.

28. Where an ADM supplies both welfare services and educational support services and the educational support services form the larger part of the contract between the parties, the HMRC are content that the supply is a single supply of educational support services. This is a standard rated supply by the ADM to the local authority. Where the welfare element is greater than the educational support services, or where it is the only supply, it is necessary to consider what the ADM is actually doing. The exemption from VAT for welfare services in item 9(b) of Group 7 to Schedule 9 of the VAT Act 1994 covers supplies of such services by “a state-regulated private welfare institution or agency”. State regulated means approved, licensed, registered or exempted by any Minister or relevant authority. Ofsted advise that although welfare providers are required to be registered with them, only some of their activities may be regulated.

29. The final budget for the Company will need to include service demand pressures, the cost of the improvement plan, and any additional budget that is attributed to the running and commissioning of the Company. Should the wider scope for the Company be agreed, an urgent review of these demands will be undertaken.

30. With a broader scope of services, the Service Delivery Contract (SDC) will require significant revision together with the Support Services Agreement (SSA) including the legal terms and condition and schedules to these documents. The Council-side lawyers will be required to conduct a number of revisions to the SDC and the SSA as well as facilitate authors to amend their schedules. Whilst the Programme Team are able to conduct some of this work (such as the revisions to the Support Services Agreement Specifications), the lawyers will be required to manage the master documentation and guide the Programme. Therefore, there is likely to be an increase in time and effort required by external legal resources, which may result in increased fees.

31. The broadening of scope will lead to an increase of staff included in the TUPE transfer, subject to consultation. The original number of expected TUPE'd staff in the Business Case was 678FTE for 2018/19. The new number of staff in scope for potential TUPE based on the broadened scope of services is approximately **815FTE**. This includes approximately 33.5FTE allocated to corporate support service provision if the decision to transfer was taken. However, this is likely to increase following a more detailed assessment of corporate support service needs based on the new scope.

32. An actuarial report has been commissioned for the current scope of services. If the broadened scope is approved, a new actuarial report is required based on the new TUPE list. It is unlikely this will have a major impact on pensions options.

33. Based on a broadened scope of services, the baseline budget will increase to include the new scope of services. This must take into account any known savings plans or increases for the next few years, particularly 2019/20, as well as consider mitigations against any current overspend. Work is required by the Finance workstream to re-baseline the budget.

Equality and Diversity Implications, Privacy and Public Health Impact Assessments

34. The Council must, during planning, decision-making and implementation, exercise a proportionate level of due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

35. Having done this, an Equality Relevance Screening has been carried out in respect of these recommendations. It identified that further equality impact analysis and public health impact assessments will be required in respect of Council staff families and the wider community during design and implementation of activity needed to give effect to the recommendations set out in this report.

36. The services and functions being transferred into Worcestershire Children First have the duty to improve outcomes for children and young people, and these outcomes directly or indirectly impact on their health. The Public Health Ring-fenced Grant is being used to support some of these services, specifically some Early Help services, in this context. A full Public Health Impact review will be carried out on services, including evaluation of impact and effectiveness.

Supporting Information

- Appendix – List of Reserved Matters for Worcestershire County Council

Contact Points

County Council Contact Points
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Specific Contact Points for this report
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Background Papers

In the opinion of the proper officer (in this case the Chief Executive) the following are the background papers relating to the subject matter of this report:

Agenda and background papers for the meetings of the Cabinet held on 29 March 2018 and 12 July 2018