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AGENDA ITEM 4

CABINET
12 JULY 2018

THE ESTABLISHMENT OF THE WORCESTERSHIRE WHOLLY OWNED COUNCIL COMPANY FOR CHILDREN'S SOCIAL CARE

Relevant Cabinet Member
Mr A C Roberts

Relevant Officer
Director of Children, Families and Communities

Recommendation

1. **The Cabinet Member with Responsibility for Children and Families recommends that Cabinet:**

a) notes the proposed change in 'go-live' date for the establishment of a Wholly Owned Council Company for Children's Social Care ('the Company') to 1 October 2019 and the high-level overview of the implementation plan;

b) approves the name of the Company as 'Worcestershire Children First';

c) approves the legal form of the Company as outlined in paragraph 21 and endorses its formation; and

d) delegates the development of the Company and its governance arrangements to the Chief Executive, in consultation with the DfE's appointed Children's Commissioner, Leader of the Council and Cabinet Member with Responsibility for Children and Families.

Background

2. On the 29 March 2018, Cabinet agreed to the development of a wholly owned council company to deliver children's social care. The aim being at the point of transferring services into this 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. Following ratification of this decision by the Secretary of State, a revised statutory direction was published on the 25 May 2018 that included an expectation that the Company would go-live on the 1 April 2019.

3. Following Cabinet's decision in March 2018, work commenced on developing a detailed implementation plan for the set up and smooth transition of services to the Company by 1 April 2019. The implementation plan has been overlaid with other service improvement and transformation plans to ascertain the wider impact on children's social

care. This highlighted a significant level of activity throughout December 2018 to July 2019 which creates a critical risk of service failure and/or loss in productivity and improvement in this time. Discussions with the DfE's appointed Children's Commissioner and DfE civil servants have focused on ways of reducing the expected pressure on the business throughout this time. These discussions have concluded in a proposal being taken to the Minister to establish the Company in shadow format by 1 April 2019, with the go-live date moving to the 1 October 2019. This would allow the priority to remain on improving services and outcomes for children and young people. Discussions with the Minister are ongoing and a positive resolution is expected before Government breaks for the summer (24 July).

Implementation: Wholly Owned Council Company

4. Working toward the Council's preferred go-live date of the 1 October 2019, the programme plan has been broken down into three distinct phases:-

- Phase 1: Design and Development (April – March 2019)
- Phase 2: Shadow and Testing (April 2019 – September 2019)
- Phase 3: Operational and Programme Closure (October – December 2019)

Further still, the full range of actions which underpin the completion of key milestones have been categorised into 13 interrelated workstreams as outlined in Appendix 2. The programme plan will be re-worked to the 1 April 2019 if the Minister does not agree to the change of go-live date.

5. A memorandum of understanding is being developed between the DfE and Worcestershire County Council to record the following matters:-

- the establishment of the Company to enable the development and delivery of high quality and innovative children's social care services that meet the requirements of the Directions and the needs of children, young people and their families in Worcestershire

- the overarching agreed principles regarding the proposed:

  i) legal form of the Company;
  ii) corporate governance of the Company; and
  iii) operational framework within which the Company shall operate and be held accountable, which will address key aspects of the proposed Service Delivery Contract, including matters relating to agreeing the Company's proposed budget and the scope of children's social care services that it will be delivering

- the proposed timetable from the signing of the MoU, through to 1 October 2019 (the "**Service Commencement Date**") when the Company will formally commence the performance of the Relevant Functions on behalf of the Council pursuant to the Service Delivery Contract and

- the commitments of each Party in relation to the transition of children's social care and related services to the Company ("**the Programme**") and the processes and the structures that they will put in place to periodically and effectively review, monitor and manage progress in accordance with the agreed timetable.

6. The DfE have agreed to contribute a fixed sum of £3.15million to the set-up/transition costs of the Company. The £3.15m has been negotiated as a fixed sum contribution and would only be reviewed in the light of an exceptional unforeseen change which significantly impacts the scope/cost of ICT and or property requirements.

7. Good progress is being made across all of the 13 workstreams and this includes launching the recruitment campaign for the Company's Chairperson, who will play a pivotal role in the development and implementation of the Company. This role will be a joint Council/DfE appointment and funded by the DfE whilst the Council remains under statutory direction. The campaign for the Chairperson will commence as soon as the Minister confirms the expectations around go-live date. Shortly following this appointment will be the recruitment and confirmation of further Board Members including the senior management roles within the company (Executive Directors) and Council appointed Non-Executive Directors. Progress on the recruitment of Board Members along with a detailed financial assessment of the Company will be included in an update to Cabinet in October 2018. Meanwhile the programme remains on track for completion by the 1 October 2019. Completion is also possible for the 1 April 2019, but with greater risk to service disruption and failure as outlined in paragraph 3 and therefore is not the Council's preferred option.

Company name

8. The Company name is the first impression people will have of the new organisation. It should be appropriate to the services the Company provides and the people it serves and reflect our vision for Worcestershire to be a wonderful place for all children and young people to grow up.

9. The process for developing the name of the Company has included capturing what is important to key stakeholders including staff and children and young people. There have been face to face workshops with social workers, children's social care managers, at schools and importantly with looked after children and care leavers. Desktop research was also undertaken into existing company names and there has been analysis into the online search terms that are currently used for children's social care services in Worcestershire.

10. A shortlist of company names was approved by the ADM Steering Group on 4 June and considered by the ADM Board on 13 June. Further views have since been sought from staff to identify the recommended option.

11. Overwhelmingly the preferred name that staff feel best captures the purpose and values of the company is **'Worcestershire Children First'**. This name has been endorsed by the ADM Board and is recommended to Cabinet for approval in order to begin the process of registering the company with Companies House.

Company Legal Form

12. In accordance with the draft Memorandum of Understanding (**MoU**) with the Secretary of State for Education the Company must be compliant with public procurement law and comply with the "Teckal" exemption in Regulation 12 of the Public Contract Regulations 2015 (the **Regulations**).

13. In setting up the wholly owned council company, advice has been sought from Bevan Brittain (a law firm procured by the Council to lead on the set-up of the company) on the different legal forms for the Company. The advice has concentrated on the most common forms of corporate vehicle considered or established by local authorities which fit within the remit of the Teckal test (as set out below), namely:

- a private company limited by shares (**CLS**);
- a private company limited by guarantee (**CLG**);
- a community interest company limited by shares (**Share CIC**); and
- a community interest company limited by guarantee (**Guarantee CIC**);

14. Less common corporate vehicles (such as community benefit societies or charitable companies) or unincorporated arrangements have not been considered since a contractual arrangement or partnership has already been ruled out.

15. All of the vehicles outlined in paragraph 13 share one feature in common – each one has a separate legal personality independent of its "owner". It may hold assets in its own name and invest funds. It may sue and be sued in its own name and owe liabilities to others on the same basis. The "owner" will benefit from limited liability in its capacity as owner, although the Council will of course owe additional obligations to the Company and to third parties in respect of the vehicle in other capacities (such as funder and provider of support services). It is open to the Council to contractually restrict the vehicle in its business (to what is often called its "objects" or "mission statement") or what it can do (its "powers") but for the purposes of this Paper, we have assumed that there are no restrictions on each vehicle – in terms of what it can own and do – other than restrictions arising under law, the Teckal test set out below and those under the Memorandum of Understanding with the DfE and the Council's Service Delivery Contract.

16. There are many similarities between a CLS, CLG, Share CIC and Guarantee CIC. They each have their own separate legal personality and so can hold assets and enter into contracts independently of their shareholders or members. They can each be wholly owned by the Council as they only require one shareholder or member and are each taxed separately.

17. A CLS has a number of advantages where the company is to be a profit-making company, in particular with shareholders that are equity investors, as it allows the shareholders to receive a dividend in proportion to their shareholding and provides a very flexible method in which to increase and transfer the shareholdings in the company. Given that the company is not to be established as a profit making vehicle, there is little advantage in using a CLS or Share CIC

18. A CLG is typically used as a "not-for-profit" vehicle. The Articles can be drafted in a way which prohibits distributions being made and instead to be directed towards the objects or purpose of the company e.g. in this case, the provision of children's services. The ownership of the company being linked to non-profit distributing membership and not shares with rights to dividends re-confirms this benevolent ethos, which is perceived very favourably when trading with third parties.

19. The Council has the ability to create a community-orientated company with social objects (through drafting in the Articles) of a CLG, without the additional regulation that a CIC brings. It is regulated by Companies House only and not the CIC Regulator as well. It does not have to pass the community benefit test and does not have the duty of

publishing additional documents, as a CIC does (such as the annual community benefit statement). Unlike a CIC, a CLG is not subject to an "asset-lock" and so assets transferred by the Council to the company could be transferred back to the Council at a later date if required. There are no tax advantages applicable to a CIC over a CLG.

20. Given that the Company is to be established for the purpose of providing children's services to the Council and to benefit children in Worcestershire, it is believed that a non-profit distributing vehicle is appropriate over that of a CIC. As the provider of the services could change in the future and assets may need to be transferred back to the Council (or another third party) at some point, it is not recommended establishing a company that is subject to an asset lock. The CLG provides the opportunity to create a non-profit distributing company that is not subject to the regulation or restrictions of the CIC.

21. The options were discussed in detail at the ADM Programme Board on 13 June 2018 which supported the recommendation that a private company limited by guarantee (CLG) is the most appropriate vehicle for the Council in this scenario.

Legal, Financial and HR Implications

22. External solicitors Bevan Brittan will continue to work closely with the Council's Legal Services to consider the legal implications for the move to a Company and this will include fully understanding the Council's ability to delegate the exercise of statutory decision-making as well as ensuring robust legal and democratic governance is developed between the Council and the Company.

23. The DfE have agreed to fund £3.15million towards the transition costs for the Company. The assumption that additional costs arising from potential VAT risks will be funded by the DfE has been included within the draft Memorandum of Understanding (MoU) being agreed with DfE, and as such the assumption is this risk is mitigated and will be cost neutral. Other work on the funding and cost of the company will progress over the summer of 2018 as the shape of its design and interaction with the Council is worked up in more detail, and an update will be included in the October 2018 report to Cabinet. Some provision has been assessed in the medium term financial plan and any changes will be assessed in that and future Cabinet reports.

24. Those staff working in services/teams considered to be included in-scope of the Company are likely to transfer to the new organisation under TUPE Regulations and would be directly employed by the new Company rather than the Council. In accordance with these Regulations staff would transfer to the Company on their current terms and conditions, including access to their current pensions. There will be a TUPE consultation period (best practice is 90 days) during the implementation phase. The cost of increasing HR capacity to help manage the smooth transfer of staff has been included within the Financial Case

Privacy and Public Health Impact Assessments

25. None at this stage. It is recommended that further assessment is done on assessing the service delivery contract for the Company.

Equality and Diversity Implications

26. None at this stage. The Council is very aware of its Public Sector Equality Duty and it is recommended that further assessment is done on assessing the service delivery contract for the Company.

Supporting Information (available electronically and at County Hall Reception)

- Appendix 1 - Statutory Direction
- Appendix 2 - Workstream overview document

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 Director of the Children, Families and Communities) the following are the background papers relating to the subject matter of this report:

Agenda and background papers for the meeting of the Cabinet held on 29 March 2018