

# **SPECIAL POLICY & RESOURCES COMMITTEE ADDENDUM**

**4.00PM, THURSDAY, 30 JULY 2020**

**VIRTUAL MEETING - SKYPE**

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# ADDENDUM

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<b>Subject:</b>	<b>Adult and Community Learning</b>		
<b>Date of Meeting:</b>	<b>30<sup>th</sup> July 2020</b>		
<b>Report of:</b>	<b>Interim Executive Director, Families, Children &amp; Learning</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Carla Butler</b>	<b>Tel: 01273 291281</b>
	<b>Email:</b>	<b>Carla.Butler@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that information required to update the future delivery model could not be confirmed and was unavailable in sufficient time to comply with the normal timetable for publication.

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This report provides an update and further recommendation following the recommendations approved by the Policy and Resources Committee on 30<sup>th</sup> April 2020 on the future delivery model of the council's Adult & Community Learning offer funded through the Adult Education Budget (AEB) by the Education and Skills Funding Agency (ESFA).
- 1.2 The recommendations were:
- (i) To bring in-house Adult and Community Learning following the expiry of the current arrangements on 31<sup>st</sup> July 2020;
  - (ii) That additional funding be allocated to the Families, Children and Learning Directorate to cover the associated costs of bringing delivery in-house;
  - (iii) That delegated authority be granted to the Executive Director for Economy, Environment & Culture to secure a one-year lease or license as appropriate on Isetta Square from the Friends Centre and to take any other steps necessary to implement the recommendations in this report;
  - (iv) That delegated authority be granted to the Executive Director for Families, Children & Learning to take forward TUPE arrangements to facilitate the in-house provision of community learning currently delivered by the Friends Centre;

## Current position

- 1.3 It has not been possible to enter in to a lease with the Friends Centre on Isetta Square, as they have been unable to secure permission from their head landlord to sub-lease to the council. This permission remains outstanding.
- 1.4 On July 10th officers were informed by the Chair of Trustees that the trustee body voted unanimously to place the Friends Centre into administration. More latterly they have advised this will take effect from 31st July 2020. The council is therefore aware that upon entering a lease with the council, the Friends Centre will seek to enter Administration. Whilst legally possible, it is considered that the council should not enter a lease on this basis, as it is neither morally or ethically right and there is a reputational risk in doing so.
- 1.5 As the council is not able to secure suitable premises, the operating model for adult learning in 2020/21 has had to be adapted which impacts upon TUPE.

## 2. RECOMMENDATION

- 2.1 It is recommended that the Committee agree:

- (i) That the family learning element of the adult education budget which supports the city's vulnerable families will be delivered directly by the tutors currently employed by the council using online or distanced based learning methods where possible. This will involve the TUPE of relevant staff from the Friends Centre
- (ii) In order to retain and secure the council's ESFA grant for adult education for the academic year 2020/21 sub-contracting arrangements should be put in place. This will provide a suitable timeframe in which to plan and implement measures which will deliver a sustainable service for the council going forward;

- 2.2 Committee note:

- (i) That the £61,030 allocated by committee to support the transition to an in-house adult and community learning service will not be required unless alternative delivery premises are secured.

## 3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Following the proposal approved by the [Policy and Resource Committee on 30th April](#) to bring in-house Adult and Community Learning following the expiry of the current arrangements on 31st July 2020, the council has been consulting with the Trustees of the Friends Centre in order to identify staff entitled to transfer under the TUPE regulations and to take forward the recommendation to secure a one-year lease on Isetta Square, the premises currently held on a long-term lease by the Friends Centre.
- 3.2 The council's adult education allocation for 2020/21 is £569,988, is the city's largest. GB MET College's allocation is significantly larger, but it supports a greater geographical area including West Sussex. Additionally, PACA and

Varndean College also have direct allocations from the ESFA. Retaining the council's allocation for residents is at the forefront of the recommendations.

### 3.3 Isetta Square

3.4 Regrettably, the council is unable to take forward the lease of Isetta Square as anticipated for the following reasons:

- (i) The Friends Centre have not received consent from their landlord to grant a sublease to the council. As highlighted in the original committee report considered by P&R on 30 April 2020 without consent of the Head Landlord a lease from Friends Centre cannot be secured;
- (ii) The council is aware that upon entering the lease with the council, the Friends Centre will seek to enter Administration. Whilst legally it is possible for the council to take a lease knowing this position, it is considered neither morally or ethically right to proceed on this basis and there is a reputational risk in doing so. This was highlighted as a risk in the report submitted to P&R on 30 April 2020;
- (iii) Should landlord consent now be forthcoming, due to time frames, the lease could not be completed prior to the Friends Centre entering Administration (based on the dates the Friends Centre have provided). Once Administrators are appointed, they may wish to realise the value of the long-lease immediately, and not grant the council a lease. The council are unable to proceed assuming the Administrators will grant the Council a lease, as this is not a guarantee;

3.5 The Friends Centre requested the annual rent for Isetta Square upfront in order to support financial planning. To assist the Friends Centre this option was explored. It is not recommended that a full years rent is paid in advance to a company who are in financial difficulty risking public funds. Additionally, the sub-letting requirements under the lease state that the tenant (the Friends Centre) is not able to receive rent on this basis under a sub-lease.

3.6 The council became fully aware of the extent of the Friends Centre's financial difficulties in mid-July following the completion of an in-depth financial assessment undertaken by the council at the request of the Trustees.

3.7 As it is not possible to secure the lease on Isetta Square, properties within the council's portfolio have been reviewed; however, no properties are currently set up for teaching. Works would need to be undertaken to a property prior to the start of the academic year to make it suitable for teaching. This would delay occupation and the property would not be available from 1 August 2020. There would also be considerable costs associated with this. Whilst it depends on the building, and the works required, high level costs are estimated to be in excess of £170,000 based on average fit out and relocation costs.

3.8 TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) .

3.9 As the option to secure a lease on Isetta Square is no longer available, the council is unable to deliver on its ambition to transfer the services currently

delivered on the council's behalf by the Friends Centre in-house from the 1st August because it has no premises or equipment required to deliver adult learning. This means that TUPE will apply to one individual (0.4 fte) who has a significant association with the council contract. Initially, it was anticipated that 21 members of staff would transfer, comprising of:

- 14 part-time fixed-term tutors (1.4 FTE)
- 4 full and part-time support and administrative staff (2.7 FTE) on permanent contracts
- 3 part-time receptionists on permanent and fixed-term contracts (1.1FTE), subject to the lease on Isetta Square being secured.

The council remains in the due diligence phase of TUPE until the 31 July 2020.

- 3.10 The council acknowledges that staff expecting to TUPE to the council will be deeply disappointed by the turn of events and recommendations of this report. The council acknowledges the very short notice, and it is regrettable that staff are now faced with the prospect of redundancy at the end of July, particularly in current economic climate.
- 3.11 The consequence of transferring staff through TUPE, when there is no mechanism by which to deliver an adult learning offer, is that the council will have significant liabilities for staff who are unable to deliver what is required under the grant, which will further impact on the severe financial situation the council finds itself in.
- 3.12 **Delivery mechanisms and way forward for 2020/2021**
- 3.13 The council will deliver an in-house family learning offer which supports the city's vulnerable families, utilising school premises where possible. The council will seek to procure additional provision through sub-contracting arrangements. This approach will secure the adult learning budget in the city for 2020/21
- 3.14 The council has experience of sub-contracting adult and community learning services with local providers who are already meeting the needs of the city's learners. It is envisaged that a competitive tendering process could be run quickly to secure suitable provision within 12 weeks. It is acknowledged this may take us beyond the beginning of the 20/21 academic year. The autumn term adult learning offer in the city will also be challenging due to restrictions in place on all learning environments due to Covid 19.
- 3.15 The ESFA grant has annual rather than termly targets therefore any impact on autumn delivery, due to a delay in procurement or impact of Covid 19 on learner numbers, can be balanced with additional delivery during the spring and summer terms.
- 3.16 During the academic year a scoping exercise will be undertaken with a view to expanding in-house delivery alongside securing suitable accommodation. Consideration will be given to what can be delivered in-house for 2020/21 given the potential ramifications of the impact of Covid-19.

## **4. CONCLUSION**

- 4.1 Following recommendations approved by Policy and Resource Committee on 30th April, to deliver the adult learning service in-house, TUPE eligible staff, and secure a one year lease on Isetta Square to support the transition of the service, the council has worked with the Trustees of the Friends Centre to try and implement the recommendations.
- 4.2 The Friends Centre have been unable to obtain Head Landlord Consent to lease Isetta Square to the council and furthermore they will be moving into Administration from 31<sup>st</sup> July before the lease would take effect. Proceeding on this basis would cause financial and reputational damage to the council.
- 4.3 The council proposes to use the ESFA funding to continue the in-house family learning offer and procure services from providers as an interim measure. This approach will enable the council to secure its adult learning grant.
- 4.4 Negotiations were entered in good faith by both parties. The chain of events and the necessary due diligence exercise has highlighted significant risks which cannot be overcome within the original timescale and would leave the council at high risk of financial and reputational damage. The proposed delivery model for the next academic year will include a mix of sub-contracting and in-house delivery in respect of family learning. The focus of the service remains on vulnerable and disadvantaged learners. This will enable sustainable planning and delivery of the service going forward.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 5.1 The current available funding for the provision of adult and family learning programmes for the academic year 20/21 is the ESFA grant of £0.570m plus the one-off allocation of £0.040m from the HRA as agreed by housing committee on 29th April. The revised recommendations in this report would mitigate the Councils exposure to the significant financial risks of leasing Isetta Square or attempting to financially support the Friends centre in the short term. With the Friends centre potentially going into administration in the near future, the original recommendations carried substantial financial risks to the council both in the short and medium term.
- 5.2 Any option being considered to provide additional financial support to the Friends Centre would entail considerable financial risk to the Council. It is unclear what level of support would be required to prevent insolvency and whether at this stage it is even a viable option. In the absence of a revised business model from the Friends Centre and full knowledge of the extent of the liabilities that would need to be met, further analysis would need to be undertaken before any such option could be properly evaluated.
- 5.3 There are, however still some financial risks to the Council from the proposals in the report. The grant currently received from the ESFA is allocated on an annual basis and is not guaranteed to remain at its current level. The grant also has a number of conditions that must be satisfied in order for the funding to be claimed.

If those conditions are not met, some or all of the grant could be withheld. In addition, it is not yet known what the outcome of any procurement process to deliver the required services would be and whether it is possible to meet all of the requirements from the available funding.

- 5.4 At the P&R meeting of 30th April it was agreed to provide additional funding of £0.061m in 2020/21 to enable the insourcing of the adult learning service and to secure suitable premises. The report states that this will not now be required unless alternative premises can be found. At this stage, it is not known whether alternative premises will be needed and if so, what or where that would be. To obtain appropriate premises and make them suitable for teaching would entail additional costs which potentially could be well in excess of this figure.

Finance Officer Consulted: David Ellis    Date: 22 July 2020

#### Legal Implications

- 5.5 The proposed educational services to be provided to fulfil the requirements of the ESFA grant funding in the next academic year, fall below the threshold value of £663,540.00 applicable to those services within Schedule 3 of the Public Contract Regulations 2015 (the Light Touch Services). A formal OJEU process is not therefore required but the procurement exercise for the service must be fair and transparent ensuring equal treatment of all potential providers. The council's Contract Standing Orders (CSOs) will apply to the procurement and award of the proposed contract.
- 5.6 With regard to the possibility of leasing the property and facilities at Isetta Square from the Friends Centre in the light of the decision of the Trustees of the Friends Centre to place the organisation in administration are dealt with for the most part in the body of the report. There is no legal reason why the Friends Centre could not grant a lease to the council ahead of the appointment of an Administrator providing they have the appropriate consents in place as required under their own long lease and the compliance is demonstrated with the terms of that lease. However once an Administrator is appointed by the Friends Centre any discussions regarding the potential to lease Isetta Square or in respect of the delivery of the services will be with the Administrator who will be concerned to fulfil one of the statutory purposes set out in Paragraph 3 to Schedule B1 of the Insolvency Act 1986 being (a) rescuing the company as a going concern; (b) achieving better results for the company's creditors as a whole than would be possible if the company were wound up without first being in administration; or (c) realising property and assets to make a distribution to the secured or preferential creditors.

*Lawyer Consulted: Judith Fisher*

*Date:22.07.2020*

- 5.7 "The TUPE regulations will not apply where the current provision of adult and community learning undertaken by the Friends Centre on behalf of the council does not continue on or after 1 August 2020. In the event that such provision is undertaken by the council or a different contractor on its behalf, the TUPE regulations are unlikely to apply if there is a sufficient distance in time between the 1 August 2020 and the commencement of a new adult and community learning provision. Currently it is proposed that the earliest this may occur is

sometime in 2021. The regulations will, however, be applicable to the one member of staff identified at paragraph 3.8 above. If in the event that premises can be secured and the service provision can be continued without a significant break, either with it being brought in-house or sub-contracted, the TUPE regulations will be applicable. Accordingly, those staff identified as being assigned to the council's contract to deliver adult education will transfer."

*Lawyer Consulted: Carol Haynes*

*Date:22.07.2020*

#### Brexit Implications:

- 5.8 Although no immediate and direct impact on these proposals, in the longer-term changes related to the UK's withdrawal from the EU around structural funds that contribute to local education and training may present a challenge or opportunity for the future of adult community learning.
- 5.9 Under the Withdrawal Agreement the UK will continue to receive EU structural funds during the transition period, which is due to end on 31 December 2020. The political declaration on the future UK–EU relationship does not envisage the UK continuing to contribute to, or receive, EU Structural Funds after that point, this includes the European Structural & Investment Fund (ESIF) which is administered and coordinated through the ESFA for the UK to provide training and education opportunities.
- 5.10 In 2017, the UK government announced that it would replace EU Structural Funds with a successor arrangement called the UK Shared Prosperity Fund. In its 2019 manifesto, the Conservative Party reiterated this pledge and committed to "at a minimum match the size of structural funds in each nation".
- 5.11 At the time of writing this report no further information was available on the proposed UK Shared Prosperity Fund. It is anticipated that at some stage in the future the Government will consult on proposals for the fund, at which point the future of the ESFA's funding capabilities will become clearer. Through the consultation the council should seek to secure the retention of funding streams which support the disadvantaged through training and education opportunities.

#### Equalities Implications:

- 5.12 The aims of the project are to increase confidence and employability for people experiencing disadvantage and vulnerability in the city, especially for women, disabled people, and BME groups to achieve their full potential. The intention to maintain provision for the current financial year enables benefits to be maintained, but the future impact is hard to define, for reasons outlined above. In the context of the COVID19 pandemic, the options for digital learning may enable access by people unable or unwilling to access courses in specific locations, but also present barriers for some (due to lack of confidence, skill or finance for ICT provision). When possible and safe, future provision should employ a range of approaches to maximise benefits.

### Sustainability Implications

- 5.13 Central locations are easy to get to by sustainable means so public transport, cycling or walking. This is beneficial as it supports the key council's policies and priorities i.e. Carbon Neutral 2030 ambition & Cycling & Walking Strategy. Whilst continuing to lease Isetta Square from the Friends Centre is the most sustainable solution, access to provision through existing providers and/or alternative fit for purpose city centre venues is considered appropriate.

### Covid19 implications:

- 5.14 The impact of Covid 19 on the delivery of adult education remains uncertain. Providers have adapted their offer to accommodate on-line and socially distanced learning. The confidence of learners returning to the classroom is likely to be influenced by the containment of Covid 19 in the Autumn and Winter terms. Unemployment levels are expected to remain higher than usual, and the end of the furlough scheme is likely to have an impact locally. Access to adult learning opportunities should continue to be made available.

<b>Subject:</b>	<b>Step by Step</b>		
<b>Date of Meeting:</b>	<b>30<sup>th</sup> July 2020</b>		
<b>Report of:</b>	<b>Rob Persey, Executive Director Health &amp; Adult Social Care</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Jenny Knight</b>	<b>Tel: 01273 293081</b>
	<b>Email:</b>	<b>Jenny.knight@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

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**1. PURPOSE OF REPORT AND POLICY CONTEXT**

1.1 The purpose of this report is to provide an update and further recommendation on the provision of the Step by Step literacy and numeracy service following the recommendation approved by the Policy & Resources Committee on 30 April 2020. The service is currently provided under contract by the Friends Centre. The Friends Centre have informed the council that it would not be in a position to provide the contracted services beyond 31 July 2020. The Friends Centre have subsequently advised the council of its intention to appoint Administrators on 31 July 2020.

1.2 Policy & Resources Committee on 30 April agreed in relation to the Step by Step service:

That delegated authority be granted to the Executive Director for Families, Children & Learning to:

- (i) Take forward the option to bring in-house two externally funded projects, Step by Step and Get Socially Active projects and manage TUPE arrangements and subsequent liaison with funders;
- (ii) Take any other steps necessary to implement the recommendations in this report including a comprehensive review of the service after one and three years of operation to assess value for money, opportunities for efficiencies, investment and growth opportunities, performance, satisfaction, and impact on equalities data.

1.3 The delivery model proposed was for the council's Adult and Community Learning Service ("ACLS") to provide the Step by Step services alongside Community Learning services.

1.4 The current position

The position with respect to the Adult and Community Learning Service is reported in the Committee Report on the agenda which sets out the reasons why the community learning services cannot be delivered in house at this time and makes alternative proposals for the delivery of Community Learning services in the new academic year. If implemented this means that the council will not have in place the infrastructure to deliver the Step by Step programme in house with effect from 31 July.

## **2. RECOMMENDATION:**

2.1 It is recommended that the Committee agree

- (i) that the Step by Step project be withdrawn from 31 July 2020 and that ASC consult with relevant stakeholders as part of a comprehensive review of the service reporting the outcomes of that consultation to Housing Committee.

## **3. CONTEXT/ BACKGROUND INFORMATION**

### **Background:**

3.1 The Step by Step project was initially commissioned by the council in 2008. The current contract for this service was awarded to the Friends Centre in 2018 for a period of 3 years expiring on 31 January 2021. The Friends Centre have indicated that they will not be delivering services under the current contract from 31 July 2020.

The contract has an annual value of £60,000. The following services are delivered under the contract by 1.5FTE employees of the Friends Centre:

- Literacy, Numeracy, IT and ESOL teaching to those who have previously been homeless and are currently living in supported accommodation.
  - Users of the service are supported with basic skills and can progress to achieve recognised qualifications.
- 3.2 Referrals for the service come from commissioned supported accommodation services, residential rehabilitation services for substance misuse and non-commissioned supported accommodation services for homeless people.
- 3.3 H&ASC also commissions a work and learning service via Brighton YMCA which supports individuals to access training, work experience, volunteering and paid employment.

### **Review of Work & Learning Services:**

- 3.4 With the contract for Step by Step due to end in January 2021 a review of the work and learning services delivered on behalf of the council was due to take place in Spring 2020.
- 3.5 Due to Covid-19 and the unprecedented workload this has generated for the Commissioning Team the review and commissioning process has been delayed. This review will take place later in the year and will now also take into account the implications of the Covid-19 pandemic and the impact this will have on the priorities for the rough sleeping and homeless services budget.
- 3.6 Evidence shows that paid employment is the most effective way of supporting recovery from homeless. The review will look at the services required to help increase the numbers of people accessing paid work to help lift people out of poverty and prevent them returning to homelessness. In particular the review will:
- Examine the needs of service users in relation to work and learning
  - Review current services
  - Examine national good practice in the provision of work and learning services
  - Examine what is available city wide and ensure homeless people have access to mainstream education and learning opportunities
  - Review existing non-commissioned services for homeless people to avoid duplication in any future commission.
  - Assess if the provision of separate services for homeless people is the right model or if the current service model further marginalises homeless individuals by limiting accessibility to mainstream services.
- 3.7 The findings of the review will be reported to a future Housing Committee together with proposals for the provision of future commissioning of work and learning services.

### **The Continuation of the Step by Step Service:**

- 3.8 The issue of long-term funding has been discussed with the Lead Member for Housing who agreed that the council was not in a position to commit to funding Step by Step post January 2021 until completion of the review and consideration of budget priorities.
- 3.9 The high demand for supported accommodation for move on from Covid-19 hotels, places pressures on H&ASC commissioning budget for rough sleepers and single homeless people. The funding for Step by Step service would support at least 6 Housing First high support accommodation placements or a small supported accommodation service.

## **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The option to bring the Step by Step service in-house to be delivered by the Adult and Community Learning Services as approved by the Policy & Resources Committee on 30 April 2020 was initially supported. This would have required a commitment to at least 2 years of further funding beyond January 2021 at a cost

of £60,000 per annum. In light of the issues raised and set out in this report and the matters raised in the associated report regarding the insourcing of the Adult and Community Learning Centre this option is no longer considered viable.

## **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 Due to the circumstances of the ending of the service and the intense Covid-19 workload of the Commissioning Team it has not yet been possible to undertake community consultation.
- 5.2 The Commissioner Team is aware from previous service reviews that the service has been well respected by partners and valued by service users. However, a full review including consultation with a wider group of service users and professionals would enable a full assessment of the best way for the city to meet the education and work needs of the client group.

## **6. CONCLUSION**

- 6.1 Step by Step has provided a good quality service to homeless people and we value the contribution those delivering the service have made to the city.
- 6.2 In normal circumstances a short extension of the current contract would have been sought to allow for a full review to take place. However, due to the financial circumstances of the ending of the contract by the Friends Centre that is no longer an option.
- 6.3 The possibility of the service being delivered in house by Adult and Community Learning following cessation of the contract with the Friends Centre is not now an immediate option. A formal review of need and means of delivery is required and it is appropriate that this take place before committing to future service funding particularly in the uncertainties about the impact of Covid-19 on budgets and priorities in the coming months.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 7.1 There is no guarantee that the services will be able to continue beyond 31st July 2020 and the council should therefore minimise any potential financial risk beyond that date.

Finance Officer Consulted: Sophie Warburton Date: 28/07/2020

### Legal Implications:

- 7.2 The council is under a duty to make arrangements to secure continuous improvement in the way it exercises its functions having regard to a combination of economy, efficiency and effectiveness (LGA 1999). The duty to deliver best value must be considered when considering the services, it needs to deliver and how those services are best delivered.

The proposed consultation exercise must be conducted fairly and proportionately and in accordance with the Public Sector Equality Duty which requires public bodies to have due regard to the need to eliminate discrimination and advance equality of opportunity.

Lawyer Consulted: Judith Fisher

Date:26 July 2020

Equalities Implications:

- 7.3 This service supports some of the most vulnerable people in the city, however there are other services in Brighton & Hove which offer literacy, numeracy and ESOL support to adults which are accessible to those on welfare benefits. Those who have previously been homeless can be supported to access these services by their keyworkers or via the commissioned access to work and learning service.

Sustainability Implications:

- 7.4 There are no sustainability implications

Brexit Implications:

- 7.5 There are no Brexit implications

Crime & Disorder Implications:

- 7.6 None

Risk and Opportunity Management Implications:

- 7.7 None

Public Health Implications:

- 7.8 None

Corporate / Citywide Implications:

- 7.9 None

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. N/A

### **Background Documents**

1. N/A



<b>Subject:</b>	<b>Get Socially Active</b>		
<b>Date of Meeting:</b>	<b>30<sup>th</sup> July 2020</b>		
<b>Report of:</b>	<b>Deb Austin, Interim Executive Director Families, Children &amp; Learning</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Carla Butler</b>	<b>Tel: 01273 291281</b>
	<b>Email:</b>	<b>Carla.Butler@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

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**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The purpose of this report is to provide an update on the [Policy & Resources Committee](#) recommendation (ii) below, which was agreed in addition to the recommendation to in-source adult and community learning from 1<sup>st</sup> August 2020.
  - (ii) Take forward the option to bring in-house two externally funded projects, Step by Step and Get Socially Active projects and manage TUPE arrangements and subsequent liaison with funders.
- 1.2 Both of these projects are currently managed by the Friends Centre, who are winding down operations with a view to cease trading on 31<sup>st</sup> July 2020. The Trustees have advised the Council that they will put the Friends Centre into Administration on this date. The purpose of this briefing is to update Leaders on why the option of bringing Get Socially Active in-house is not recommended.
- 1.3 The Friends Centre are keen for the Get Socially Active project to continue until the contract ends on the 31 March 2022 to enable participants in the city and wider area including Newhaven to be able to continue to access the project services. The Friends Centre are keen to transfer potential liabilities to the council where possible due to their challenging financial position.
- 1.4 Attention is drawn to the content of the earlier report in relation to Adult and Community Learning on the Agenda also relating to the Friends Centre and concerning Adult and Community Learning Service.

## **2. RECOMMENDATION**

- 2.1 The recommendation is not to take forward the option to bring in-house the Get Socially Active Project due to the resources required to manage the project and the risks attached to the funding requirements.

## **3. Context/ background information**

- 3.1 The Get Socially Active project is funded by the European Social Fund and the National Lottery Community Fund. It started in 2016, initially for 3 years. In 2019, the Friends Centre was awarded a maximum additional amount of £265,143.97 to further extend the delivery of the project. It is currently funded to June 2022.

- 3.2 The Friends Centre is the lead organisation for this project, they have a partnership agreement in place with Sussex Community Development Association (SCDA) in Newhaven until 28 February 2022. The Friends Centre are solely responsible to The National Lottery Community Fund/ESF to deliver the project in accordance with The National Lottery Community Fund/ESF terms and conditions.

- 3.3 The purpose of the partnership is to promote social inclusion and combat poverty by supporting participants into employment in Newhaven, and Brighton & Hove areas and the project provides a one to one coaching support service that helps support individuals into work through an individualised action plan, identifying and addressing barriers to work and learning. It also helps them to navigate and access local training and services that could help with confidence, managing stress, basic skills such as ESOL, maths and English and general employability skills. During the first three years of the programme intensive support was provided to 103 residents.

- 3.4 Two part-time staff are currently employed by the Friends Centre to deliver this project. A project co-ordinator is funded to 31 March 2022 and a project worker funded to 31 January 2022.

- 3.5 The Friends Centre advise that the funders have agreed in principle that the project grant of £80,639 could be transferred to BHCC, which will enable the project to continue until 2022.

- 3.6 Under the terms and conditions of the grant from the Lottery Fund and ESF the FC must seek written agreement of the funders should it wish to change ownership control of the business of the organisation, transfer assets or merge with another organisation. Further the FC must obtain the written consent of the funders to the transfer any part of the grant or the Grant Agreement or any rights under it to another organisation or individual. This is a prerequisite to any transfer by the Friends Centre.

- 3.7 If the transfer was approved BHCC would assume the following responsibilities under the terms of the grant.

- (i) Sole accountability to the National Lottery Community Fund/ESF for future and past delivery of the project in accordance with The National Lottery

Community Fund/ESF terms and conditions.

- (ii) A new partnership agreement with SCDA will need to be negotiated (subject to their agreement).
- (iii) Management of the staff and redundancy payments of the staff at the end of the term. Redundancy payments cannot be met from the project fund.
- (iv) Secure retention of all financial records and participant and outcome evidence until December 2034.
- (v) Contract management including regular reporting of outcomes, outputs and results.
- (vi) Financial management - the Finance Manager at the FC was due to dedicate up to one day a month to manage this project which was not costed into the current operational budget). Banking arrangements will need to be established to meet the requirements of funders.

3.8 The following risks are associated with the Get Socially Active Project.

- (i) The Friends Centre may not be able to transfer as the lottery fund may withhold consent. The Funders may demand repayment of all or any of the grant if it is likely that the FC will have to stop operating, may be dissolved, or is likely to be put into administration receivership or liquidation, or is about to arrange with, or guarantee a Trust Deed, with their creditors.
- (ii) The council would need to exercise due diligence in assuring itself that the contract has been properly managed throughout its term and would need to obtain appropriate guarantees from the FC as to any potential liability which may have arisen during the stewardship of the FC. Some form of security would need to be put in place to ensure that any liability which devolves on the council can be recovered from the FC. This might be difficult in view of their financial situation.
- (iii) The impact this would have on the SCDA and any ongoing initiatives also needs to be considered.
- (iv) Advice from the council's employment lawyer is that TUPE will not apply to the staff. Exceptional arrangements would need to be agreed with HR if the staff currently performing these roles at the FC were to be slotted into new roles. Exceptional arrangements may not be agreed.
- (v) EU funding is complex and the Principal of the Friends Centre who manages the budget, contract, partnership relationship management and line manages the project staff is not entitled to TUPE to the council. The council has limited capacity to manage this project due to the challenging timescales of insourcing adult and community learning.
- (vi) If SCDA do not agree to enter into a new agreement, BHCC will be solely responsible for delivering the project, which may not be achievable.

- vii) If the project outcomes are not achieved the council will not be able to draw down anticipated income and will be responsible for costs incurred and potentially liable for returning funding, if targets are not achieved.

3.9.1 The following benefit is associated to this project.

The project will continue until its natural conclusion in 2021 and residents will continue to benefit from the services offered through this project.

## 6. CONCLUSION

6.1 In conclusion it does not appear that it is viable for the project to be transferred to the council due to the significant risks highlighted above. The loss of service to the city would be naturally disappointing, however, in weighing up the benefits and risks, the risks and costs of transferring the service to the council are disproportionate. Instead the council should seek to deliver services to the target group within the city by other means.

## 7. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 7.1 The transfer of the Get Socially Active programme to the Council would expose the council to significant financial risks for the remainder of the contract. As stated in the body of the report, the funding streams are not secure and additional resources would need to be found in order to meet the new obligation.
- 7.2 The recommendation of the report, not to transfer the programme to the Council would result in no financial impact or risk to the Council.

*Finance Officer Consulted: David Ellis*

*Date: 16/07/20*

### Legal Implications:

7.3 The Funding Agreement entered into by the Friends Centre with the European Social Fund and the National Lottery Community Fund in respect of the Get Socially Active Programme, contains a provision that consent has to be obtained in writing to the transfer of the Agreement to a third party. Although the Friends Centre have indicated that the Funders have no objection in principle to the transfer, no formal application has been made by the Friends Centre to the Funders. Until that consent is confirmed in writing by the Funders no transfer can properly take place. The risks associated with the transfer of responsibility for the delivery of the Programme to the council, which would encompass the entire funding period from inception of the Programme, are set out in the body of the report.

*Lawyer Consulted: Judith Fisher 14 July 2020*

### Equality implications:

7.4 The purpose of this project is to promote social inclusion and combat poverty through a range of approaches, as outlined above. Given the aim of supporting

vulnerable and disadvantaged people, officers should explore what other options are already available in the city and whether some current and potential beneficiaries may be able to access those. Given the current limitations created by the COVID19 pandemic and the financial impacts on a number of service providers it may not be possible to find suitable alternatives for everyone and therefore there will be negative impacts. Data from the existing project should be assessed to see whether people sharing specific characteristics may be disproportionately affected, and this data could be used to help prioritise how alternative options are provided.

#### Sustainability implications

7.5 None

#### Brexit implications

7.6 The UK use the European Social Fund funding to reduce inactivity among young people and the long-term unemployed and to improve training and skills. As the UK has left the EU this fund will end. The Government has pledged to set up a Shared Prosperity Fund to “reduce inequalities between communities”. The Government has not yet published its consultation on the Fund.

