

<b>Subject:</b>	<b>Youth and Employability Trust</b>		
<b>Date of Meeting:</b>	<b>3<sup>rd</sup> October 2016</b>		
<b>Report of:</b>	<b>Executive Director of Families, Children &amp; Learning</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Chris Parfitt</b>	<b>Tel: 29-4252</b>
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<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), were so as to provide opportunity for additional advice on the scope of the proposals.

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

The Children , Young People and Skills Committee authorised the Executive Director of Families, Children and Learning Services to consult on “an alternative delivery model, for example a Youth Trust or Foundation , or reconfigurations and re-commissioning of the Youth Collective and other CVS organisations for the provision of services to vulnerable and disadvantaged children”. This authorisation was given against a backdrop of major financial challenges as the Council’s budgets are increasingly put under pressure.

This paper reports on the work undertaken by officers following this authorisation to identify a new delivery model for the service in particular one which will attract alternative sources of revenue whilst delivering those priorities and outcomes set out in the Council’s corporate and strategic objectives as enunciated the Corporate Plan 2015/2019.

In this endeavour the officers have been supported by external specialist legal advisers appointed with funding awarded by the Cabinet Office under their programme “Delivering Differently for Young People”.

This work has resulted in the development of a new means of service delivery which combines youth and employability services in a Trust model provisionally entitled Youth and Employability Trust “Trust”. The proposed model delivery vehicle combines both charitable and commercial benefits, and ways of bringing council services closer to those who need them by forging stronger links with local people.

It is proposed that the ‘Youth & Employability Trust’, will establish a subsidiary company in the form of a community interest company that will provide an

apprenticeship brokerage service for employers across the city. This trading company will help the city to meet the recommendations of the City Employment and Skills Plan and the Employer Skills Taskforce

## **2. RECOMMENDATIONS:**

2.1 That the Children, Young People & Skills Committee recommend that the Policy, Resources and Growth Committee approve the following recommendations

2.1.1. a) that the principle of a new trust, provisionally to be known as “The Youth and Employability Trust” for commissioning of youth and employability services within the City be agreed and that officers develop the model further within the parameters set out in b) and c) below;

b) That the Trust takes the legal form of a company limited by guarantee and registered as a charity;

c) that the Trust establish a subsidiary company in the form of a Community Interest Company (CIC) to provide a non-charitable activity in the form of a brokerage service including but not limited to young people.

2.1.2 That delegated authority be granted to the Executive Director of Families, Children and Learning

(i) To finalise the arrangements for establishing the Trust and Community Interest Company

(ii) To recruit and appoint high calibre trustees who are able to bring additional skills and expertise capable of contributing to the realisation of the success of the organisation and delivery of key strategic outcomes identified by the Council

(iii) To establish a new “Youth Voice Group” and ensure that there is provision in the constitution of the Trust for an obligation on the trustees of the new charity to meet with the Youth Voice Group on a regular basis

2.1.3 That delegated authority be granted to the Executive Director of Families, Children & Learning to take all necessary steps to constitute a Trust and to negotiate and enter into all necessary legal agreements including where necessary an asset transfer agreement which assets shall include ongoing contracts and existing initiatives including the Mobile Play Project and property

2.1.4 That delegated authority be granted to the Executive Director of Families, Children & Learning: to enter into a competitive procurement process to secure the provision of youth services on a neighbourhood open access based model and youth work supporting vulnerable young people for a period of three years commencing on 1 April 2017 in order to secure the continuity of service provision in the shorter term

2.1.5 That delegated authority be granted to the Executive Director of Families, Children & Learning to award and let the contracts for this procurement for

a period of three years which contracts shall contain a provision permitting the novation of the contracts to the Trust at an agreed time.

## **CONTEXT/ BACKGROUND INFORMATION**

3.1 The Children, Young People and Skills Committee have agreed the following four priorities:

- Ensure that the most vulnerable and disadvantaged children receive the council's support, consolidating services where possible and targeting resources at those most in need
- Take the council on an improvement journey to achieve excellent services for children and young people by 2019, as rated by Ofsted
- Provide greater challenge and support to council maintained schools to close the disadvantage and educational attainment gaps, including a focus on STEM subjects (Science, Technology, Engineering and Mathematics)
- Eliminate long-term youth unemployment (18-25 years old) and boost apprenticeships in the city by 2019

3.2 Job creation and unemployment reduction are a clear priority for Brighton & Hove. The number of new apprentices in Brighton & Hove is relatively low. In 2013/14 the city created just under 1,700 opportunities; whereas similar sized cities such as Sunderland and Coventry created 3,500 and 2,940 respectively. We need to ensure that the city's residents are equipped with the skills and knowledge to access the city's jobs. Take up of apprenticeships from school leavers is low and the greatest number of apprenticeships starts are for the over 25 age group.

3.3 Incapacity Benefit/Employment and Support Allowance (IB/ESA) claimants account for over half of all claimants, with people suffering from mental and behavioural disorders accounting for the largest number of these. The links between health and unemployment have been shown to be as strong as the links between skills and unemployment. Increases over the past 5 years in unemployment have been fastest amongst young people under the age of 24 years. It places local adult residents of the future at a distinct disadvantage, potentially confining them to a cycle of worklessness or low and insecure employment, unable to compete for decent jobs in a city where high housing costs could make sustainable and successful living beyond their reach.

3.4 The Children Young People & Skills committee in March 2016 agreed to the arrangements for the delivery and/or external commissioning of youth work provision, a 'flexible continuum' of joined up services from open access provision for disadvantaged neighbourhoods and communities, to targeted interventions for the most vulnerable young people and opportunities for all young people to have fun in spaces welcoming to them. It also agreed to explore alternative delivery models, for example a Youth Trust or Foundation for the provision of services to vulnerable and disadvantaged children, young people and their families.

- 3.5 The council has current contracts for delivery of youth services with CVS Brighton & Hove Youth Collective, (historically three years and BMEYPP, Extra Time and Allsorts one year contracts) which have been extended into the transitional year of 2016/17 to allow time for a review of the council's arrangements for commissioning and provision of youth work. A view has been taken that to ensure continuity of service during the initial period of operation of the Trust it would be prudent to retender the contracts for a period of three years from 1 April 2017. The contracts would then form part of the asset transfer agreement with the Trust
- 3.6 It is recognised that young people and vulnerable adults want to reach their full potential and be economically self-sufficient. Therefore they need the right course or opportunity at the right time at the level that corresponds with the available employment opportunities. Employers need employees with the right personal and social skills to develop and sustain such opportunities. The establishment of the Youth and Employability Trust will support this, maximising efficiency and impact in the context of savings pressures and offering a service in a more coherent way.
- 3.7 The proposed brokerage service will tackle connectivity between need and opportunities and to help large employers and small and medium size enterprises to find trainees and apprentices. It is also intended to develop an apprenticeship brand for the greater Brighton City Region and to simplify the training and apprenticeship offers thereby reducing confusion for businesses, young people, schools and parents. This service would be provided by a small team of skilled staff who manage enquiries and sign post businesses to the appropriate support including the Digital Apprenticeship Service which will launch in January 2017. It will also analyse patterns and trends in recruitment, skills and recruitment requirements with support from the Coast to Capital Local Enterprise Partnership. It is envisaged that the brokerage company would work with providers to help them enhance the relevance and quality of their services and target businesses with opportunities and offers. A key focus will be to support those organisations who will be contributing to the Apprenticeship Levy within the Greater Brighton Area. There is work taking place actively pursuing mayor employers who are likely to be levy payers, including NHS, universities and other public sector organisations, to secure sustainable funding for this service. Subject to state aid regulations, it is envisaged the brokerage will initially be funded by a contribution from the Council in order to get the service up and running. Longer term it is envisaged that funding will be secured from levy payers and training providers including the FE colleges in the region.
- 3.8 Chaired by the Executive Director for Families Children and Learning the working group has considered alternative options for the provision of youth and employability services. The recommended option is that the Youth and Employability Trust is established as a company limited by guarantee and registered charity. The Trust will be established with the Council and the Trust will identify and agree key outcomes for the Service. The charity will determine how these outcomes are achieved, thus ensuring the charity retains its discretion as to how it achieves its charitable objects, which is critical to charitable status. This will be a new and important strategic partnership for the Council.

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

- 4.1 The scope the working group considered was:
- The council's in-house youth service including: youth centres and youth support staff; detached and targeted youth work; the participation and youth advocacy teams and the Duke of Edinburgh awards team
  - Youth work commissioned by the council (including Public Health funding) from the Youth Collective, Allsorts Youth Project, Extratime Ltd and the Black and Minority Ethnic Young People's Project
  - Youth Employability Service
  - To set up the framework for the brokerage service
  - Mobile play project options

However it is recognised that the term "Youth Work" has a considerable ambit extending beyond this limited scope. It is not the intention to limit the flexibility of any Trust established for the purposes of delivering services to the youth of the city. It is envisaged that such a Trust will develop in a dynamic and entrepreneurial way to improve the range of services and opportunities and so delivery better outcomes for the entire city's youth.

- 4.2 Using £35k drawn down from the Cabinet office '*Delivering Differently for Young People*' fund we were able to commission a specialist firm with expertise in this area, to work to explore delivery models relevant to the economy of Brighton & Hove. They identified a range of legal models through which the services could be delivered. These include:

- Unincorporated charity (trust deed)
- Community benefit society
- Co-operative
- Company limited by guarantee
- Company limited by shares
- Community interest company
- Charitable incorporated organisation

The relative advantages of these options are set out in tabular form in appendix 1.

- 4.3 Of these it is recommended that the best way to meet the city's ambition is the formation of a Trust as a company limited by guarantee and which also has charitable status. Such a Trust operating together with potential CIC subsidiary company(ies) has the potential to integrate youth services across the city whilst maximising the opportunities for charitable funding and commercial investment. The key features of a CIC are an asset lock which secures those assets for the good of the community and places limitations on dividends and interest payments made to shareholders and financiers so as to ensure the primary focus remains on achieving benefit for the community and not simply profit for the shareholders.
- 4.4 The establishment of a shell company is straight forward. Ensuring the entity has proper governance in place and is economically sustainable requires consideration of a wide range of issues. The following issues are addressed in the following Appendices

- Appendix 1** Recommended model for the parent company and its implications
- Appendix 2** Details on the Brokerage Subsidiary Company and its implications
- Appendix 3** The proposed relationship between the two companies
- Appendix 4** Outline of the proposed Governance arrangements of the new organisations
- Appendix 5** Details on the appointment of trustees
- Appendix 6** Advice on the transfer of assets
- Appendix 7** TUPE and pensions

#### 4.5 **Youth Employability Service (YES)**

The Youth Employability Service has performed strongly in Brighton and Hove. In the period 2014- 2015 Not in Education, Employment or Training (NEET) figures were 5.6% and Not Known 2.2% and this has continued to decline. The YES team has had great success in the use of social media as a tool for supporting young people, particularly those from a range of vulnerable groups. The inclusion of the Youth Employability Service in the Trust has been discussed at the working group and it has been agreed it should remain outside of the new company at present. It has also been agreed that this decision may be reviewed in the future as the project develops. It is also recognised that it delivers a service to more vulnerable young people in the city, not only with youth and community workers but alongside RUOK?(our specialist substance misuse service) and the Youth Offending Service.

#### 4.6 **Mobile Play Project**

The Mobile Play Project in Brighton and Hove is a popular provision, although not a statutory service. Between April and September 2015, 3654 children attended free-play sessions. As part of budget setting for 2016/17, it was agreed that the mobile play provision budget was reduced to £75k. Part of the reduction in budget work has been taking place to create a sustainable Play project by exploring other funding opportunities. Work is ongoing in this area and due to the importance of the service it is likely to be included as part of the Trust Model. This provides an opportunity for it to attract other sources of funding in the future.

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

The Youth & Employability working group has met on a regular basis since the November 2015, Children Young People and Skills committee approved the exploration of an option to establish a Youth Trust / foundation

The group consisted of;

Pinaki Ghoshal, Executive Director of Families, Children and Learning Services, B&HCC

Rachel Carter, Head of Skills and Employment, B&HCC

Paul Mitchell, Executive Director, Sussex Council of Training Providers (SCTP)

Chris Parfitt, Service Manager, Youth & Communities, B&HCC

Jo Lyons, Assistant Director, Education and Skills, B&HCC

Nick Juba, Chief Executive, City College

Joanne Martindale, Chief Executive, Hangleton & Knoll Project

Ben Glazebrook, Young People's Centre, Impact Initiatives

Chas Walker, Chief Executive, YMCA Downslink Group

Wayne Edmunds, Partnership Manager, Department for Work and Pensions (DWP)

Cheryl Finella, Economic Development Programme Manager, B&HCC  
Gill Brooks, Commissioning Manager, Children's Mental Health & Wellbeing, Brighton & Hove Clinical Commissioning Group  
Mark Price, Principal Lecturer, University of Brighton

- 5.2 The plans of the Youth and Employability Trust have been widely discussed with stakeholders
- 5.3 A city wide young people's reference group have been formed which will be embedded in the governance structure of the new organisation alongside with robust links to the Brighton and Hove Youth Council. Following on from the 2015 review of youth services and young people's involvement, information has also been taken to the Brighton & Hove Youth Council. The proposal is to create a Youth Forum. The Board of the new Youth and Employability Trust (the "Trust") will be required to meet with the Youth Forum on a regular basis, e.g. quarterly. The format / agenda for those meetings will be agreed with the Youth Forum. However, the agenda should broadly reflect the items for discussion at the next board meeting of the Trust so that the Youth Forum's views can be fully represented and taken into account at those meetings. The board papers should include the views of the Youth Forum. The board minutes should be shared with the Youth Forum. The Board's obligation to meet and engage with the Youth Forum will be set out in the constitution of the Trust. This will be in the public domain. The constitution will include safeguards to ensure that these provisions cannot be changed without the consent of the Youth Forum (and, potentially, the Council). In addition to the above, the Youth Forum may wish to have the right to attend and speak at board meetings and/or send an observer to board meetings.
- 5.4 As part of the City Employment and Skills Plan process, which has supported the establishment of a Brokerage service, there was engagement with providers, public bodies, third sector partners and businesses.
- 5.5 The Employer Skills Taskforce which completed its work in March 2016, committed to an Employer Pledge, with a key recommendation being the establishment of a brokerage service to support the recruitment of apprentices. This taskforce was made up of over 30 leading businesses and education providers.

## **6. CONCLUSION**

- 6.1 The Working Group has a framework on which future commissioning and provision can be planned through the setting up of a Youth and Employability Trust. The Trust will take the form of a company limited by guarantee and registered as a subsidiary company set up to develop the apprenticeship brokerage service taking the form of community interest company (CIC) limited by shares.

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

- 7.1 Financial Implications:

The current 2016/17 Council funding of the Youth services, including corporate and departmental overheads, is £1.181m. In addition there is £0.063m funded from the Public Health Grant, £0.040m from schools and £0.049m from other sources. The figure of £1.181m excludes funding for the Youth Employability Service (this is £0.499m).

Savings of £0.399m for the youth and employability services were agreed as part of the 2016/17 budget strategy and work is ongoing to ensure these are achieved prior to the establishment of the trust. It is not anticipated and it is not a requirement at this stage that additional significant savings will be made as a result of the creation of the trust.

A number of issues will need to be resolved, including the pension arrangements and the potential increases in employer contributions, funding of support functions, the use and funding of buildings currently occupied by the youth service and the potential for income generation. A business plan is being drafted covering the five year period to March 2022 which will identify the full financial implications and highlight the risks facing the trust.

*Finance Officer Consulted: David Ellis Date: 26/08/2016*

## 7.2 Legal Implications:

Duties in relation to the provision of youth services

- Section 507b of the Education Act 1996 places a specific duty on the Council to secure 'as far as reasonably practicable' sufficient educational and recreational activities for the improvement of young people's well-being, and sufficient facilities for such activities. Young people are defined as those aged 13-19, and those with learning difficulties to age 24.
- Statutory Guidance for Local Authorities on Services and Activities to Improve Young People's Well-being issued in 2012 clarifies that it is not prescribed which services and activities for young people local authorities should fund or deliver or to what level. Local authorities are responsible for securing, so far as is reasonably practicable, a local offer that is sufficient to meet local needs and improve young people's well-being and personal and social development. They should strive to secure the best possible local offer within available resources. Under the guidance it is for local authorities to determine the mix of open access, targeted, preventative and specialist provision needed to meet local needs and how to integrate all services around young people and decide what facilities are needed and how to make these available and accessible, wherever possible maximising the utilisation and potential of all local partners' assets.
- The recommendations in the report relate to the vehicle to deliver youth services and so do not compromise the council's statutory duty and are therefore a matter for the discretion of the committee exercising usual administrative law principles.
- Under the statutory guidance local authorities must take steps to ascertain the views of young people and to take them into account in making decisions about services and activities for them. The report sets out the steps that officers have taken to engage and consult with key stakeholders, including young people and



makes recommendations for the involvement of young people in the future governance of the Trust.

Irrespective of the vehicle for delivery the local authority must also fulfil the following statutory functions as part of its obligations under the Raising of the Participation Age (RPA) agenda, as set out in Statutory Guidance on the Participation of Young People in Education, Employment or Training for Local Authorities, DfE, March 2013:

- A duty to exercise functions to ensure that children aged 16 -18 who have not obtained 2 GCSEs are participating effectively in education or training. (s10 Education and Skills Act 2008)
- A duty to provide such services as it considers necessary to young persons and relevant adults to encourage, enable or assist them in participating in education or training with a view to ensuring that those persons fulfil the duty to participate in education or training (s68 Education and Skills Act 2008)
- A duty to identify those children mentioned above who are in their area and are not in work, education or training (“identify the NEETS”) and who are failing to fulfil the duty to participate in education or training (s12 Education and Skills Act 2008)
- Maintenance of a local Client Caseload Information System (CCIS). In Brighton & Hove this database is Aspire, which is jointly owned with East Sussex.

Access to good quality play can positively contribute to many aspects of children’s lives and can bring benefits to the wider community. It directly contributes to better outcomes for children and families. There is a duty to provide for children’s play under Article 31 of the United Nations Convention on the Rights of a Child, ratified by the Government in December 1991.

## The Trust

The proposal is to establish a new Youth and Employability Trust (“Trust”) as the new legal model for delivering and/or commissioning youth and employability services, which combines both charitable and commercial benefits. The new legal model will be:

- A new parent company - established as a company limited by guarantee (“CLG”) and registered charity
- A new subsidiary company - established as a community interest company (“CIC”) limited by shares

The parent company will provide an integrated approach to youth services, including community based youth work, targeted youth work and youth employability services (per the caveat in paragraph 4.5 regarding existing council run employability service). 100% of any surpluses generated by the Youth and Employability Trust will be reinvested in young people. The subsidiary company will provide employability services (including, but not limited to, young people) and the brokerage service recommended by the Employer Skills Task Force. The subsidiary will be liable to corporation tax. However, this can be mitigated to the extent that the subsidiary company gifts its surpluses to the charitable parent.

The vehicle proposed means that the Council will lose direct control over the services. It will, however, retain significant strategic control. The Youth and Employability Trust will be appointed by the Council to deliver the Council's outcomes for young people and vulnerable adults, skills and employment. The Council will not prescribe how these outcomes are achieved. It will be for the Youth and Employability Trust to determine how to achieve these outcomes – either providing services directly or collaborating with third party providers. It is envisaged that the Council will be represented on the board of the new charity and, potentially, its commercial subsidiary. This means the Council will retain a key role in the strategic decision-making process. The outcomes set by the Council for the Trust will need to reflect the obligations of the council, as well as reflect the Council's ambition for its young people and aspirations for the City.

In so far as it will be necessary in due course to consider the transfer of assets to the Trust, under Section 123 of the Local Government Act 1972 local authorities are under an obligation to secure best consideration with regards to the disposal of property, save for with the permission of the Secretary of State.

### 7.3 Procurement

Procurement of services to ensure continuity of provision over the transition period will need to comply with the Public Contract Regulations 2015 (PCR) and the council's internal Contract Standing Orders. The services fall within Schedule 3 PCR and as such if the value exceeds £589,148.00 measured over the life of the contract must be advertised in the Official Journal of the European Union. The process following advertisement must be fair, open and transparent services in order to select the most economically advantageous provider over the life time of the contract. This means that both quality and price will be evaluated in order to ensure that best value is achieved. The contracts will provide for transfer to the proposed Trust

### Vires

The Council has a clear statutory basis for creating the new legal model and entering into arrangements with it.

The Council has a General Power of Competence under Section 1 Localism Act 2011 to do "anything individuals generally may do" which includes the establishment of a Trust. Specific powers in relation to education and children are set out above.

It is permissible for a local authority to establish or promote a charity carrying out a public function. It is critical, however, that the charity is established for exclusively charitable purposes. A local authority and a charity can work together to deliver common objectives where the objectives of the local authority and the charitable organisation coincide. An "unstated non-charity purpose" would be where the organisation has been established simply to give effect to the wishes and policies of the local authority or its manager. A charitable trust must operate at arm's length from the Council. Arm's length negotiations will need to take place with the organisation and this will necessitate the establishment of the

trust and the appointment of trustees prior to finalisation of all contractual documentation. .

The Trustees have a fiduciary duty to exercise their duties in the best interests of the Trust and it is recommended that the organisation receives specialist independent advice before finalisation of documentation.

### Ongoing relationship

It is proposed that the Trust be appointed to deliver services through a series of formal agreements giving the council legal remedies in the event of poor performance by the Trust.

The organisation will clearly have a significant role to play in delivering many of the Council's strategic objectives but the Council will not retain direct control. It will enter into a Commissioning / Partnership Agreement with the new delivery partner, which will clearly set out the Council's aspirations for the service by reference to service outcomes / targets, which will need to be subject to a rigorous monitoring and review regime.

Agreements which should further provide for council representation on the board of the Trust and CIC. In order to embed the role of young people in the decision-making processes the establishment of a new "Youth Voice Group" is envisaged. This will be set out in the constitution of the new charity, together with an obligation on the trustees of the new charity to meet with the Youth Voice Group on a regular basis (e.g. quarterly) to discuss the matters arising for the next trustee meeting.

### TUPE and Pensions regulation

The staff currently involved in the delivery and/or commissioning of services which are intended to transfer to the new Youth and Employability Trust, would be regulated by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). Staff who spent a majority of their time providing the relevant services would transfer on existing terms and conditions to the Youth and Employability Trust and there would be no break in their continuity of service. The proposal is that all staff to whom TUPE applies are employed by the parent charity (at least initially).

The Best Value Authorities Staff Transfers (Pensions) Direction 2007 provides that where a local authority is contracting out services previously provided by the local authority, the contract for those services must secure pension protection for all transferring employees and provide that the pension protection is enforceable by the employee. Pension protection is defined as the right to acquire pension benefits which are the same as, or broadly comparable to or better than those rights they had or had a right to acquire as an employee of the authority. The charity will, therefore, be required to offer LGPS to the transferring staff (or a broadly comparable scheme).

*Lawyers consulted Judith Fisher & Natasha Watson 23.9.2016*

## Procurement Implications

In order to meet the deadline for contract commencement on the 1st April 2017, a procurement timetable has been drawn up which proposes that the Invitation to Tender (ITT) will be published in November 2016 to ensure selection of preferred bidders and contract awards by February 2017. A comprehensive specification will be drafted to accompany the ITT. The tender will be split into separate lots which will be on neighbourhood areas for open access work and by protected groups for equalities work.

The Public Services (Social Value) Act 2012 (the Act) requires contracting authorities to consider at the pre-procurement stage of any services contract which exceeds EU threshold to consider how what is being procured might improve the economic, social and environmental well-being of an area and how the authority might secure that improvement in the procurement process itself. There is also a requirement that authorities consider whether to consult on these matters.

In February 2015, the Cabinet Office published a review of the Act by Lord Young which highlighted concerns that there have been inconsistent practices both in defining social value and determining how and when to include it in the procurement process. The Council has recently agreed a new Social Value framework for Commissioners, Procurement teams and Providers and this will inform the requirements for these services.

*Procurement consulted Steve Dillow Dated 8.9.2016*

### 7.4 Equalities Implications:

An Equalities Impact Assessment will be developed alongside any proposed changes to delivery which will highlight impacts on those young people with protected characteristics. Any impact on staff will be considered as part of a service redesign. Changes are likely to impact on low paid and / or female staff. The EIA will address how these impacts can be addressed through the service redesign proposed.

### 7.5 Sustainability Implications:

Continuing to provide youth services will build more sustainable communities and boost health and wellbeing amongst young people and their families. Exploring new models of delivery will allow for a more sustainable model longer term.

### 7.6 Crime & Disorder Implications:

Young people will have reduced support and access to diversionary activities which increases the risk of antisocial behaviour, sexual exploitation, radicalisation and reduces young people's resilience to substance misuse.

### 7.7 Risk and Opportunity Management Implications: Risks have been considered in the development of the consultation proposals. The main risks are:

Financial sustainability of the Youth and Employability Trust

- Brokerage CIC not receiving funding
- National changes in welfare provision including reductions in tax credits could mean that more young people and families will need support

#### 7.8 Public Health Implications:

The aim of the proposals is to design a revised service which, within the reduced funding available, will continue to improve outcomes for young people and reduce inequalities between families in greatest need and their peers.

### **SUPPORTING DOCUMENTATION**

- Appendix 1** Recommended model for the parent company and its implications
- Appendix 2** Details on the Brokerage Subsidiary Company and its implications
- Appendix 3** The proposed relationship between the 2 companies
- Appendix 4** Outline of the proposed Governance arrangements of the new organisations
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## Appendix 1 Recommended model for the parent company and its implications

### 1.1 Recommended Legal Model for the Parent Charity

For the charitable entity there are, potentially, three legal models which could be used:

- Company limited by guarantee
- Community benefit society
- Charitable incorporated organisation

**Our recommendation is the company limited by guarantee, for the following reasons:**

<b>Company Limited by Guarantee</b>	
<b>Limited Liability</b>	<p>A company is a separate legal entity. It would be the company not the individual board members who would enter into any contractual arrangements. Any debts or liabilities would be those of the company not the individual board member. This therefore protects the directors from any liability.</p> <p>In addition, the company has members rather than shareholders. The members act as the guarantors of the company. The members undertake to contribute to the assets of the company in the event of the company being wound up as a contribution to the debts and liabilities of the company. As this is a charitable entity and there is no intention to expose the members to any risk, this liability will be capped at £1. This, therefore, limits the liability for the members.</p>
<b>Modern Regulatory Regime</b>	<p>A company operates in a modern regulatory regime.</p> <p>It is subject to the Companies Acts, which are regularly reviewed and updated to ensure that they are up to date with business law and practice.</p> <p>A company is regulated by Companies House - an efficient and helpful regulator.</p> <p>All company filings e.g. report and accounts are available on the Companies Register which is easily accessible and available for online inspection. This transparency provides significant confidence to all those dealing with the company.</p>
<b>Most Familiar Model</b>	<p>The company model is the model with which third parties are most familiar. This will make dealings with other funding partners, stakeholders, banks and suppliers</p>

<b>Company Limited by Guarantee</b>	
	easier.
<b>Charity Model</b>	<p>It is still the recommended model for incorporated charities. Although the charitable incorporated organisation (CIO) is now available for use, this is still relatively new and not familiar to the wider public.</p> <p>Significantly, a charitable company limited by guarantee must register with the Charity Commission. This means that it will have a charity registration number. This will be critically important when seeking charitable funding. A charitable community benefit society by contract is exempt from registration with the Charity Commission. It has a HMRC tax reference and eligible for tax benefits. However, this does not have the same “brand recognition” as a charity registration number.</p>
<b>Flexible Model</b>	<p>The company model is extremely flexible. It is easy to create subsidiaries/ group structures/ consolidate groups/ SPVs for new business ventures.</p> <p>Therefore, new subsidiary companies can be created with the parent becoming a “hub” for youth and employability services.</p>
<b>Statutory Duties and Responsibilities</b>	<p>The directors will be subject to duties and responsibilities under the Companies Acts. These are not onerous. However they must be taken seriously. It gives confidence to those dealing with the company that the directors are subject to a statutory regime requiring them to act in the best interests of the organisation.</p>
<b>Accountable</b>	<p>The company will be required to file annual report and accounts at Companies House. This is not onerous and ensures the company is complying with the rigours of company accounting.</p> <p>The report and accounts are readily available in the public domain. Therefore, they can be scrutinised by key stakeholders.</p>

## 1.2 **Community Benefit Society**

A community benefit society is registered under the Co-operative and Community Benefits Society Act 2014. It is registered with the FCA.

If charitable, it is exempt from registration with the Charity Commission. However, it can be recognised by HMRC for charitable tax benefits. It will not, however, have a charity registration number.

It is a slightly old fashioned vehicle and operates in a less transparent regime.

It is not possible, for example, to quickly search the FCA website to confirm directors, registered office, filing history or obtain the latest report and accounts. This may, therefore, create some difficulties with dealings with third parties, including banks, suppliers, funders and delivery partners.

It is not a model with which third parties are generally familiar.

Having regards to the challenges ahead for the PSM, it is our recommendation that it establishes a model which is modern, up-to-date, flexible and which operates in a transparent and accountable regime.

### 1.3 **Charitable Incorporated Organisation**

The charitable incorporated organisation is a very new legal model for charities.

It was introduced under the Charities Act 2006.

However, the statutory instruments setting out the key provisions of the charitable incorporated organisation were only introduced last year.

It has the prime advantage of only being regulated by the Charity Commission and not Companies House.

This may, however, also be a disadvantage.

Registration at Companies House provides a quick and easy way for third parties dealing with the charity to confirm its status and financial standing.

Further, as a very new legal model, the legal status of the charity may cause some uncertainty and/or confusion.

On balance, the recommendation is that, for the time being at least, the new charity be established as a company limited by guarantee and registered charity.

A company limited by guarantee can easily convert to a charitable incorporated organisation.

If, therefore, in the future there is a perceived disadvantage of being a company limited by guarantee and not a charitable incorporated organisation, the charity can easily convert.

In terms of establishing a charitable company limited by guarantee, the first stage is to incorporate the company and, then, to apply to the Charity Commission for registration.

It is recommended that the company be established at the earliest opportunity and then an application be made to the Charity Commission following the recruitment of the shadow board.



## Appendix 2 Details on the Brokerage Subsidiary Company and its implications

### 1.1 Recommended Legal Model for the Subsidiary Company

For the subsidiary company which will be non-charitable, there are two options:

- Company limited by shares
- Community interest company limited by shares

The company limited by shares is the legal entity most commonly used as trading subsidiaries for charities.

Here, however, we are recommending the community interest company limited by shares for the following reasons:

Advantage	Comment
<b>Brand</b>	<p>CIC is a bespoke legal entity for social enterprises.</p> <p>It is a relatively new entity, introduced under the Companies (Audit, Investigations and Community Enterprise) Act 2004.</p> <p>It is, however, recognised as the “fit for purpose” corporate model for community enterprise initiatives and the preferred model for this particular initiative.</p>
<b>Regulation</b>	<p>It is regulated by the CIC Regulator at Companies House.</p> <p>It is subject to the Companies Act, as with any Companies Act vehicle, save that, in addition, it must comply with “the community interest test” and the “asset lock” test.</p>
<b>Community Interest Test</b>	<p>To be registered as a CIC, the company must demonstrate to the satisfaction of the CIC Regulator, that the company has been established for a purpose which “could be regarded by a reasonable person as being in the community or wider public interest”.</p> <p>Here, there is a clear public interest and the benefits will be available to the wider public.</p>
<b>Asset Lock</b>	<p>The asset lock is a fundamental feature of CICs. This means that the assets of the CIC, including any profits or other surpluses generated by its activities, must either be retained within the CIC to be used for community purposes or, if they are transferred out of the CIC, they must satisfy one of the following requirements:</p> <ul style="list-style-type: none"> <li>• It is made for full consideration, i.e. market value, so the CIC retains the value of the assets transferred</li> <li>• It is made to another asset locked body, e.g. a CIC or charity which is specified in</li> </ul>

<b>Advantage</b>	<b>Comment</b>
	<p>the CICs Articles of Association</p> <ul style="list-style-type: none"> <li>It is made to another asset locked body with the consent of the Regulator or is otherwise made for the benefit of the community</li> </ul> <p>The asset lock is established in legislation and prohibits the CIC from distributing its assets or profits to their members, except to the extent permitted where CIC issues equity, i.e. shares and dividends.</p> <p>The asset lock will not, however, prevent a CIC from using their assets efficiently in pursuit of community benefit, including collateral for finance.</p>
<b>Tax Status</b>	<p>CICs do not enjoy any special tax status. The CIC will therefore be subject to corporation tax on any surpluses (20%). It can mitigate its tax liability by gifting all or part of its surpluses to the charitable parent. In the hands of the charitable parent, the income will be tax exempt. For the avoidance of doubt, a CIC cannot be a charity.</p> <p>A CIC may, however, be eligible for discretionary rate relief, depending on the local authority's discretionary rate relief policy.</p> <p>A CIC may, also, be eligible for funding available to support community projects.</p>
<b>Shares</b>	<p>In order to raise investments, a CIC can be established as a CIC limited by shares and, therefore, have the option of issuing shares that pay a dividend to investors.</p> <p>In order to protect the asset lock, the dividend to private investors is subject to a maximum aggregate dividend cap set by the Secretary of State.</p> <p>The maximum aggregate dividend limits the total dividend declared in terms of profits available for distribution.</p> <p>The current is 35% of distributable profits. The dividend cap is intended to strike a balance between encouraging people to invest in CICs and the principle that the assets and profits of a CIC should be devoted to the benefit of the community.</p> <p>This helps ensure that the dividends are not disproportionate to the amount invested and profits made by the company.</p> <p>Hence the cap means that 65% of the CICs profits are reinvested back into the company to further its community benefit purposes.</p>

### **Recommendation**

The recommendation is to establish the parent charity as a company limited by guarantee and registered charity and the subsidiary company as a community interest company limited by shares.

Both legal models are modern, flexible and “fit for purpose” for a project of this nature.

## **Appendix 3** The proposed relationship between the 2 companies

### **1.1 Collaborative Arrangement**

The CIC will be a subsidiary of the charity.

This has a specific meaning in company law. It means that the two organisations can be grouped for VAT purposes and consolidated for accounting purposes.

More significantly, however, it means the creation of a new group structure to maximise charitable and commercial opportunities.

Each organisation will have a slightly different focus. However, they will share a common vision.

It will be critical that the two organisations work collaboratively to achieve this common vision.

### **1.2 CIC Model**

The proposal is that the CIC focuses on promoting employment opportunities (including, but not limited to, young people) and, most importantly, delivering the brokerage services, as recommended by the Employee Skills Task Force.

Elements of this service could, arguably, be included within the remit of the charitable parent.

However, it is suggested that there are significant advantages of these being carried out in the CIC.

The CIC will be a separate legal entity. The legal model is bespoke for social enterprises. It will be able to develop a separate brand and identity with a clear remit and purpose.

Aspects of the CIC's remit and, specifically, the brokerage services, are non-charitable and, therefore, would, in any event, be required to be carried out by a trading subsidiary of the charity.

The activities of the CIC and, in particular, the understanding of the skills needs within the different business sectors will inform and focus the activities of the parent, as well as provide resources to fund specific projects (as highlighted below).

### **1.3 Size and Composition of the CIC Board**

It is suggested that the CIC board will be slightly smaller than the charity board with a clear focus on education, skills, training and business.

The Council can be represented on the board of both the parent and the subsidiary.

The parent charity will, also, be represented on the board of the subsidiary, with a residual right to approve (and/or remove) other board members.

The “independents” on the board of the CIC will be critical, not only in terms of harnessing additional skills and expertise, but, also, for managing any conflicts of interest that might arise.

An example of a potential conflict that might arise is at year end, when the CIC is determining whether, and to what extent, it wishes to gift any surpluses to the parent.

The independent board members will need to make this decision, giving careful consideration to the business plan requirements of the CIC.

#### 1.4 **Management and Operational Support**

The parent charity can provide management and operational support to the subsidiary company. If the charity and CIC are grouped for VAT purposes, then there will not be VAT charged on any intra-group supplies, making this a VAT efficient structure.

#### 1.5 **Funding from the CIC to the Charity**

The CIC limited by shares will be subject to corporation tax on any profits made. To mitigate this liability (currently 20%) it can gift all or part of the profits to the parent charity. In the “hands” of the parent, the income is tax exempt on the basis that it is applied to fulfil the parent’s charitable objectives, i.e. removing barriers for young people. This is, therefore, a tax efficient structure.

Any funding from the CIC to the charity can be for specific purposes, e.g. targeted support to young people to improve employment opportunities. Such support can be informed by the CIC’s knowledge of the need for certain skills in the local economy.

This creates a “virtual circle” of information from the CIC, informing the work of the charity together with the provision of resources to provide the targeted support for young people to maximise their employment opportunities.

#### **Recommendation**

It is recommended that the subsidiary be created as a community interest company limited by shares.

The CIC will focus on the brokerage services.

The charity and the CIC will be group for VAT purposes. Therefore, there will not be VAT on any support services provided by the parent charity to the CIC (intragroup supplies).

The CIC will be subject to corporate tax on any profits.

To mitigate this liability it can gift all or part of the profits to the parent charity. In the hands of the parent, the income is tax exempt.

The funding from the CIC can be targeted at programmes to improve the employment opportunities of young people, informed by the knowledge and expertise of the CIC.

**Recommendation**

This creates a “virtual circle” of information from the CIC, informing the work of the charity together with the provision of resources to provide the targeted support for young people to maximise their employment opportunities.

## **Appendix 4** Outline of the proposed Governance arrangements of the new organisations

### **1.1 Proposed legal structure**

The subsidiary will be wholly (or majority) owned by the parent company.

Both legal models are modern, flexible and fit for purpose for a project of this nature. Section 5 of this report sets out in detail the advantages of the recommended legal models for this project.

Active citizenship is one of the Council's overriding principles. This includes increasing participation by children and young people, in particular.

The youth service team is fully committed to encouraging children and young people to engage in the development of youth services.

It is critical that the new Youth and Employability Trust not only engages with young people, but embeds the role of young people in the decision-making processes.

The proposal is, therefore, the establishment of a new "Youth Voice Group".

This will be set out in the constitution of the new charity, together with an obligation on the trustees of the new charity to meet with the Youth Voice Group on a regular basis (e.g. quarterly) to discuss the matters arising for the next trustee meeting.

The views of the Youth Voice Group will be reported to, and fully taken into account at, the next trustee meeting.

Additional rights of the Youth Voice Group can be discussed and agreed with the Youth Council, such as attendance at trustee meetings.

Most importantly, however, these rights will be "enshrined" in the constitutional document for the charity, with safeguards to prevent these rights from being eroded without the consent of the Youth Voice Group.

### **1.2 Potential Funding Opportunitites**

The charity will be able to maximise charitable giving, including gift aid, donations and charitable grants.

The subsidiary company can facilitate commercial and quasi commercial investment (i.e. philanthropic investment).

The subsidiary company will be subject to corporation tax on any profits (20%).

It can mitigate that liability by gifting (using the gift aid scheme) all or part of the profit to the parent charity. In the hands of the charity, the income is tax exempt. This is, therefore, a tax efficient structure.

More significantly, the funding from the subsidiary can be used by the charity to develop specific training and support initiatives to maximise the employment opportunities for young people (as well as improving other life skills).



## Recommendation

To create a new Youth and Employability Trust to deliver youth and employability services.

The new legal model will be:

- A new parent company – established as a company limited by guarantee (“**CLG**”) and registered charity
- A new subsidiary company established as a community interest company (“**CIC**”)

The parent company will provide an integrated approach to youth services, including community based youth work, targeted youth work and youth employability services.

The subsidiary company will provide employability services (including, but not limited to, young people) and, significantly, the brokerage service recommended by the Employer Skills Task Force.

This is an innovative and forward thinking approach to youth and employability services, optimising opportunities for charitable funding and commercial investment.

It demonstrates the Council’s commitment to explore new ways of working to achieve the Council’s corporate and strategic objectives for the City.

It brings together the youth, skills and employability agendas identified by the Children, Young People and Skills Committee.

It, also, meets the Cabinet Office’s criteria for a new and innovative approach to service delivery for young people.

The Youth and Employability Trust will be appointed by the Council to achieve certain outcomes in relation to youth and employment services.

The Youth and Employability Trust will determine how to achieve those outcomes – either providing services directly or through partnership arrangements with third parties.

## **Appendix 5** Details on the appointment of trustees

### **1.1 Skills on the Board of the Charity**

It is essential that the board is made up of individuals with a range of skills and expertise and who can contribute to the success of this new organisation.

This is, therefore, an opportunity to harness public, private and voluntary sector expertise to compliment the expertise of the senior management team and help deliver the strategic objectives of the new organisation.

The senior management team have unrivalled knowledge and expertise in relation to youth services.

However, for the new organisation to be a success, it will need to develop new skills and expertise, with a particular focus on business, enterprise and commerce.

Therefore, we would recommend a board of, perhaps, between 3-11 individuals (rather than corporate board members) and which includes representation from the following key sectors:

- Business / enterprise / commerce
- Education / training
- Health / welfare
- Housing
- Leisure / arts / culture

Board members should all be committed to the objectives of the new organisation and fully embrace the Council's vision for youth and employability services.

Ideally, board members should also have key specialisms/professional qualifications including:

- Business / Enterprise / Commerce
- Finance
- Fundraising
- Marketing / PR
- Leisure / Hospitality
- Education
- Health / Care
- Legal

- Youth and community development

Achieving the right balance of skills and expertise will be key to the success of this project.

It is, however, a great opportunity to harness private sector expertise in particular.

The recruitment, selection and appointment of trustees is one of the key success factors for an initiative of this nature.

The recruitment, selection and appointment of trustees is one of the key success factors for an initiative of this nature. It is essential that trustee recruitment is approached in a professional way with full commitment from members and officers.

It is imperative that we achieve a balance of skills and expertise and, most importantly,

We set out below a summary of the key steps for trustee recruitment:

- Prepare trustee recruitment pack including a person specification
- Prepare draft advert to be placed in local, national and specialist press
- Contact local press to get some editorial alongside advert
- Place advert and send advert direct to known potential candidates
- Fix deadline for expressions of interest
- Fix date for an open evening
- Hold open evening
- Fix deadline for submissions of CVs and formal application to be a Trustee
- Confirm make up of Trustee selection panel (to include the Council and other key stakeholders, most importantly, young people)
- Fix date for trustee interviews (ideally on one day)
- Selection panel to conduct interviews and shortlist shadow board members
- Inform short-listed candidates
- Fix date for first trustee meeting
- Second phase recruitment campaign/interviews if required

## 1.2 Skills on the Board of the Community Interest Company

Again, it is essential that the board is made up of individuals with a range of skills and expertise and who can contribute to the success of this new organisation.

The CIC board will potentially be smaller than the parent board (perhaps between 3-7) and specifically focussed on the employment and brokerage services.

The skills of the board will reflect this focus and therefore include representation from the following key sectors:

- Business / enterprise / commerce
- Education
- Training/ retraining

Again with core skills around finance.

This is in addition to representation from the parent on the board of the subsidiary.

### 1.3 **Conflicts of Interests**

It is preferable to appoint board members of the charity and CIC who are not subject to a conflict of interest. It is recognised, however, that with the involvement of key stakeholders including the Council, conflicts of interest may arise from time to time. These would need to be managed in accordance with the charity's or company's governing document and best practice generally. This would mean declaring the interest, absenting from discussions when the item is discussed and not voting on that particular matter.

#### **Recommendation**

It is recommended that there be a high profile, professionally run trustee / director recruitment process to recruit high calibre trustees / directors who fully embrace the Council's vision for youth and employability services but who, also, have additional skills and expertise to contribute to the success of the Youth and Employability Trust.

Key areas of expertise would include business, enterprise, commerce, finance, marketing, education, health, leisure and youth and community development.

## **Appendix 6** Advice on the transfer of assets

### **1.1 Property**

Careful consideration needs to be given to the transfer of any land and property associated with the Youth Services.

Under Section 123 of the Local Government Act 1972, local authorities are under an obligation to secure best consideration with regards to the disposal of property.

Disposal for these purposes includes both freehold or leasehold disposal.

A disposal for less than best consideration would require consent from the Secretary of State.

General consent is given in relation to disposals for the economic, social and environmental wellbeing of the area, provided the undervalue is less than £2 million.

Consideration will, therefore, need to be given as to whether or not the disposal will be for less than best consideration and if therefore consent will be required from the Secretary of State to the disposal of any property associated with the Youth Services.

Subject to that, the next key consideration is whether or not to transfer any such property freehold or leasehold.

A freehold transfer means that legal title to the property will be transferred to the new charity (and/or CIC).

The property would become an asset of the charity (and/or CIC).

In the event that the charity (and/or CIC) got into financial difficulty, there is a risk that the property and other assets of the charity could be seized and sold to settle debts of any creditor.

This is a significant risk with regards to these vital community assets.

If the preferred way forward is to transfer freehold, then it is possible that the asset could be subject to a special trust and, therefore, not corporate property of the charity or, alternatively, held as permanent endowment.

In these circumstances, however, it is suggested that the better way forward would be a long lease of the assets, e.g. 15 years plus.

A lease would provide significant protection to the Council and, thus, the local community.

In the event that the charity (and/or CIC) got into financial difficulty, e.g. insolvency, then the lease would automatically terminate and the land and property would revert to the Council.

Further, in relation to a lease, the landlord is able to restrict certain actions, thus providing protection as to the use of the property and/or land.

Such restrictions would include:

- Permitted Use
- Prohibition on charging
- Restriction on disposal
- Restriction on subleasing
- Restriction on sharing
- Restriction on development

The proposed restrictions are not in any way intended to limit the activities of the charity (and/or CIC) but, rather, to ensure that these vital community assets are used by the charity (and/or CIC) for the intended purposes.

Consideration needs to be given as to what properties could, potentially, be transferred to the charity (freehold or leasehold) to be used by the new charity to expand the range of services it can provide and, most significantly, explore income generating opportunities.

The Council may, also, want to explore expanding the role of the new charity to include a housing and accommodation function – not just limited to advice on housing but, potentially, to own and/or manage accommodation for young people, potentially linked to employment and/or apprenticeship scheme.

## 1.2 **Other Assets**

Careful consideration needs to be given to the transfer of the other assets associated with the operation of the Youth Services, including, for example:

- ICT
- Supply contracts
- Operational manuals
- Databases

Each asset needs to be identified by reference to a schedule/inventory and the treatment of each asset carefully considered.

If title to the asset is transferred or assigned, then ownership passes.

Therefore, the Council would need to consider how they would recover that asset in the event of early termination of the contractual arrangements or insolvency of the charity (and/or CIC).

To protect the Council's position it might be appropriate to loan or licence this asset. This will, of course, very much depend upon the value on the asset. This issue will not arise, potentially, in relation to low value items.

## **Appendix 7 TUPE and pensions**

### **1.1 TUPE**

The transfer of the management and operation of the youth and employability services to the Youth and Employability Trust will include a transfer of staff currently engaged in delivering those services.

The staff transfer would be regulated by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“**TUPE**”).

In such a case all staff who spent a majority of their time providing the services would transfer on existing terms and conditions to the Youth and Employability Trust and there would be no break in their continuity of service.

### **1.2 Secondments**

The Council will be aware of some high profile outsourcing projects that have involved the secondment of staff rather than the TUPE transfer of staff.

This has previously been in the context of an outsourcing of services to a joint venture / “special purpose vehicle”. In those circumstances, the Unions argued that the staff were transferring to a non asset holding entity and therefore were prejudiced and potentially at risk.

Long term secondments are potentially at risk of being challenged as a TUPE transfer.

Secondments should only be considered, therefore, on a short term or interim basis.

Here, the proposal is that all staff are employed by the parent charity (at least initially).

However some staff will be seconded to the subsidiary company to deliver the brokerage service).

### **1.3 Pensions**

The Best Value Authorities Staff Transfers (Pensions) Direction 2007 (“the Direction”) came into force on 1 October 2007. The Direction was introduced pursuant to sections 101 and 102 of the Local Government Act 2003 (“the Act”) and applies to ‘best value authorities’ as defined in section 1 of the Local Government Act 1999. Sections 101 and 102 confer power on the Secretary of State to require local authorities to deal with matters affecting staff according to directions. The requirements of the Direction set out what has previously been set out in Codes of Practice and guidance. The intention behind the introduction of the Direction is to formalise and give statutory force to the previous Codes of Practice and guidance.

The Direction provides that where a local authority is contracting out services previously provided by the local authority, the contract for those services must secure pension protection for all transferring employees and provide that the pension protection is enforceable by the employee. Pension protection is



defined as the right to acquire pension benefits which are the same as, or broadly comparable to, or better than those rights they had or had a right to acquire as an employee of the authority.

The Direction also provides for subsequent contracting-out situations so that where a local authority is contracting with a subsequent contractor for the provision of services originally provided by the authority, the contract must secure the same level of pension protection for those employees.

The charity will, therefore, be required to offer LGPS to the transferring staff (or a broadly comparable scheme).

The charity will be eligible to become an Admitted Body within LGPS and, therefore, offer pension protection to the transferring staff.

There are a number of key commercial issues in relation to LGPS pensions which will require careful consideration, including:

- Under funding at outset
- Increases in pension contribution rates during the contract period
- Accrued deficit at exit

Going forwards the charity may wish to enter into alternative (non LGPS) schemes for new employees (i.e. not the TUPE staff).

1.4 It is understood that some of the TUPE are members of the Teacher's Pension Scheme. This is an entirely different type of Scheme. It will be necessary to discuss and agree with the Trustees of that Scheme continued admission of those members of staff.

#### 1.5 **Consultation**

Any organisational change will, of course, be of concern to staff.

It would be essential to consult with the Unions at the outset and to agree a staff consultation protocol.

This will involve a commitment by the Council to meet regularly with the Unions and to regularly communicate with those staff affected by the transfer.

#### **Summary**

All staff who spend the majority of their time providing the services would transfer, pursuant to TUPE, to the new charity on existing terms and conditions.

It is recommended that all staff are transferred to the parent charity, at least initially.

Those staff providing the brokerage services can be seconded by the parent to the subsidiary company.

The new charity will be entitled to be an admission body for the purposes of

### **Summary**

LGPS, providing continued pension provision for the transferring staff.

Special arrangements will need to be made for those employees currently in the Teachers' Pension Scheme.

### **Recommendation**

Consideration needs to be given to the transfer of property assets to the charity (most likely leasehold) to be used by the Youth and Employability Trust to expand the range of services it can provide and, most significantly, explore income generating opportunities.