

NORTH NORTHAMPTONSHIRE SHADOW AUTHORITY

SHADOW EXECUTIVE COMMITTEE MEETING

THURSDAY 25TH MARCH 2021

Report Title	Children's Trust Joint Arrangements
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List of Appendices

Appendix 1: Terms of Reference of the Joint Officer Board

Appendix 2: Terms of Reference of the Joint Committee

Appendix 3: The Key Principles Paper (not for publication by virtue of Paragraph 3 of Schedule 12A of the Local Government Act 1972)

1. Purpose of Report

- 1.1. The purpose of this report is to seek members agreement to the arrangements which govern the relationship between the two new Councils West and North Northamptonshire as they take over the contractual agreements with the Children's Trust from Northamptonshire County Council.

2. Executive Summary

- 2.1 The report sets out the governance arrangements between the Authorities and the key issues that need to be considered in approving them.

3. Recommendations

- 3.1 It is recommended that the Shadow Executive Committee:
- i. Note the Children's Trust Governance Arrangements which became operational on 1st November 2021
 - ii. Agree the structure of the joint arrangements between North and West Northamptonshire including:
 - a) Joint Committee
 - b) Joint Officer Board
 - c) Support Service Agreement and SLAs
 - d) The Interface Agreement

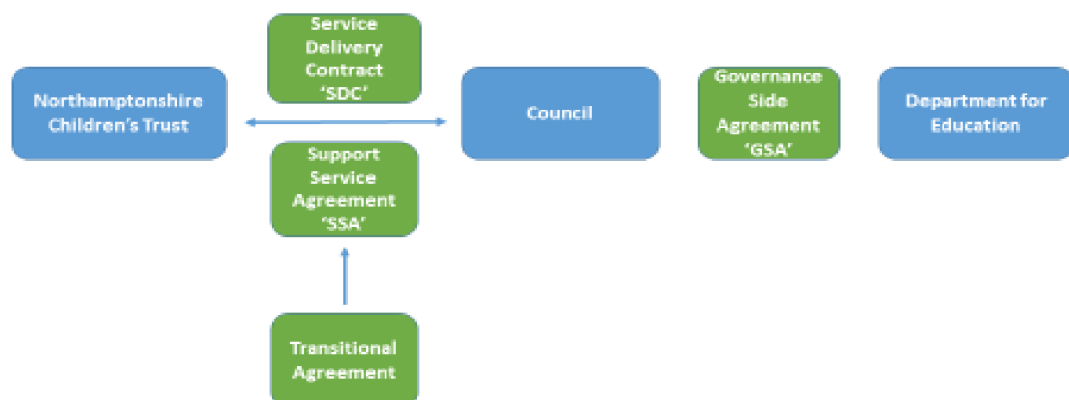
- e) The other documents necessary to enable the transition to the two new Councils including the Deed of Variation for the existing Service Delivery Contract between the Children’s Trust and Northamptonshire County Council.
- iii. Delegate to the Director of Children’s Services the power to finalise the Supports Services Agreement, the Interface Agreement and any other documents necessary to give effect to the Children’s Trust Governance arrangements prior to 1st April 2021 and make any necessary minor operational changes to enable the transition to the two Councils of North and West Northamptonshire.

(Reason for Recommendations – To ensure that the Children’s Trust arrangements can operate effectively across the two new Councils including the provision of support services to the Children’s Trust and operation of the existing agreements.)

4. Report Background

4.1 The DfE issued a statutory direction to Northamptonshire County Council (NCC) on 17 October 2019 and on 30 June 2020. The latter was to direct NCC to secure timings for the establishment of a children’s trust. On 30 October 2020, NCC entered into a suite of contractual documents with Northamptonshire Children’s Trust (“the Trust”), for the delivery of children’s social services. The Trust is a wholly owned company of NCC. NCC has entered into a contractual arrangement with the Trust to fulfil the Council’s statutory children’s social care functions in accordance with the Children and Young Persons Act 2008. Services commenced on 1 November 2020.

4.2 The arrangements between NCT and NCC, and the DfE, include a number of agreements to give effect to the arrangements. These agreements will transfer to the new Council with the exception of the Transition Agreement, which is a time limited agreement to take the arrangements through to 31st March 2021. These arrangements are summarised in the diagram below:



4.3 Schedule 18 of the Service Delivery Contract sets out the governance arrangements between NCC and NCT for the management of the Contract. The key aspects of this is set out in the table below.

Group	Roles/Responsibilities	Frequency/Attendees
Operational Group	To provide oversight of the contract management and monitoring arrangements and the Council's performance of the Dependencies. The meeting provides an operational forum for both Parties to discuss their respective performance and all associated issues holding each other accordingly to account in respect of such performance.	<p>Monthly frequency</p> <p><u>Council</u>: Director of Children's Services (Chair); finance representatives; Council representatives from the Intelligent Client Function.</p> <p><u>NCT</u>: Chief Executive; fianance representative; Director of Children's Social Care.</p>
Strategic Group	To provide strategic, political and executive oversight and scrutiny of NCT's delivery of the Council's statutory functions, through periodic monitoring of performance, Change Control and Annual Review. The Strategic Group is also a point of escalation for issues arising from the Operational Group.	<p>Quarterly (frequency from 1 April 21)</p> <p><u>Council</u>: Lead Member (Chair) Chief Executives, Section 151 Officers, Director of Children's Services.</p> <p><u>NCT</u>: Chair, Chief Executive, Finance Director,</p> <p>Director of Children's Social Care,</p>

5 Issues and Choices

5.1 The Reorganisation of Local Government will replace a single entity with two separate new Councils. Although agreements will transfer to the new Councils it is necessary to put in place arrangements to ensure that the continued effective operation of the existing agreements. A Key Principles Paper was prepared to highlight the matters which need to be covered in agreements and arrangements during the period between 1st November 2020 and 31st March 2021, to enable the transition. The Key Principles Paper is attached at Appendix 3.

5.2 The agreements which are necessary to give effect to these changes are as follows:

Doc. No.	Document title	Parties	Summary of purpose
1.	Deed of Variation to the Service Delivery Contract	Unitary Councils and Northamptonshire Children's Trust	The Service Delivery Contract will be amended to take into account minor operational changes as a result of the Unitaries taking over the role of NCC currently (for example in relation to contract management).
2.	Support Services Agreement	Unitary Councils and Northamptonshire Children's Trust	This will replace the Transition Agreement and will be the mechanism under which the Support Services will be provided by the Unitary Councils (either directly or through the PDA) to NCT to facilitate NCT's provision of the social care services.
3.	Interface Agreement (linking to the Joint Committee Arrangements)	Between the Unitary Councils	The purpose of the Agreement is to provide a mechanism for the two Unitaries to work together, and also for how the Unitaries will interface with NCT, and how NCT will interface with the Unitaries pursuant to the Service Delivery Contract and the support services arrangements. The Interface Agreement is fundamentally about the governance arrangements between the Unitaries and the agreed basis upon which the Unitaries will jointly manage the relationship with NCT following the local government reorganisation. The governance of the Agreement has a direct interface with the Unitaries' decision making under the SDC, SSA and the Articles. The agreed governance provisions should be reflected in the relevant policies and procedures of each Unitary.
4.	Pensions Guarantee Agreement	Northamptonshire Children's Trust, Unitary Councils and the Pensions Fund	Guarantee and Indemnity relating to the participation of NCT in the Northamptonshire Pension Fund as a Designating Employer.

5.	The Properties – Leases and Licences	Unitary Councils and Northamptonshire Children’s Trust	To be agreed in accordance with Clause 9 and in place with effect from 1 April 2021.
6.	EDT Buy Back Agreement	Unitary Councils and Northamptonshire Children’s Trust	Arrangements for the provision of the EDT services relating to adult services provision.

4.3 The Support Services Agreement

4.3.1 The Support Services Agreement (SSA) is one of the key documents required to implement the necessary transition to the two new Councils. At the time of writing it is not yet finalised but has been the subject of detailed dialogue between the Trust and the Council through the trust lawyers (Burgess Salmon) and those acting for the Councils (Bevan Britten).

4.3.2 The (SSA) is to be entered into with effect from 1 April 2021 and will replace the current form of Transition Agreement for the provision of the Transitional Support Services. The SSA is a mechanism through which the Trust can buy back services from the Councils in order to fulfil its obligations under the Service Delivery Contract (SDC).

4.3.3 The SSA comprises of a set of overarching terms and conditions dealing with key issues such as term, termination and exclusivity. The operational arrangements for the provision of each Support Service are set out in individual SLAs which will be appended. The arrangements for the provision of the Support Services have an interface with the arrangements with the Cambridgeshire and Milton Keynes authorities, however, in terms of contractual responsibility, the Unitary Councils are responsible for facilitating the provisions of the full suite of Support Services to the Trust including those provided by third parties. Schedule 1 to the SSA sets out the categories of Support Services.

4.6.3.1 Term: The Support Services will be delivered with effect from 1 April (replacing the current provision of the Transitional Support Services) and whilst the SSA will continue until the SDC expires or is terminated, there are specific provisions under which the SSA might be terminated in whole or in part. The Trust also has the ability to go source services from elsewhere outside of the exclusivity periods, which are specific to each service.

4.6.3.2 Termination: The SSA will terminate when the SDC expires or terminates, but there are a number of other termination provisions, which will allow either the Trust or the Unitary Councils party to terminate on a fault basis and a no fault basis (without cause) provided that the detailed conditions set out in Clause 11 are met. These conditions over remedying any breaches, notice

arrangements, conduct of impact assessments as well as exclusivity arrangements vary depending on the basis of the termination and the Support Services(s) that are the subject of the termination.

- 4.6.3.3 Governance: There is a structure for review and monitoring of the provision of the Support Services, which are set out in further detail in Clause 18 and Schedule 5. This includes the establishment of a Support Services Board, which does have an interface with the governance groups set out within the Service Delivery Contract governance.
- 4.6.3.4 Indemnity and Liability: The SSA contains indemnity and liability provisions, which have an interface with the Councils' dependency under the SDC under which the Councils' must provide/facilitate the provision of the Support Services and if they fail to meet the terms of that dependency, the Trust has the ability to claim a relief event under the SDC as well as a claim for losses. The SSA sets out that to the Trust, the Councils' are jointly and severally liable for any losses claimed by the Trust in the context of the Support Services. The attribution of that liability between the Unitaries will be determined through the joint committee arrangements.
- 4.6.3.5 The SSA also contains provisions regarding charging arrangements for the provisions of Support Services, TUPE and Pensions, Information Governance as well as Intellectual Property.

4.4 The Interface Agreement

- 4.4.1 The interface agreement will set out the Governance arrangements which are to be put in place to facilitate the relationship between the two new Councils and these are summarised in the table below. The Interface Agreement will be between both Unitary Councils (Unitaries) within the scope of the joint committee arrangements between the Unitaries. The purpose of the Interface Agreement is to provide a clarity of how the Unitaries to work together within the parameters for the Children's Trust arrangements specifically including how the Unitaries will interface with the Trust, and how the Trust will interface with the Unitaries.
- 4.4.2 The Interface Agreement is fundamentally about the governance arrangements of the Trust and the agreed basis upon which the Unitaries will run the Trust following the local government reorganisation in terms of contractual governance (of the SDC and the SSA) as well as corporate governance of the Trust in the context of the Articles of Association.
- 4.4.3 These agreements together with the others listed in the table above will need to be in place before 1st April and to make the final amendments to the SSA and to enable the Interface Agreement to be put in place delegated power will need to be granted to the Director of Children's Services who is leading the negotiations. She will also require delegated power to agree minor

operational changes with regards to the Intelligent Client Function (ICF) and contract management arrangements for the contractual and corporate governance. Delegation is also required in relation to the Deed of Variation to the Service Delivery Contract (which will be signed by the Unitaries). It may be necessary to make minor changes to the Governance Side Agreement and Articles to take into account minor operational changes with regards to the Unitaries.

4.4.4 The proposed arrangements between the two Councils have also been scrutinised by the Department for Education to ensure they are compatible with the existing governance arrangements. This includes the governance arrangements which will form the basis of the Interface Agreement. The detailed governance arrangements between the two councils are set out below.

Group	Roles/Responsibilities	Frequency/Attendees
<p>Joint Committee</p>	<p>To provide political and statutory oversight of the relationship between the two unitaries in relation to the Support Services to NCT pursuant to the Support Services Agreement (which will be entered into with effect from 1 April 2021).</p> <p>To provide governance in respect of the Northamptonshire Children’s Trust Limited company to reflect the role of the two Unitaries as joint members/owners of the jointly owned</p> <p>Teckal company in accordance with the Articles of Association. In particular, joint decision making for the exercise of Council rights under the Articles, NCT’s Business Plan and the Reserved Matters; and</p> <p>To oversee the interface between the unitaries in relation to the effective discharge of the commissioning responsibilities pursuant to the Service Delivery Contract (dated 30 October 2020).</p>	<p>Frequency: Initially monthly but to be reviewed within 12 months should it be agreed that quarterly meeting are sufficient to discharge the Unitary responsibilities.</p> <p>Leader of each Council</p> <p>Children’s Services Portfolio Holder of each Council</p> <p>One further member from each Council.</p> <p>Substitutes will be permitted in accordance with the rules of each Council.</p>

Joint Officer Board	<p>To manage the matters to be referred to the Joint Committee and ensure that reports and agenda etc provide Members with the information necessary to make effective decisions.</p> <p>Take delegated decisions, where necessary, which are not Executive matters which from time to time fall to be made in relation to the business of the Joint Committee, including any decisions in relation to staffing matters which directly affect both Councils.</p>	<p>The Chief Executives of both Councils. The Director of Children Services the S151 Officers.</p> <p>In each case a nominee may be sent in the absence of the relevant officer.</p>
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4.5 Arrangements for the implementation of the Joint Committee

- 4.5.1 The Joint Committee and the details of its operations are matters for the two Councils and its establishment will enable the effective management of the relationship between the two Councils. There are no proposed changes to the Service Delivery Contract and the contractual governance arrangements for the Contract.
- 4.5.2 Any triggers for action in the case of poor performance of NCT are managed through the SDC and corresponding rights and obligations are acted on by the Director of Children's Services via the Operational and Strategic Group processes and not through this Joint Committee.
- 4.5.3 The agenda for the Joint Committee will be prepared through discussion at the Joint Officer Board and will be subject to the operation of those agreements to ensure that its operation remains consistent with the wider contractual governance arrangements of NCT. A separate agreement, The Interface Agreement will set out the arrangements for the operation of the governance between the two Councils.
- 4.5.4 The Joint Committee is intended to be operational from 1 April 2021 although in practice it will not meet until after the election on 6 May 2021 in accordance with the interim arrangements within the transitional provisions. The Joint Committee will operate alongside the Interface Agreement which will provide further detail about the arrangements between the two Councils and apportion responsibilities for the support services and the ICF as between the two councils. The Interface Agreement will also set the arrangements for the setting up and operation of the Joint Committee as set out in paragraph 3.

4.6 Arrangements for the Joint Committee

4.6.1 The Joint Committee is created by the two Councils in the exercise of their powers under the Northamptonshire (Structural Changes) Order 2020 and Sections 101(1) (a) 101 (5) and 102 of the Local Government Act 1972 and Part 1A Chapter 2 Section 9EB of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and any other enabling legislation.

4.9.2 Set Up

4.9.2.1 The Joint Committee will be called the Children's Trust Joint Committee and it will exercise the functions of both Councils set out in the Terms of Reference. Each Council will pass a resolution to appoint the Joint Committee at the meeting of their respective Shadow Executive meetings (currently scheduled for 23rd March (West) 25th March (North)). Each Council will also undertake to co-operate with each other and shall work within the spirit of openness, honesty, trust and with a friendly approach and respect of each other in relation to the operation of the Joint Committee and in the conduct of its business.

4.9.3 Membership

4.9.3.1 The Members of the Joint Committee shall exclusively be elected Councillors of either Council who are also members of that Councils Executive in accordance with the provisions of Local Government Act 2000 or members able to carry out Executive functions. Each Member of the Committee shall remain in office unless removed by his/her appointing Council, he or she ceases to be an elected member of the appointing Council or a member of the Executive or unless they cease to be a Joint Committee. Either Council may change or replace its Joint Committee Members at any time by giving the other written notice of any change of 5 clear days. Members shall comply with their appointing Council's Members Code of Conduct.

4.9.4 Chair and Vice-chair

4.9.4.1 The Joint Committee must have a Chair and a Vice-Chair who are members of the Joint Committee. Each Chair and Vice-Chair shall be appointed by the Joint Committee at the first Meeting after the 1st April 2021 and thereafter at the first Meeting after the start of each Municipal Year.

4.9.4.2 Each Chair and Vice-Chair shall not be a Member from the same Council as the previous Chair and Vice-Chair. The Chair and Vice-Chair will not be Members from the same Council. The Chair and Vice-Chair may resign from their positions at any time (without necessarily resigning as Members of the Joint Committee at the same time). The Chair and Vice-Chair may be removed during their term of office only at a Meeting of the Joint Committee with a majority of the total number of Members at the time in favour. If the Chair or Vice-Chair is removed or resigns from their terms of

office the Joint Committee shall immediately appoint a new Chair or Vice-Chair for the remainder of the previous Chair's term of office providing that the appointment shall be made from the same Council's Members as the previous Chair or Vice-Chair.

4.9.5 Chairing

4.9.5.1 The Chair is to chair all Meetings at which he/she is present unless he/she unable to do so. If the Chair is not present within 5 (five) minutes after the starting time of a Meeting or if the Chair unable to chair a JC Meeting, then the Vice-Chair must chair that Meeting unless he/she unable to do so. If both the Chair and the Vice-Chair are not present within five minutes after the start time, of the Meeting or both are unable to chair the Meeting then the Joint Committee must elect 1 (one) of the Members who is present to chair the Meeting.

4.9.5.2 The responsibilities of the Chair are to:

- a) act as an ambassador for the Joint Committee and to represent the views of the Joint Committee to the Councils, other organisations and general public;
- b) ensure that Meetings are conducted efficiently;
- c) give all Members an opportunity to express their views;
- d) establish a constructive working relationship with, and to provide support to the Joint Officer Board and any sub-committees or Officers of the Councils to whom the Joint Committee has delegated its functions
- e) encourage the Joint Committee to delegate sufficient authority to any sub-committee to enable the Joint Committee to carry out its business effectively between Meetings; and
- f) ensure that the Joint Committee monitors the use of any delegated powers.

4.9.5.3 The role of the Vice-Chair is to deputise for the Chair during any period of his absence and, for that period, his/her functions shall be the same as those of the Chair. Except as set out in these terms of reference neither the Chair nor the Vice-Chair has any authority beyond that of any other Member of the Joint Committee.

4.9.6 Meetings of The Joint Committee

4.9.6.1 The Joint Committee shall meet as required and no less than six monthly. Meetings of the Joint Committee ("JC Meeting") shall alternate between the two Councils and will be held alternatively at [One Angel Square, Angel Street, Northampton, NN1 1ED] and (XXX) at such time as 3the Chair

decides. A meeting may be called on shorter notice if all the Members agree. Notice of a JC Meeting must be given to the Monitoring Officer of each Council.

4.9.7 Quorum

4.9.7.1 No business may be transacted at a JC Meeting unless a quorum is present. The quorum for a JC Meeting is at least two members of each constituent Council. If a quorum is not present within 15 (fifteen) minutes after the start time of the JC Meeting or a quorum ceases to be present during a JC Meeting it must be adjourned to such time and place as the Joint Committee decides. Without prejudice to the above, the conduct of the Joint Committee, the Members and the proceedings JC Meetings shall be accordance with the Committee Procedure Rules of West Northamptonshire Council. JC Meetings shall be open to the public and the press in accordance with the Access to Information Rules of West Northamptonshire Council.

4.9.8 Decision Making

4.9.8.1 Subject to the provisions of any enactment all questions coming before the Joint Committee shall be decided by a simple majority of the Members present voting. A named Officer shall be appointed by each Council as Clerk to the Joint Committee. The Clerk shall be responsible for the administration of the Joint Committee and shall attend and take notes of all Meetings and decisions made by the Joint Committee and within 5 (five) Working Days of a JC Meeting shall provide copies of the notes to all of the Members and the Monitoring Officer of each Council. The Clerks shall alternate their attendance at the Meetings and shall cooperate with each other in the performance of their role.

4.9.9 Monitoring Officer

4.9.9.1 The Monitoring Officer of either Council shall act as the monitoring officer for the purposes of Section 5 of the Local Government and Housing Act 1989 in respect of all the Joint Committee actions.

4.10 Legal Advice

4.10.1 The Joint Committee shall submit requests for legal advice to the Director of Legal and Democratic Services of either Council. The cost of legal advice to the Joint Committee shall be borne equally by the Councils.

4.11 Terms of Reference of the Joint Committee

4.11.1 The Joint Committee shall work in partnership with the Councils and the Joint Officer Board in respect of the Functions discharged and the

Services delivered under the s101 Agreements in accordance with the Terms of Reference of the Joint Committee set out below.

4.11.2 The Joint Committee shall report to the Cabinet and Council of the Councils on its operation.

4.12 Officers

- a) The Joint Committee may, in accordance with Regulation 11(4) of the 2000 Regulations, arrange for the discharge of its functions by 1 (one) or more Officers of either Council.
- b) The Joint Committee may only arrange for the discharge of its functions to Officers offered by either Council as being available and capable of performing those functions.
- c) The Joint Committee must specify the financial limits within which an Officer may function.
- d) Each Officer appointed by the Joint Committee must report to the Joint Committee on his/her exercise of the functions of the Joint Committee as the Joint Committee determines.

4.13 Joint Officer Board

4.13.1 The Councils shall establish a Joint Officer Board in respect of the functions discharged and the services delivered under the Support Services Agreement.

4.13.2 The Joint Officer Board shall support and advise the Joint Committee in accordance with Joint Officer Board Terms of Reference as set out below.

4.14 Termination

4.14.1 Either Council may terminate these arrangements subject to the terms of the Interface Agreement between the Councils.

4.15 Dispute resolution

4.15.1 The Councils will use their best endeavours through for example a joint meeting of Executive members of the Councils (in equal numbers) or other internal process to seek to resolve their dispute. The Councils shall in doing so exchange statements at least three Working Days prior to the date of the joint meeting, setting out their respective views of the disputed issues.

4.15.2 If notwithstanding any steps which are taken the dispute between them remains unresolved then at the request of either Council the dispute in question shall be referred to an independent and professional mediator who shall be nominated without delay by agreement between Councils, or

(in the absence of such agreement) by the President of the Law Society (or his authorised representative). Any such mediation shall then be carried out in confidence and on a without prejudice basis in relation to any subsequent proceedings and each of the Councils shall bear their own expenses and one half of the mediator's resulting charges.

4.15.3 If regardless of whether or not the Councils have implemented the procedures which are specified above and fail to resolve their dispute within six weeks of the dispute first arising, then either Council may serve notice on the other to require the dispute to be referred for Arbitration through an Arbitrator appointed in accordance with the Arbitration Act 1996.

6 Implications (including financial implications)

6.1 Resources and Financial

6.1.1 Budgets for providing support services will be included within Service Plans within the Inter Authority Agreements and will be managed through the governance arrangements.

6.2 Legal

6.2.1 Legal implications are contained within the report.

6.3 Risk

6.3.1 Should governance arrangements and contractual arrangements not be agreed by the Authority there is a risk that the parties would not have sufficient assurance and accountability to deliver children's services in accordance with statutory requirements.

6.4 Consultation

6.4.1 Not applicable

6.5 Consideration by Overview and Scrutiny

6.5.1 Not applicable

6.6 Climate Impact

6.6.1 There are no climate change implications arising from the recommendations.

6.7 Community Impact

6.7.1 There is no distinct community impact resulting from the recommendations.

7 Background Papers

None