

Children's Trust Joint Committee 22 December 2021

Report Title	Children's Trust Contractual Agreements
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List of Appendices

Appendix A – Support Services Provided by the Councils

1. Purpose of Report

- 1.1. To consider proposed changes to the contractual agreements between the Councils and Northamptonshire Children's Trust.
- 1.2. To seek permission from the Joint Committee to delegate execution of the final set of contractual agreements to the Chief Executives of both councils.

2. Executive Summary

- 2.1 This report sets out the proposed changes to the contractual agreements that exist to manage the relationship between North and West Northamptonshire Council (the Councils) and Northamptonshire Children's Trust (NCT).
- 2.2 The majority of contractual agreements were agreed and finalised in October 2020 before NCT's service commencement date of 1 November 2020. Following the Local Government Reorganisation (MGR) a number of agreements required changes. There were also some areas that required more detailed work between the parties before agreements could be finalised and this was envisaged when the original documents were completed in October 2020.
- 2.3 The report sets out the background to the establishment of the Children's Trust and the work completed to date on progressing the contractual agreements. The report then summarises the key agreements still to be finalised, the proposed changes to these agreements and the implications for the Councils.

3. Recommendations

- 3.1 It is recommended that the Joint Committee:
- a) Approve that the proposed changes and updates to the contractual agreements between the Councils and Northamptonshire Children's Trust outlined in this report are agreed; and
 - b) Delegate the sign off of the final set of contractual agreements to Chief Executives of both councils.
- 3.2 Reason for Recommendations
- To ensure the appropriate contractual agreements are in place to enable the strong management of the relationship between the Councils and NCT

4. Report Background

- 4.1 Northamptonshire Children's Trust (NCT) was established on 1 November 2020. It is a company limited by guarantee that was initially owned by Northamptonshire County Council. On 1 April 2021, Northamptonshire County Council was abolished, and two new unitary authorities were established; North Northamptonshire Council and West Northamptonshire Council. NCT is now wholly owned by these two unitary councils.
- 4.2 NCT was established in response to a statutory direction from the Secretary of State for Education issued in June 2019. Statutory directions are issued to councils that are poorly performing and, in most cases, provide children's services judged inadequate by Ofsted. In June 2019, Northamptonshire Children's Services were inspected by Ofsted and found to be failing to keep children safe, the services were judged inadequate by Ofsted as a result.
- 4.3 As part of the establishment of NCT, a set of contractual agreements were put in place to manage the relationship between NCC and NCT. The majority of these agreements were negotiated and signed by both parties in October 2020 prior to the establishment of NCT. Upon the abolition of NCC, the contracts were novated to the unitary councils who took on the obligations of NCC as set out in the agreements.
- 4.4 Whilst the majority of agreements were completed before November 2020, some of the agreements required amendment following the LGR and some required further development. These are summarised in section 5 below.
- 4.5 The West Northamptonshire Shadow Executive and North Northamptonshire Shadow Executive previously gave delegated authority on the 23 and 25 March 2021 respectively to the Director of Children's Services to finalise the Support Services Agreement, the Interface Agreement and any other documents necessary to give effect to the Children's Trust Governance arrangements prior to 1 April 2021 and make any necessary minor operational changes to enable the transition to the two Councils of North and West Northamptonshire.
- 4.6 Whilst it was anticipated that this work would be completed by 1 April 2021, this has not been possible for a number of reasons. Since April 2021, officers

from both NCT and the Councils have been working to finalise the agreements. This has been done whilst both parties were focusing on the commissioning and delivery of children's social care services which has at times had to take precedence over the finalising of agreements.

- 4.7 Additionally, some issues to be ironed out through the agreements were complex and required further work to get the agreements completed. This included some of the complex issues related to property agreements as well as the development of the 'performance concepts' included in the Support Services Agreement (see more detail in section 5.4 below). Some of the agreements were also inter-dependent on each other, so for example the Support Services Agreement could not be signed whilst there were outstanding issues on the Deed of Variation.
- 4.8 The council and the Trust also need to enter into a deed of variation to the Service Delivery Contract. This deed of variation makes amendments which are largely caused by local government reorganisation (see more detail in section 5.3 below) and therefore could only take place once the new unitary councils had been established.
- 4.9 Both parties have been supported by specialist legal support in drafting these agreements. The relevant agreements are now completed and ready for execution by NCT and both councils and this report therefore recommends that the Joint Committee grants the Chief Executives the delegated authority to execute the remaining agreements.

5. Issues and Choices

- 5.1 There are 5 documents that are due to be completed and that have been provisionally agreed between the councils and NCT. Each of these agreements is briefly summarised below with a summary of any updates or changes as well as the implications for the councils.
- 5.2 In addition to the 5 documents outlined below, the Councils are currently developing an Interface Agreement that will set out the interface between the two Councils in respect of the Trust. This document will be Council-facing as opposed to Trust-facing – the Trust will not be a party to the Interface Agreement. The Councils intend to agree this document following completion of the documentation referred to within this report. Once this is complete, a report will be brought to a future Joint Committee.

5.3 SDC Deed of Variation

- 5.3.1 The Service Delivery Contract (SDC) is the main contract that governs how the Trust will deliver children's social care and early help services on behalf of the Councils. The parties need to enter into a deed of variation on the SDC, the SDC is being varied to take into account the changes resulting from the change from NCC to the Unitary councils. The SDC (and its rights, obligations, and liabilities) are statutorily transferred from NCC to the Unitary Councils and the Parties to the SDC are varied accordingly.
- 5.3.2 The changes also clarify the position of North Northamptonshire Council as the 'Host Council' for managing the relationship with NCT. NNC hosts the

'Intelligent Client Function' with the Trust which leads on contract management.

5.3.3 There are minor changes to the standing memberships of the key contractual governance meetings (the Strategic and Operational Groups) to reflect the move from NCC to the unitary councils.

5.3.4 The Deed of Variation also changes some elements of the SDC that relate to the Trust's occupancy of the councils' properties and assets. These include making reference to the leases and licenses for the various properties that have been agreed between the Councils and the Trust.

5.4 **Support Services Agreement**

5.4.1 The Councils provide a variety of Support Services to the Trust to enable them to effectively deliver children's social care services. The support services provided are listed in Appendix A. Most support services are provided by West Northants with a small number provided by North Northants.

5.4.2 Two services are also provided by Cambridgeshire County Council and one by Milton Keynes Council which reflects the legacy of the old LGSS arrangements that were in place under NCC. However, in terms of contractual responsibility, the Councils are responsible for facilitating the provisions of the full suite of Support Services to the Trust including those provided by third parties.

5.4.3 The Support Services Agreement (SSA) records the overarching terms and conditions upon which the Councils will provide the Support Services to the Trust, and details the service parameters, responsibilities, and charges in respect of the provision of Support Services.

5.4.4 When it is agreed the SSA will replace the Transition Agreement (TA) dated 30 October 2020. The TA was entered into at the same time as the SDC and is a mechanism through which the Trust can buy back the Transitional Support services from the Council to fulfil its obligations under the SDC. It is a short-term agreement designed to allow the parties to agree outstanding elements of the Support Services Agreement.

5.4.5 There have been several changes from the TA to the SSA, these are:

- The refining and development of key performance indicators (KPIs) for each of the Support Services. A draft suite of KPIs were developed to enable the Trust to hold the councils to account for the delivery of the support services. Over the last few months, officers from both parties have worked together to agree a reduced number of KPIs as well as agreeing targets for each KPI.
- The agreement of the 'performance concepts' and how these relate to the KPIs. These concepts allow the Trust to hold the Councils to account for their performance of the individual support services by defining what constitutes a KPI Failure and prescribing a process for the rectification of any such failures. If the councils are failing to provide a support service to an adequate standard this may be defined as a performance failure, the Trust may then ask the councils to develop a plan to improve. If, after implementation of this plan, performance does not improve to the agreed standard then the Trust can

escalate this through the contractual governance channels and ultimately choose to terminate an individual support service for an individual material breach.

- The agreement of these performance concepts also clarifies the interface between poor performance of the Support Services and the Dependency regime under Schedule 4 to the SDC. It clearly defines when the Trust may claim a 'Relief Event' if the Councils fail to deliver one or more of the support services.
- Changed to Schedule 1 – The Support Services. This schedule provides an overview of what Support Services are being provided by the Councils to NCT. The changes are largely to reflect the changes stemming from LGR such as a change from NCC to one of the unitary councils providing the Individual Support Services or a change in the primary and secondary escalation points. These escalation points are officers at the councils the Trust should approach if issues with an Individual Support Service arise.
- Changes to Schedule 3 – the Service Level Agreements (SLA). Each support service has an individual SLA that sets out the councils' obligations which includes the KPIs which the Trust will use to hold the councils to account. The previously proposed KPIs and targets have been reviewed to enable scrutiny of performance and to reflect the parties' priorities. There have also been minor changes to the SLAs to reflect changes from NCC to the new Councils.
- The removal of the Information Governance and Data Protection support service from the SSA. Parties have mutually agreed that this service can now be provided in-house by the Trust. Since 1 April, NCT have recruited a Data Protection Officer so there is now a clear lead in the Trust for this service. The Trust also felt that they would be able to deliver a service more able to meet their specific needs if they delivered the service in house. This has involved the TUPE transfer of 1 member of staff as well as small accounting changes to the overall contract sum, however this change is financially neutral to both councils.
- The development of clearer processes to protect the limited exclusivity of the services, essentially there is an exclusivity period where the Trust may not choose to stop receiving a support service from either of the Councils. The updated SSA also provides greater clarity more generally over termination rights and notice periods.

5.5 Pensions Guarantee Agreement

5.5.1 The Pensions Guarantee Agreement is a document supporting the Trust's access to the Northamptonshire Pension Fund section of the Local Government Pension Scheme.

5.5.2 In it, the Councils guarantee the Trust's obligations to the Fund should the Trust fail to meet any of its payment obligations. Almost all forms of access to the Fund require some form of guarantee, so this is not unusual. It in fact offers benefits to the Councils. By so closely integrating the Trust's access to the Fund with the councils', it means that there will be no need to underwrite significant costs such as an exit debt.

5.5.3 The changes to the Pension Guarantee Agreement are again mainly to reflect the changes caused by Local Government Reorganisation. The councils together will be joint guarantors of the Trust's exposure to the fund whilst WNC will act as the administering authority.

5.6 Relationship Deed

- 5.6.1 The Councils were each automatically admitted as members of the Trust on 1 April 2021 in replacement of NCC. The Councils have established a joint committee and joint officer board for the purpose of discharging their relevant children's social care functions, managing the relationship between the councils and between the councils and the Trust from 1 April 2021 to enable the Trust to deal with a single entity and forum for all matters.
- 5.6.2 The Relationship Deed governs the terms under which North Northants will act as the Host Council, being the legal entity and interface between the joint committee, joint officer board and Trust (given that the joint committee and joint officer board are not legal entities themselves) and will act on behalf of the Councils in respect of all matters relating to the Articles.
- 5.6.3 The Relationship Deed will take priority over the Trust's Articles of Association (if a conflict between the two documents were to occur) and will continue until the joint committee arrangements end or the parties mutually agree to terminate the deed. During this time, unless the parties otherwise agree in writing, the Host Council will represent and act on behalf of both Councils for the purpose of the Articles (including issuing and receiving notices, giving, and receiving information, consenting, approving, or directing the Trust or being consulted by the Trust, exercising any rights, or carrying out any obligations and anything similar under the Articles) and any reference to 'Member' shall be to the Host Council.
- 5.6.4 However, nothing in the Relationship Deed shall fetter any rights of either Councils, as member, to exercise their rights as members of the Trust including passing resolutions, voting, attending meetings, nominating Council Directors, appointing authorised representatives, and accessing information relating to the Trust or in relation to their liability as members.

5.7 Side Letter to the Governance Side Agreement

- 5.7.1 The other document to be executed is a side letter to the Governance Side Agreement (GSA). The GSA is a contract between the Councils and the Secretary of State for Education under which the Secretary of State is afforded certain consultation and consent rights with regards to the Trust.
- 5.7.2 The letter will be from the Councils to the Secretary of State for Education. It will address how the two new councils will interface with the Secretary of State, this is required because of the creation of the two new Councils.

6. Implications (including financial implications)

6.1 Resources and Financial

- 6.1.1 There are no direct resources or financial implications arising from the proposals. The contract sum for NCT for the current financial year has already been agreed and the proposed changes to the contractual agreements will have no impact on the current contract sum.

6.2 Legal

6.2.1 This report provides a summary of the proposed changes to the legal documentation for the Committee's consideration prior to the amendments being made to the contractual agreements.

6.3 Risk

6.3.1 There are no significant risks arising from the proposed recommendations in this report.

6.4 Consultation

6.4.1 Include the details of any statutory or other consultation undertaken with the public and/or agencies/interested parties. Also include the consultation results and any amended recommendations to draft policy or proposals that have resulted.

6.5 Consideration by Scrutiny

6.5.1 This report has not yet been considered by Scrutiny Committees at either council.

6.6 Climate Impact

6.6.1 There is no significant climate impact from this report.

6.7 Community Impact

6.7.1 There is no distinct community impact from this report.

7. Background Papers

7.1 [North Northamptonshire Shadow Executive Committee, 25 March 2021 – Item 16, Children's Trust Joint Arrangements](#)

7.2 [West Northamptonshire Shadow Executive Committee, 23 March 2021 – Item 18, Children's Trust Arrangements](#)