

9 February 2016		ITEM: 9
Children's Services Overview and Scrutiny Committee		
Alternative Delivery Model for the Thurrock Youth Offer		
Wards and communities affected: All	Key Decision: Key	
Report of: Michele Lucas, Interim Strategic Lead Learning & Skills Sue Green, Strategic Lead - Children's Commissioning & Service Transformation		
Accountable Head of Service: Michele Lucas Interim Strategic Leader Learning and Skills; Sue Green Strategic Leader Children's Commissioning and Service Transformation.		
Accountable Director: Carmel Littleton – Director of Children's Services		
This report is Public		

Executive Summary

This report proposes a means of addressing significant socio-economic, health and educational inequalities facing the young people of Thurrock through the establishment of 'Inspire' as a staff mutual able to respond to and take advantage of funding and partnership opportunities.

Research on the different delivery models available completed over recent years and reported back to both Cabinet and Children's Overview and Scrutiny concluded that an alternative delivery model in the form of a trust formed by a staff mutual would provide the best operating model and the greatest benefits.

1. Recommendation(s)

- 1.1 That Children's Services Overview and Scrutiny Committee endorse the recommendation to Cabinet on the development of 'Inspire', the Youth Trust, as a staff mutual having noted the opportunities and risks.**
- 1.2 That members endorse the recommendation to Cabinet to agree the stages outlined in this report and note that a commissioning report will be referred back to Cabinet for agreement as per current procurement regulations.**
- 1.3 That members note the recommendations to be made to Cabinet with regard to the provision to award a contract to a new mutual for three years in line with the Public Contracts Regulations 2015.**

1.4 That it be agreed regular monitoring reports be referred to the Children's Services Overview and Scrutiny Committee as appropriate as a part of the ongoing governance of the project.

2. Introduction and Background

- 2.1 This report is written to outline the work that has been undertaken in the exploration of the development of a youth mutual and to make recommendations to Cabinet on this. It follows earlier reports to Cabinet and to Children's Overview and Scrutiny as this work has developed over recent years.
- 2.2 The development of a new way of working underpinned the savings that were approved by Cabinet in 2013 as a part of the ongoing financial strategy. In order to continue to deliver a range of youth services in the current reducing financial climate, new ways of working along with the expansion of income generation need to be considered.
- 2.3 The current service has been working closely with the Cabinet Office through their support programme to identify the business model that would enable a mutual to be developed. The Cabinet Office has significant experience in the development of mutuals within public sector organisations and of the applicants they have supported 38% are from youth and community services (31 applicants).
- 2.4 The scope of this proposal is the current youth offer including the following services funded at approximately £1.5m per annum:
- Youth provision and positive activities
 - Thurrock Careers providing impartial information, advice and guidance (NEET reduction)
 - Employability and Skills – providing links with employers and young people enabling them to access apprenticeships and other learning opportunities
 - Targeted Access – providing Duke of Edinburgh programme, Princes Trust programme and a range of activities for vulnerable groups of young people
 - Grangewaters – providing outdoor education activities
 - Youth participation
 - Thurrock Youth Cabinet and a range of programmes to support engagement

3. Issues, Options and Analysis of Options

- 3.1 Whilst there have been significant improvements in the number of young people aged 16-19 accessing education, employment or training, there remain significant inequalities, including socio- economic and health inequalities as well as a significant gap in educational outcomes with only 23% of 19 year olds entering higher education, one of the lowest levels in the Country. The reduction of these inequalities for the young people of Thurrock are the root cause of the need for the continuation of a youth offer that brings together access to support, development, education and opportunities linked to the regeneration of the area will be essential in reducing these inequalities for the young people of Thurrock.
- 3.2 The challenging financial climate puts the sustainability of the service at significant risk. Many changes have been implemented over recent years to ensure the service operates at the lowest possible cost, whilst there has been considerable success in income generation, the constraints of operating within a local authority structure limit both the opportunity to generate income and the ability to operate competitively because costs are higher. Officers have recently completed a restructure of the youth offer and Grangewaters to develop a joint management post to further integrate youth related services across Thurrock. Furthermore, local authority governance structures, whilst necessary, do not enable the current service to be flexible and agile enough to respond to all the funding and partnership opportunities available.
- 3.3 Research on the different delivery models available completed over recent years and reported back to both Cabinet and Children's Overview and Scrutiny concluded that an alternative delivery model in the form of a trust formed by a staff mutual would provide the best operating model and the greatest benefits.
- 3.4 National research on the benefits of a mutual includes:
- Improved competitiveness, profitability and sustainability
 - Staff tend to be more entrepreneurial thus generating better ways of working and more business
 - Recruitment and retention improves
 - There is a stronger commitment to social responsibility
 - Business performance improves
- 3.5 Alongside the benefits of increased employee engagement, there is the opportunity to increase user engagement as with a move away from a local authority structure young people could have the opportunity to be directly involved in decision making.

- 3.6 Developmental work with the Cabinet Office has outlined that locally the key benefits of mutualising youth related activities are:
- Reduction of longer term liabilities to the local authority and a budget reduction as agreed over the period of the contract whilst sustaining a consistent level of service
 - Greater opportunities to secure funding that is not available to the local authority thus increasing funding for youth provision locally
 - Greater flexibility to develop strategic and innovative services to meet local need, ensuring the voice of the community is sought when considering how to best deliver services
 - Greater opportunities for young people to be involved via the establishment of a governance model that would have a young people's advisory board
 - Greater opportunities for staff to be involved via the establishment of a governance model with a staff advisory board
 - The opportunity to increase staff ownership which research indicates reduces
 - Sickness absence and create a better delivery and working environment.
 - The retention of a working relationship between the local authority and the new organisation.
- 3.7 A draft business model has been developed for both the Youth Offer and Grangewaters and these provide an indication of the opportunities available. The local authority, if agreement is given to proceed, will need to develop service specifications independently of these business models. This will ensure that the commissioned offer meets the outcomes and financial requirements of the local authority; an initial estimate is that a 10% per annum saving will need to be achieved to meet the local authority savings requirements.
- 3.8 The Public Contracts Regulations 2015 (PCR 2015) permits the Council to devise its own procurement process to enable social enterprises or employee owned organisations to participate in the bidding process.
- 3.9 It is clear that there are significant opportunities in the development of the youth mutual however members should also consider the risks of such a change. Officers have considered these and the table below shows the key risks with the mitigation officers feel can be put into place:

Risk	Mitigation
<p>Loss of staffing capacity for other duties current undertaken including:</p> <ul style="list-style-type: none"> - Child poverty reduction - Regeneration agenda - Learning and skills strategic work 	<p>Resource to fund this work can be retained by the LA or alternatively it could be built into the specification of the new organisation</p>
<p>Loss of income generation opportunities from Grangewaters</p>	<p>The current market reputation of the centre as a local authority run entity is not attracting significant bookings and the LA has over the last 5 years been unable to secure a sustainable level of bookings to cover all costs. It is felt that the rebrand and re-launch under new ownership could improve bookings and also by being independent of local government decision making processes the centre could respond quickly to requests for different services.</p> <p>There is a need for significant investment in upgrading the equipment on site and the centre does not currently cover its costs. As the centre sustainability improves income will be reinvested into the site to ensure that it can continue to operate as a community resource.</p> <p>The monitoring mechanisms will include details of income and expenditure for the centre and at the end of the 3 year contract period a better price could be negotiated should income generation be successful.</p>
<p>Loss of youth participation from within local authority including support for youth cabinet (could lose its identity if a part of Inspire)</p>	<p>This can be included as a part of the specification with full details of the participation expected. Young people have been an integral part of the development of this proposal and are support of it.</p>
<p>Loss of flexibility re finances as 3 year contract</p>	<p>The contract will have built in increasing income targets in line with broader savings work across children's services. This work has already commenced with an income target of £185k in 2015/16</p>

	<p>which has been achieved. Further income targets to support savings have been agreed as follows: £119k 2016/17 £123k 2017/18 These would need to be taken into consideration when considering savings targets with the new organisation, if agreed.</p>
Provider failure as new organisation	Risk analysis will be undertaken on a regular basis and delivery will be closely monitored. Models of assessing provider sustainability will be used to reduce risk
Baseline costs of the local authority will be apportioned across fewer services	Baseline services will need to be reviewed in line with the smaller size of the LA as all services reduce
Start-up of new business is time consuming and consideration to capacity will need to be given	By providing adequate lead in time this reduces the capacity issues, this is also supported by building in a shadow / handover period
If retained in the local authority long term sustainability for the youth offer and Grangewaters cannot be secured. Also there are limited options for income generation.	The current service has been successful in generating income from a range of sources and now needs to look for funding that is not available to public sector organisations.

3.10 If we are to proceed there are a number of phases which would be overseen by the Children's Commissioning & Service Transformation Service:

3.11 **Agreement**

- Agreement by Cabinet to move the services outlined to a staff mutual (March 2016)
- Development of a detailed business case / specification of the commissioned offer (March – May 2016)
- Agreement of leases and financial arrangements (March – May 2016)
- Agreement to specification and to proceed to contract by Cabinet (June 2016)

3.12 **Mobilisation**

- Establishment of the new organisation (July 2016)
- Development of new organisations business plan and submission to Children's Commissioning & Service Transformation Service to ensure it meets requirement of service specification (September 2016)

- HR process to transfer staff (November 2016 – March 2017)
- Transition / shadow operation (November 2016 – March 2017)

3.13 Completion

- Full transfer of operations and staffing (1st April 2017)
- Contract signed (January 2017, to commence 1st April 2017)
- Contract monitoring commences (April 2017)

3.14 Governance

The new organisation will have a governance structure that supports the aims of the organisation and delivery of the contract. Governance arrangements are recommended to include young people, an elected member representative, representatives from the local authority and local partners from the community. Staff will also be involved in the governance of the organisation through the staff group.

- 3.15 The specification will build links into the local authority through report to Overview and Scrutiny and by regular monitoring by the Commissioning Service.

4. Reasons for Recommendation

- 4.1 The recommendations are made as they provide the best opportunity to sustain a youth offer in the current financial climate, the provision of this offer is vital in maintaining support for young people and reducing the current socio economic inequalities. They also present improved opportunities to access funding sources which would otherwise not be available to the local authority.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 There has been ongoing consultation with:

- Young people
- Staff
- Unions
- Elected members

- 5.2 These have been reported on in a number of earlier reports to Cabinet and Children's Overview and Scrutiny and there is broad support from both young people and staff.

6. Impact on corporate policies, priorities, performance and community impact

6.1 The outline proposals within this report link with the following Council's Corporate priorities:

1. Create a great place for learning and opportunity
2. Encourage and promote job creation and economic prosperity
3. Build, pride responsibility and respect
4. Improve health and wellbeing
5. Promote and protect our clean and green environment

7. Implications

7.1 Financial

Implications verified by: **Kay Goodacre**
Finance Manager

Over the past three years youth related activities have seen a significant budget reduction in excess of £600,000, as have many other non- statutory services provided by the council. It should be noted that the reduction in such services can have long term implications on many other areas of the Councils budget. The proposal to 'spin out' youth related activities on a three year contract, with an annual reduction of 10% from year 2 onwards will require a detailed risk assessment around the Council's ability to award the contract value outlined in the business plan, this will be considered in the report to Cabinet to proceed to contract. A realignment of service areas has taken place prior to the proposed 'spin out' which may potentially incur some additional costs. Income generation has been maximised however this has at times been limited as local authority access to some grants is not possible.

7.2 Legal

Implications verified by: **Amena Eghobamien**
Contracts and Procurement Lawyer

The PCR 2015 provides that contracts for educational, social care and other community based services that exceed the threshold of £589,148 (January 2016) must be advertised on OJEU and awarded following a procurement process. The projected contract value for the Youth Offer based on current funding, is £1.5million per annum. This means that the proposed limited liability company (the mutual) must therefore compete with other providers and the Council must treat all bidders equally or risk a claim under the PCR 2015.

Regulation 77, PCR 2015 permits the Council to reserve participation in the bidding process to social enterprises or employee owned organisations and construct the procurement process in such a way that the mutual can participate in the process, for example, by reducing its usual requirements around bidders' track record and financial standing. This however does not guarantee that the mutual will win the bid.

The mutualisation process can be expensive particularly given the projected 10% annual savings to satisfy the Council's savings requirements. Careful consideration should therefore be given to taxation, state aid, TUPE and pensions, start-up and administrative costs and to alternative funding arrangements.

The tax status of the mutual may be affected by the legal structure it adopts. A charity, for example will receive will receive certain tax reliefs.

It is advisable to lease or licence assets, rather than transfer them, for the duration of the initial contract, to avoid the risk of state aid.

Employees working on the services to be externalised are likely to be subject to a relevant transfer under TUPE. The transfer may limit the flexibility of the mutual as the transferring employees must have continued access to their public sector pensions in compliance with the Fair Deal policy. Pension rights do not transfer under TUPE so this requirement must be reflected in the contract between the mutual and the Council.

The alternative to competing for a contract award and to obtain a direct contract award from the Council is to rely on the *Teckal* or *in-house* exception, developed from case law, and codified in the Public Contracts Directive 2014 and the PCR 2015.

This means the procurement rules will not apply, provided a contracting authority performs tasks using its own administrative, technical and other internal resources or the other party is, for all intents and purposes, another part of that contracting authority, albeit one with a separate legal personality. This would be a company limited by shares.

The exception applies only if the mutual is owned by the Council or another public body **and** if the mutual performs more than 80% of its activities for the Council.

Consideration should be given to reliance on the *Teckal* exception as it may provide the support the mutual needs as a young business. The Council can divest itself of ownership once the mutual has established itself as a contender in the market and able to compete for public contracts.

7.3 Diversity and Equality

Implications verified by: **Natalie Warren**
Community Development & Equalities Manager

Equality of opportunity is a key principle of many voluntary sector organisations who often pursue improved cohesion and diversity through their objectives and practice, involving communities in decisions and governance.

Recent government policy such as the Localism Act encourages the devolution of services to communities and staff mutuals in recognition of the benefits that community involvement can bring to local areas. An equality impact assessment will be completed to inform the transfer of services into the staff mutual, with ongoing involvement by young people and the wider community to help ensure services improve cohesion and diversity through their deliver. The council is seeking to develop a Community Asset Transfer Policy and this will provide guidance on ensuring that potential transfer of asset opportunities are informed by best practice as well as consideration through an equality impact assessment.

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

There are significant implications for staff who, if agreed will be subject to TUPE transfer. Staff have been fully consulted throughout this process and the changes will be subject to formal HR consultation processes in line with the current policy.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- None

9. Appendices to the report

- Appendix 1: Inspire Governance Structure

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