

Report to Cabinet

28 September 2022

Subject:	Sandwell Children’s Trust Contract Review
Cabinet Member:	Cabinet Member for Children and Education, Councillor Simon Hackett
Director:	Director of Children and Education, Michael Jarrett
Key Decision:	Yes
Contact Officer:	Mandip S. Chahal, Senior Commissioning Manager for Statutory Services Mandip1_chahal@sandwell.gov.uk

1 Recommendations

- 1.1 That the Cabinet, as the decision maker for the Council, in its capacity as sole Member (shareholder) of Sandwell Children’s Trust (SCT) a private company limited by guarantee and employer of SCT for the delivery of services pursuant to a Service Delivery Contract (SDC) made between the Council and SCT dated 1 April 2018:
- a) formally receives the Contract Review Report
 - b) notes the progress made to date by Sandwell Children’s Trust in delivering services as set out in the Contract between the Council and the move from being judged as inadequate to requires improvement to be good.
 - c) agrees the recommendations detailed in the contract review:
 - i) does not recommend to the Secretary of State that the break clause is invoked
 - ii) authorises the Director of Children and Education, in consultation with the Chief Executive of the Council and the Cabinet Member for Children and Education, to agree with Sandwell Children’s Trust revised contractual key performance indicators, to commence on 1st April 2023
 - iii) The requirement to achieve a judgement of ‘Good’ as per the ILACS framework be revised from within four years of



contract commencement (March 2022) to the next standard ILACS inspection by Ofsted (within three years of the previous inspection).

2 Reasons for Recommendations

2.1 The Service Delivery Contract (SDC) between the Council and Sandwell Children's Trust went live on 1 April 2018. The total contract period was for 10 years with an option to exercise a break after 5 years of operation.

2.2 The SDC included a requirement for the Trust to produce an annual review each year and a Contract Review at the end of year 4 of operation. There is a joint requirement on the Council to also review the contract at the end of year 4.

2.3 Schedule 3 of the SDC sets out what should be included in the contract review:

- the Trust's performance against budgets in the first four (4) Contract Years;
- demand analysis in respect of the services against assumptions and models in respect of the first four (4) Contract Years;
- the Trust's performance of the services against the Performance Targets in the first four (4) Contract Years;
- the Trust's proposals for the future operation and performance of the services;
- whether the Trust has achieved the standard 'Good' as set out in the Ofsted guidance* within four (4) years of the services; Commencement Date as evidenced by the Annual Self Evaluation and/or any external regulatory inspection;
- whether the Trust is achieving the aims and objectives set out in Clause 2 of this Agreement (Aims); and
- such other matters that the Parties may agree from time to time.

(*Ofsted's framework and guidance for inspection of local authority children's services (ILACS) in need of help and protection, children in care and care leavers.)



- 2.4 On the completion of the Contract Review process a recommendation must be made to the Secretary of State on whether a Break Notice should be served, and children’s social care functions brought back under the direct management of the Council.
- 2.5 The Secretary of State will make the final decision on the serving of the break notice, considering the recommendations of both the Council and Sandwell Children’s Trust.

3 How does this deliver objectives of the Corporate Plan?

	<p>Best start in life for children and young people</p> <p>SCT works with children, families, foster carers, schools, statutory and voluntary providers to support the achievements of vulnerable children and those in the care of the Council</p> <p>SCT works to ensure that children in the care of the Council receive the support and opportunities that any parent would give their child</p>
	<p>People live well and age well</p> <p>SCT ensures coordination between social care and the NHS to better protect vulnerable children</p>
	<p>Strong resilient communities</p> <p>SCT supports families to improve children’s life chances</p> <p>SCT works closely with the police to ensure that children are protected from the impact of crime, domestic violence, and all forms of exploitation</p>
	<p>Quality homes in thriving neighbourhoods</p> <p>SCT supports care leavers to live independently in the community, working closely with Housing to ensure care leavers are able to good quality accommodation in Sandwell.</p>





A strong and inclusive economy

SCT works with families to access services and support so that they are able to improve their economic well-being and the life chances for their children

4 Context and Key Issues

- 4.1 On the 6 October 2016, the government formally announced its decision to introduce a trust to run children's social care services in Sandwell. This decision came after a Department for Education (DfE) appointed commissioner recommended that services be removed from local authority control for a period of time.
- 4.2 In a statutory direction, issued under Section 497A (4B) of the Education Act 1996, the Council was directed to work with a newly appointed DfE commissioner to set up a children's services trust and to transfer children's social care functions to this newly created body.
- 4.3 In March 2017 a paper was presented to Cabinet that set out the arrangements for the new body. This included the corporate model, the strategic decision-making functions the Council would retain as sole owners of the new organisation (reserved matters) and the composition of the Trust's Board and how members would be appointed and by whom.
- 4.4 In February 2018 the Council approved a ten-year contract between the Council and Sandwell Children's Trust (the Trust), which consisted of the Service Delivery Contract (SDC), Support Services Agreements (SSA) and Occupation Documents. In addition to this, the Council entered into a governance side agreement with the DfE which set out certain rights afforded to the Secretary of State in respect of the Reserved Matters for the Intervention Period. This agreement sets out when and how the Council consults with and obtains the consent of the Secretary of State and will be in place throughout the period of intervention.
- 4.5 The Service Delivery Contract consists of core legal terms under which the Trust provides the services and in turn receives payment for the same, referred to as the contract sum, from the Council. The SDC includes key operational provisions such as the Services Specification and Performance Management Framework setting out how the Trust's



performance will be measured, together with an outline of the contractual governance arrangements and the interface with the dependencies for which the Council retains statutory responsibility.

- 4.6 The Service Delivery Contract between the Council and Sandwell Children's Trust went live on 1 April 2018 for the delivery of children's social care functions. The total contract period was for 10 years with an option to exercise a break after 5 years of operation. The SDC included a requirement for the Trust to produce an annual review each year and a Contract Review in year 4.
- 4.7 There is a joint requirement on the Council to also review the contract at the end of year 4 and make a recommendation to the Secretary of State whether to exercise the option to break after 5 years of operation. The break clause is in addition to the standard termination clauses included in the contract if Consistent Failure has occurred.
- 4.8 Unlike the annual review, the contact review is undertaken by both parties and the Service Delivery Contract sets out what this review should cover.
- 4.9 On completion of the contract review process it must be agreed whether a Break Notice is to be served by the Council. If the Statutory Direction is still in force, then a final report must be produced and sent to the Secretary of State. The final report must include a recommendation on whether the Break Notice should be served by the Council. Where SCT and the Council cannot come to a joint recommendation on whether a Break Notice should be served the report should include each party's position. The Secretary of State will make the final decision on the serving of the break notice, considering the recommendations of the parties.
- 4.10 If the Statutory Direction is no longer in place, then the Council can make the final decision on whether the Break Notice is to be served.
- 4.11 If the Break Notice is served, the Service Delivery Contract will end on the 31 March 2023, services delivered by the Trust would need to be transitioned back to the Council prior to this date. The Trust must be given a minimum of 6 months' notice of the intention to invoke the break clause. There would then be 6 months during which all staffing and service transition would need to take place.



- 4.12 Since 2018 the Trust has demonstrated a clear trajectory of improvement. This can be seen in the monitoring, focussed visits and inspection reports produced by Ofsted and the performance reports tabled at the Operational Performance Board (OPB), the Strategic Partnership Board (SPB) and the Children and Education Scrutiny Board.
- 4.13 On 29th May 2022 notice was received from Ofsted that they would be undertaking a full inspection of children's services under the ILACS Framework¹. It was the first full inspection since 2017, where services were judged as inadequate. Following a 3-week long inspection, Ofsted published their findings on 5th July 2022. They judged Sandwell Children's Services as 'requires improvement to be good', meaning that they found there are no widespread or serious failures that create or leave children being harmed or at risk of harm. This outcome, along with the inspection of the fostering service in August 2021, which delivered a judgement of 'Good' (a shift from the previous judgement of 'requires improvement to be good'), clearly demonstrates that there is a positive trajectory of service improvement.
- 4.14 The funding provided by the Council to the Trust in 2022/23 will be £71.7m and was determined by the contract sum negotiation process and change controls agreed by Cabinet. This figure is higher than the annual budget when the Trust was set up in 2018 basis. There have been several financial pressures on the Trust linked to demand, the cost of placements and significant staff recruitment and retention issues, which is a national issue, that have underpinned the need for additional funding. The Trust has detailed how it will reduce the total spend on service provision, through efficiencies and demand management, so that by 2024/25 the annual budget will be, after inflation and pay awards, over £2m/year lower than the 2021/22 budget.
- 4.15 The expectation when the Trust was set up was that services would move from being 'inadequate' to 'Good' within 4 years. This expectation was set when a global pandemic was not the reality in which children's services would be operating for over 2 years. The impact of the pandemic on delivery for all public services has been significant:

¹ [Ofsted's framework and guidance for inspecting local authority services for children \(ILACS\) in need of help and protection, children in care and care leavers](#)



children's services had to focus on supporting and safeguarding children, meaning focussed practice improvement has been delayed. Due consideration should therefore be given to revising the timeline for achieving a judgement of 'Good', and with the next inspection likely to be approximately two and half years from now, it is suggested that moving the target date for achieving 'Good' to March 2025 would be appropriate.

- 4.16 The Trust is on an improvement journey that it is anticipated will lead to a future judgement of good. The judgement of requiring improvement is a step along the path. Given the acknowledged improvements that the Trust has made, introducing systemic change, which would occur if the break clause were invoked, could have the impact of disrupting the pattern of improvement.
- 4.17 The Council will remain the subject of the statutory direction issued in 2016, and subsequently updated in June 2019 to reflect the role of the newly created regional adoption agency, however the Parliamentary Under-Secretary of State for Children and Families, Brendan Clarke-Smith MP, has acknowledged the improvements that Sandwell has made and advised that Sandwell will now enter a period of 'transition from intervention'. There will continue to be ongoing support and supervision from the DfE until it is clear there is a 'sustainability of continued progress'.
- 4.18 On 22 March 2022 the Secretary of State for Levelling Up, Housing and Communities issued statutory directions under section 15(5) and (6) of the Local Government Act 1999. These directions appointed two commissioners who will oversee all functions associated with the governance and scrutiny of strategic decision making by the Authority. The directions will be in force until March 2024, unless the Secretary of State considers it appropriate to amend or revoke them at an earlier date. These directions are in addition to the ones that led to the creation of Sandwell Children's Trust.
- 4.19 In response to the statutory directions issued by the Secretary of State for Levelling Up, Housing and Communities the Council, led by the appointed commissioners, has started the process of strengthening governance arrangements and ensuring activities and practices are meeting the Council's best value duty. If the Council were to recommend invoking the break clause, it would mean spending significant time and resource on reintegrating children's social care



functions, which could impact on the improvement plans for both the Council and the Children's Trust.

- 4.20 An Independent Review of Children's Social Care, commissioned by the Government, was published on 23 May 2022. It has reviewed how children's social care operates and has made eighty recommendations that could fundamentally reshape how social care is delivered in the future. In response, the Government has announced the creation of a National Implementation Board that will publish a strategy by the end of 2022 on how the recommendations will be taken forward.
- 4.21 While it is not yet known which of the recommendations will be implemented they include in them the scope to fundamentally change how services operate and in turn the relationship between the Council and the Trust.
- 4.22 A value for money governance review of the Council published by Grant Thornton in December 2021 acknowledges the robust governance framework that is in place between the Council and Trust. The governance review did not highlight any concerns in how the contract is currently managed. The governance review recommended a review of the KPI's be undertaken. This is currently underway with a new set of contractual KPI's proposed for adoption from 1st April 2023.

5 Alternative Options

- 5.1 An alternative option would be to recommend to the Secretary of State that the service delivery contract is ended, and that children's social care functions return to the direct management of the Council.

6 Implications

Resources:	<p>Sandwell Children's Trust receives a significant financial resource to deliver the Council's statutory responsibilities for children's social care, and also to provide targeted early help services.</p> <p>The Contract Sum amount that SCT receives is agreed annually in line with mechanisms set out in the Service Delivery Contract.</p>
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Legal and Governance:	<p>The service delivery contract was agreed by Cabinet in February 2018 (Minute No 35/18), it includes an option to exercise a break clause. The Council is still subject of a statutory direction so is unable to exercise this break clause without Secretary of State approval.</p> <p>The contract in place between the Council and the Trust is for 10 years, it includes robust governance mechanisms that would continue to be in force for the duration of the contract.</p> <p>The contract review includes a revised set of key performance indicators.</p>
Risk:	<p>The council's strategic risk register previously identified a red risk relevant to this report, regarding improvements required in children's social care services.</p> <p>In the most recent review, as a result of the recent ILACS judgement, the risk assessment has decreased from 16 (red) to 8 (amber)</p>
Equality:	<p>An Equality Impact Assessment screening is not required for this report. However, the improvement in children's services will have a positive effect on the lives of vulnerable children, young people and families in Sandwell, including those with protected characteristics.</p>
Health and Wellbeing:	<p>SCT continues to support children and families in Sandwell and as the quality of service that they deliver improves so does the impact they have on improving the health and wellbeing of children and families.</p>
Social Value	<p>SCT supports children to achieve, feel safe, be supported and access opportunities. SCT supports care leavers to access education, employment and training.</p>



	SCT supports community resilience through the recruitment of local residents as foster carers, helping children to remain close to communities they are from and to thrive in Sandwell.
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7. Appendices

Contract Review – SMBC
Contract Review - SCT

8. Background Papers

Cabinet Meeting 19 October 2016
Cabinet Meeting 19 September 2018

