

Leicester
City Council

Cabinet

23 July 2007

LEICESTER SHIRE CONNEXIONS – GOVERNANCE AND FUNDING ARRANGEMENTS

Report of the Corporate Director of Children and Young People's Services

1. PURPOSE OF THE REPORT

- 1.1 This report explains the background to Connexions, the local position, transition arrangements and proposals for future governance.

2. REPORT

- 2.1 Connexions companies offer advice on education, careers, housing, money, health and relationships for 13-19 year olds in the UK. As part of the range of services to young people, Connexions meets the statutory requirements under Section 8 of the Employment and Training Act 1973, Section 140 of the Learning and Skills Act 2000 for the assessment of LDD young people undertaking post-16 education or training, and Section 114 of the Learning and Skills Act 2000, covering the requirement to provide careers services to young people, to support the schools statutory responsibility for careers education and in the provision of services designed to tackle the NEET (Not in Education, Employment of Training) issue.
- 2.2 Leicester Shire Connexions Service Limited and its subsidiary are not-for-profit companies, limited by guarantee. The directors of the parent company are representatives of the key strategic partners including the City and County Councils, the Learning & Skills Council (LSC), Job Centre Plus, the Police, Probation, the PCTs, schools/colleges and the voluntary sector. The company is funded by the DfES and is permitted to carry forward up to 5% from year to year. The company is not allowed to build up reserves. 76% of funding is spent on staffing and the company is a member of the Local Authority pension scheme. Approximately 7% is spent on leases, primarily for public access centres in the city and 6 population centres in the county.
- 2.3 At local level, there is a strong collaborative partnership recognising the importance of a coherent and coordinated approach to delivering services to young people across the city and county. This is evidenced in the strategic approach being taken and led by Chief Officers of both Local Authorities and the Chief Executive of the Connexions Service and the LSC on issues relating to 13-19. Work already undertaken to develop this strong strategic approach is evidenced by the emerging joint strategy and includes:

- Developing a shared 13-19 prospectus.
- Maximising the benefits of the client information system.
- Positioning 13-19 work as a sub set of the local strategic arrangements on joint commissioning and the Children and Young People's Plan.

The New Arrangements

- 2.4 By 2008, accountability for delivering services funded by the Connexions grant will transfer to each Local Authority, either through Local Area Agreements (LAA) or Children's Trust arrangements. The statutory requirements will then pass to Local Authorities. The DfES paper "Youth Matters: Next Steps" anticipates that LAs will continue to commission from Connexions where evidence suggests it is working well. Guidance issued by the DfES indicates that "the Department is clear that it does not necessarily expect wholesale changes in delivery arrangements for services delivered through the Connexions grant". It also states that the "over-riding consideration in transition planning... should be how best to maintain and improve the scope, quality and outcomes of frontline services to young people – both during and after transition".
- 2.5 The DfES expects Connexions partnerships and LA's to discuss and agree how the services funded through the Connexions grant will be delivered in each area under children's trust arrangements. It suggests that fundamental considerations include:
- the importance of maintaining and improving service delivery
 - the continuing viability and maintenance of services across the wider partnership area
 - the needs and priorities of young people in each LA area
 - the configuration which is best able to meet these needs
 - the options for mode of delivery, aiming to maximise outcomes for young people and to secure best value for money
 - the impact on the Connexions partnership and its staff
 - the effects on the LA and other partners
 - ensuring all procurement decisions are taken in accordance with the LA's standing orders.
- 2.6 From April 2007, funding has been pooled in both Leicester and Leicestershire, with funding passported back to Connexions using the Connexions funding formula for 2007/8 and 2008/9. The business planning guidance for 2007/8 places emphasis on the need for careful planning to ensure that this is a smooth process that does not impact upon:
- The delivery of high quality services to young people.
 - Adequate integration with the Children's Services agenda of "Every Child Matters" and the Youth Offer.

- 2.7 There is recognition that there maybe additional costs associated with effecting transition to ensure that both the above are met and in ensuring that any wind-up company costs are appropriately covered. Leicester and Leicestershire therefore put in a joint proposal for additional funding to:
- Commission additional management capacity to enable the creation of a transition plan.
 - Support both LAs with additional capacity to understand a clear analysis of provision for young people.
 - Additional capacity to support the evidence-gathering of needs and priorities in line with the refresh of both the Children and Young People's Plan and the joint 13-19 strategy.
- 2.8 The DfES has awarded funding of £100,000 towards the costs of effecting the transition in over 2007 – 2009.
- 2.9 Prospective was jointly commissioned by Leicestershire, Leicester City and Connexions to prepare a report outlining the company options available for future arrangements and to appraise the LAs to form a view as to the preferred arrangements for implementation to ensure best value and improved delivery of services (see appendix A)

Future Options

- 2.10 The Prospective report offers four models for consideration, detailing the Pros and cons:
- Model 1: Local Authority and community – community with majority control
Model 2: Local Authority and community involvement – Local Authority with majority control
Model 3: Community Interest Company
Model 4: Charitable organisation
- 2.11 Following a meeting of Chief Officers from both Local Authorities and Connexions on 1.6.07, agreement was reached that Model 2 was the preferred model in principle, subject to further exploration of the legal and financial considerations. This is a company limited by guarantee with the directors drawn from local authorities and other community interests, the Local Authority forming the majority. The benefits of this model allow for:
- A continuity of approach for young people.
 - Continuity of service and focus of activity against agreed targets.
 - Delivery of services which LAs can directly influence and ensure speed of response.
 - A cost effective approach.
- 2.12 Once a preferred model is agreed upon, the detail within the model including procurement issues, staffing options, trading opportunities, grant and financial arrangements would be able to be drafted.

Recommendations

2.13 That cabinet agree:

- 1) To note the position from April 2008
- 2) To support the principle of joint working with the County Council on this matter.
- 3) To receive a further report detailing the proposed way forward once the implications of the options have been fully researched and considered.

3. FINANCIAL AND LEGAL IMPLICATIONS

- 3.1** This report seeks to inform Members of the nationally driven changes to the arrangements for the Connexions Service, and to present potential operational and governance models for Leicester and Leicestershire. The detailed financial and legal implications of the preferred model and the other potential models are being explored, so that a fully informed proposal can be brought to Members. Members are asked to note that the commentary within the attached report is the view of Prospective, and should not be taken as official financial or legal advice to Members at this stage.
- 3.2** Procurement will be simplified if the “in-house” rule suggested by Model 2 can be followed. This will require management of the company providing the Connexions service to be exercised through a board of directors answerable only to public authorities, ideally only the accountable bodies.
- 3.3** If the Connexions service is to be undertaken by new companies or in sourced to one of the Councils (such as through a joint committee arrangement) there is likely to be a TUPE transfer of employees.

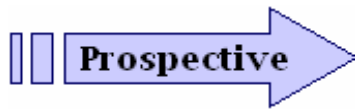
Greg Surtees
Senior Solicitor, Commercial and General Team
Ext 29 6453

Colin Sharpe
Head of Finance (C&YPS)
Ext 29 7750

4. AUTHOR OF THE REPORT

Name : Penny Hajek
Title : Service Director (Access, Inclusion & Participation)
Phone No. : 29 7704

Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)



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Leicester Connexions Review –Paper from Prospective Ltd.

Introduction

The accountability for delivering services funded by the Connexions Grant transfers to local authorities by April 2008. There was a requirement on local authorities to develop a transition plan which ensured that the process of transition is a smooth process and that it does not have a negative impact on:-

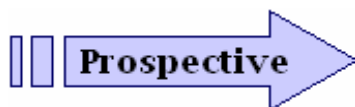
1. The delivery of high quality services to young people
2. Adequate integration of the Connexions service with that of the Children's Service agenda of Every Child Matters and the Youth offer.

A paper outlining the local position has been submitted previously by Leicester's Children and Young People's service which outlined the interim position. That is, that from April 2007 Connexions funding would be pooled through the LAA in Leicester and Leicestershire. This was subject to the agreement that the funding is passported back to Connexions using the Connexions funding formula for 2007/8 and 2008/9.

It was agreed that concurrent with this process negotiations would continue to secure a mutually agreed transition process that secures the long-term delivery of services, provides value for money and which enables cross-authority collaboration in support of developments for the 13-19 year age group.

In order to progress the transition discussions, Prospective have been commissioned to outline the company options available for future arrangements and to appraise them to allow Leicester and Leicestershire to form a view as to the preferred arrangement they would wish to implement to ensure best value and improved delivery of services.

In addition to this work it has been acknowledged that a separate piece of work (not commissioned via Prospective) will be required to look at an implementation plan for options in respect of the integration of services across the 13-19 age group. This will

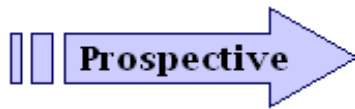


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April 2007

Heather Stephens

Tel: 07879 620289 Email: heather.stephens@prospectivegroup.co.uk



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ensure a holistic approach to service delivery, improved performance outcomes for young people, targeting of priority groups to ensure best use of resources.

The Current Position

Leicester Connexions currently offers services across Leicester City and Leicestershire local authority areas. It is currently a company limited by guarantee and is a not for profit organisation. Its objects are widely drawn and relate to a very large range of education and community activities.

The accountability for services currently delivered via funding from the Connexions grant reverts to local authorities from April 2008. The agreed position from the local authorities in the area and Connexions is to maintain services and to continue to improve service effectiveness and efficiency during and following the implementation of the necessary adjustment to governance and procurement processes.

Future Company Models

As stated earlier this piece of work is focused on the key company models available to Leicester and Leicestershire.

There are four main models to consider

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|---------|---|
| Model 1 | Local authority and community – community with majority control |
| Model 2 | Local authority and community involvement - local authority with majority control |
| Model 3 | Community Interest company |
| Model 4 | Charitable organisation |

Model 1 Local authority and community – community with majority control

Model 1 can be viewed as very similar to the status quo within the current Connexions model. That is, directors drawn from local authorities and other community interests with community interest directors in the majority. Under this model, unless Leicester and Leicestershire can demonstrate that only Leicester Connexions can deliver the contract to the standard required and with the expertise to deliver the services then it would be necessary to go out to competition for the contract. There would be no guarantee of continuity of service and the possibility of



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Tel: 07879 620289 Email: heather.stephens@prospectivegroup.co.uk

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establishing new relationships with a new organisation which might detract from progressing the currently agreed children and youth targets for service improvements.

It should be noted, however, that this model does allow for the new agency to trade and seek contracts elsewhere.

However, there is potential for conflict of interest and the need for declaration of interest could be an issue as the main contracts held would be with the local authorities. The potential for conflict of interest would be higher than in the current system.

- Pros**
- Limited set up costs.
 - Revenue as negotiated through contracts
 - Local Authority Directors/Members permitted by company articles
 - Current company objects broadly fit for purpose.
 - Established track record as company would be advantage to Connexions in competition for contract.
- Cons**
- Local Authority potentially subject to EU procurement regulations – contract may need to go out to tender. Disruption or discontinuity of service could ensue.
 - Local Authority involvement not guaranteed – choice of the local authority – could make this one of many externally commissioned agencies with limited member/director involvement if they so choose.
 - Potential conflict of interest in decision making – need to declare interests at board meeting and within Local Authority meetings
 - May be restrictions arising from LA influenced company status if influence less than 50% but more than 20% of membership.



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Model 2 Local authority and community involvement - local authority with majority control (Local Authority Company)

Model 2 is a company limited by guarantee with the directors drawn from local authorities and other community interests. In this model the local authority directors would form the majority. Although the previous problems of this model in respect of restrictions on local authority borrowing ability has been changed with amendments to the central government controls on local authorities which now allow local authorities to set their own limits.

There are still some disadvantages to this model but there are also distinct advantages. If Leicester and Leicestershire were to agree to move forward using this model it would offer a way of delivering services which they would be in a position to directly influence and would be able to ensure a degree of speed of responsiveness. For Connexions the advantages would be that of continuity of approach and the reassurance of a longer term relationship with the local authorities in the area. For both it offers the potential for a formal long term partnership with liabilities ring fenced.

The benefits to young people in the area would be of a continuity of approach, direction and actioned through existing mechanisms through the local plans already agreed and it allows for involvement through existing mechanisms which can be developed further in line with the strategic plan.

Pros Potential procurement advantage if accepted as falling within the “in house” rule. (This should be explored further to check on status)
This would also bring potential VAT savings.

Current objects broadly fit for purpose – need to be agreed as objects for new company

Close partnership with local authorities, Leicester and Leicestershire already exist. Gives local authorities control over investment and focus on agreed targets.



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Heather Stephens

Tel: 07879 620289 Email: heather.stephens@prospectivegroup.co.uk

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Can be developed as responsive company without all LA or charitable status restrictions. This will require defined decision processes between and within each of the local authorities involved. Revenue as negotiated by contract and outcomes monitored as per contract. Continuity of service and focus of activity against agreed targets would be possible subject to agreement of the two local authorities. Involvement of service users, other community interest groups would be set by the local authorities in setting up the new company structure.

Cons

Strengthening of the local authority position within the Board could potentially lead to greater conflict between the separate local authority priorities and other interests. Defined process for decision making and process for agreeing services to commission will ease the potential for conflict and dispute.

Company would need to be set up with cooperation between Leicester and Leicestershire. (There appears to be existing co-operation which would prevent this necessarily being viewed as a negative)

Additional requirements on Connexions and the local authorities for example, audit and trading restrictions.

There is the potential for regulation and conflicting interests of the local authorities reducing the flexibility and independence of the new organisation.

Some cost of change to the company but this could be offset by the potential VAT savings.

Model 3 Community Interest company

Model 3 would designate the company as a community interest company. It would appear to offer no additional advantages to Model 1 and gives some additional restrictions albeit minor ones. There is nothing to commend it over the other models considered.

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- Pros** Current Objects broadly fit for purpose. This model would be a customised entity for social enterprises wishing to operate for community benefit and allowing limited liability for members.
- There are potential VAT savings under this model.
- Revenue as negotiated by contract.
- Outcomes monitored via contract.
- Cons** Local Authorities subject to EU procurement regulations. Involvement of the local authorities would need to be specified in the company articles.
- Local Authority involvement not guaranteed – choice of the local authority – could make this one of many externally commissioned agencies with limited member/director involvement if they so choose.
- Potential conflict of interest in decision making – need to declare interests at board meeting and within Local Authority meetings.
- Subject to normal company law requirements and additional restrictions (e.g. asset lock restricting distribution to members)
- Increased regulation by CIC register.
- There would be some set up costs.
- The company cannot register as a charity and so cannot benefit from some tax advantages.

Model 4 Charitable organisation

Model 4 was to register as a charity. There are advantages to this model, it gives financial advantages in terms of tax exemption, and the right to hold appeals and bid for specific funding available to charities. In addition it would give a public image of a charity with the resultant pros and cons.

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The disadvantages to this model are the same as for Models 1 and 3 as well as having to meet the additional regulation requirements of the Charities Commission. The requirements placed on Trustees and these additional requirements could pose problems.

- Pros**
- Current Objects broadly fit for purpose
 - Possible enhanced public standing – charitable status may inspire confidence in the public.
 - Local Authority members/directors permitted by company articles.
 - Specific tax exemption and reliefs.
 - May elicit better response to appeals, can bid for specific charitable grants/funds, can raise money and can trade.
- Cons**
- Local Authorities potentially subject to EU procurement regulations. May be negative connotations for service users of receiving “charitable services”
 - Local Authority involvement not guaranteed – choice of the local authority – could make this one of many externally commissioned agencies with limited member/director involvement if they so choose.
 - Potential conflict of interest in decision making – need to declare interests at board meeting and within Local Authority meetings.
 - Extra layer of regulation is added to that governing the legal entity established (that is, charity commission regulation requirements).
 - Directors/members also have responsibilities as Trustees of the charity.
 - There are some registration costs.

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The Preferred Model

This paper does not attempt to recommend a specific model as Leicester City and Leicester together in consultation with Connexions need to consider the type of model that best meets their joint requirements.

The following would be required to be determined to assess which model best meets the needs of Leicester City and Leicestershire. These issues are as follows:-

1. The extent to which the local authorities want to retain control in the organisation or to create a totally separate organisation with degree of control to be specified.
2. The extent to which the local authorities would like to see the new organisation trading across and outside of the current catchment area (that is beyond Leicester City and Leicestershire).
3. The level of integration to be achieved across local authority youth services and Connexions.
4. If an organisational model is chosen independent of the local authority and where integration is intended, the transference of staff from youth services into a new organisation under TUPE regulations would be required which could pose financial, political and organisational problems. Consideration on whether to transfer or to second would be necessary.
5. Further clarification on competitive tendering would be required for implementation of some of the models outlined. Even where an organisation independent of the Local Authority is viewed as the preferred model there are some circumstances where EU procurement procedures may be avoided, such as taking the negotiated award procedure to competitive tendering which can be used in limited circumstances or where a Strategic Partnership agreement could act as the "letting body". The latter may be a preferred option in these circumstances.

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6. Where the preferred organisational model is controlled by the local authority and where integration of services is the aim, there would be some areas of overlap in organisational and service terms which could lead to economies or improved effectiveness. The level and detail of this would only become apparent once a detailed integration implementation plan is developed.

The Detail of the Model

Once a preferred model is agreed on, the detail within the model including procurement issues, staff transfer options, trading opportunities, grant and financial arrangements would be able to be drafted.

In addition the following specific details will need to be drafted to implement the model.

1. Develop a memorandum of agreement outlining the expectations of the Board.
2. Detailed protocols for the working of the Board.
3. Determine membership of the company and directors for the board of management, size and arrangements for nominations and selection.
4. Define the decision making processes in and between meetings, including the role and process of appointment of the Chair.



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Local Authority Companies

There are particular statutory restrictions relating to the involvement of local authorities in companies. The Local Government and Housing Act 1989 and Regulations made subsequently set out complex rules defining the levels of control and influence which local authorities can exercise in companies and the implications of their involvement.

The legislation was designed to prevent local councils setting up, or becoming involved in, companies through which they could then carry out functions outside the scope of the strict controls on local government expenditure and operations.

In general terms the restrictions mean that if the local authority has more than a certain level of control or influence in a company then the company is deemed to be part of the council. This brings the company under the same controls on capital, use of receipts, borrowing etc as the council. Where more than one local authority is involved in a company, it is the joint influence or control of the Councils which is relevant.

Companies are categorised differently depending on the level of local authority involvement in them.

Controlled (including arms length companies)

Influenced (both regulated and unregulated)

Minority interest

Rules introduced in 1995 brought in restrictions on all controlled companies and certain influenced companies, making these companies “regulated”. This effectively meant that they were treated as part of the local authority for capital finance purposes.

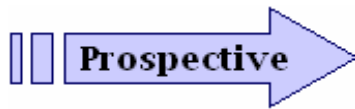


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Tel: 07879 620289 Email: heather.stephens@prospectivegroup.co.uk



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Regulated Companies

A company is automatically regulated if it is controlled. That is:-

It is a subsidiary of a local authority in company law terms or

The local authorities have power to control a majority of votes at a general meeting of the company

The local authorities have power to appoint or remove a majority of directors of the company

If the local authorities have less than this amount of control but still are actively involved in the company it may be considered to be “influenced” rather than controlled.

A guarantee company becomes an influenced regulated company if a number of circumstances exist at the same time. These are:-

A personnel relationship exists between the local authorities and the company

A business relationship exists between the local authorities and the company and (if both exist at the same time)

There is a dominant influence by the authorities over the running of the company.



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Heather Stephens

Tel: 07879 620289 Email: heather.stephens@prospectivegroup.co.uk

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Implications of Regulation

treated for capital finance purposes as if it is part of the local authority itself. The main impact is that the various activities, e.g. taking out a lease count toward the local authority borrowing capacity. In addition the company's activities are subject to the scrutiny of the councils, district auditors and audit commission. There are also limits on publicity and on the level of allowances payable to members/directors.

The freedom of the company to trade and operate in the market is constrained substantially by regulation under these provisions.

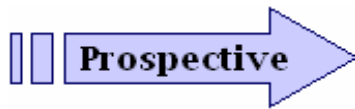
The usual approach to ensure sufficient flexibility is to find mechanisms which are strong enough to provide legitimate representation/influence for local authorities to protect their investment but do not trigger sufficient levels of influence or control to make a company regulated. However, there are a number of regulated companies in operation under local authority control across a wide range of service areas.

Note: The Council's Chief Finance Officer comments that following the change in the Local Government capital financing regime, the impact of regulated companies on the Council's credit limit is no longer of any relevance
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Community Interest Company

Community Interest Companies (CICs) are a special type of limited company established by the Companies (Audit, Investigations and Community Enterprise) Act 2004 (the CIC Act) CICs have been created as an alternative vehicle for social enterprises wishing to operate as companies "for the benefit of the community".

CICs may not register as a charity even if its objects are entirely charitable. A CIC is intended to be an alternative to registration as a charity, benefiting from a lighter regulatory regime but without the benefit of the tax advantages of charities. However, a charity may establish a CIC as a subsidiary company. This allows the charity to



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establish a CIC as a trading entity with the CIC transferring all its surpluses to the charity.



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Tel: 07879 620289 Email: heather.stephens@prospectivegroup.co.uk