

Leicester
City Council

WARDS AFFECTED
All

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:
Cabinet

11 December 2006

TRANSFER OF HIGHFIELDS CHILDREN'S CENTRE MANAGING AGENCY

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

1. Purpose of the Report

- 1.1 To seek cabinet approval for the transfer of 'managing agency responsibility' for Highfields Children Centre from the N.S.P.C.C. to N.C.H.
- 1.2 To provide Cabinet with information regarding the delay in the transfer process and to recommend a way forward.

2. Summary

- 2.1 In 2006 The D.F.E.S. moved the funding and accountability for the delivery of Sure Start grant funded services to the local authority. This has changed the role of 'Accountable Bodies' and 'Lead Agencies' to one where the Local Authority as the 'Accountable Body' now commissions a Lead Agency to manage and deliver the programme through a commissioning contract.
- 2.2 The Highfields Sure Start Programme has been managed by the N.S.P.C.C. since its inception in 2003.
- 2.3 In 2004, the N.S.P.C.C. indicated a strategic intention to withdraw from management of all Sure Start Programmes nationally. Negotiations began with the Local Authority in relation to the transfer of Highfields in September 2004.
- 2.4 It was agreed by all parties that N.C.H. would be best placed to take over the role of provider for Highfields and could be commissioned to fulfill this role until March 2008 when an overall review of all providers would take place.
- 2.5 Negotiations commenced to transfer the programme by March 06, however the transfer was suspended as a result of a failure to reach agreement on the issue of business indemnity (see Supporting Information).
- 2.6 Legal Services identified a number of risks in proceeding with a transfer without an indemnity and provided advice on this matter to the then Interim Service Director, Education and Lifelong Learning in March 2006. This resulted in detailed discussions

taking place between all parties in a search for an agreed resolution to the indemnity issues.

- 2.7 The only resolution that appears to be available is one which requires the Local Authority in its capacity as Accountable Body to offer an indemnity to N.C.H. This would enable the transfer to be concluded and would support the Centre to move forward in reshaping service delivery in line with other centres.
- 2.8 Failure to agree a resolution with regard to indemnity will result in the N.S.P.C.C. resigning and will require the Local Authority to take over both the Lead Agency and Accountable Body roles.

3. Recommendations

Cabinet to approve the transfer of the management agency for Highfields Sure Start Children Centre to N.C.H., subject to the Chief Finance Officer being satisfied that the due diligence exercise has appropriately minimized the level of risk to the Council.

4. Financial Implications and Legal Implications

4.1 Financial Implications

- 4.1.1 The amount allocated to the Highfields SureStart for 2006/07 is £1,459,487.
- 4.1.2 The amount allocated for 2007/08 is £1,035,103.
- 4.1.3 This is a reduction of £424,384.
- 4.1.4 NCH has presented and agreed a budget for 2007/08 that delivers the required services within the reduced budget.
- 4.1.5 It is not possible to identify and value the risk scenario in order to identify the City Council's possible exposure if it agrees to indemnify NCH in this case.
- 4.1.6 The City Council, as Accountable Body, is responsible to the D.f.E.S. for the financial management of the programme and it is imperative that this transfer is effected without any prejudice to the Council, financially or in its standing as an accountable body, in this regard.

Barrie Woodcock, Interim Head of Finance, x7750.

4.2 Legal Implications

- 4.3 The Legal Implications of proceeding with this transfer remain as originally identified in March 2006. In summary this advice was:
- 4.4 To proceed without an indemnity from NSPCC and for the Council to indemnify NCH for actions by NSPCC could ultimately result in funding being withdrawn to settle claims. Clearly it is difficult to give a precise example of when an indemnity may be called upon but typically it will be needed in the event that a claim is received by either NCH as the

Lead Agency or LCC as the Accountable Body but which relates to a time when NSPCC was performing the Accountable body role. It should be noted that this risk is now much diminished due to the period of time taken to resolve this issue.

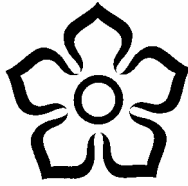
- 4.5 Originally NCH were to inherit NSPCC service contracts with external providers and were seeking an indemnity from the Council or the NSPCC against claims arising from these contracts. It is understood that this indemnity will no longer be required as due to the lapse of time these service contracts are due to expire in March 2007 when new contracts will be issued on NCH terms without the need for an indemnity.
- 4.6 There is a risk to the Council for claims arising due to breaches of intellectual property rights. Due to the length of time and practices put in place to prevent this possibility occurring then this risk is reduced.
- 4.7 Advice was given in March 2006 to undertake a risk assessment and due diligence exercise in conjunction with the Chief Finance Officer to identify any other risks and the scope of those already identified. "
- 4.8 The Local Government Act 2000, Section 1 gives a Local Authority power to do anything which they consider is likely to achieve, inter alia "the promotion or improvement of the social well being of their area". This power includes powers to "enter into arrangements or agreements with any person". Legal Services are advised that the transfer of the Lead Agency role to NCH is imperative to promote the social well being of the Highfields area and Legal Services are not aware of any reason why the actual agreement, the Deed of Indemnity, that will be necessary to effect this should not be included within the general power to enter into agreements referred to at Section 2. Further discussion on this point will be undertaken with the Service Director, Legal Services.

Rebecca Jenkyn, Senior Solicitor, Commercial and General, Legal Services, x6378.

5. Report Author:

John Skinner
Interim Head of Early years
Ext 4371
JohnF.Skinner@leicester.gov.uk

Mel Meggs
Children's Centre Strategy Manager
Ext 4354
Mel.Meggs@leicester.gov.uk



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SUPPORTING INFORMATION

1. Report

1.1 Introduction and Rationale for the Transfer

1.2 Highfields Sure Start was a double programme and the largest Sure Start Programme in the country. The programme has been managed by the N.S.P.C.C. since its inception 2003. In 2004, the NSPCC indicated a strategic intention to withdraw from management of all Sure Start Programmes nationally. Negotiations began with the Local Authority in relation to the transfer of Highfields in September 2004.

1.3 A Children's Centre Report was present to Cabinet in August 2004, which sought approval for the change in governance of two local Sure Start Programmes, Beaumont Leys and New Parks. The report also requested Cabinet approval to make changes to the governance of other local Sure Start programmes as they evolved into Children's Centres. This was agreed.

1.4 In 2006 The D.F.E.S. moved the funding and accountability for the delivery of Sure Start grant funded services to the local authority. This has changed the role of 'Accountable Bodies' and 'Lead Agencies' to one where the Local Authority as the 'Accountable Body' now commissions a Lead Agency to manage and deliver the programme through a commissioning contract.

1.5 The N.S.P.C.C. in conjunction with the local partnership board and the Sure Start Unit at GOEM sought an alternative agency to manage the programme. They agreed that the agency best able to undertake this role was N.C.H. (June 05)

1.6 NCH has a positive track record of managing Sure Start Children Centres both nationally and locally. They are nationally the largest voluntary sector provider of Children Centres and have built up considerable expertise in the area of preventative and early intervention services.

1.7 N.C.H. currently successfully manages the St.Matthews and Braunstone Children Centres through a commissioning contract arrangement with the local authority.

1.8 It was agreed by all parties that N.C.H. would be best placed to take the role of provider for Highfields and could be commissioned to fulfill this role until March 2008 when an overall review of all providers would take place

1.9 Transfer Arrangements

1.91 Staff

Negotiations commenced to agree the transfer of all staff currently employed by the N.S.P.C.C. to N.C.H. under T.U.P.E. legislation. These negotiations were successfully concluded in March 2006 with a view to the transfer taking place in April 06. This transfer is currently on hold.

1.92 Assets

Negotiations commenced on the transfer of all Sure Start grant funded assets from N.S.P.C.C. to N.C.H. under an Assets Transfer Agreement. All Assets were disclosed and agreement was reached on the transfer of all physical assets purchased through the Sure Start grant to N.C.H. for the purpose of delivery the of the services set out in the commissioning contract. These assets consisted of buildings equipment and I.T. The agreed assets were scheduled to transfer on 1st April 06,.The process is currently on hold.

1.93 The N.S.P.C.C. currently has a series of service level agreements with a range of agencies to deliver services. These agreements were disclosed and arrangements were put in place for them to be re-issued by N.C.H.

1.10 Indemnity

Leicester City Council Legal services have advised that it is standard practice in all situations such as these for the departing organisation to give a series of indemnities to the incoming organisation effectively agreeing to indemnify the Council or N.C.H. for actions which may have arisen whilst they were responsible for the sure start operation. This is understood to be entirely reasonable and normal procedure.

1.11 Indemnity became an issue at the end of February 2006 as the NSPCC refused to sign the indemnity clause, which is part of the transfer agreement (Minutes of the Transfer Meeting 20 February 2006). This was because NSPCC did not accept responsibility for the decisions taken by the Partnership Board and did not have the funds to pay litigation costs.

1.12 The partnership board is not a legal entity and the Sure Start Guidance was clear that accountability lies with the Accountable Body and cannot be delegated.

1.13 N.C.H. requires to be indemnified against potential future litigation before they will agree to the transfer.

- 1.14** The issue of indemnity protection presented an unknown level of risk to both Leicester City Council and NCH and Legal Services at that time (March 06) advised the Corporate Director for Children and Young Peoples Services of the risks in proceeding without an indemnity but that naturally it was a decision for herself to take having considered all the risks.
- 1.15** The planned transfer was suspended on the instruction of the Corporate Director for Children and Young People s Services until a resolution was reached.
- 1.16 The current position**
- 1.17** Legal services advice from March 2006 is, summarised in the Legal Implications section of this Report
- 1.18** Two further meetings have taken place between all parties to try to reach a resolution on the indemnity issue.
- 1.19** N.S.P.C.C. still wishes to withdraw from managing the centre with increasing urgency however they have not changed their position regarding indemnity.
- 1.20** N.C.H. remains committed to taking over the management of the centre on the condition that they have a contract until March 08 as a minimum (in line with the other centre's they manage). They still require indemnity from either the Local Authority or N.S.P.C.C.

1.21 Proposed resolution

The local authority offers an indemnity to N.C.H. in its role as Accountable Body to enable the transfer to be concluded.

- 1.22** This resolution would enable the Centre to move forward in reshaping service delivery in line with other centers. Therefore ensuring they are able to meet their contractual obligations and improve outcomes for children.

2. Financial and Legal Implications

2.1 Financial Implications

- 2.1.1** The amount allocated to the Highfields SureStart for 2006/07 is £1,459,487.
- 2.1.2** The amount allocated for 2007/08 is £1,035,103.
- 2.1.3** This is a reduction of £424,384.
- 2.1.4** NCH has presented and agreed a budget for 2007/08 that delivers the required services within the reduced budget.
- 2.1.5** It is not possible to identify and value the risk scenario in order to identify the City Council's possible exposure if it agrees to indemnify NCH in this case.

2.1.6 The City Council, as Accountable Body, is responsible to the DfES for the financial management of the programme and it is imperative that this transfer is effected without any prejudice to the Council, financially or in its standing as an accountable body, in this regard.

Barrie Woodcock, Interim Head of Finance, x7750.

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2.6 There is a risk to the Council for claims arising due to breaches of intellectual property rights. Due to the length of time and practices put in place to prevent this possibility occurring then this risk is reduced.

2.7 Advice was given in March 2006 to undertake a risk assessment and due diligence exercise in conjunction with the Chief Finance Officer to identify any other risks and the scope of those already identified.

2.8 The Local Government Act 2000, Section 1 gives a Local Authority power to do anything which they consider is likely to achieve, inter alia "the promotion or improvement of the social well being of their area". This power includes powers to "enter into arrangements or agreements with any person". Legal Services are advised that the transfer of the Lead Agency role to NCH is imperative to promote the social well being of the Highfields area and Legal Services are not aware of any reason why the actual agreement, the Deed of Indemnity, that will be necessary to effect this should not be included within the general power to enter into agreements referred to at Section 2. Further discussion on this point will be undertaken with the Service Director, Legal Services.

Rebecca Jenkyn, Senior Solicitor, Commercial and General, Legal Services, x6378.

3. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities			
Policy			
Sustainable and Environmental			
Crime and Disorder			
Human Rights Act			
Elderly/People on Low Income			

4. Consultation

NCH
NSPCC
Highfields Programme Board

5. Report Author

John Skinner
Interim Head of Early years
Ext 4371
JohnF.Skinner@leicester.gov.uk

Mel Meggs
Children's Centre Strategy Manager
Ext 4354
Mel.Meggs@leicester.gov.uk