

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

CABINET - 19 JULY 2012

**REPORT BY THE TRI-BOROUGH EXECUTIVE DIRECTOR OF
CHILDREN'S SERVICES
AND THE TOWN CLERK AND EXECUTIVE DIRECTOR OF FINANCE**

**REMODELLING THE YOUTH SERVICE TO CREATE AN EMPLOYEE LED
MUTUAL**

This report seeks approval for Youth Support and Development (YSDS) staff to set up a social enterprise to opt out of the Council and operate independently as an employee led mutual (ELM). The new entity will provide a range of services to young people under contract to the Council, as set out in this report.

FOR DECISION

1. INTRODUCTION

1.1 Cabinet is requested to approve the decision for the Youth Support and Development (YSDS) staff to set up a social enterprise to opt out of the Council and operate independently as an employee led mutual (ELM). The new entity will provide a range of services to young people under contract to the Council.

1.2 Recommendations:

- i) To note the process to set up the new enterprise to and award an initial service contract to the YSDS-ELM.
- ii) To give approval to proceed with setting up an Employee Led Mutual
- iii) To delegate to the Cabinet Member for Family and Children's Services and Education and Libraries the authority to approve the level of spend (within limits agreed by Cabinet and Council) and the range of commissioned services. The overall decision on award of the service contract will be a Cabinet one.

2. BACKGROUND

2.1 The Council retains a statutory duty to secure sufficient education and leisure time activities for young people¹. Sufficiency is not

¹ Education and Skills Act 2008: what constitutes 'sufficient' is not defined in the Act and is at the discretion of the local authority.

closely defined and councils vary widely in the levels of service provided under this duty. The Royal Borough currently invests significant sums in services for young people although it will become increasingly difficult to sustain the direct delivery of youth services at the current level as resources diminish.

- 2.2 Due to financial pressures in local authorities nationally, non statutory services have come under intensive scrutiny. A number of local authorities have made major changes to youth provision and reduced resources accordingly. Non statutory services will continue to be an area for scrutiny into the next spending review.
- 2.3 In this context, Children's Services is exploring new ways of delivering services and of bringing in a more diverse mix of funding.
- 2.4 A range of options has been examined and the social enterprise approach can demonstrate that it could meet the aim of securing high quality, effective and sustainable services for young people at less cost to the Council.
- 2.5 To support the work, the Council has been accepted to join the Cabinet Office Employee Mutuals Pathfinder programme. The purpose of the Pathfinder is to examine the feasibility of YSDS operating outside of the Council as an employee led mutual. This means staff will own shares in the company and be directly involved in governance.
- 2.6 A major incentive for joining the Pathfinder programme is that the Royal Borough has been given an experienced business mentor and has access to a considerable amount of advice and guidance from legal and other sources.
- 2.7 The proposal to set up the YSDS-ELM is supported in principle by the Cabinet Member for Family and Children's Services and Education and Libraries, the Joint Chief Executive and the Tri-borough Executive Director of Children's Services. This follows formal submission of an expression of interest in November 2010 identifying the opportunity to deliver existing services in a more creative way. Since then YSDS staff have been developing a more detailed business case.
- 2.8 Following approval by Cabinet the new enterprise will seek to opt out from the Council and begin operations from April 2013. Initially, the new entity may operate in shadow form for a short period as transition to the new entity is finalised.
- 2.9 To ensure effective transition from the Council to an independent body, a project board has been set up to govern the process, ensure due diligence and ensure smooth implementation of the project plan. This involves senior officers from the proposed client (council) and new provider (YSDS-ELM) side.

- 2.10 Part of the project brief has been to develop a process and governance arrangements for staff setting up new enterprises and new ways of working. This process is being tested through the YSDS-ELM project. The process is set out in Appendix 1.

3. BUSINESS CASE

Current service

- 3.1 YSDS currently has a staffing establishment of around 75 full-time equivalents. The service includes sports coaches, health advisors, youth workers, careers advice specialists, teachers and tutors, arts and music specialists and others.
- 3.2 YSDS currently provides a range of centre based and outreach youth work services across the Royal Borough and illustrated in Figure 1 below. The map also includes services delivered by voluntary sector organisations.
- 3.3 YSDS has a deserved reputation for delivering high quality services to young people. It is regarded as a London and national leader for services such as the Duke of Edinburgh award scheme, alternative education provision, teenage pregnancy services, youth participation work and others. Fundamental to the ELM proposition is the recognition that in order to maintain this quality of service, a radical remodelling is required.

Fig 1: Centre-based and outreach youth work services across the Royal borough

YSDS Youth Provision in the Royal Borough of Kensington and Chelsea



Includes both Council and voluntary sector provision

The Royal Borough of Kensington and Chelsea
 The Town Hall, Hornton Street, London, W8 7NX
 +44 (020) 7361 2216
 adam.richardson@rbkc.gov.uk
 June 2012

YSDS Units: Source YSDS.
 20% most deprived LSOA's nationally
 within the Tri-Borough Area
 Source: IMD 2010, DCSF

Reproduced from the Ordnance Survey
 mapping with the permission of the Controller
 of Her Majesty's Stationery Office. © Crown copyright
 and database rights 2012 Ordnance Survey 100021668

3.3 YSDS currently operates youth services from four Council owned buildings:

- Lancaster Youth Centre
- Golborne Youth Centre
- Canalside Activity Centre
- Cremorne Kayaking Centre

3.4 In addition to directly provided youth services, the Council funds a range of voluntary organisations to provide services to young people, working closely with YSDS. The Council also seconds staff to Earls Court and Chelsea Youth Clubs.

Future commissioning intentions

3.5 Youth Services, like other Children's Services, have made significant savings over the past two years. Furthermore, development of the YSDS-ELM sits in the context of Tri-borough Children's Services and, in Kensington and Chelsea, the reconfiguration of services around Early Help and Targeted Support.

3.6 All commissioned activity from the YSDS-ELM will contribute to delivery of outcomes set out in the Early Help and Targeted Support strategy. In this context, what is commissioned will focus on early intervention for 13-19 year olds, and in some cases up to 25 year olds. This is in addition to more specialist work; for example, with Looked after Children and Care Leavers, those on the threshold of care, young people with disabilities, young offenders and young people who are not in education, employment or training.

3.7 In practice, this means the YSDS-ELM would continue to deliver core centre-based diversionary activities as well as a range of other more targeted or specialist services.

3.8 The Council will continue to contract directly with voluntary organisations to deliver Early Help priorities for young people. This could include, for example, centre based youth activities and evidence based programmes for young people who are not in education, employment or training.

3.9 Following a decision to proceed with setting up the YSDS-ELM, officers will identify the required level of spend and produce a service specification. This will form the basis of an initial service contract with the new entity. The decision to award the service contract will be made by Cabinet.

Funding model

3.10 The budget allocated to YSDS for 2011-12 was just over £6.3m. This includes £1.3m in recharges and overheads leaving an operating budget of £5m. The operational budget includes £810,000 which was used to commission services from the voluntary youth sector and which will not form part of the YSDS-ELM service contract. The Council will continue to contract directly with the voluntary youth sector. The service absorbed a reduction of £710k in 2011-12, mainly in loss of government grants.

YSDS Budget	2010-11	2011-12	2012-13
Operating costs	£5.7m	£5.0m	£4.48m
Recharges/overheads	£1.3m	£1.3m	£1.30m
Total	£7.0m	£6.3m	£5.80m

3.11 Further savings of £520,000 have been made in 2012-13. An examination of backroom costs associated with IT, payroll and HR has been undertaken with a view to establishing whether further savings might be realised through outsourcing these functions. There is potential for considerable savings in this area.

3.12 The business strategy for the YSDS-ELM is to grow through the acquisition of new contracts and funding streams beyond the primary contract with the Royal Borough. YSDS already delivers contracts for the PCT in Westminster and Kensington and around 4% of income comes from trading with the public. Setting up as a new entity would allow greater flexibility to generate income. The severity of cuts elsewhere puts the YSDS-ELM in a unique position to pick up areas of priority or specialised contracts from other organisations. As part of its business plan, YSDS has identified a range of opportunities, in addition to the Kensington and Chelsea service contract. These include:

- Contracts with other local authorities - YSDS has started a contract to deliver youth services for Hammersmith and Fulham.
- Further contracts from Inner North West London PCT and Clinical Commissioning Groups - YSDS are currently commissioned by the PCT to deliver services to the value of £248k.
- Contracts with schools. YSDS currently charges schools for sports input and alternative education provision. Sports provision earned £75k last year.
- Subcontracting with others to deliver large scale contracts. There is potential for a subcontracting arrangement on the Youth Contract and with the Challenge Network, contracted to deliver the National Citizenship Scheme across London.
- Traded income – charging for services. Two centres have drawn up plans to be economically self sufficient within 3-4 years. One is already charging adult groups to use facilities during down time.

This earned £41k last year. The other has converted part of the centre to dormitory accommodation and is selling residential accommodation to schools in Europe.

- Corporate sponsorship. Currently £11k this year for sports events but there is growth potential. Corporates have indicated they would be more likely to sponsor YSDS as a social enterprise than as a local authority service.
- From a Property Perspective this would mean that RBKC would need to charge a market rent. For example, Sita and GLL cannot run services for other authorities or third parties from RBKC property. We would be subsidising those contracts through the use of RBKC property at a peppercorn rent. We should therefore agree either to charge a market rent now, or agree a point in time or when a certain point is reached in the maturity of the ELM, that a market rent is charged.

- 3.13 The working assumption is that the employee mutual will form a Community Interest Company (CIC) limited by shares. This means that assets on the company balance sheet cannot be sold or disposed of except to another entity with social purpose. The asset lock guards against asset stripping and ensures assets are retained for community benefit. The CIC model allows for investment and trading to a greater degree than a charity or trust model and lends itself well toward the business ambitions of the ELM. The company will have no external shareholders. Employees will hold the shares and surpluses will be re-invested into service delivery which should give added value to the Council and to service users.
- 3.14 Staff will be transferred in accordance with TUPE² on current terms and conditions. This includes access to the Local Government Pension Scheme.
- 3.15 YSDS staff have worked up an interim business case setting out how the new enterprise could work and identifying markets where their expertise could be applied. The council will carry full due diligence on all aspects of the business plan and obtain external independent views as to the viability of the plan.
- 3.16 In addition, legal costs for staff setting up the new entity are being funded by Cabinet Office Mutuals Support Fund.

Benefits to the Council

- 3.17 Compared with keeping the service in-house, the ELM approach allows for the development and delivery of high quality services

² Transfer of Undertakings (Protection of Employment) Regulations (TUPE). Legislation to protect employees if the business in which they are employed changes hands.

within a reducing burden on Council finances. Benefits to the Council are:

- YSDS has a well established reputation for delivering excellent services and will be able to do this at less cost than if services remained in-house. Efficiencies and savings to the Council will be achieved through lower operating costs and the ability to trade. Diversifying income streams and operating as a Community Interest Company, investing surplus back in to the company, will further lower the cost of provision to the Council.
- The Council will also benefit from working with a staff group that knows local communities already and has well established relationships with young people and partners.
- In addition to the savings of £520k delivered in 2012/13 the Children's Services business planning process for 2013/14 and 2014/15 has identified a initial savings target of £400k. As part of the business plan it is expected that further savings will be identified in future years to address future funding reductions and service priorities.
- A significant non financial benefit is the social value to the local labour market. One third of YSDS staff live in the area and this reflects a conscious effort by the service to recruit locally. Many new recruits came from neighbourhoods with high levels of unemployment. The service also provides opportunities in the labour market to many who might otherwise find gaining regular employment a challenge.
- By opting out of the Council, longer term liabilities to the Council are reduced.

Assets

3.18 A transfer agreement will cover assets such as equipment.

3.19 The working assumption is that YSDS will take the buildings into the new enterprise on a leasing arrangement. The draft terms and conditions of the leasing arrangement are included in paragraph 7.4. YSDS currently operates services, including back office and management functions, from four Council owned buildings:

- Lancaster Youth Centre, which is proposed to be redeveloped and replaced as part of the PDC;
- Golborne Youth Centre;
- Canalside Activity Centre; and
- Cremorne Kayaking Centre.

3.20 To be clear, should the ELM lose its contract with the Council at any future date, the Property Assets would revert back to the full control and use of the Council.

- 3.21 Equipment essential to the delivery of youth support services will be included in an asset transfer agreement. This is likely to include:
- Sports equipment;
 - Health and well-being materials;
 - Art/craft materials;
 - Resource materials relating to a range of young people's issues such as careers advice; and
 - Audio-visual equipment.
- 3.22 Items for transfer will be audited, valued and listed in the asset transfer agreement and due protection for the Council's property will be bound in legal form.
- 3.23 IT equipment needs are being audited as part of IT outsourcing sub-project.
- 3.24 In order to qualify as a Social Enterprise, the YSDS-ELM will have to demonstrate a specific social purpose as well as commit to an asset lock. This means that assets on the company balance sheet cannot be sold or disposed of except to another entity with social purpose. The asset lock guards against asset stripping and ensures assets are retained for community benefit.

Award of the YSDS-ELM service contract

- 3.25 The EU Public Procurement Directives (the Directives) must be taken into consideration on deciding how to contract with the YSDS-ELM.
- 3.26 The services to be provided by the YSDS-ELM fall under Part B for the purposes of the Directives. Therefore the full extent of the regime does not apply, including the requirement to publish a notice in the Official Journal of the European Union (OJEU).
- 3.27 The Council, is however, required to comply with the General Principles of the Treaty of the Functioning of the European Union (TFEU):
- Freedom of the movement of Goods and Services;
 - Freedom of Establishment;
 - Freedom of providing services.

and derived principles of:

- Non-discrimination;
- Transparency;
- Equal treatment;
- Proportionality; and

- Mutual recognition.

- 3.28 A risk analysis of the various options open to the Council to award the initial service contract has been undertaken and the recommended option is to award an uncontested contract through a negotiated procurement procedure.
- 3.29 Market testing was carried out with relevant organisations ranging from multi-nationals through to small charities. Results showed that organisations were more interested in collaborating with the new enterprise and partnership than outright competition. As well as giving a greater degree of confidence that the risk of challenge to an uncontested initial service contract is low, the market test exercise has opened the door to potential investment opportunities for the YSDS-ELM.
- 3.30 A contract of reasonable length is required to allow time for the ELM to establish itself and to compete for other business while providing flexibility for the Council in terms of what is delivered. On this basis a contract of up to five years duration is being considered.
- 3.31 The YSDS-ELM would be able to compete for subsequent contracts from the Council.

Proposed Client Arrangements

- 3.32 The Tri-borough Children's Commissioning Directorate will hold the contract budget and monitor the YSDS-ELMs performance in delivering the specification as part of an agreed legal contract.

Governance

- 3.33 The YSDS-ELM will be governed by a board of directors made up of members of staff elected by staff, service users (members of the Youth Parliament), non-executive directors and the managing director. The board will have an independent chairman. Currently the board is operating in shadow form and external appointments to the position of chair and non-executive directors are planned using the same organisation which recruited to the recently established Kensington and Chelsea Credit Union. Appointments will be made of people with particular skills in finance and commerce and early indications suggest a strong field. Once appointed the board will operate in shadow form to ensure a smooth transition.
- 3.34 The board will oversee significant company matters such as the business plan, strategic options and staff terms and conditions. The board may be advised by sub committees – one for financial matters and one comprised of service users and other stakeholders.

- 3.35 The proposed company structure is designed to create a clear delineation between strategic management, business development and delivery of services. Although the overall governance of the enterprise is based on the principles of employee ownership, the day to day running of the company is through a standard line management process.
- 3.36 A small business management team will include a dedicated finance post with expertise in financial management and cash flow control. The team will also cover marketing and publicity, staff development, and personnel. This will be financed in part through reconfiguring existing roles.

Stakeholder Engagement

- 3.37 Despite the risks and uncertainties associated with this project, 81% of YSDS staff indicated support for the ELM proposal in a staff ballot in June last year. If approval is given to proceed with the new enterprise YSDS has committed to another staff ballot.
- 3.38 The reaction to the YSDS-ELM proposal from the local voluntary sector has been broadly supportive though there is understandable concern that the YSDS-ELM may become a competitor. The YSDS-ELM wishes to retain close working relationships with local providers and as a gesture of commitment to this principle a VCS representative is a member of the shadow board.
- 3.39 Discussions with trade unions (Unison, GMB and Unite) have been cordial and constructive. Union representatives have been kept informed at every stage.

4. OPTIONS

- 4.1 **Option 1** – The recommended option, to proceed with the development of the YSDS-ELM which will result in achieving additional savings of £400k.
- 4.2 **Option 2** – Decide not to proceed and continue with the current service model. (Savings would be a matter for budget planning).

5. LIABILITIES TO THE COUNCIL

- 5.1 **Reduction in demand for services** – from the Council or others. Any final proposal agreed for the new enterprise must give thought

to how it will diversify or source additional income to mitigate decreases in demand and not be reliant on one income stream.

- 5.2 The Council will not act as a guarantor and as such will have no contractual liability for the workings of the YSDS-ELM.
- 5.3 The proposal is to create a Community Interest Company run as an employee mutual but the company still has limited liability. Directors will not incur personal liability, except in certain exceptional circumstances, and shareholders will only be liable up to the amount of their contribution.
- 5.4 **Non award of a future Council contract.** In line with TUPE the staff undertaking the majority of their time on the Council commissioned contract would either:
- A – transfer to the successful provider (TUPE)
 - B – be assigned other responsibilities within the mutual
 - C – require redundancy
- 5.5 **Redundancy provisions for staff transferring to the mutual.** Currently all staff proposed to transfer are the liability of the Royal Borough if the service is no longer required. The extent of these liabilities particularly for long serving individuals in singular cases can be very large.
- 5.6 For staff who TUPE transfer into the YSDS-ELM, if redundancy costs arise for staff that have had significant years of service with the Council, these costs would be too great to be borne solely by the new YSDS-ELM company so would be covered by the Council. However, if redundancies arise through the poor performance of the business, for example through the failure of non-Council contracts, these costs would fall on the YSDS-ELM.
- 5.7 If the YSDS-ELM were to fail then the Council would retain the option of re-acquiring the business and re-employing the staff, dependent on commissioning priorities and finances pertaining at the time. The precise terms will be built into the contract and the asset transfer agreement. In the event of failure, the Council would also have the option of tendering part or all the business.

6. FINANCIAL IMPLICATIONS

- 6.1 The Director of Finance for Tri-borough Children's Services confirms the Council will retain the ability to commission services which meet both local and national priorities. In addition, in awarding any contract the Council will ensure it retains the ability to respond to

future funding pressures and priorities and minimise the potential of financial risk.

- 6.2 In order to ensure value for money, benchmarking and unit cost comparisons will be required as part of the development of the business case. Efficiencies identified as part of the business strategy will form part of the business planning process within Children's Services to achieve the identified savings targets for 2013/14 and 2014/15.
- 6.3 In addition to the savings of £520k delivered in 2012/13, the Children's Services business planning process for 2013/14 and 2014/15 has identified an initial savings target of £400k. As part of the business plan it is expected that further savings will be identified in future years to address future funding reductions and service priorities.
- 6.4 In order to ensure the viability and deliverability, external independent advice will be sought to ensure due diligence is undertaken on all aspects of the business plan.
- 6.5 Some budgetary adjustments around maintenance budgets may be required between Children's Services and Property to account for the service taking responsibility for its internal maintenance.

7. PROPERTY AND ASSET IMPLICATIONS

- 7.1 The Director for Corporate Property comments that he envisages any Employee Led Mutual occupying Council owned property will be by way of a licence or lease depending on the space occupied. There will be no Stamp Duty Land Tax implication if the rent is a peppercorn. Properties let at a rent with a net present value of between £0 - £150,000 have a zero SDLT rate. Based on lease terms of 3 years, if let at a market rent, SDLT is likely to be circa £10,000 in total for the four properties detailed in paragraph 7.4 below.
- 7.2 Any agreement should contain termination and break terms which mirror those set out in the main service contract or agreement. Furthermore, Corporate Property should retain the right to move the occupier if required as part of a wider property portfolio strategy, e.g. the redevelopment of Lancaster Youth Centre and the PDC.
- 7.3 The rental level applied to the tenancy, including management and maintenance cost, will largely depend on the way in which the contract with the ELM is structured. Corporate Property will work with colleagues in Finance and Legal to establish an appropriate model and produce estimated costs for each building.

- 7.4 The following is a list of properties that the Youth Service is currently run from which will require a Lease from the Council:
- Lancaster Youth Centre;
 - Cremorne Riverside Centre;
 - Canalside Activity Centre; and
 - Golborne Youth Centre.
- 7.5 A lease will be granted to the Employee Led Mutual at a peppercorn rent on the basis that services are dedicated to the Royal Borough of Kensington and Chelsea only. If the ELM undertakes services that are not directly performed for RBKC, then a market rent would need to be charged to avoid RBKC property portfolio subsidising other external revenue streams.
- 7.6 Golborne Youth Centre is currently part of the HRA fund and as such an annual "transfer rent" of £60,000 is transferred to the HRA fund. This is currently paid by Children's Services and will therefore have to be paid by the Employee Led Mutual. It should be noted that this rent was set over four years ago and is based on the market rent at that time. The rent is due to be reviewed to the current market rent and may increase.
- 7.7 As with other Council contractors occupying Council property, the Employee Led Mutual will be responsible for all outgoings relating to the property including internal maintenance, insurance (arranged by the Council and recharged to tenant), business rates, utilities and compliance costs. The Council will only be responsible for repairs to the structure and exterior of the building.
- 7.8 The ELM can purchase the internal repairs and maintenance service back from RBKC's FM team if required.
- 7.9 A breakdown of the last 3 year's expenditure can be found in Part B of this report, at appendix 1. In summary the current budget for the Year Ending April 2013 held by Corporate Property is £84,700. The average annual expenditure over the past 3 years was £107,500.
- 7.10 The Leases will be contracted out of the Landlord and Tenant Act 1954 so there will be no Security of Tenure.
- 7.11 Example Heads of Terms are detailed in Appendix two.
- 7.12 Where Employee Led Mutual employees occupy property currently let by external organisations we would recommend that a licence is entered into between the voluntary organisation and the Council,

and the Council then enter into an agreement with ELM. Corporate Property can provide a template licence and assist where necessary.

- 7.13 Where Employee Led Mutual employees will be occupying part of a Council building, the Council will document this by way of a licence. The licence fee will reflect a fair proportion of the running costs for the building and will be determined by the RBKC Asset Management Surveyor.

8. LEGAL IMPLICATIONS

- 8.1 The Chief Solicitor comments that the proposed employee mutual will receive its own independent legal advice and the Council will receive legal advice from Children's Services Business Development and Procurement team, Legal Services and external solicitors yet to be commissioned. Part B, appendix 2 sets out further information that is considered to be commercially sensitive or otherwise exempt from public access.
- 8.2 It is proposed that the ELM will provide services to third parties. This does have property implications. The Council has a duty to comply with section 123 of the Local Government Act, 1972, in obtaining the best consideration reasonably obtainable. If the property is used solely for delivering a service to the Council, then the rent income becomes irrelevant if the Council is paying. However if the leased properties can be used for services externally, then rent will need to be considered.

9. HUMAN RESOURCE IMPLICATIONS

- 9.1 The Bi-borough Director of Human Resources confirms that all the Council employees within the scope of the proposal would transfer to the new ELM under the TUPE regulations, which protect employment pay and conditions, including a pension provision.
- 9.2 The Council may grant the ELM 'admitted body' status for the purposes of the Local Government Pension Scheme, but this must follow actuarial advice to mitigate financial risk to the Council's pension fund. Under the LGPS a financial bond or indemnity may be required at the outset and employer pension contributions may be increased.
- 9.3 There is scope under the LGPS regulations for the Council to share pension costs and risks with the new Company.
- 9.4 A report has been received from the Council's pension fund actuary, advising on the estimated costs and risks to the pension fund of

allowing the ELM to have admitted body status. This report is attached as Appendix three. It addresses two key points: the size of the financial bond or guarantee that may be required; and the rate of employer pension contribution that the ELM will need to make.

- 9.5 The actuary has recommended that the ELM should pay the same employer contribution rate in respect of its staff as the Council. The ELM's employer contribution rate would in fact be slightly lower if it were to offer a scheme open to new recruits in the future, but the cost difference is small and for operational reasons a scheme limited to the transferring group of staff is seen as desirable.
- 9.6 The actuary recommends that a financial bond or guarantee of £454k is made, calculated to cover the potential pension liabilities of the staff in the admitted body. Making such a bond or guarantee would be a very significant hurdle for the ELM and it is open to the Council to agree to undertake this on the ELM's behalf. The purpose of the bond or guarantee would be to cover all pension costs and liabilities relating to the members of the admitted body at the end of the contract period.

10. RISK MANAGEMENT

- 10.1 The approach to risk management follows corporate guidance. Inherent risks are identified and given a rating based on the potential impact of the risk and the likelihood of it happening. As part of the risk management strategy, mitigation is identified in the project risk register and this is reviewed regularly.
- 10.2 A risk register has been compiled following a workshop with input from key stakeholders. Ongoing risk management and monitoring of mitigation controls are the responsibility of nominated senior officers.

11. EQUALITIES IMPLICATIONS

- 11.1 The proposal to create an ELM does not hinder equality of opportunity and/or adversely impact Human Rights, so a full Equality Impact Assessment is not required.
- 11.2 Consultation with staff and stakeholders has been built into the project plan. Commissioned activity identified in the service contract will take account of any relevant equalities considerations.
- 11.3 The proposal will recognise proper duties to ensure that when finally considered as a new way of working, it will fully take into account all

relevant policy considerations, including the effect, if any, on disadvantaged groups.

12. SAFEGUARDING

- 12.1 The Royal Borough's expectations of the YSDS-ELM will be consistent with those of other commissioned organisations. As such, safe recruitment practices and appropriate and regular CRB checking should be in place along with regular training for staff on safeguarding matters.

13. RECOMMENDATION(S)

- 13.1 It is recommended that Cabinet approves Option 1, to proceed with the development of the YSDS-ELM.
- 13.2 Cabinet are also recommended to delegate to the Lead Member for Children's Services the authority to approve the level of spend and range of commissioned services. The overall decision on award of the service contract will be a Cabinet one.

Andrew Christie
Tri-borough Executive Director for Children's Services

Nicholas Holgate
Town Clerk and Executive Director of Finance

Background papers:

Employee Led Mutuals - Potential and Scope for Youth Support Services in the Royal Borough – YSDS Expression of Interest, October 2010

Tri-borough Proposals Report, February 2011

Establishing the Youth Support and Development Service as an Employee Led Mutual – Feasibility Study, Report to Scrutiny, November 2011

YSDS interim business case, December 2011

Stronger Families, Remodelling the Youth Service project documentation, to April 2012

Contact officer: Joanne Hay, Head of Business Development and Policy,
Tri-borough Commissioning Directorate (Children's Services)
Tel: 020 7361 3353 **E-mail:** joanne.hay@rbkc.gov.uk

APPENDIX 1

ROYAL BOROUGH OF KENSINGTON AND CHELSEA NEW WAYS OF WORKING PRINCIPLES AND PROCESS

The purpose of this paper is to set out the Council's approach for employees wishing to set up new enterprises to deliver council services.

1. Principles

- 1.1 The Tri-Borough Proposals Report (Feb 2011) recommended some principles to guide staff and others leaving the direct employment of the council. The main thrust of these principles is to deliver services that fulfil statutory responsibilities or meet identified public requirements at less cost.
- 1.2 New enterprises can expect to be supported by commissioning councils for a period of time to allow them to get established, thereafter commissioning councils reserve the right to consider competitive tendering for services to assure value for money for taxpayers. Councils will expect any new enterprise to present a credible business and financial plan and be subject to appropriate due diligence.
- 1.3 The following section sets out the high level process and key activities that:
 - Employees will need to undertake to set up the new enterprise;
 - the Council will need to undertake to protect the Council's interests, support staff and identify what will be commissioned;
 - elected members will need to take to agree the new delivery vehicle.

2. Summary of the Process for Employees Wishing to Develop new Ways of Working

- 2.1 The Council has developed a process and governance arrangements for staff setting up new enterprises. RBKC, Family and Children's Services are piloting this process with the YSDS mutual.
- 2.2 **Stage 1:** In summary, the process begins with staff putting together an expression of interest to their Director identifying the opportunity to deliver existing services in a more creative way. If agreement is given the Lead Member will also be asked to agree the proposal to proceed.

- 2.3 **Stage 2:** Following support by the business group Director and the Lead Member the staff group will start work on a business plan submitted to Management Board in two phases, starting with an options appraisal and initial business plan.
- 2.4 **Stage 3:** If approved, a more detailed business case will be worked up including the viability of the new venture, the preferred organisational form, the legal position and the scope of services to be commissioned. The full business case will go to Management Board and Cabinet.
- 2.5 **Stage 4:** If approved it is assumed the transition stage will be under delegated powers to the Lead Cabinet Member in consultation with the appropriate Directors to develop through the final stages of the transfer. A project board chaired by the Executive Director of Finance will undertake the assurance and due diligence for the Council and make the necessary recommendations to the Cabinet Member for decision.
- 2.6 **Stage 5:** Once the new entity has been set up and a contract awarded the Council will hold the venture to account through performance measures set out in the contract based on Early Help and Targeted Services priority outcomes.

3. Detailed Process

A. Expression of Interest

- 3.1 Where employees are considering the alternative provision of services they need to address the following:
- Scope of services to be provided
 - Evidence on state of the market and likelihood the Council will commission the service
 - Impact on other council services/strategies
 - Full operating costs – direct salary costs, on-costs, building costs, hidden costs
 - Additional burden and risk of proposed alternative
- 3.2 Assuming that employees can identify an opportunity and considering the factors above, believe they can deliver the existing services in a more creative way, then they should discuss this with their Director and if in agreement proceed to the next stage of the process.

- 3.3 Issues that may arise include the Council's strategy in respect of the identified service area and the ability of the service to operate in a commercial environment.
- 3.4 The LA may reject an expression of interest if: i) the body submitting it is incapable of providing the service or is not a suitable body to do so; ii) a procurement exercise for it has already started; or, iii) another body has already expressed an interest in it. A Template for completion prior to the discussion is in Annex 2.

B. Option Appraisal and Business Plan Development

- 3.5 Following support by the business group Director and Lead Member of the service area the staff group will need to start work on a business plan. This will be submitted to Management Board in two phases, firstly the option appraisal and initial business plan. If approved, a more detailed business case will be worked up. This process will include the viability of the new venture and establish the preferences for vehicle delivery and the company organisational form.
- 3.6 During this phase staff will be involved in informal discussions with all stakeholders and staff likely to be involved. Staff may also want to carry out a ballot to ensure there is solid support for the venture.
- 3.7 The following need to be undertaken and considered to ensure high service standards while the while setting up the new venture:
- The time and ability to conduct a feasibility review to determine levels of demand, sources of revenue, potential 'deal breakers' such as VAT and pensions and the true cost of providing the services
 - A process of establishing the future viability of the current service model
 - A transparent process which involves staff or staff representatives as much as possible from the outset and raises awareness about the various options
 - A shared vision and common motivations for pursuing shared ownership, whilst not glossing over risks and necessary changes, for instance, to staff terms and conditions. It is far more important at this stage to develop this sense of overall grounded vision than to begin by considering different legal models of ownership
 - Leaders who are able to manage change, channel anxieties and maintain energy and momentum during a time of uncertainty, whilst preserving space for dialogue.

- A process for considering other options (e.g. out-sourcing, joint venture with private or voluntary sector, management buy-out, shared services) and for taking a corporate assurance view (e.g. public purse perspective, how much risk and control to transfer, transfer/locks on any related assets).
- This will conclude in an options appraisal and outline business case for discussion at Management Board and direction can then be provided to the proposers before they develop their final business model. The proposal will also go to Cabinet for approval to proceed.

C. Business Case (including negotiating the terms and process of the transition)

3.8 Following approval from Cabinet for the Options Appraisal and business plan, and support from stakeholders and staff, then the staff group will need to develop a full Business Case. A template for the business case can be found at Annex 3.

3.9 In summary the Business Case will need to establish the following:

- Background and context.
- The vision and mission statement for the proposed organisation form.
- The legal structure of the proposed organisation and its implications e.g. in relation to taxation, procurement and its ability to trade for profit with third parties and finance.
- The scope of both the immediate services commissioned and the medium term approach and funding that the Council are expected to commit to, as the commissioning body.
- The market and market research establishing income streams for a minimum of three years and attitudes of key stakeholders like service users.
- Expenditure and financing required to deliver these services including the impact on corporate overheads for the Council.
- The rationale as to why an alternative model accelerates the quality and cost benefits to residents or the respective client group, relative to other options.
- Informal discussions with staff and the views of these given the requirement for these services to have staff support. For large service areas this could take the form of a staff ballot.
- Engagement with staff and partners outside of the working group responsible for the options appraisal stage.

- Proposed client arrangements for the Council to protect its investment.
- A viable business plan and model that includes the partnerships and arguments necessary to make the case to local politicians or other decision makers who may be unfamiliar with the benefits of shared ownership.
- Discussions with those representing pension fund administering authority (see Annex 4 for further detail on the process for gaining admitted body status).
- Delivery plan including location, infrastructure, assets, systems, linkages to the Council and risks/challenges that may need Management Board decision/support to overcome.
- Local commissioners being willing to take appropriately managed risks in the interests of longer-term benefits, and to work collaboratively and flexibly with the new owners-to-be to resolve issues regarding transfer of staff and assets (with or without asset locks).
- Having access to an independent third party – whether a leader from another local organisation or an independent advisor – to hold the ring during the negotiations and provide expert advice and guidance.
- Assessing the readiness of the leaders or leadership team to undertake the transition to shared ownership, including the availability of business skills, and the fitness-for-purpose of governance and management arrangements.
- Having a continuing commitment on the part of leaders to open, inclusive dialogue with staff and partners, and a willingness to recognise the psychological and emotional dimensions.
- The legal position in respect of transferring these services to an alternative delivery vehicle, including procurement questions.

D. Transition

- 3.10 This stage it is assumed will be under delegated powers to the Lead Cabinet Member in consultation with the appropriate Directors to develop through the final stages of the transfer.
- 3.11 It is recommended that a project board is established, chaired by the Executive Director of Finance. The board will undertake the assurance and due diligence aspects for the Council and ensure the appropriate officers are brought together to make the necessary recommendations to the Cabinet Member for decision.

- 3.12 The new delivery vehicle is created. This will include the final positions in regards to:
- New legal entity set up
 - Registered office (venue)
 - Insurance
 - Internal systems
 - Data information
 - People
 - Tools needed to undertake the services
- 3.13 The appropriate procurement phase or fine detail of the contractual relationship are agreed and approved by the Cabinet Member.
- 3.14 A date for “Go Live” is agreed and communicated to all stakeholders.
- 3.15 Staff are transferred. The exact mechanism and whether TUPE applies will depend on the nature of the new delivery model.
- 3.16 New employer undertakes its contractual relationship with the Council and other service purchasers.

E. Post Transition

- 3.17 The business reviews its initial plans, adapts and amends as necessary and further develops its direction of travel to be successful.
- 3.18 The Council hold the venture to account through the key performance measures set in the contract.
- 3.19 If at the end of the trading year and the business is unsuccessful there will be liabilities. The risk of this will have been further assessed during the transition phase before any final decision is taken.

APPENDIX 2: Example Heads of Terms

i.	Landlord	The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea. Town Hall Hornton Street, London W8 7NX
ii.	Tenant	TBC
iii.	Business	Youth Community Services
iv.	Demise(s) Lancaster Youth Centre Golborne Youth Centre Canalside Activity Centre Cremorne Kayaking Centre	That property known as (details for each property to be included).
v.	Lease	The Landlord will grant to the tenant a new full repairing and insuring lease for a term to match the contract terms and not to have security of tenure under Part II of the 1954 Landlord and Tenant Act.
vi.	Break Clause	The lease is to include a break clause to match the contract terms. The Council retains the right to relocate the service in order to meet the objectives of the Cabinet approved Corporate Property Strategy. There will be no compensation for these moves. Any move will be by agreement with Children's Services.
vii.	Rent	A peppercorn per annum exclusive of all other outgoings.
viii.	Rent Deposit	n/a

ix.	Service Charge / Insurance	The tenant will be responsible for paying the service charge (where there are parts shared in common with other building users) and insurance premium for the demise if demanded.
x.	Outgoings/Repairs	<p>The tenant will be responsible for Business Rates, internal repairs and maintenance and all other outgoings from the commencement of the lease.</p> <p>A condition survey will be undertaken prior to lease start. At lease expiry the tenant will be required to hand back the property in an equal state of repair to that evidenced by the condition report, or will be liable for a dilapidations claim from the Council.</p> <p>In addition to this, the tenant will be responsible for ensuring the property is compliant with all legislation including but not limited to Health and Safety regulations.</p>
xi.	Alienation	No assignment or underletting
xii.	Alterations	The Landlord will permit the tenant to undertake internal non-structural alterations, subject to landlord's consent which is not to be unreasonably withheld or delayed.
xiii.	Use	The permitted use will be as class D1
xiv.	Landlord's Solicitor	<p>RBKC Legal Department. Town Hall Hornton Street, London W8 7NX</p> <p>Attn: David Walker Tel: 020 7361 2211 E: david.walker@rbkc.gov.uk</p>
xv.	Tenant's Solicitor	TBC

xvi.	Legal Costs	Each party will bear its own legal costs involved in granting the lease.
xvii.	Conditions	The above remains subject to: a) Contract. b) The landlord's formal Council Approval.

