Cabinet

5 June 2013

Transfer of Investing in Children to a Community Interest Company

Report of Corporate Management Team
Rachael Shimmin, Corporate Director, Children and Adults Services
Councillor Ossie Johnson, Cabinet Portfolio Holder for Children and Young People's Services

Purpose of the Report

1 To inform Cabinet of a delegated decision, made under the delegated powers set out in paragraph 12 of the General Delegations Table One to transfer Investing in Children to a Community Interest Company,

Background

2. Since 1995 Investing in Children has played a key role in ensuring that children and young people have had a voice in the design, review and delivery of the services they use in County Durham. As a result, Durham County Council has enjoyed a regional, national and international reputation as an authority committed to respecting the human rights of children and young people.

3 In the current economic climate, the County Council has had little choice but to reduce its financial support to Investing in Children, and further reductions are planned for 2013 and 14. When the savings in the current Medium Term Financial Plan are implemented, the Council's contribution to the Investing in Children budget in the five years between 2009 and 2014 will have been reduced by 66%.

Durham CC contribution to IIC budget, 2009- 2015						
2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	
£352k	£334k	£299k	£223k	£173k	£123k	

4 As a result of a decision made by the County Council in 2004, to establish the Investing in Children Development Agency, the Project has established a portfolio of external work. In financial year ending 12/13, 46% of the budget came from sources other than the County Council.

5 An opportunity was identified to secure the future of Investing in Children, and the key contribution it makes to the planning and delivery of services to children and young people in Durham, whilst reducing its financial dependence upon the County Council.

6.0 Investing in Children Business Plan

6.1 The Business Plan attached as appendix 2 to this report contains an outline of how this might be achieved.

6.2 The Business Plan considered the current external contracts with, for example, Alder Hey Children's Hospital in Liverpool and the Northumberland, Tyne and Wear Foundation Trust, and looked forward at emerging opportunities for new contracts in Scotland, across the European Union and in the field of academic research into children and young people's issues.

6.3 The Plan made the case for 'spinning out' Investing in Children from County Council control and converting it to a Cooperative Community Interest Company (CIC), in order to reduce risk to the Council and secure Investing in Children's future.

6.4 In addition to the income set out in the plan, there are a range of new potential funding streams for Investing In Children, available only to "third sector" organisations, not to those in the statutory sector.

6.5 The Plan described how this would provide IiC with the freedom to maximise its ability to increase its external business by exploiting the opportunity to develop new markets and apply for funding streams not currently accessible to local authority organisations. This will create the circumstances in which Investing in Children can continue to promote the human rights of children and young people, and maintain its services to Durham County Council at a much reduced cost.

7.0 Financial Risk

7.1 The Business Plan also considered the financial risks to the County Council. The reductions in funding which have already been implemented and the further reductions contained in the Medium Term Financial Plan effectively create a doubt about the long term sustainability of Investing in Children.

7.2 If no action had been taken, the current Investing in Children Team would have been at risk of redeployment or redundancy, with the consequent costs to the Authority of redundancy of ten staff. The current estimated cost to the Authority of early retirement and redundancy of the current team is £140,000.

7.3 The proposals put forward in the Plan created an alternative course of action which, without exposing the County Council to any additional risk, created the realistic possibility of the Authority retaining the services of Investing in Children whilst reducing its employer's liability for the staff involved over a 2 year period.

7.4 Specific advice was given by relevant corporate experts in relation to Pensions, Employment Liability and TUPE transfer.

8.0 TUPE Transfer

8.1 All employees transfered to the new organisation with existing terms and conditions intact. However, any future employees will be appointed on new terms. HR have advised on this process. Similarly, consultation with Trade Unions has been completed successfully, as all staff were in favour of the transfer.

9.0 Pensions

9.1 Seven of the transferring staff are members of the Local Authority pension scheme. Following advice from pension experts, it was agreed that those members be allowed to continue in the scheme. External advice received suggests that such an arrangement is not uncommon for ex-local authority social enterprises.

9.2 The Corporate Director of Resources' recommended that these staff should be subsumed into the pension with a levy of 2% in addition to the normal employer contribution, borne by Investing in Children CIC. This arrangement will be subject to review. The figures in the Projected Budget are based on this assumption. Should the company downsize, with ER pension strain costs, these costs would be borne by CAS cash limit reserves. This represents an opportunity cost only.

9.3 The pension scheme will be closed to any new employees who will be offered a Stakeholder pension only.

10.0 Employer Liability

10.1 Under TUPE, accumulated employer liabilities transfer from the County Council to the new CIC. In the event of the CIC not meeting its budget targets in the first two years, it would have the accrued liability for any redundancy that might ensue, but not the means to pay it.

10.2 An agreement has been reached whereby liability for redundancy is shared over the first two years, but on a sliding scale, to allow Investing in Children to build up a reserve sufficient to meet its responsibility. So if there is any redundancy liability between years 1and 2, 50% of that liability would be borne by the Council. If a redundancy cost were incurred in year 3, 100% of the cost would be borne by the Community Interest Company.

10.3 This arrangement will not increase the County Council's current liabilities, and clears them within the two year period. Advice from the Corporate

Director of Resources indicated that this is reasonable, given that all of the liability is currently carried by the council and would continue to be so, if IiC remained within the council.

11.0 Procurement

11.1 Advice from the Head of Corporate Procurement and Legal Services is that the services provided by Investing in Children are 'Part B Services, and as such are largely excluded from the procurement regime, and only limited rules apply. However, any contract that may interest providers from a different member state must comply with EU principles of transparency, equal treatment and non-discrimination.

11.2 It is accepted that this is a very specialised service, and that there is unlikely to be a contestable market, however there is a risk that an alternative supplier may step forward.

11.3 In order to mitigate the risk of challenge, the Council has established a 3 year contract (2 years plus an option to extend for 1 year) with a termination clause, should an alternative supplier express an interest and demonstrate the potential capacity and capability to provide the service.

11.4 A market testing exercise will be carried out at the beginning of Year 2 to provide reassurance that there is still no contestable market, allowing time to carry out a procurement in advance of the decision to extend in Year 3, if necessary. The fact that the size of the contract will diminish year on year, as MTFP planned savings are realised, makes competition even less likely.

12.0 Considerations in reaching a delegated decision

12.1 Like any new business, Investing in Children will face a challenging period. Over the next two years, the organization needs to not only consolidate existing business but also develop significant new business to cover its running costs, and create a reserve, to cover the employer's liabilities it will inherit from the County Council in 2015.

12.2 There are a number of opportunities to maximise income to the new Community Interest Company, including through the securing of income from funders geared specifically to social enterprise and mutual providers. Of particular note is the potential to develop work in Europe, where there are signs of a market and resources in this area of work.

12.3 The EEC Europe for Citizens' Programme has announced a new grants round. Grants of between 100,000 euros and 250,000 euros are available. Investing in Children, in partnership with Euro Child (a European children's rights network) and the European Children's Right's Unit (ECRU) at Liverpool University Law School, has developed a proposal to make the Investing in Children Membership Scheme available in other European Union countries.

MEP Stephen Hughes has offered his support and agreed to bring it to the attention of Viviane Reding the EEC Commissioner for Citizenship about this.

12.4 As the proposals concern the Investing in Children Membership Scheme, the most persuasive application would come from IiC itself, rather than one of the partners. However a successful application required clarity about IiC's status, and in this case, time is critical. The closing date for applications is June 1st, and we have been informed that there is unlikely to be a further grants round until 2014.

12.5 Although income from this fund is not assumed in the IiC business plan, a successful bid would significantly improve the new company's prospects.

12.6 Had a delegated decision not been taken, it would not have been possible to make this bid in time. In addition, other work to secure funding would have been put on hold. Such a delay would have weakened the momentum that has built up in the team, and reduce the number of months left in the financial year to achieve the budget targets for 2013.

12.7 A delegated decision to transfer Investing in Children to a Community Interest Company was made by the Cabinet Portfolio holder, Claire Vasey in consultation with the Corporate Director of Children and Adult Services on May 1st, 2013.

13.0 Recommendations and reasons

Cabinet is asked to endorse the decision to transfer Investing in Children to a Community Interest Company under delegated powers, on the basis that:

i) risk to the Council is reduced to the Council post transfer
ii) the transfer provides the best opportunity for service continuity, which is to the Council's advantage
iii) the Council's support for the new mutual is best served by facilitating their access to additional funding streams without delay.

Background papers

1. Establishing Investing in Children as a Social Enterprise- CMT report 3/4/13

2. Investing in Children Business Plan for a Community Interest Company

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Appendix 1: Implications

Finance – The proposals within the draft business plan are within the budget allocated to Investing in Children in the Medium-term Financial Plan. The overall impact of the proposals reduces the cost to the County Council of sustaining Investing in Children.

Staffing – The staff group will remain the same and will transfer to the CIC under TUPE with their existing terms and conditions.

Risk – There is no additional risk to the Council, in terms of employment liability, and if successful, the proposals will reduced the Council's liability to nil over a two year period

Equality and Diversity / Public Sector Equality Duty – None.

Accommodation – IiC proposes to pay rent for the Council accommodation.

Crime and Disorder – None.

Human Rights – The proposals protect Investing in Children's ability to continue to promote the human rights of children and young people.

Consultation – Consultation with the Trade Unions has been concluded positively as all staff are in favour of the transfer. Delegated decision taken by the Portfolio Holder for Children and Young People in consultation with the Corporate Director of Children and Adult Services.

Procurement – No immediate procurement issues; legal advice confirms that there is minimal risk to the council in transferring the business to social enterprise in anticipation of soft market testing in year 2 and subsequent procurement process.

Disability Issues – The proposals protect Investing in Children's ability to continue to support children and young people with disabilities to campaign for their rights.

Legal Implications – Legal advice has been included concerning the procurement implications of the proposals and in terms of the use of delegated powers.