

CABINET MEETING – 16 MARCH 2023 EXECUTIVE SUMMARY SHEET – PART I	
Title of Report: Proposed extension and variation of the service delivery contract with Together for Children Sunderland Limited	
Author(s): Chief Executive	
Purpose of Report: This report seeks Cabinet's approval to the proposed extension and variation of the service delivery contract ("the Contract") with Together for Children Sunderland Limited ("TfC") and related matters.	
Description of Decision: Cabinet is recommended to: <ul style="list-style-type: none"> (i) Approve the extension of the Contract with TfC for a further period of three years up to 31st March 2027; (ii) Approve the variation of the Contract to include the additional services as described in Section 5.1.2 of the report ("the Additional Services"). (iii) Approve a new service level agreement between the Council and TfC in connection with the management of those related services as described in Section 5.1.3 of the report ("the Related Services"); (iv) Authorise the Chief Executive, in consultation with the Leader, the Portfolio Holder for Children, Learning and Skills and the Director of Finance, to take all necessary steps to implement (i) to (iii) above, including (without limitation) the finalisation, approval and execution of the relevant contract documents and the approval of any resulting changes as may be required to the Company's Articles of Association; and (v) Authorise the Chief Executive, in consultation with the Leader, the Portfolio Holder for Children, Learning and Skills, the Director of Finance and the Director of Smart Cities and Enabling Services, to determine, agree with TfC and implement a review of the corporate support services delivery arrangements for TfC. 	
Is the decision consistent with the Budget/Policy Framework?	*Yes
If not, Council approval is required to change the Budget/Policy Framework	

Suggested reason(s) for Decision:

The current service delivery model with TfC has secured major continuous improvements and successes and the delivery of high quality children's services within Sunderland as demonstrated by the recent "Outstanding" rating by Ofsted. The proposed extension and variation of the Contract to incorporate the Additional Services will further extend and strengthen this high quality and integrated delivery model for children's services in the city.

Alternative options to be considered and recommended to be rejected:

- (i) Not to extend the Contract for a further period of three years- In this case, the Contract would expire on 31st March 2024 and the Council would need to instigate the formal exit process set out in the Contract to enable the formal transfer of the relevant services, functions and employees back to the Council in April 2024 and the winding-up of TfC. However, given the major service benefits and continuous improvements that have been secured through the current service delivery model, this option is not recommended.
- (ii) Not to vary the Contract to include the Additional Services- However, this would mean that the clear benefits of establishing a fully holistic and integrated children's services delivery model would not be secured. As a consequence, this option is not recommended.

Impacts analysed:

Equality

Privacy

Sustainability

Crime and Disorder

Is the Decision consistent with the Council's co-operative values? Yes**Is this a "Key Decision" as defined in the Constitution?** Yes**Is it included in the 28 day Notice of Decisions?** Yes

**PROPOSED EXTENSION AND VARIATION OF SERVICE DELIVERY CONTRACT
WITH TOGETHER FOR CHILDREN SUNDERLAND LIMITED**

REPORT OF THE CHIEF EXECUTIVE

1.0 Purpose of Report

- 1.1 This report seeks Cabinet's approval to the proposed extension and variation of the service delivery contract ("the Contract") with Together for Children Sunderland Limited ("TfC") and related matters.

2.0 Description of Decision

- 2.1 Cabinet is recommended to:

- (i) Approve the extension of the Contract with TfC for a further period of three years up to 31st March 2027;
- (ii) Approve the variation of the Contract to include the additional services as described in Section 5.1.2 of the report ("the Additional Services");
- (iii) Approve a new service level agreement between the Council and TfC in connection with the management of those related services as described in Section 5.1.3 of the report ("the Related Services");
- (iv) Authorise the Chief Executive, in consultation with the Leader, the Portfolio Holder for Children, Learning and Skills and the Director of Finance, to take all necessary steps to implement (i) to (iii) above, including (without limitation) the finalisation, approval and execution of the relevant contract documents and the approval of any resulting changes as may be required to the Company's Articles of Association; and
- (v) Authorise the Chief Executive, in consultation with the Leader, the Portfolio Holder for Children, Learning and Skills, the Director of Finance and the Director of Smart Cities and Enabling Services, to determine, agree with TfC and implement a review of the corporate support services delivery arrangements for TfC.

3.0 Background and Current Delivery Model

- 3.1 In March 2017, Cabinet approved the detailed arrangements and terms for the establishment and operation of TfC, as a Council owned subsidiary company, to deliver specified children's social care and education functions on behalf of the Council as part of a new holistic and long-term service delivery model. The TfC arrangements subsequently went live on 1st April 2017.

- 3.2 As part of the establishment of TfC, a services contract (“the Contract”) was awarded by the Council to TfC for the delivery of the relevant children’s social care and education functions for an initial period of seven years, with an option for the Council (at its discretion) to thereafter extend the contract period for up to a further three years. This initial contract term expires on 31st March 2024. However, in the interests of the good planning and ensuring service continuity, the Council is required to notify TfC of its intention to extend or otherwise by no later than twelve months before the expiry of the initial contract period i.e. by 31st March 2023.
- 3.3 Under the existing Contract, TfC is responsible for the delivery of the following children’s services functions and services on behalf of the Council:

Services for safeguarding and vulnerable groups, including:

- a. Children in need and safeguarding
- b. Independent Reviewing Officers
- c. Services for cared for children including fostering and adoption
- d. Services for care experienced young people
- e. Services for children with special education needs and disabilities
- f. Youth Offending

Early Help services, including:

- a. Family support
- b. Youth Offer
- c. Early years and childcare

Education and Schools support services, including:

- a. Schools finance (excluding capital)
- b. Support to school governing bodies
- c. Education leadership and support for school improvement
- d. Inclusive education and vulnerable learners

- 3.4 At the time of the establishment of TfC and the award of the Contract, it was decided that a number of other education functions, including the enforcement of school attendance, school admissions and school and pupil place planning should be retained in-house by the Council and not contracted out to TfC. However, at the time it was recognised that due to the nature of these retained functions, their relationship with those education functions to be performed by TfC and the need to ensure the overall co-ordinated and assured delivery of education functions in the city, that there would need to be close and effective working between the relevant Council and TfC employees and that this arrangement should be kept under review.

4.0 Current Position and Successes to Date

- 4.1 As Cabinet is aware, when TfC was established in 2017, the Council was subject to a Direction from the Department of Education (DfE) in relation to the improvement of its children's social care functions.
- 4.2 In August 2021, following a full Ofsted inspection, Sunderland's children's services were rated as "Outstanding". This represented a nationally unprecedented improvement in children's services following the last Ofsted inspection in 2018. In particular Ofsted's report recognised that there had been a relentless dedication to improvement and that the Council and TfC in partnership have created a service that is "highly aspirational for children's futures". Ofsted also commented how good it was to see the importance TfC placed upon the voice of the child, and the report had found tenacious staff who have worked "tirelessly to ensure that children are at the centre of all work and interventions". This was an excellent acknowledgement of the substantial improvements that have been made in Sunderland's children's services.
- 4.3 In light of the Ofsted report, the DfE Direction in relation to Sunderland's children's services was revoked in full in November 2021.
- 4.4 In addition to securing the Outstanding rating, some of the Company's recent achievements also include:
- Achieved a positive SEND local area inspection in 2022.
 - Both adoption and fostering services separately inspected and rated Good.
 - A highly successful traded school improvement service.
 - Four additional children's homes created, and supported accommodation established, all rated Good or Outstanding
 - Enacted a proactive Change the Language campaign launched to eradicate stigma against cared for children.
 - Introduced an innovative outreach Mobile Prevention Bus "WEAR HERE 4 YOU", providing a safe space for children and young people to talk to us.
 - 9,481 children and young people engaged in TfC's Holiday and Activities programme.
 - Annual Young Achievers' Award celebrations held to date which recognise achievements of young people.
 - TfC became the first organisation in the country to reach 2,000 Mind of my Own statements, affording children dynamic opportunities to make their voices heard.
 - Wear Together' project launched to help young people at risk of becoming cared for to stay with their families, with an accompanying residential facility.
 - Young Persons team launched to work directly with young people at risk outside of the family home.
 - An established Pre-Birth Team helps far more infants stay with their parents and extended families, keeping them out of the cared for system
 - TfC leading the 'Purple Book' project to develop a SEND app, working with parents and carers. Funded by NHS England and Microsoft.

- Launched ‘Lifestart’ project to create an innovative SEND data platform across agencies, to better identify needs.
- In excess of £3m of external grant funding secured to grow innovative practice.
- Led a successful Joint Targeted Area Review inspection of early help for families.
- Delivering improvement support to other Local Authorities and
- A positive DfE funded review of governance that affirmed the key contribution that the TfC Board has made to the organisation and service delivery.

5.0 Proposals

5.1 In light of the major improvements and success secured to date through the current service delivery model with TfC as described above, it is proposed as follows:

5.1.1 Extension of the Contract

It is recommended that the Council exercises its option to extend the Contract as set out above for a further period of three years up to 31st March 2027.

Subject to the proposed variation as set out in 5.1.2 below and to any required changes to ensure the Contract remains up to date and reflects current operating practices between the Council and TfC, the intention is that the Contract will otherwise be extended on its existing terms. This will include the current performance reporting arrangements to scrutiny committee.

5.1.2 Variation of the Contract to include the Additional Services

As explained in Section 3.4 above, there are a number of key education functions that were originally retained in-house by the Council and are not currently included in the Contract.

Given the major improvements that have been demonstrated through the TfC model and to further strengthen the holistic children’s service delivery model and provide full assurance across all children’s services in Sunderland, it is proposed that the following additional statutory education functions and services (“the Additional Services”) are now included in the Contract by way of a variation to be undertaken by TfC:

- School attendance and elective home education;
- School’s Capital and Sufficiency Planning; and
- Sunderland Safeguarding Children’s Partnership (SCCP) business unit.

The transfer of these Additional Services will complement the founding purpose of TfC, namely, to provide a holistic focus on children and families in order to put the child first. Further, a recent SSCP Child Safeguarding Practice Review (which looked at risks to a child electively home educated) recommended to the Council that the statutory functions for these children need to sit with the direct accountability associated with the Director of Children's Services (DCS) role. This will enable the DCS to oversee the quality of these services as well as integrating their management into the day to day service offer from TfC.

The proposed transfer will create an integrated management focus on these key services.

5.1.3 Proposed Service Level Agreement for the Related Services

In addition to the above, there are a number of other related Council services that it is proposed to primarily retain in house but where there is a need to achieve close and effective working with TfC and for some level of executive management support and expertise to be provided by TfC to these Council services.

These services ("the Related Services") are as follows:

- Adult skills and family learning; and
- The management of the Derwent Hill residential facility.

In addition, in the interests of flexibility, it is recommended that the Chief Executive, in consultation with the Leader, the Portfolio Holder for Children, Learning and Skills and the Director of Finance, is authorised to increase and/or vary the scope of the Related Services from time to time.

It is proposed that the close work arrangements for the Related Services will be governed by a separate service level agreement between the Council and TfC.

5.1.4 Corporate Governance

During 2022, an independent Review of TfC Governance was undertaken, funded by the Department for Education. This Review identified that the current governance arrangements were strong, the Board was the right size and composition and that it functions well.

The Review highlighted a number of recommended changes in personnel and operating practices which will require the company's internal operating procedures (including its articles of association) to be amended to ensure they remain fully up to date and fit for purpose, drawing on experience of other Children's Services trusts across England. The recommendations relate to internal operating matters only and do not alter or affect the Council's corporate rights under the Articles of Association as the company's member.

In addition, as a follow-up to the governance review, it is also recommended that a joint review is undertaken by TfC and the Council regarding the delivery arrangements for corporate support services within TfC to ensure the future arrangements are the most efficient and effective in the interests of both parties.

6.0 Reason for Decision

- 6.1 The current service delivery model with TfC has secured major continuous improvements and successes and the delivery of high quality children's services within Sunderland as demonstrated by the recent "Outstanding" rating by Ofsted. The proposed extension and variation of the Contract to incorporate the Additional Services will further extend and strengthen this high quality and integrated delivery model for children's services in the city.

7.0 Alternative Options

- 7.1 Not to extend the Contract for a further period of three years. In this case, the Contract would expire on 31st March 2024 and the Council would need to instigate the formal exit and hand-over process set out in the Contract to enable the formal transfer of the relevant services, functions and employees back to the Council in April 2024 and the winding-up of TfC. However, given the major service benefits and the continuous improvements and that have been secured through the current service delivery model, this option is not recommended.
- 7.2 Not to vary the Contract to include the Additional Services. However, this would mean that the clear benefits of establishing a fully holistic and integrated children's services delivery model would not be secured. As a consequence, this option is not recommended.

8.0 Relevant Considerations

8.1 Equalities

An Equality Impact Analysis ("EIA") has been undertaken in connection with the proposals. A copy is enclosed in Appendix A. In summary, the findings of the EIA are that there will be no known negative equalities impacts as a result of the implementation of the proposals.

8.2 Co-Operative Values

As a Council controlled company, TfC follows and adopts the Council's co-operative values of self-help, self-responsibility, democracy, equality, equity and solidarity through its operating practices.

8.3 Financial Implications

Provision for the costs of the current service delivery contract with TfC is included within the Council's revenue budget and medium term financial plan. The award of an extension does not give rise to additional financial costs in itself beyond those already included in the budget planning. Incorporating the Additional Services following completion of the due diligence exercise will necessarily increase the contract sum however this will be offset by a commensurate reduction in the direct costs currently incurred by the Council i.e. the transfer of the Additional Services should be cost neutral.

8.4 Legal Implications

The Contract is within the scope of the "in-house" exemption (known as the Teckal exemption) under Regulation 12 of the Public Contracts Regulations 2016 ("the Regulations") given that TfC continues to meet both the Council control and activities tests as set out in Regulation 12. Therefore, the Contract is outside the full operation of the Regulations and the Council is entitled to both extend and vary the Contract to include the Additional Services.

As explained in the previous Cabinet report dated March 2017, the Council has the legal power to formally "contract out" the discharge of specified children's social care functions (under Section 1 of the Children and Young Persons Act 2008) and specified education functions (under the Contracting Out (Local Education Authority Functions) (England) Order 2002 made under the Deregulation and Contracting Out Act 1994).

In relation to any parts of the Additional Services that the Council is not legally entitled to formally "contract-out" to TfC, the Council is permitted under Section 1 of the Localism Act 2011 (the general power of competence to do anything that individuals may generally do subject to any pre-existing statutory restrictions) and Section 111 of the Local Government Act 1972 (the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions as a local authority) to enter into support service arrangements with TfC to facilitate the continued discharge by the Council of such functions that are not capable of being formally contracted-out to TfC under the 2008 Act and by the 2002 Order.

Notwithstanding any contracting-out arrangements under the 2008 Act and 2002 Order, the Council will remain the statutory duty holder in respect of all of the children's social care and education functions. As a consequence, the existing rights and protections of the Council under the Contract shall continue to operate.

The proposed variation of the Contract to include the Additional Services is likely to constitute a service provision change for the purpose of the Transfer of Undertaking (Protection of Employment) Regulations 2006 and may lead to a TUPE transfer of the relevant employees currently assigned to the Additional Services to TfC. As a consequence, in the event that Cabinet approves the proposals in this report, they will need to be fully scoped and subject to the relevant consultation under the 2006 Regulations prior to implementation.

8.5 Privacy

The arrangements for the ownership, sharing and use of records and data between the Council and TfC in respect of the relevant children's services functions are governed by the terms of the existing Contract.

9.0 **Background Papers**

Equality Analysis