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Meeting	Cabinet Resources Committee
Date	18 October 2012
<b>Subject</b>	<b>Future Provision of Music Service</b>
Report of	Director of Adult Social Care and Health and Interim Director of Children's Service
<b>Summary</b>	<p>The Music Service is a well regarded service in the Borough that is funded through grants, instrument hire and lesson fees from parents &amp; schools.</p> <p>The grant funding arrangements are changing which means that the service would be unlikely to receive further funding if current service delivery arrangements are maintained.</p> <p>This report seeks authority to commence activities for the creation of a new corporate entity and to transfer the provision of the Council's Music Service for the new entity to become Barnet's Music Hub. This will enable continued access to existing funding sources as well as new sources that are currently unavailable.</p>
Officer Contributors	Matt Waters, Project Manager, Corporate Programmes Ruth Murphy, Project Manager, Corporate Programmes
Status (public or exempt)	Public
Wards affected	All
Enclosures	Appendix 1: Music Service Full Business Case Appendix 2: Equalities Impact Assessment
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in	Not applicable
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## **1. RECOMMENDATION**

- 1.1 That the Director of Adult Social Care and Interim Director of Children's Service be authorised to commence activities to create a new corporate entity that is able to register as a charitable organisation and deliver Music Service activities as Barnet's Music Hub.**
- 1.2 That the Director of Adult Social Care and Interim Director of Children's Service be authorised to commence activities to transfer the provision of the Council's Music Service to the new corporate entity in 1.1.**
- 1.3 Subject to final approval by the Chief Finance Officer of the terms of such guarantee, that the Council guarantees the liabilities of the new corporate entity to the Teachers' Pension Scheme and (if so required by the administering authority of the Fund) to the Local Government Pension Scheme, initially for a three year period, and then subject to review (see section 4.5).**
- 1.4 That the Chief Finance Officer be authorised to approve the terms of the guarantee referred to in 1.3 (see section 4.6).**
- 1.5 That the Director of Children's Service or his/ her nominee will be the nominated Council member on the Board of Trustees for the new corporate entity.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 None.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 Better Services with Less Money - The Corporate Plan 2012-13 states that "we will continue to drive costs out of the council through transforming our internal organisation, reducing the costs of providing services and giving better value for money. 77 per cent of our savings over the next three years will be achieved through efficiency savings. We also need to innovate and embrace change in order to live within our means over the next three years and beyond. Standing still is not an option." To meet the Council's corporate priority of "Better services with less money" there is a strategic goal to keep prices affordable for all families and to utilise the Music Education Grant to ensure that all children are given the opportunity of initial free access to instrumental tuition.
- 3.2 A Successful London Suburb - The Music Service will continue to support Every School a Good School through a high quality offer of instrumental tuition, Continuing Professional Development (CPD), ensemble activity and extension activities.
- 3.3 Sharing Opportunities, Sharing Responsibilities - The new Music Service will seek to access charitable funds on behalf of the youth service to help support work with vulnerable groups of young people.

## 4. RISK MANAGEMENT ISSUES

- 4.1 The Music Service in its current form generates a surplus of £40,551, which will be an additional budget pressure for the Council and may require efficiency savings to be made elsewhere. This pressure will be contained within the Children's Service budget. In addition, any existing debts owed to the London Borough of Barnet (LBB) relating to the Music Service will not transfer to the new corporate entity. However, the new Music Service will continue to assist in the resolution of these debts.
- 4.2 There is a financial risk of the new Music Service not meeting its obligations to pay staff and services. It is noted that LBB may need to support the new company in the first year of trading while the new company realigns income to support cash flow. If this support is necessary, the amount and terms will be reported back for a decision as appropriate.
- 4.3 The service currently receives back office support from other Council areas including HR, Finance and IT. Under the current arrangement, these are provided and treated as below the line costs. The new music service may find that support costs are higher than expected due to the loss of any economies of scale. To reduce this risk, financial models have been produced based on procurement of support services as traded services from the Council on a like for like basis. This provides a known cost that can be contained. It is envisaged that the administration and accommodation costs for the service could be delivered for less. The Head of Service has made enquiries as to the cost of premises, cost of payroll and HR provision which has identified that these services would cost in the region of £30,000, including accommodation and insurance. This would inevitably enable the charge to parents to remain fair and competitive, thus increasing take up. The new entity will procure from an alternative source if it is able to identify solutions at more competitive rates than those available through the Council's traded services. It should be noted procurement decisions for the new music service will rest with the Board of Trustees. If the Music Service elects not to buy back services from the Council, this may have staffing impacts for Council support services.
- 4.4 There are two members of the Local Government Pension Scheme (LGPS) within the Music Service currently who are eligible to transfer. External legal advice, from Cobbetts Solicitors has indicated that the new Music Service will need to request admitted body status as a community admission body via a formal admission agreement, and the Pensions Committee will need to approve this request. The employer contribution rate will be 18.90% and an actuarial assessment indicated that the bond or guarantee level required is £31,000. This will remain so unless there are any staffing changes before the transfer. In addition, the actuarial assessment is based on an assumption that the transfer will be fully funded. If, the Music Service and the Council agree that the Music Service will take on part of the deficit that relates to the two staff members of the LGPS, a higher bond or guarantee level may be required. This bond or guarantee is to protect the LGPS fund against the risk that the music service charity may fail and therefore be unable to meet its liabilities to LGPS. The bond level is assessed at regular intervals (at each valuation) and can increase or decrease. It is proposed that the admission agreement will be on a "closed" basis (ie. limited to the employees transferring from the Council). It is recommended (1.3) that the Council should act as guarantor for at least an initial three-year period, for the reasons set out in 4.5 below.
- 4.5 There are 83 members of the Teachers' Pension Scheme (TPS) within the Music Service. The TPS Regulations 2010 state provision of a bond or guarantee as an absolute condition which must be met for a company to be accepted as a function provider and therefore eligible to participate in TPS. The Department for Education have confirmed that the Council will be an acceptable guarantor. The alternative is for the new

corporate entity to secure a commercial bond, but without any trading history it is expected that the costs would be prohibitive, if, indeed, it is possible for the new corporate entity to obtain cover at all under such circumstances (current market experience indicates that this may not be possible). The recommendation (1.3) is for the Council to bear the financial risk as a guarantor for an initial three-year period, which will be essential to enable the Music Service to continue to provide high quality music services locally. After this period, the new company will have built up trading history and may be able to secure an affordable bond. The precise amount of the bond or guarantee which will be required by the Department for Education is not yet known, but the experience on similar transfers in other local authority areas indicates that a figure of around three months' worth of contributions is likely. A high estimate of the equivalent figure is approximately £100,000. The actual figure is likely to be lower, taking into part-time and/ or seasonal hours.

- 4.6 The amount of the bond or guarantee must be kept under review, and must be revised when necessary. In this connection, it should be noted that it is anticipated that the new company will normally take on new teaching staff under a self-employment model, which will not result in additional liabilities to TPS.
- 4.7 The pension guarantee arrangements described above (and in particular, the amount of the guarantee for TPS) will need to be finalised through discussion with the relevant administrators of the two schemes prior to transfer. It is recommended that The Chief Finance Officer be authorised to give final approval to such arrangements on behalf of the Council.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 Under the Equality Act 2010, the Council and all other organisations exercising public functions on its behalf must have due regard to the need to: a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; b) advance equality of opportunity between those with a protected characteristic and those without; c) promote good relations between those with a protected characteristic and those without. The 'protected characteristics' referred to are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 5.2 The service has been asked by the Department for Education (DFE) to provide a number of core entitlements for every child in order that they will have the opportunity to access high quality instrumental, singing and ensemble activities. The government recognise that the funding from these activities will come from a number of sources. With no Local Authority funding the Music Service has relied heavily on parents being able to pay for these opportunities. With the economic downturn the Music Service will need to source alternative funding routes. The demographic map of the authority has changed significantly in the past ten years and the Music Service would like to respond to these changes with a fairer offer for all children (not just those with parents who can afford to pay).
- 5.3 The proposals will provide continued access and opportunity to music tuition for those that would otherwise be unable to afford tuition.
- 5.4 An Equality Impact Assessment was carried to assess the impact of the proposal on a range of Barnet's protected groups as well as considering those on low income and

vulnerable status. This is attached as Appendix 2. The proposal is believed to be primarily beneficial to all of the current and potential users of the new Barnet Music Hub.

## 6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

### 6.1 Finance

6.1.1 New arrangements for the funding of Music Services come into place from August 2012. Grant money that has to date been provided direct to the Music Service will now be provided to the Music Hub. The Arts Council has accepted the Music Service's bid with the expectation that the delivery model will change. If the Music Service does not implement a change in its delivery model, the service will ultimately lose its direct funding.

#### 6.1.2 Transformational/Implementation Costs

In total, the project is expected to cost **£39,500** to deliver. This has been established through investigations and lessons learned during phase 2 of the Assessment Stage and will cover Legal, HR, Project Management, Investigations and Set Up costs. The £39,500 will be contained within the funding envelope below.

<b>Funding Source</b>	<b>Amount</b>
Contained Within Existing Music Services Budget 2012/13	£15,000
Contained Within Overall Schools and Learning Division Budget 2012/13	£24,500
<b>Total</b>	<b>£39,500</b>

#### 6.1.3 Ongoing Finances

As noted in 4.1, the provision of the Music Service by a new, separate entity to the Council will result in a reduced annual income for the Council of £40,551 from 2013/14 onwards. This reduction in income will be funded from the Children's Service. For 2012/13 the expectation is that the Music Service will achieve its income target (pro-rata amount from April 2012 to the date of the transfer amounts to £30,410)

By delivering the Music Service as a separate entity, the service in its new form is expected to operate at a net surplus. This is detailed in the table below.

	MUSIC NEWCO 13/14 BASELINE	MUSIC NEWCO 14/15 BASELINE	MUSIC NEWCO 15/16 BASELINE
	Year 1 (15 months) - Annual Costs	Year 2 - Annual Costs	Year 3 - Annual Costs
<b>INCOME</b>			
Grants	-£537,988	-£458,652	-£488,652
Customer/Client Receipts	-£1,382,616	-£1,086,341	-£987,582
<b>INCOME TOTAL</b>	<b>-£1,920,604</b>	<b>-£1,544,993</b>	<b>-£1,476,234</b>
<b>EXPENDITURE</b>			
Employees	£1,649,843	£1,304,739	£1,229,066
Transport	£4,336	£3,469	£3,469
Premises	£76,250	£61,000	£61,000
Sales Related	£30,625	£24,500	£24,500
Supplies & Services	£128,718	£100,845	£99,845
<b>EXPENDITURE TOTAL</b>	<b>£1,889,772</b>	<b>£1,494,553</b>	<b>£1,417,879</b>
<b>Net EXP / (INC) TOTAL</b>	<b>-£30,832</b>	<b>-£50,440</b>	<b>-£58,355</b>

The provision of the Music Service as part of a charitable organisation will enable access to additional sources of funding that are currently unavailable under the current arrangement.

The provision of the Music Service by a new, separate entity will eliminate the Music Service's responsibility for the generation of income to support other areas of the Council. This potentially releases £40,551 per annum which can be spent on front line Music Service Provision.

Following transfer, the Music Service will become directly responsible for procurement and payment for its own support services that currently appear as "below the line" costs. The costs for these elements have been identified and incorporated into the financial models.

6.1.4 As set out in recommendation 1.3, the Council will act as guarantor for contributions into the Teacher's Pensions Fund and the London Borough of Barnet Pension Fund for a period of 3 years. This covers the eventuality whereby the new Music Service is unable to pay pension contributions in the event of financial distress. The maximum exposure under this arrangement is estimated to be £131k (£100k for Teacher's Pensions and £31k for LGPS).

## 6.2 Procurement

6.2.1 There are no procurement issues anticipated.

## 6.3 Performance & Value for Money

6.3.1 The Music Service is a well regarded service across the community. The proposal will provide the service with an opportunity to sustain successful delivery through continued access to existing funding sources and through access to additional funding sources that are unavailable under the current arrangement. The access to additional funds and elimination of its responsibility to fund other services will increase the service's potential to develop further and provide more for the community.

## **6.4 Staffing**

6.4.1 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will operate to transfer to the new Music Company all of the Council's rights, powers, duties, and liabilities (except criminal liabilities) under or in connection with the contracts of employment of the relevant staff.

6.4.2 The new music service employs the following staff:

<b>Employment Status</b>	<b>No.</b>
Fixed Term	2
Permanent	53

6.4.3 It should be noted that the Music Service currently makes use of approximately 150 casual workers.

6.4.4 Where, as anticipated in this case, any change results in a TUPE transfer the Council will meet all of its statutory obligations provided by TUPE, and under the TUPE Transfer Commitments which the Council implemented in the summer of 2011. Under TUPE, existing contractual terms and conditions are protected on transfer and, under the TUPE Transfer Commitments the Council implemented in the summer of 2011, all terms and conditions are protected for at least a year including pension provision.

6.4.5 The Council will continue to meet all of its statutory or contractual obligations with regard to change and its impact upon the Council's staff. In the context of the change, this means that all internal restructures will be managed in compliance with the Council's Managing Organisational Change procedure. The Council has recently implemented a Relocation Protocol which we would expect a new employer to adhere to if they do not have a similar way of working. It is anticipated that transferring staff who are members of the local government pension scheme operated by Barnet will remain part of that pension scheme as operated by the new Music Company and their benefits will transfer. This will afford staff the continued membership of the Local Government Pension Scheme and the Teachers Pension Scheme.

## **6.5 IT**

6.5.1 In the immediate term following transfer, IT support and hosting will be provided by the Council's Information Services department as a traded service. Associated costs for this have been incorporated into the finance section of this report.

## **6.6 Property**

6.6.1 There are no property issues to report

## **6.7 Sustainability**

6.7.1 There are no sustainability issues to report

## **7. LEGAL ISSUES**

7.1 An external Legal Advisor, Cobbetts Solicitors, has been appointed to provide support for this scheme.

- 7.2 In addition to its broad powers under Section 111 of the Local Government Act 1972, the Council has a general power of competence under Sections 1 - 4 of the Localism Act 2011 to do anything “that individuals generally may do”. In order to be satisfied that the creation of the new corporate entity described in this report is a proper exercise of this power the Council needs to be satisfied with (a) the objectives of the business (b) the investment and other resources required; any risks the business might face and how significant these risks are; and (c) the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve. This report contains material to support the Council’s assessment in each of these areas.
- 7.3 The Council must comply with its legal obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) with respect to the transfer of staff. Legal advice has been given by the external Legal Advisors to ensure compliance with TUPE. In addition, the Council’s HR is part of the project team for the proposed transfer of the music service.
- 7.4 Under TUPE, the new employer (the proposed new music company), takes over amongst others, all rights and obligations arising from contracts of employment (except criminal liabilities) of all employees “assigned” to the music service prior to the transfer.
- 7.5 There is a need for separate legal representation of the Council and the new entity once it is created (see paragraph 7.6). The initial appointment of Cobbetts is made by the Council to advise on structures and issues and to prepare and register the new corporate entity. Following the creation of the new entity, the new entity will have its own Legal Advisor. The Joint Legal Service will represent the Council.
- 7.6 Following the creation of the new entity and prior to transfer, Cobbetts will be representing it. The Joint Legal Service will represent the Council.
- 7.7 The legal approach will, amongst others, involve the following to ensure a successful transfer:
- Preparation and Registration of New Corporate Entity
  - Registration as a Charity
  - Business Transfer Agreement
  - Pensions, Standard LGPS Admission Agreement and Related Documents
  - Provision of Employment Advice
  - General Legal Advice including Procurement and State Aid
  - Care and Control/Legal Project Management

## **8. CONSTITUTIONAL POWERS**

- 8.1 Council Constitution, Part 3, Section 3.6 sets out the functions of the Cabinet Resources Committee, which includes approval of schemes not in performance management plans but not outside the Council's budget or policy framework
- 8.2 Council Constitution, Contract Procedure Rules – Table 5-1 stipulates that the Cabinet Resources Committee must authorise contracts with a value in excess of £500,000.

## **9. BACKGROUND INFORMATION**

- 9.1 The Music Service is a traded service of the Local Authority which brings in approximately £1.6 million per annum from grants, instrument hire and lesson fees from parents & schools. £40,551 of the income is used to fund other Council Services and the remaining income is used to fund delivery of the music service.
- 9.2 Children are currently offered an initial period of free instruction which is paid for from the music grant. After the initial period of free instruction, parents will normally book lessons for a fee. The Music Service has planned for an approximate 25% reduction in income over the next three years, partly due to reducing household income resulting in fewer children continuing lessons after the initial free period of instruction. A £128,000 reduction in parents paying for lessons has already been identified during 2011/2012.
- 9.3 In order to cater for children from families who will be unable to afford tuition, the Music Service would like to be in a position to raise charitable funds and apply for grants from other sources (including gift aiding membership fees). This is not an option under the current arrangement.
- 9.4 The government has published the National Music Plan and arrangements for the funding of Music Services. The government expects the main provider of music education services in any locality to become a music hub, responsible for brokering all grants and music education in a local area.
- 9.5 The Music Service has recently been successful in a bidding process for applications to receive "Hub Status". The acceptance by the Arts Council, means the Music Service will be eligible to receive the funding. The Arts Council expect new and creative models to be implemented for the delivery of the hubs and have accepted the bid on the basis that the service will implement a new company vehicle which allows greater access to funds and an increase in percentage income spent on front line delivery.
- 9.6 This project is now required to gain approval for a change in direction away from the current service model and implement a new model so that the Arts Council will continue to fund the service and to position the Music Service so that it is eligible to receive funding from other sources.

## **10 LIST OF BACKGROUND PAPERS**

None

Legal – POJ  
CFO – JH