



## Cabinet

<b>Title</b>	<b>Pan London Vehicle for Children's Complex Commissioning Ltd</b>
<b>Date of meeting</b>	6 February 2024
<b>Report of</b>	Councillor Barry Rawlings, Leader of the Council and Cabinet Member for Resources & Effective Council Councillor Pauline Coakley Webb – Cabinet Member for Family Friendly Barnet
<b>Wards</b>	All
<b>Status</b>	Public
<b>Key</b>	Key
<b>Urgent</b>	No
<b>Appendices</b>	None
<b>Lead Officer</b>	Chris Munday , Executive Director - Executive Director Children & Families <a href="mailto:chris.munday@barnet.gov.uk">chris.munday@barnet.gov.uk</a>
<b>Officer Contact Details</b>	Queensley Uzomba, Programme Manager <a href="mailto:queensley.uzomba@barnet.gov.uk">queensley.uzomba@barnet.gov.uk</a>

### Summary

In November 2022, the Children, Education and Safeguarding Committee agreed in principle for the London Borough of Barnet to become a member of a not-for-profit company, now known as the Pan London Vehicle for Children's Complex Commissioning Ltd (PLV Ltd).

This report seeks endorsement of the Committee's decision and seeks approval to appoint a Borough representative to the Company's Members' Group.

### Recommendations

**That Cabinet resolves to:**

1. Become a Member of the Pan London Vehicle for Children’s Complex Commissioning Ltd, a Company Limited by Guarantee that will be owned by London Boroughs, including the London Borough of Barnet (the ‘Company’)
2. Note that Full Council on 30 January 2024 is recommended to approve the appointment of the Executive Director for Children and Families to the Company’s Board of Directors on terms set out in the Company’s governance documents.
3. Delegate authority to the Chief Executive, in consultation with the Executive Director for Children & Families, the Leader of the Council and Cabinet Member for Resources & Effective Council, to make company member/shareholder decisions on particular matters set out in the Company’s governance documents and reserved for decision by the constituent Boroughs’ as company members/shareholders on the Company’s Members’ Group, to enable the Members Group to carry out its functions efficiently and effectively.

**1. Reasons for the Recommendations**

- 1.1 The Pan-London Vehicle for Children’s Complex Commissioning Ltd (PLV Ltd) is a joint endeavour between London boroughs to support the collaborative planning, commissioning and delivery of services for children from London with the most complex needs, including a new secure welfare provision.
- 1.2 A report to the Children, Education and Safeguarding Committee in November 2022 set out the principles of PLV Ltd and the Committee resolved to agree, in principle, for the London Borough of Barnet to become a Member of the Company.
- 1.3 In November 2022, the Committee also resolved to refer the decision to become a Member of PLV Ltd to Council, because at the time, the Council were operating under a committee system of governance, so the next tier up and appropriate body to make this decision would have been Full Council.
- 1.4 As the Council’s Constitution has changed from a committee system of governance to a cabinet and scrutiny system, Cabinet is now the appropriate body to make the executive decisions recommended in this report.
- 1.5 As of January 2024, 31 boroughs have secured in principle agreement to become a Member of PLV Ltd, and if approved by Cabinet, the London Borough of Barnet will be part of the first wave of Members that will work together to implement the Company’s governance arrangements and shape its delivery model.
- 1.6 The purpose of the Members Group for PLV Ltd will be to provide a forum for joint review and decision making by the Members as owners/shareholders in connection with the discharge of Member functions as set out in the Company’s governance documents.

- 1.7 The Council's Representative on the Member's Group must have individual delegated authority from the Council to make decisions to enable the PLV Members' Group to carry out its functions.
- 1.8 Becoming a Member during this implementation stage will not put the Council at financial risk and financial risks are limited as PLV Ltd is a Company limited by guarantee.

## **2. Alternative Options Considered and Not Recommended**

- 2.1 Not to become a member of Pan London Vehicle for Children's Complex Commissioning Ltd – this is not recommended for the reasons set out in the report to the Children, Education and Safeguarding Committee on 17 November 2022, and as set out in this report.
- 2.2 Alternative options to setting up the Company were also considered and rejected for the reasons set out in the report to the Children, Education and Safeguarding Committee on 17 November 2022.

## **3. Post Decision Implementation**

- 3.1 Subject to Cabinet approval of the recommendations set out in this report, the Executive Director for Children & Families will, in consultation with the Executive Director for Strategy & Resources and the Council's Monitoring Officer:
- Complete the processes required for Barnet Council to become a member of PLV Ltd.
  - Work in partnership with other London boroughs to continue developing and subsequently finalise the governance documents required to run PLV Ltd.

## **4. Corporate Priorities, Performance and Other Considerations**

### **Corporate Plan**

- 4.1 In line with the Council's Corporate Plan (2023 – 2026), becoming a member of PLV Ltd will help to further the Council's aspiration to be a *"Family Friendly borough where children and young people have the best start in life with the best education, the right support and safeguarding when they need it, and the right tools to live their lives successfully into adulthood. This especially applies to our children in care and care leavers, who we are 'corporate parents' for."*

### **Corporate Performance / Outcome Measures**

- 4.2 Becoming a member of PLV Ltd will enable the successful delivery of the following:
- 4.2.1 The Council's Placement Sufficiency Strategy (2023-2027), which sets out how the Council will meet its sufficiency duty.
- 4.2.2 The Children and Young People's Plan (2023 – 2027), which sets out how the Council will meet the needs of Barnet's most vulnerable children by:
- *“ensuring that there is sufficient placement choice that provides safe and secure homes for our children in care and*
  - *ensuring the provision of high-quality local placements and support for children and young people with special educational needs and disabilities.”*
- 4.3 As set out in section 22G of the Children Act 1989, the Council is required to ensure, so far as reasonably practicable, that it can offer enough suitable accommodation in its area to meet the needs of the children in its care. However, like other London boroughs, the London Borough of Barnet, is unable to provide for the needs of all children within the local authority's boundaries due to the much-highlighted crisis in the sufficiency of placements for looked-after children including:
- a lack of specialist local provision for children with multiple and complex needs;
  - a lack of secure welfare provision nationally, with no provision at all in London and
  - issues with recruitment and retention within the children's residential care workforce.
- 4.4 This means that, for some children, the overriding consideration is for them to be placed as close to Barnet as is possible and appropriate.
- 4.5 PLV Ltd will provide a mechanism for Barnet to achieve this, by collaborating with London boroughs to tackle the above sufficiency challenges through joint planning, commissioning and delivery of services that are within / close to London. This will keep as many of Barnet's children as possible close to their families, communities and support networks.

### **Sustainability**

- 4.6 There are no direct impacts on sustainability arising from the proposals contained in this report. PLV Ltd will carry out its future business activities with due regard for environmental sustainability and climate change.

### **Corporate Parenting**

- 4.7 When exercising its functions, in relation to looked after children, the Council has a duty to consider the corporate parenting principles as set out in section 1 of the Children and Social Work Act 2017.
- 4.8 The majority of the Company's business activities will be to improve services for London's looked after children, therefore becoming a member of PLV Ltd demonstrates the Council's commitment to fulfilling its corporate parenting duties.

4.9 The Company's future business activities will be underpinned by the corporate parenting principles.

### **Risk Management**

4.10 PLV Ltd offers the most equitable way of taking forward a collaborative commissioning arrangement with London boroughs, without an imbalance of risk and reward between the participating councils.

4.11 Risks that are specific to the proposed secure welfare provision were set out in the report to the Children, Education and Safeguarding Committee on 17 November 2022.

4.12 There will be unique risks associated with other commissioning projects to be delivered by the Company, and these will be managed through the Company's financial and business planning process.

4.13 The risks that are most relevant to this implementation phase, and the recommendations in this report are as follows:

<b>Risk</b>	<b>Mitigation</b>
The company does not achieve its objectives.	If PLV Ltd does not work, the Council can cease to be a Member of the Company by serving written notice - the terms of which will be set out in the Company's governance documents.
The company encounters financial difficulties and ceases to operate.	On becoming a member, the Council will agree to be liable for the debts of the Company up to a specific amount, should the Company be wound up whilst the Council is a member (or in the period of one year after the Council ceases to be a member). It is proposed that this is a nominal amount of £1.  Becoming a Member during this implementation stage will not put the Council at financial risk.

### **Insight**

4.14 Pan London insight data, informed the proposals set out in the report to the Children, Education and Safeguarding Committee on 17 November 2022 and will continue to shape the direction and business activities of PLV Ltd.

## **Social Value**

- 4.15 The proposals within this report have no direct implications on social value however, the Company's future procurement activities will consider wider social, economic and environmental benefits.

## **5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)**

- 5.1 The report to the Children, Education and Safeguarding Committee on 17 November 2022 included financial modelling to illustrate the costs and financial implications of running the proposed secure welfare provision that will be owned by PLV Ltd. This financial modelling will be refreshed once the local planning authority has made a decision on the planning application to build the facility. The assumed date for planning committee is November 2024, subject to the project meeting the relevant milestones.
- 5.2 The costs and financial implications associated with other commissioning projects that will be delivered by the Company will be set out and managed through the Company's financial and business planning process.
- 5.3 The majority of expenditure that will be incurred by the Company during the implementation period will be covered by external grants.

## **6. Legal Implications and Constitution References**

- 6.1 The decisions recommend in this report are executive functions under the Local Government Act 2000 and can therefore be made by Cabinet. Under Part 2 of the Council Constitution (Terms of Reference and Delegation of Duties to the Cabinet) the Executive (Cabinet) has the following responsibility: The Executive will exercise all of the local authority functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.
- 6.2 There are a number of statutory provisions that the Council can rely upon up set up and become a member of the Company, including:
- 6.2.1 The General Power of Competence under section 1 of The Localism Act 2011.**
- This authorises the Council to do anything that an individual with full capacity can do, including for commercial purposes, and includes setting up and participating (including borrowing/investment/provision of loans) in a company.
- 6.2.2 Section 111 of The Local Government Act 1972**
- This authorises the Council to "to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property rights) which

is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions”.

The ‘Incidental Power’ combined with the Councils’ functions under the Children Act 1989 potentially authorises the establishment of a joint company to facilitate the delivery of those functions. The Council’s functions here would be those under Section 25 of the Children Act. Further, Part III of the Children Act 1989, Section 27, supports collaborative approaches between local authorities for the benefit of discharging their responsibilities for children.

6.2.3 Further, the use of a company to build, develop and operate the Secure Children’s Homes does not amount to trading or acting for commercial purpose because the Company will be focused on providing services and goods to the Company’s members, and is being established to operate principally for the London Boroughs to meet their statutory responsibilities.

- 6.3 The Company will be a company limited by guarantee (“CLG”) and owned by the London local authorities. The Company will not be focussed on profit generation and it is intended that any surplus generated by the Company will be reinvested into its activities. Under public procurement rules (Regulation 12 of The Public Contracts Regulations 2015) this legal structure will enable the Company Members to contract freely with the Company for its services without a competitive public procurement process being undertaken. This will not change under the new Provider Selection Regime, or the new Procurement Act 2023 due to come into force later this Year.
- 6.4 As a CLG, the Company will be registered at Companies House and will be subject to the Companies Act 2006. The Company member local authorities will be the equivalent of the shareholders of a company limited by shares and as such will in effect ‘own’ the Company. In turn, the Company will own its assets (i.e. the Secure Children’s Homes).
- 6.5 Where an officer is appointed as a director of the Company then consideration should be given to their position and responsibilities within the Council, and the potential conflicts of interest that this creates. Officer directors should not advise the Council as a company member/shareholder or commissioner of the Company on action or decisions to take relevant to the Company (the reserved matters). The existence of apparent bias or predetermination towards the Company by a member when decisions are made (whether by officers or elected members) can give rise to actions for judicial review. Therefore the officer appointed to the Board of Directors on the Company should not also be the person appointed by the Council as their shareholder/Company representative on the Members’ Group.
- 6.6 Bevan Brittan LLLP is advising on setting up the Company and drafting all of the Company and associated documents.

## **7. Consultation**

- 7.1 The following stakeholders were consulted on the proposals set out in the report to the Children, Education and Safeguarding Committee on 17 November 2022:

- The Association of London Directors of Children’s Services;
- London Councils’ Executive, Leaders’ Committee and Lead Members;
- Society of London Treasurers;
- Local authorities (children’s social care and youth offending teams);
- Central government (Department for Education, the Mayor’s Office for Policing and Crime, OFSTED, Ministry of Justice);
- Clinical experts and practitioners within the field of children’s services and health;
- Third sector organisations delivering children’s services and
- Children and young people with lived experience of SCH.

7.2 Engagement, consultation and coproduction with stakeholders, including children with lived experience and their families / carers, continue to shape the proposals for a secure welfare provision in London and this type of consultation and engagement will inform all of the Company’s future business activities.

## **8. Equalities and Diversity**

8.1 The current placement sufficiency challenges, including the lack of secure welfare provision, are exacerbating poorer outcomes for London’s children, particularly those from ethnic minority backgrounds. PLV Ltd aims to improve a range of outcomes for these children and will help to address the racial disparities and issues relating to their overrepresentation, particularly in secure welfare provision.

8.2 The Company will undertake Equalities Impact Assessments to consider the impact of its future business activities and to ensure that its policies, practices and decisions are fair and do not inadvertently discriminate against any protected group.

## **9. Background Papers**

9.1 [PLV Ltd and secure children's home - Children, Education & Safeguarding Committee, Thursday 17th November, 2022](#)