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Report of: John Macilwraith, Executive Director, People Services

Report to: Councillor Jackie Drayton, Cabinet Member for Children and Families

Date of Decision: 4th March 2021

Subject: Observational Contact Services

Is this a Key Decision? If Yes, reason Key Decision:- Yes No

- Expenditure and/or savings over £500,000
- Affects 2 or more Wards

Which Cabinet Member Portfolio does this relate to? Children, Young People & Families

Which Scrutiny and Policy Development Committee does this relate to? Children, Young people & Family Support

Has an Equality Impact Assessment (EIA) been undertaken? Yes No

If YES, what EIA reference number has it been given? 277

Does the report contain confidential or exempt information? Yes No

If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-

*"The (**report/appendix**) is not for publication because it contains exempt information under Paragraph (**insert relevant paragraph number**) of Schedule 12A of the Local Government Act 1972 (as amended)."*

Purpose of Report:

This Report sets out proposals for the future of for observational contact services for looked after children and recommends that the Council delivers these services in-house at the end of the current contract.

Recommendations:

The Cabinet Member is recommended to:

- 1) Note the current circumstances of the observational contact services.
- 2) Approve the establishment of an in-house service, within the wider Children and Families Service, to arrange and oversee the delivery of observational contact and 'family time' for children in our care and their families.
- 3) Authorise the Executive Director of People Services, in liaison with the Executive Director of Resources, to insource the service, and to establish an implementation and project group with relevant senior officers, to oversee and support the insourcing.

Background Papers:

None

Lead Officer to complete:-	
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.
	Finance & Commercial Services: <i>Helen Damon – Finance</i> <i>Sian Holmes – Commercial Services</i>
	Legal: <i>Tim Hoskin</i>
	Equalities: <i>Bashir Khan</i>
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	EMT member who approved submission: John Macilwraith Executive Director People Services Portfolio
3	Cabinet Member consulted: Councillor Jackie Drayton
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.
	Lead Officer Name: Sam Martin
	Job Title: Head of Commissioning – Vulnerable People
Date: 18 th February 2021	

1. PROPOSAL

Background and Responsibilities of Local Authorities

- 1.1 The Local Authority has a duty to promote contact between children who are Looked After and their families under Schedule 2 of the Children Act 1989 and Children and Families Act 2014, unless it is not practicable or it is not consistent with the child's welfare.
- 1.2 Guidance is that the starting point for LAs should always be that "The interests of the majority of looked after children are best served by sustaining or creating links with their birth families including wider family members" - Department for Education: The Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review (June 2015).

In addition the Human Rights Act 1998 by reference to Article 8 of the Human Rights Convention defines the right to family life, and a failure to promote contact at the correct level both in terms of frequency and level of support provided could be argued as contrary to this, if it was disproportionate and without good reason.

- 1.3 There are currently 646 children in care: of these 476 are in foster care, 23 are living with family, 34 are living independently, 83 are in residential care, and 30 are in adoptive families awaiting final court decisions.

Current Situation

- 1.4 The current service is designed to facilitate contact between Children in Care, including those who are the subject of care proceedings and those where care proceedings have concluded and contact is an ongoing requirement, and their families.
- 1.5 In Sheffield, supervised contact provision currently involves a contact supervisor observing contact between the child and their family members, with activity reporting and, if necessary, intervention in difficult circumstances. For the last 10 years this provision has been delivered by a number of external providers, with a small number of contact sessions organised through the Council's own social workers. In the last 5 years there were three Service Providers who have delivered the external services, although this has reduced more recently to a single provider. Where contact is undertaken at the provider's premises, every contact session is observed by a suitably trained worker.
- 1.6 Where it is deemed in the best interests of the child, observational contact may be undertaken at another location. This can be premises within the community (e.g. a family centre) or in another Local Authority premises or a prison. Transport for the child/ren and an observing worker are provided by the contracted service providers, with travel costs reimbursed by SCC.

- 1.7 Social workers determine the activity and location of the contact in a Contact Plan derived from the individual child/young persons Care Plan, although ultimately the Court can determine contact arrangements for children in who are in the care of the local authority.

Review of Provision

- 1.8 Children are at the centre of our practice. Our Corporate Parenting Strategy states that we need to make sure that children and young people feel safe and secure, have stability in their lives and that we help them to achieve their full potential by supporting them in fulfilling their ambition and aspirations. Our ambition to increase the range of 'family time' options aligns with our corporate parenting principles

The Immediate Issue

- 1.9 In October 2019 the Lead Cabinet Member for Children, Young People and Families, approved a recommendation to conduct a review of the Observational Contact Service and to explore the possibility of providing the service in a variety of ways, including bringing it back in-house. In order to allow this review to be completed, approval was also given to recommission and retender the contact service framework of providers (to be called-off as necessary) for a period of up to four years;
- 1.10 Initial findings suggested that there are a significant number of contacts that are currently supervised that could continue to run without the need for supervision. Identifying these would allow us to give children, young people and their families more pleasant family time together, reduce demand on the service and allow other resources to be deployed to direct support to children and families. It has been identified that a reduction in costs could be achieved by reducing the overall number of contacts and establishing more cost-effective arrangements, whilst retaining a good quality of service.
- 1.11 Unfortunately, the Covid-19 Pandemic prevented the review of Observational Contact provision being undertaken and completed in the timescales as originally set out. Contact services were significantly impacted by the national lockdown and were for the most part suspended as buildings closed and contact between people has been restricted to prevent the spread of the virus. At this point it is difficult to estimate the numbers and costs of contact and family time, because we are operating in an unprecedented environment when normal services are not being delivered and we cannot be certain when things will return to 'normal'.
- 1.12 The short-term framework contracts which had been put in place to allow the review to complete, were expiring on 31st August 2020. As the national lockdown was continuing, and in order to allow time to complete the review, a further contract was let to ensure continuation of current contact services in the meantime. This contract was awarded to Crews Support Services

Ltd ('Crews'), with the potential for this contract to run until 30th September 2021 with the agreement of both parties. The contract was based on a block purchase of 300 hours per week at a price of £28 per hour.

- 1.13 In December 2020 Crews gave the Council notice of their intention to close and quit delivery of the contract on 31st March 2021. The review of contact provision has not been completed due to the extended and ongoing nature of the pandemic and national lockdown. In order to secure continuation of provision beyond March the Council ran a further short retender process to secure alternative provision from other external providers. There were no successful bidders to this process. The short-term nature of the contract being offered, along with the uncertainty over the future in terms of the pandemic and potential service volume, are likely to have impacted on provider availability and interest.
- 1.14 The Council was therefore in a position where current provision for observational contact would end on 31st March 2021 with no alternative delivery model yet in place. In order to provide continuity of service, while the Council considers options for the future of the service, and implements its preferred option, the Executive Director has approved (and Crews have agreed) the extension of Crews contract to 30 June 2021.

Options

- 1.15 To inform the recommended approach a number of options have been considered by officers. An appraisal of these options is set out in the following table:

1.16

	Benefits	Risks
1. Do nothing	None identified.	Doing nothing to continue this service provision will see the failure of the Authority's statutory functions in relation to Looked After Children and mean children do not get appropriate family time which is essential for their wellbeing and development.
2. Run another tender exercise to see whether any new or other providers submit bids to run the service.	Continued delivery beyond June, if successful.	The number of providers delivering contact provision has reduced over the last few years. Market analysis indicates few or no other suitable providers likely to make any bids. Potential bidders may also be deterred by the TUPE implications of taking over the current service, including whether there is sufficient time to consult. The

		process is likely therefore to waste time which would be better invested in developing an in-house resource.
3. Establish an in-house provision	Continued delivery beyond March. Direct control over the resources and management of family time provision. Greater ability to manage costs and quality.	Timescale is very challenging. Legal processes including TUPE, transfer of premises, and service continuity will need to be carefully managed and allocated appropriate HR, legal, finance support.

1.17 **Our Ambitions for the Future delivery of Observational contact and ‘family time’.**

Our ambition is to enhance the experiences for children and young people, allowing a more ‘natural’ environment referred to as ‘family time’. Where it is deemed in the best interest of the child family time should be undertaken at another location within the community, such as a park, play centre, museum or other activity that replicates family time as experienced by other families. Our aim will be to offer more support to families to enable better quality time for children with their families and significant others. We also want to support evening contact, weekend day and / or bank holidays to enable the local authority to fulfil its legal duties. We propose to make a clear distinction between different types of contact, as per the categories below:

1. Facilitated Contact – where we provide safe, clean, secure and stimulating facilities, fit for the needs of contact. Staff will be onsite during contact, but will not wholly supervise the contact. Instead staff will monitor handover at commencement and end of contact to conduct some safe and well checks. Staff may also pop in to the contact session from time to time if requested by the Social Worker.
2. Overseen/Supervised Contact – staff will remain present throughout the whole of the contact session in an observational capacity, and submit a contact report back to the social worker afterwards.
3. Supported Contact – staff will provide guidance, advice, support and encouragement to the family to enhance their family time/contact.

- 1.18 The approach we are proposing is a wide scale gradual transformation to the contact service in Sheffield - supporting operational transformation, not just improving existing practice but adding real value, including social value.

Implementation of a decision to deliver family time services in house

- 1.19 Should the recommendation to insource the delivery of family time services be accepted, a formal project board will be immediately established to oversee the process. The board will involve lead officers from the Children and Families Service, Commissioning, HR, Legal, Commercial Services and Finance. The project plan will include actions to:
- Develop an in-house operating model, including decisions about the process for deciding which children receive family time provision, the process for booking and monitoring this, and the management of staff and resources delivering family time services.
 - Transfer current staff (who wholly or mainly provide the service), premises, and any other relevant resources, to the extent provided for under the current contract and under TUPE. Staff transfer will be done in line with all legal requirements including consultation with staff and other due diligence.
 - Oversee the effective legal wind up of the current contractual arrangements.
 - Manage any contingency issues and risks to ensure that continuation of family time and contact services can continue beyond 30 June 2021.

2. HOW DOES THIS DECISION CONTRIBUTE?

- 2.1 By fulfilling the Authority's statutory duty to maintain contact between families and children and young people in care we increase the health and wellbeing of those individuals involved by providing a contact session. We also reduce inequalities for those families currently disconnected that, without support, would struggle to maintain a level of contact in a safe and structured environment.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 The Authority has to provide an observational contact service to fulfil its statutory duty. However, there has been consultation with the market and potential providers, taking place via both a written soft market test (under the auspices of the Council's e-procurement portal 'YORtender') plus market engagement sessions held between potential providers and Sheffield City Council. This has allowed the Council to market test and obtain the views of potential providers in advance of the formal tender process, with some of the outcomes of this engagement included within

this report.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

4.1.1 Decisions need to take into account the requirements of the Public Sector Equality Duty contained in Section 149 (1) of the Equality Act 2010. As part of documenting the meeting of the requirements of the duty, we have carried out an Equality Impact Assessment. Section 149 (1) identifies the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

4.1.2 The Equality Act 2010 Section 149 (7) identifies the following groups as a protected characteristic:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

4.1.3 The Observational Contact service contributes to meeting the authority's statutory duties to facilitate contact between children and young people, their parents, siblings and key people in their lives.

4.1.4 An EIA has been completed and highlights positive impacts of contact (where it is practicable and in the child's welfare) on Looked After Young People and also highlights the positive impacts on health and wellbeing.

4.2 Financial and Commercial Implications

4.2.1 The total observational contact service budget in 2021-22 is £908k. Of this, £437k is currently budgeted for the current provider, based on 300 hours per week at a cost of £28 per hour.

4.2.2 Due to the current pandemic it is difficult to assess the actual costs for the contact service, because the lockdowns and social distancing restrictions

has made it extremely difficult to maintain the normal contact service. Based on previous years activity, expenditure would be reduced to manage within the existing budget.

- 4.2.3 At this stage, it has not been possible to establish detailed costs an in-house service, this will depend on the number of staff transferring from the current provider, accommodation costs for these staff and premises costs for delivering the contact. It is likely that there will be an increase in staffing costs, above those in the current contract, as staff are transferred to the Council's terms and conditions.
- 4.2.4 A detailed assessment of the financial implications of an in-house service will need to be undertaken as part of an implementation project and based of the operational model of the service.
- 4.2.5 Any increases in costs or changes to the operating model will be managed within current resources.
- 4.2.6 It is evident that there is little commercial interest across the sector to deliver an Observational Contact service. Commercial Services were unable to award a contract for the service in February 2021 (as intended) since only one tender response was received. In addition, the received bid was deemed non-compliant and therefore discounted due to a number of nil or inadequate responses to critical questions.
- 4.2.7 Extensive market development (requiring Council resources) would be necessary to attempt to encourage an appropriate level of suppliers to compete for future opportunities. However, there is no guarantee that the effort expended would return the level of competition required in the market to increase the rate of success for future procurements.
- 4.2.8 In terms of timescales, the current Observational Contact service contract has adequate but finite scope to support the activities required to in-source the service.
- 4.2.9 Completing and insourcing process by the 31st March would subject the Council to a number of risks, in particular relating to due diligence processes for the transfer of staff and other resources under the TUPE regulations. To enable these processes to be properly enacted, and to identify and manage any risks, including allowing effective consultation with any staff who are likely to transfer to the council, more time will be needed. To allow this, an associated Executive Director decision has been approved to extend the current contract with Crews Ltd to 30th June 2021, subject to the agreement of the provider. Crews Ltd have agreed to this extension.

4.3 Legal Implications

- 4.3.1 The recommendations in this report will allow the Council to comply with its statutory duties in relation to Looked After Children and obligations

under the Human Rights Act 1988; failure in relation to either of these leave the Council at risk to legal challenge.

- (a) The Council has a duty under Schedule 2 of the Children Act 1989 and Children and Families Act 2014, to promote contact between children who are Looked After and their families, unless it is not practicable or it is not consistent with the child's welfare.
- (b) Failure to promote family contact for Looked After Children with the correct frequency and support may be inconsistent with the requirement to respect family rights (as required under the Human Rights Act 1988 read in conjunction with the European Convention on Human Rights), if the failure was disproportionate and without good reason. This failing could also leave the Authority at risk to legal challenge by way of judicial review.
- (c) The court would not tolerate any failure to provide ordered contact due to lack of available facilities.

4.3.2 If the contract with the current provider ends with no alternative external provider, the Authority will be deemed the new provider (because the statutory service must continue) so staff who are entitled to transfer from the current provider under TUPE, will automatically become employees of the Authority as a matter of law (regardless whether the council has made arrangements to receive these employees or complied with its statutory obligations to inform and consult under TUPE).

4.3.3 The recommendation therefore allows the Authority an opportunity to comply with TUPE implications obligations and use the provisions in the contract to facilitate smooth transfer of assets, property and staff.

5. **ALTERNATIVE OPTIONS CONSIDERED**

5.1 The urgency created through the current provider decision to close business, combined with the diminishing and limited range of alternative external providers for this kind of service, mean that the Council is left with very limited options.

5.2 Doing nothing to continue this service would see the failure of the Authority's discharge of its statutory functions in relation to Looked After Children. The Local Authority has a duty to promote contact between children who are Looked After and their families under Schedule 2 of the Children Act 1989 and Children and Families Act 2014. Failure to meet a statutory duty leaves the Authority vulnerable to legal challenge by way of judicial review and the negative publicity and reputational damage. Consequently, in the event that SCC was not in contract (written or by performance) it would have to discharge its statutory duty by delivering in-house with immediate effect. As SCC does not currently have the capacity or capability to do so, this cannot be considered as a realistic option.

6. REASONS FOR RECOMMENDATIONS

- 6.1 The Council has a statutory responsibility to provide contact for children and young people in care and is not currently in a position to deliver this service in-house.
- 6.2 The current provider had indicated an intention to close on 31st March 2021, and a tender exercise has secured no alternative external provider to continue the services. However, the Council has secured an extension of this arrangement, so that it will continue to 30 June 2021.
- 6.3 Although the timescale remains challenging, it is preferable for the Council to bring the service in house at the end of the current contract in order to take direct control over the future delivery and development of family time provision, and ensure that the council continues to deliver it's statutory duties.