

Wiltshire Council

Cabinet

11 February 2014

Subject: Arrangements to be put in place following the end of the Department for Education Trial on permanent exclusion and alternative provision

Cabinet member: Councillor Laura Mayes – Children’s Services

Key Decision: Yes

Executive Summary

In July 2011 Wiltshire accepted the Department for Education’s invitation to take part in a national trial on permanent exclusion and alternative provision. The purpose was to pilot a new arrangement under which if a secondary school permanently excluded a pupil it would remain responsible for the making educational provision for the pupil and the pupil’s examination results would count against them. The rationale behind this approach was to make secondary schools more accountable for the performance of those students who are permanently excluded and, therefore, to raise the achievement of a very vulnerable group of young people.

In May 2012 a Power to Innovate Order went through parliament transferring the responsibility of the local authority under section 19 of the Education Act to provide suitable education for permanently excluded pupils to those secondary schools agreeing to take part in the Trial for its duration. 28 of Wiltshire’s 29 secondary schools agreed to take part and were named in the Power to Innovate. Wiltshire adopted a radical approach and to enable these schools to fulfil this responsibility it decided to close Wiltshire’s Pupil referral Unit, the Young Peoples’ Support Service (YPSS) and devolve its budget to the secondary schools. This was done from 1 April 2012 and the final element of YPSS closed in July 2013.

The DfE Trial and the Power to Innovate will come to an end in July 2014. Although an evaluation is being carried out of the Trial by the London Institute of Education and the National Foundation for Education Research, (NFER), it seems unlikely that its report will be published in sufficient time for primary legislation to be brought forward before the general election of 2015. The Council, therefore, needs to make a decision about what arrangements should be put in place once the Trial finishes and before any primary legislation is put in place.

Initial evidence from the external evaluation and an internal review that has been carried out indicates that the current arrangement is working effectively. Any change to it would cause considerable turbulence for a highly vulnerable

group of young people. Other possible arrangements appear to be more expensive and less effective'

Proposal

To continue the present devolution of funding to secondary schools replacing the Power To Innovate Order with a service level agreement under which secondary schools undertake to provide suitable education in accordance with section 19 of the Education Act for those pupils permanently excluded or at risk of permanent exclusion for the period 1 April 2014 to 31 March 2017.

Reason for Proposal

1. There is evidence that the current system of devolved funding is working effectively.
2. All the secondary schools currently involved in the Trial wish to continue with this arrangement and the one school that did not take part would like now to do so.
3. Any change would cause a considerable degree of turbulence to a very vulnerable group of young people.
4. All other possible alternatives appear to be more expensive and less effective.

**Carolyn Godfrey
Corporate Director**

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Purpose of Report

1. The purpose of this report is to enable the Council to make a decision as to what arrangements should be put in place once the Department for Education Trial on permanent exclusion and alternative provision comes to an end in June 2014. A decision needs to be made now to enable a smooth transition from the current arrangements to whatever may replace them.

Relevance to the Council’s Business Plan

2. This proposal relates to Outcome 4 of the Council’s Business Plan- Wiltshire has inclusive communities where everyone can reach their potential. At its core it is about continuing to raise the achievement of a highly vulnerable group of young people which also relates to key action 4. As the proposal has been developed in consultation with secondary headteachers it is linked to Outcome 2 about involving people in local decision making. Finally the approach that the Council adopted in its participation in the Trial was a radical and innovative one so in seeking to continue the proposal is very much in line with the ethos of the Business Plan which is about radical and innovative action.

Background

3. In April 2011 as a result of a management restructuring Wiltshire’s Pupil Referral Unit (PRU) became part of education. At the time discussions had already begun about the future of YPSS. In May 2011 an Ofsted inspection put YPSS into special measures indicating that radical action was required. While different options to address the situation were being considered Wiltshire was invited by the Department for Education (DfE) to take part in a national trial relating to permanent exclusion and alternative provision.

In the 2010 White Paper, “The Importance of Teaching”, the Secretary of State for Education had outlined his concern about the poor level of achievement of pupils who had been permanently excluded. The White

Paper suggested that the best way to remedy this was for schools to remain responsible for the achievement of pupils even after they had been excluded. This could be done by making schools responsible for ensuring appropriate educational provision for these pupils and accountable for their achievements. The purpose of the DfE Trial was to test out this approach with a small group of local authorities. After some consideration it was decided with Cabinet approval to accept the invitation to take part in the Trial and use it as a means to take the radical action needed to address the issues surrounding YPSS.

It was decided to close YPSS and to devolve its budget to individual secondary schools using a formula incorporating numbers, socio-economic deprivation and a service factor. A Power To Innovate Order was passed in parliament in May 2012 which for the period of the Trial temporarily transferred to secondary schools the Council's responsibility under section 19 of the Education Act to provide suitable education for those pupils permanently excluded. 28 of Wiltshire's 29 secondary schools signed up to this Order and the service level agreement underpinning it. The one school that refused to participate did so for reasons that were unique to its position as a sponsored academy rather than to any objections to the Trial itself. From 1 April 2012 money began to be devolved to participating secondary schools. Schools were also supported by the creation in, May 2012, of a catalogue of accredited providers of alternative education from whom secondary schools could buy provision. YPSS closed in two phases. The majority of the service closed in August 2012 with a small element remaining open until July 2013 to provide for pupils who had been permanently excluded before the Power To Innovate came into effect.

Appendix A, an internal review of the impact of the Trial, provides clear evidence of its effectiveness. Permanent exclusions have fallen from 21 before the start of the Trial in 2011 -212 to virtually zero. The number of days lost to fixed term exclusions fell from 1755 in 2011-12 to 1440 in 2012-13 and 182 so far in 2013-14 and the number of pupils receiving fixed term exclusions from 972 in 2011-12 to 765 in 2012-13 and 153 so far in 2013-14. All secondary schools involved have substantially increased the amount of preventative work they are doing and even in the short time the Trial has operated this has begun to have a significant effect. There is also evidence of increasing achievement among the target group of pupils. Appendix B the external evaluation being carried out by the London Institute of Education and the National Foundation for Education Research (NFER) also indicates positive signs although this only covers the first year of the Trial.

As a result of the time it takes to carry out the external evaluation it has become clear that the results will not be available to the government in sufficient time for them to bring forward any changes to primary legislation before the general election of 2015. With the Trial and the Power To Innovate due to finish in June 2014 Wiltshire Council needs to decide what provision should be put in place to cover the period after the end of the Trial while the government decides whether it is going to change the law.

The responsibility under section 19 of the Education Act to provide suitable education for permanently excluded pupils will revert to the Council. The issue for the Council is how best to fulfil this responsibility. A number of options have been considered.

- A. The Council should end the devolution of funds to schools and return to fulfilling the responsibility itself directly. This would be both difficult and expensive. To make provision itself would entail setting up a PRU or some kind of entity with a DfE number. This would involve recruiting staff and finding premises. Any PRU set up now would have to be an academy with a delegated budget so in reality the Council would not be directly making the provision. The end of the devolved funding would curtail the good preventative work that schools have been doing as it is extremely unlikely in the current financial climate they would be able to fund it themselves. It would also create a significant amount of turbulence for those pupils in alternative provision which can only have a detrimental impact upon their educational achievement.
- B. The Council could commission a third party – an existing alternative provider or an academy trust to make the provision on its behalf. In reality there are very few alternative providers with the capacity to take on such provision for the whole of Wiltshire. Judging by the current rates charged by alternative providers to schools and to other local authorities any alternative provider would be more expensive than the current option. This is also likely to be the case for an academy trust. Such a course of action would have the same negative impact upon schools as option A without giving the Council any more direct control over the provision being made.
- C. The council could continue to devolve funding to schools and replace the Power To Innovate with a service level agreement through which secondary schools agree to provide suitable education for those pupils permanently excluded or at risk of permanent exclusion in line with section 19 of the Education Act for a specified period. This would enable schools to continue to develop their preventative work and provide continuity of provision for the most vulnerable pupils. Although Wiltshire Council would not be directly providing education it would ensure the quality of what was delivered through a robust monitoring process. This process would consist of the regular collection of data about named individual pupils, the random sampling of provision through visits and observations and regular dialogue carried out through the local authority's attendance at the In Year Fair Access Panels at which most of these pupils have been discussed and their progress reviewed.

In October Select Committee, see appendix C, approved an approach to investigate the feasibility of option C. A representative group of secondary headteachers was set up to review the progress of the Trial and discuss options to put in place once it ended. They were unanimously in favour of continuing the existing arrangements with the operation of a service level agreement. In discussion with the group and with Gough's solicitors acting on behalf of the Wiltshire Association of Secondary and Special

Headteachers, (WASSH), a new service level agreement has been drawn up which would support the adoption of option C. This is set out in appendix D. It is also extremely likely that if option C is adopted the one school that remained outside the Trial will now wish to become part of the arrangement.

Main Considerations for the Council

4. The main considerations for the council are
 - There needs to be an arrangement in place by June 2014 to secure the provision of suitable education for permanently excluded pupils so that the Council is able to fulfil its responsibility under section 19 of the Education Act.
 - As the Council can no longer make such provision directly, as even a new PRU would be an academy, it needs to decide how to secure the best provision for a highly vulnerable group of young people and, therefore which third party would be the most effective and provide the best value for money.
 - How to ensure stability and continuity for those pupils already in some kind of alternative provision.
 - How best to build upon the good practice that schools have developed during the period of the Trial.
 - How to monitor the third party delivering the provision to ensure that its responsibility is being delivered effectively.

Safeguarding Implications

5. The young people who are the subject of this provision are highly vulnerable. However they are currently being provided for by secondary schools who have to have strong safeguarding procedures or by alternative providers who have been through an accreditation process. As the proposal continues with an existing arrangement in terms of provision it does not in fact create additional safeguarding issues. Schools are already tightly monitored in terms of safeguarding and there will be mentoring of the provision for the young people concerned on a named individual basis.

Public Health Implications

6. There are no additional public health issues.

Environmental and Climate Change Considerations

7. There are no additional environmental issues because canting the existing arrangements will not result in the creation of a greater carbon footprint.

Equalities Impact of the Proposal

8. The main deliverers of provision will be secondary schools that already have robust equalities polices and alternative providers who have been through an accreditation process.

Risk Assessment

9.

Risks that may arise if the proposed decision and related work is not taken

10. If a decision is not taken there will be the following risks
1. If no decision is taken once the Power To Innovate ends the responsibility for providing a suitable education for permanently excluded pupils will return to Wiltshire Council without there being any arrangement in place for the Council to fulfil this responsibility.
 2. In the absence of a decision secondary schools may assume that money will no longer be devolved, cease their preventative work and begin to permanently exclude pupils again leaving the Council to find a way to make provision this would put at risk a highly vulnerable group of young people.
 3. Alternatively secondary schools may assume they can keep the money but are not responsible for providing education for permanently excluded pupils. The Council would then be left to make provision with no funds to do so.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

11. Risks that may arise if the decision is taken.
1. Some secondary schools may decide they do not wish to be part of the arrangement and return the money leaving the Council with the need to make provision for any pupils permanently excluded by those schools.
Action has already been taken to manage this risk. The setting up of a group of headteachers to review the Trial and help design the arrangements to follow it has gone a long way to ensure that all schools including the one not currently part of the Trial will accept the new arrangement.
 2. All secondary schools may decide that there is not enough money because of the increasing numbers of “hard to place” young people coming in from neighbouring authorities.
An analysis of the existing data has been carried out and a proposal will be made to Schools’ Forum in January to provide a block of extra funding to address this issue and therefore manage the risk involved.
 3. Some schools may not provide education that would be deemed suitable in terms of section 19 of the Education Act.
This risk will be managed through the monitoring systems that will underpin the service level agreement. Data will be regularly collected from secondary schools about named individual pupils. There will be a programme of sampling of the provision that schools

have in place for these pupils. In addition through its attendance at the three secondary In Year Fair Access Panels the Council will be part of the discussions about provision for most of these pupils. All Panels not only discuss provision when placing pupils but review the progress of pupils that have been placed. If monitoring indicates that the duty under section 19 is not being fulfilled, the proposed service level agreement allows the Council to review provision, agree a remedial action plan and ultimately withdraw part or all of the funding so that the Council can make alternative arrangements for affected pupils.

4. The government decides that overall there is not enough evidence to justify a change of primary legislation or a different government is elected in 2015 which is not in favour of such a change. The proposed arrangement will last for three years which will provide time for the national situation to become clear. If it seems a change in legislation is not going to take place there will be plenty of time to consult with headteachers about what action to take in the light of this. If the progress achieved so far under the Trial is maintained under the service level agreement then there would be powerful arguments for continuing the service level agreement for another three years.
5. Permanent exclusions may increase again because of the different legal structure under the service level agreement compared with the Trial. Legislative changes under the Trial transferred the section 19 duty from the Council to each participating school in relation to permanently excluded Pupils. The Trial also removed the statutory requirement for each school to delete the name of any permanently excluded Pupil from the admission register. When the Trial ends the section 19 duty will return to the Council and each school must delete from the admission register the name of any permanently excluded Pupil.

To mitigate this risk, clause 3.2 of the service level agreement requires each school to continue to use the funding to provide suitable “on roll” education for permanently excluded pupils, which will be an expensive deterrent to schools. Furthermore, we ask for the school’s agreement that, within the confines of legislation and government guidance, it will exhaust all alternative options before making permanent exclusions.

6. The Council may be reluctant to enforce a contract made with a school for policy reasons, leaving the Council exposed if a school breaches the service level agreement.

To mitigate this risk, schools have been fully involved in planning these arrangements as set out above, and we expect them to be fully engaged in the entire process. It is clear from discussions that all parties are focussing on the needs of this vulnerable group of children.

7. The Council may not have the resource to monitor the arrangements effectively?
To mitigate this an outline of what would be required in terms of monitoring and evaluation has been produced.

Financial Implications

12. Under the Trial Wiltshire Council devolved to secondary schools approximately £2.6 million, the original budget for YPSS. The money was devolved to individual secondary schools using a formula agreed with headteachers that takes into account school numbers. Social deprivation and service children as described in schedule 2 of Appendix D. The formula has worked well and headteachers have no desire to change it. Money would continue to be devolved in this way for the next three financial years beginning with 1 April 2014. Arrangements for its use and transfer are set out in the service level agreement, see Appendix D. This service level agreement is based on the one that has been used during the duration of the Trial. It has worked extremely well and there have been no problems and no disputes relating to it.

Legal Implications

13. Option C requires the Council to enter into an agreement with its secondary schools for them to make provision for pupils who have been permanently excluded or who are at risk of permanent exclusion to enable the Council to fulfil its responsibility under section 19 of the Education Act. This would be achieved through a service level agreement, Appendix D. In order to facilitate agreement, the service level agreement is heavily based on the agreement which was in place during the Trial. It has been produced by the Council's Legal Services and discussed by them with Gough's solicitors acting on behalf of the secondary schools. The agreement is still being negotiated, and schools have so far been reluctant to agree to certain key points. Legal Services has advised that these key points must remain to mitigate the Council's risk, in particular regarding each school's fulfilment of the Council's section 19 duty and deterring schools from making permanent exclusions. However, we believe that headteachers are strongly in favour of continuing current arrangements and that they will agree to our key terms shortly.

Options Considered

14. The options considered are set out in detail in section 3 Background above. They are as follows
 - A. End the devolution of funds to schools and attempt to make provision more directly by setting up a new PRU.
 - B. End the devolution of funds to schools and commission a third party such as an alternative provider or an academy trust to do so.
 - C. Continue the devolution of funding to schools and replace the Power To Innovate with a time specific service level agreement supported by robust monitoring.

Conclusions

15. None of the options gives the Council direct control of provision. In the current situation it will have to deliver its responsibility through a third party. The devolution of funds to secondary schools appears to have been effective in reducing fixed and permanent exclusions, stimulating preventative work and raising achievement. Secondary headteachers are unanimously in favour of continuing this arrangement and doing so will enable them to continue to build on the work they have done and will provide continuity and stability for a highly vulnerable group of young people. Both option A and option B are likely to be more expensive and create more turbulence. It, therefore, seems logical that option C is the best option for the Council to adopt.

Carolyn Godfrey
Corporate Director

Background Papers

The following unpublished documents have been relied on in the preparation of this report:

None

Appendices

Appendix A	Review of the DfE trial on permanent exclusion and Alternative provision in Wiltshire
Appendix B	Interim evaluation of the Trial by NFER
Appendix C	Children's Select Committee report 1st October 2013
Appendix D	Proposed service level agreement
