

Open Report on behalf of Debbie Barnes, Executive Director for Children's Services

Report to:	Councillor Mrs P A Bradwell, Executive Councillor: Adult Care and Health Services, Children's Services
Date:	05 May 2015
Subject:	Music Service Options Review
Decision Reference:	I008809
Key decision?	Yes

Summary:

Lincolnshire County Council has made the decision to withdraw its financial contribution to the Music Service post April 2016. In preparation for this a 50% reduction (£200k) will be carried out during 2015/16. This is reflected in the budget approved by the full Council on 20th February 2015.

In preparation for this the Music service has been considering a set of options to ensure its sustainability for the longer-term future so that while the Council may not continue to provide music services, there will still be a provider of music services in the County.

This paper sets out those options and seeks approval to the preferred option from the Executive Councillor.

Recommendation(s):

That the Executive Councillor:-

- 1 approves the proposal that Lincolnshire County Council ceases to operate a music service and supports Lincolnshire Music Service (LMS) to become a viable charitable entity; and
- 2 delegates to the Director of Children's Services in consultation with the Executive Councillor for Adult Care, Health and Children's Services the negotiation of the final terms on which LMS is supported to become a separate entity and approval of the terms of and the entering into of any legal documentation necessary to give effect to the decision at 1 above.

Alternatives Considered:

1. Lincolnshire Music Service continues to be a service offered by Lincolnshire County Council, but exists as a traded, non LCC-funded service.

The pros and cons of this option are set out in the Report.

2. Lincolnshire County Council continues to provide funding for the Lincolnshire Music Service and makes savings elsewhere within the Children's Services budget to ensure that the budget is balanced.

The pros and cons of this option are set out in the Report.

3. Lincolnshire County Council ceases to run a Music Service and disestablishes it and does not provide any support to the Lincolnshire Music Service to become a viable charitable entity.

The pros and cons of this option are set out in the Report.

4. Lincolnshire County Council ceases to operate a music service and supports LMS to become a viable charitable entity.

The pros and cons of this option are set out in the Report.

Reasons for Recommendation:

Although Lincolnshire County Council only contributes 8% towards the operational costs of Lincolnshire Music Service (28% is a DfE music grant and 64% is traded income), as a charitable entity LMS will be eligible to make use of tax reliefs such as gift-aid and donations to support its financial position. It will also be able to, longer-term, set its own terms of conditions for employment and choose a pension scheme fitting to its organisation and employees.

LCC's main business is not a traded service so many of its systems and processes are not flexible or possible to enable a positive trading experience for its customers.

If the Council were to disestablish the service without taking any steps to ensure its continued viability then a valuable service would be lost to the children of Lincolnshire and the Council would pick up a major redundancy liability.

1. Background

Lincolnshire Music Service (LMS) is a traded service generating a turnover of around £2.7 million. The projected income streams for 2015/16 are:

Income Stream	Projection	%
DfE Music Grant	£755,798 (£970,00 inclusive of 15/16 uplift)	28%
Lincolnshire County Council	£200,000	8%
Generated Income	£1.697,000	64%

An additional 29% DfE Music Grant uplift (outlined in brackets above) has been received by LMS for 2015/16 however this grant remains un-stable and has not been relied upon when calculating future projections.

LMS has a set of clear objectives which relate to the requirements of the DfE Music Grant which are:

1. Children from all backgrounds should have the opportunity to learn a musical instrument including whole-class instrumental teaching programmes
2. Make music with others
3. Learn to sing
4. The opportunity to progress to the next level of excellence if they wish to

Despite a backdrop of reduced funding, LMS has remained robust and adapted resulting in:

1. The introduction of a 9% price increase in September 2014
2. Efficiencies through smarter timetabling, travel arrangements and online claiming/processes
3. New hybrid contractual arrangements for all staff
4. Full restructure reducing management costs
5. Savings through streamlined delivery

LMS presented to DMT originally in June 2014 the desire to form a Charitable Organisation and to trade from outside the Council's structures. Approval was given to:

1. Engage an external finance company to provide a report, in partnership with LCC finance, to ascertain the viability of LMS as an separate non-Council entity
2. Research further the legal forms / options available

In addition it was recommended that contact should be made with the Enterprise Growth Manager who would assist in terms of business and long-term planning.

External advice suggested the creation of a Charitable Incorporated Organisation (CIO). CIOs were launched in January 2013 and are the only bespoke incorporated legal form for charities with flexibility to incorporate a staff mutual within the governance.

A further report was presented in November 2014 detailing a full financial synopsis and report and also explored the hidden shared costs currently provided by LCC.

The report also identified some of the benefits that may be available to an externalised service if LMS became a registered charity. The report considered the current and future operating cost of the service and explored factors that would directly impact on the viability of the business case and identified strategies moving forward.

In September 2014, LMS canvassed their staff members to ascertain the will from tutors to potentially externalise. They are our greatest asset and demonstrated a real ambition to externalise with a shared desire to influence its future direction. This was an exciting and a critical component within the preferred legal form in terms of governance and influence. Staff were in support of the move forward and had been aware of a similar approach by other local authority areas.

The Council must now consider how to approach the removal of funding for the LMS. The following options have been considered.

1 Lincolnshire Music Service continues to be a service offered by Lincolnshire County Council, but exists as a traded, non LCC-funded service.

Under this option the Music Service would continue to be delivered by Lincolnshire County Council but any funding by the Council would be removed. The service would therefore need to fund itself from external sources of funding and from charging users of the service. An 8% shortfall in income would be sought through business remodelling.

The advantage of this model is that the service would continue to be badged as a Council service. The Council's 'brand' is easily recognised and trusted and much of the necessary business infrastructure (e.g IT and financial systems, accommodation, access to HR and legal support) already exists and will continue to be there to support the service.

The disadvantage is that the Council is not in the business of traded services where the client base is so large and the invoicing period so small and frequent – this gives rise to a large overhead of financial invoicing which requires efficient processes specifically designed to handle transactions of this type. Its systems and processes and culture are not essentially entrepreneurial or commercial. The Council's ability to access third party funding is limited and the service is fundamentally at risk from reductions in existing third party funding (DfE Music Grant principally but also user charges) if it does not have the freedoms to pursue new avenues of funding or new services.

The Council therefore remains at risk of meeting the redundancy costs attendant on reductions in funding or demand for services.

2 Lincolnshire County Council continues to provide funding for the Lincolnshire Music Service and makes savings elsewhere within the Children's Services budget to ensure that the budget is balanced

Under this option the Music Service would continue to be delivered by Lincolnshire County Council and the Council would continue to fund it to the extent that it was not able to fund itself from external sources of funding and from charging users of the service.

The advantages of this approach are the same as for option 1 above.

As well as the disadvantages under option 1 above, this approach would mean the Council would continue to have to find funding of some £200k per annum to support the service. This money is no longer within the budget approved on 20th February 2015. This money would therefore have to be found from other services for 2016/17 as no budget has yet been set beyond 2015/16. However, other Children's Services budgets have had to find some £5.3m of savings for 2015/16 out of a budgeted £30.2m from the Council as a whole. In these circumstances, if there is a viable option in which the Music Service is able to become self-sustaining without recourse to Council funding this is a better solution.

3 Lincolnshire County Council ceases to run a Music Service and disestablishes it and does not provide any support to the Lincolnshire Music Service to become a viable charitable entity

Under this option the Council would simply cease their relationship with LMS and make all staff members redundant.

However, LMS accesses over 20,000 children and young people on an annual basis through opportunities and tuition. They are a highly respected service with a national reputation serving 99% of Lincolnshire schools through learning an instrument, progression, singing and ensembles. This option would and would be detrimental to the creative outcomes for CYP across the county. It would also carry a great cost with many LMS staff members with high levels of continuous service over the 40 years since its conception.

4 Lincolnshire County Council ceases to operate a music service and supports Lincolnshire Music Service (LMS) to become a viable charitable entity.

This option is described in more detail in Appendix A including the financial analysis and consideration of the options for the legal form of the service. Under it the Music Service would become a separate entity. The Council would therefore cease to provide a music service but the service would continue on a commercial basis through the new entity. The new entity would deliver the services under its own remit and would not be delivering services to the Council under a contract. There would therefore be no procurement implications of such a model.

This option would maintain the Music Service as a resource for children and young people within Lincolnshire while enabling the service to access the financial benefits of charitable status and to operate outside restrictions on the Council's freedom to trade. Staff would transfer to the new entity under existing terms and conditions and it is envisaged that the new entity would take admitted body status

to the Teacher's Pension Scheme. An 8% shortfall in income would be sought through business remodelling.

The Executive Councillor's attention is drawn to the list of pre-requisites at pages 10 and 27 of Appendix A which lists a number of potential means of support to be offered by the Council to the new entity to support its viability. None of these suggestions has been agreed. If the Executive Councillor approves this option in principle then each of these issues, amongst others, will need to be worked through with the service. As part of this process legal advice will be taken to ensure that any arrangement does not breach any legal requirements including State Aid. The final decision would be taken under the delegation set out at recommendation 2 in consultation with the Executive Councillor.

Legal Issues

Equality Act 2010

The Council's duty under the Equality Act 2010 needs to be taken into account by the Executive when coming to a decision.

The Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- 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: Equality Act 2010 section 149(1).

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having

due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in this section may involve treating some persons more favourably than others.

The relevant protected characteristics are:

- ❖ Age
- ❖ Disability
- ❖ Gender reassignment
- ❖ Pregnancy and maternity
- ❖ Race
- ❖ Religion or belief
- ❖ Sex
- ❖ Sexual orientation

A reference to conduct that is prohibited by or under this Act includes a reference to:

- ❖ A breach of an equality clause or rule
- ❖ A breach of a non-discrimination rule

It is important that the Executive is aware of the special duties the Council owes to persons who have a protected characteristic as the duty cannot be delegated and must be discharged by the Executive Councillor. The duty applies to all decisions taken by public bodies including policy decisions and decisions on individual cases and includes this decision.

To discharge the statutory duty the Executive must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

There will be limited change to the offer for children and young people and therefore no immediate impact. Staffing will be subject to a staff consultation where an impact assessment will be undertaken.

Child Poverty Strategy

The Council is under a duty in the exercise of its functions to have regard to its Child Poverty Strategy. Child poverty is one of the key risk factors that can negatively influence a child's life chances. Children that live in poverty are at greater risk of social exclusion which, in turn, can lead to poor outcomes for the individual and for society as a whole.

In Lincolnshire we consider that poverty is not only a matter of having limited financial resources but that it is also about the ability of families to access the means of lifting themselves out of poverty and of having the aspiration to do so.

The following four key strategic themes form the basis of Lincolnshire's Child Poverty strategy: Economic Poverty, Poverty of Access, Poverty of Aspiration and Best Use of Resources.

The Strategy has been taken into account in this instance and the following comments are made:

Economic Poverty

Improved performance of schools will enhance pupil's educational performance and attainment, providing improved chances of access to further education and well paid employment.

Around 20,000 CYP accessed opportunities through LMS during 2014 enhancing pupils' educational performance and attainment. Learning a musical instrument has the following educational benefits:

- Teaches perseverance and discipline
- Fosters self-expression and relieves stress
- Promotes social skills
- Boosts self-confidence
- Promotes happiness
- Increases the capacity of your memory
- Enhances coordination
- Boosts listening skills
- Improves reading and comprehension skills

Poverty of Access

Lack of qualifications and skills are a key barrier in accessing creative employment opportunities and the ability to earn at least a living wage. Improving schools and pupils performance will enhance the ability to access employment opportunities. Other key skills as outlined above are also vital in terms of self-confidence and securing the path to employment.

Poverty of Aspiration

A key part of school improvement is to close the gap of attainment between those vulnerable groups and their peers and to ensure that pupil premium funding is utilised effectively. This service will provide support and monitor schools use of the funding to ensure vulnerable groups are able to achieve their aspirations and fulfil their potential. This also includes bespoke remission policies for children in challenging circumstances including free school meals and looked after children.

Best use of Resources

Best use of Resources aims to ensure that all key stakeholders contribute to improving the life chances of children and young people in a coordinated way. Lincolnshire Music Service is the lead organisation of the Lincolnshire Music and Arts Education Hub removing the duplication of multiple organisations and implementing a streamlined approach to music education in Lincolnshire.

Joint Strategic Needs Assessment (JSNA)

The Lincolnshire JSNA identifies a number of needs that directly relate to young people, with a specific focus on Educational Attainment. This service directly supports the improvement in:

- Outcomes for pupils at the end of Foundation and Key Stage 4
- Outcomes for pupils eligible for Free School Meals (economic deprivation), and those with Special Educational Needs
- Reducing the gap in achievement between “key vulnerable groups” and their peers

Health & Well Being Strategy

The Lincolnshire Health & Well Being Strategy includes five main themes. This service specifically supports:

Promoting healthier lifestyles – monitoring of appropriate educational activity.

Improve health and social outcomes for children and reduce inequalities – ensuring the pupil premium funding is targeted to close the attainment gap between vulnerable groups and their peers.

The wider benefits of music are evidenced earlier in the report in terms of deeper impact.

2. Conclusion

Approval is sought to support LMS to form a CIO with an implementation date of 1st April 2016 as part of a supported transition in partnership with LCC.

The financial analysis undertaken has identified factors in favour of this approach however LMS would need to identify a combined annual income target / efficiency saving representing 8% of income. This is a risk and further work will be carried out to identify how this would be achieved e.g. gift-aid, donations, price increases etc.

Cash flow is a key risk factor that requires mitigation and a combination of process changes to invoicing and financial support will be required. This is not insurmountable though and through transfer planning and due diligence should be resolved.

Another key risk for LMS whether aligned to LCC or externalised is the continuation of central DfE funding. LMS is the lead organisation for the Lincolnshire Music and Arts Education Hub which consist of around 20 organisations from across Lincolnshire united in achieving the best possible musical outcomes for CYP across the county. LMS is the conduit of the central funding and it has been confirmed by the DfE that it is not necessary for the lead organisation to be within the structure of a LA. This funding represents around 1/3 of the service's income and the withdrawal of significant reduction would have material impact on LMS. This is unlikely and an externalised entity would have

increased ability to draw on funding and other income opportunities easier as a charity.

3. Legal Comments:

The Council has the power to pursue the recommended option. No procurement issues arise for the reasons set out in the Report. Any support given to the proposed new entity may amount to State Aid and legal advice will be required during any negotiations to ensure the final agreement is lawful.

Otherwise the issues that the Executive Councillor must take into account in reaching a decision are addressed in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive Councillor if it is within the budget.

4. Resource Comments:

The intention is to enable the service to prosper and in so doing remove LCC's subsidy, but the precise financial implications cannot be determined at this stage.

5. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The Children and Young People Scrutiny Committee will consider this report at its meeting on 24 April 2015. Comments from this meeting will be presented to the Executive Councillor for Adult Care, Health and Children's Services on 5th May 2015.

d) Policy Proofing Actions Required

The purpose of this decision is to enable the music service to be a viable entity that can continue to deliver its services to families and schools in the future. Detailed plans, including an impact assessment will be ratified once the final delivery model has been agreed. This work will take place up to December 2015.

6. Appendices

These are listed below and attached at the back of the report

Appendix A	LMS paper to DMT - Nov 14
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7. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by John O'Connor, who can be contacted on 01522 553213 or john.o'connor@lincolnshire.gov.uk.

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