

Executive

7 December 2016

Report of the Assistant Director (Communities & Equalities)

Portfolio of the Executive Member for Education, Children & Young People

York Music Hub and York Arts Education

Summary

1. This report proposes new delivery arrangements for the York Music Hub and York Arts Education, which together will plan for and provide music opportunities for children and young people in York.

Recommendations

2. The Executive is asked to agree that:
 - The council ask Arts Council England to novate the council's existing contract for delivery of music opportunities for children and young people to the new York Music Hub.
 - The council transfer its delivery staff to a new community interest company (York Arts Education), spun out from the council, to act as the York Music Hub's delivery partner, subject to negotiation of an appropriate contract as set out in paragraph 19.
 - The council provide a guarantee to York Arts Education with respect to future redundancy liabilities as set out in paragraph 36.
 - Delegated authority be given to the Head of Legal Services to draw up appropriate legal agreements to enact these decisions.

Reason: To support the continued development of excellent music opportunities for children and young people in York

Background

3. **York Music Hub** is a strong and developing partnership of providers of music education within the city. Established in August 2012, it works with Arts Council England (ACE) to support the

delivery of The National Plan for Music Education. It is currently funded to March 2017 and, in due course, will be required to submit a bid for the next round of ACE funding. ACE's grant is £223,506 in 2016/17. The Hub receives no financial support from the council.

4. York Music Hub is committed to providing the highest quality of opportunities for children and young people and seeks to foster a life-long love of music, both within and beyond the classroom. Its objectives, in line with the National Plan for Music Education, are to:
 - ensure that every child has the opportunity to learn a musical instrument through whole-class ensemble teaching programmes
 - provide opportunities to play in ensembles and to perform from an early stage
 - develop a singing strategy to ensure that every pupil has opportunities to sing regularly
 - offer Continuing Professional Development (CPD) to school staff
 - provide an instrument loan service, with discounts or free provision for those on low incomes
 - provide access for pupils to high quality music experiences working with professional musicians and venues

5. **York Arts Education (YAE)** is the Hub's lead delivery partner. It is currently a council service which has a long track record of high quality delivery and partnership working. It employs two full-time managers and approximately 25 part-time tutors many of whom are qualified teachers. It delivers:
 - whole class instrumental tuition in schools providing first access opportunities for children to learn a musical instrument and sing
 - an Approved Tutor scheme through which teachers are Disclosure and Barring Service (DBS) checked and monitored annually to ensure the highest quality teaching and learning
 - CPD throughout the year for YAE staff, Approved Tutors and all York class teachers
 - York Music Centre, which operates out of Millthorpe School mid-week evenings and Saturdays providing music making opportunities for approximately 250 children of all ages and abilities. Free places are available for families in need
 - low cost, instrumental hire services to individuals and to schools with subsidies and free hire to families in need

6. In June this year a report was brought to the Executive Member for Education, Children and Young People which highlighted the following drivers for change.

York Music Hub:

7. The success of the Hub has led the partners involved to conclude that the time is now right to constitute the Hub as a legal entity in its own right (as a charitable incorporated organisation) in order to:
 - deepen the representative nature of the Hub and increase its ability to lead the sector
 - increase its capacity to fundraise on behalf of the sector
 - by separating it from YAE, increase its freedom to commission effectively and focus it exclusively on meeting the city's needs
8. The Executive Member agreed that the council will continue to participate in the new Hub by nominating the Assistant Director (Communities and Equalities) to be a trustee. Other trustees are in the process of being recruited and Patrick Scott, former Director of Education and Culture, has agreed to chair the board of trustees.

York Arts Education:

9. The council is no longer best placed to provide this service. The council does not fund the activity and no longer has a management infrastructure capable of supporting it. It is not, therefore, appropriate for the council to continue to be involved in this area of activity; however, it is a valued service in the city and it is right that the council should ensure that robust, alternative arrangements are made for the future. A proposal has been put forward by the management of the service to set up a Community Interest Company (CIC) to operate the service. This would be able to:
 - operate as a business increasing its proportion of earned income
 - be more responsive to the needs of the Hub through a commissioned arrangement
 - increase user-involvement in the service
10. CICs are limited companies which operate to provide a benefit to the community they serve. Key features of a CIC are:
 - it has the “company” legal form familiar to the business community

- an asset lock ensures that the assets of the CIC are used for the benefit of the community
- the level of profit a CIC is allowed to make is not limited as this profit will be used to benefit the community it was set up to serve
- stakeholder involvement and transparency of operation is integrated into its governance through its annual community interest report
- it is regulated by the CIC Regulator via an annual report

11. The Executive Member asked that officers investigate the potential for YAE to spin out as a CIC with a viable business plan.

Consultation

12. Initial consultation has been undertaken with staff and unions. Should the proposals progress, formal consultation will be undertaken in accordance with the council's management of change procedures.
13. With regard to stakeholders, consultation and communication is being led by the council through the Music Hub Strategy Group. Information has been provided to schools, approved tutors, pupils and parents to keep them updated on the proposals.
14. ACE's Hub Relationship Manager has been consulted throughout on the development of these proposals. ACE has provided a grant of £6k to help procure relevant expertise to inform the proposals. ACE's agreement to novate the current contract will be subject to a formal application to them following the Executive's decision.

Proposals

15. The new arrangements for York Music Hub and York Arts Education will be delivered through the following legal agreements:
- the council will transfer its accountable body status for the Arts Council funding to the York Music Hub through a **Novation Agreement**
 - the council will transfer its delivery function in respect of the activities funded by the Arts Council grant to YAE through a **Transfer Agreement**

- York Music Hub and YAE will enter into a **Contract for the Provision of Services**

The Novation Agreement:

16. Under this agreement the Arts Council grant will transfer to the York Music Hub together with responsibility as the accountable body for the funding. It will be a three way agreement between the council, ACE and York Music Hub.

The Transfer Agreement:

17. Under this agreement the assets which YAE requires to carry out its business (primarily the current stock of musical instruments) will transfer to YAE. (An asset lock, as described above, will ensure that, if at some point in the future YAE no longer provides services that require use of the instruments, they will transfer to another appropriate organisation to be used for their intended purpose).
18. The music library, being a city-wide resource, will transfer to the York Music Hub.

The Contract for the Provision of Services:

19. The contract will be between the York Music Hub and YAE. The council has an interest in the contract, however, to ensure that it represents a viable proposition for the new CIC into which its staff will be transferring.
20. **Term:** Whilst the current ACE funding agreement lasts until March 2017 it now appears likely that it will, in fact, be rolled forward for a further period as the Arts Council is not planning a new bidding round at this stage. It is not clear when the new bidding round will be held nor how long the next funding period will be for. In the face of this uncertainty the Hub is proposing to enter into a three year contract with YAE, with provision for annual extensions. This will provide for a smooth transition to the new arrangements and give YAE sufficient certainty to spin out. At the same time it will allow the Hub flexibility with regard to shaping future provision and potentially testing the market. The Hub will review the contract at the end of the second year and will, at that point, either give YAE one year's notice to terminate the contract or extend it by a further, fourth year.

21. It is recognised that:
- there will need to be a break clause in the event that no further ACE funding is secured
 - that the specification may need to change depending on ACE's requirements in respect of a new funding period
 - that the contract sum is likely to change depending on any new funding award
22. **Scope:** The service specification will broadly follow the National Plan for Music Education as reflected in the current Hub business plan. It will include provision of all core activities, known as "First Access" and "Progression" activities. The Hub will agree not to commission activities from any other provider during the term of the contract that compete with those commissioned from YAE.
23. With regard to activities that fall outside the above definition of "Core", i.e. "Extension" activities, there will be a negotiation as to which if any should be included in the contract. Some may be included for a limited period only. There will be two specification schedules:
1. For the Core and Extension services to be delivered.
 2. For professional support services which will be bought by the Hub from YAE.
24. The contract will include a requirement for YAE to increase its income generation over the life of the contract in order to fund more of the core activities and to increase the overall quantity and quality of activity delivered. (The Hub will also have a role in raising additional funding in order to increase overall provision in the city.)
25. Should the ACE's grant reduce at any point during the term of the contract the priority will be protection of the Core activities.
26. YAE will have responsibility for all matters concerning delivery of the Core activities, including pricing, subject to delivery of the service in accordance with the terms of the ACE grant.
27. As an independent organisation YAE will be free to bid for and undertake other work/contracts.

York Arts Education's Viability

28. To ensure that the council's staff are transferring to a viable organisation a detailed business plan for YAE has been drawn up with officers for the next three years. Income and expenditure forecasts have taken into account future increase in fees and pay and prices inflation.
29. The service has an earmarked reserve consisting mainly of ring-fenced Arts Council funding which is used to provide bursaries, grant and put on events. This will be transferred into the Hub and YAE bank accounts and will aid cashflow.
30. A business plan has also been drawn up for York Music Hub to ensure that the overall financial system proposed is viable. The main headings of both business plans are shown below.

York Music Hub

	2017/18	2018/19	2019/20
	£'000	£'000	£'000
<u>INCOME</u>			
Arts Council grant	223.5	223.5	223.5
Music4U	12	12	12
Fundraising	2.8	12	20
Other income	1	1	1
	<u>239.3</u>	<u>248.5</u>	<u>256.5</u>
<u>EXPENDITURE</u>			
Lead Partner Commission	163	163	163
Commissioning Fund	7.5	15	15
Music4U	18	18	18
Bursaries	10	10	10
Manager	20.5	20.7	20.9
Other Expenditure	20.2	20.2	20.2
	<u>239.2</u>	<u>246.9</u>	<u>247.1</u>
Surplus	<u>0.1</u>	<u>1.6</u>	<u>9.4</u>

York Arts Education

	2016/17	2017/18	2018/19
	£'000	£'000	£'000
<u>INCOME</u>			
Hub Grant	163	163	163
Tuition Fees	47.6	49.9	52.2
School Fees	31.2	31.5	31.5
Hub Management	20.5	20.7	20.9
Other income	3.9	3.9	3.9
	<u>266.2</u>	<u>269.0</u>	<u>271.6</u>
<u>EXPENDITURE</u>			
Music Tutors	132.6	133.9	135.2
Directors	95.1	96.0	97.0
Additional Support	8.1	8.1	8.2
Premises	13.3	13.3	13.3
Other Expenditure	17.0	17.2	17.0
	<u>266.1</u>	<u>268.5</u>	<u>270.7</u>
Surplus	<u>0.1</u>	<u>0.5</u>	<u>0.9</u>

31. YAE is forecast to break-even or achieve a small surplus. There are three critical issues:
- Arts Council funding continues at the current level and is paid on time. This funding flows through the Hub and is the main source of funding for YAE
 - YAE will have sufficient funds to cover salaries and tuition fees for one month if Arts Council funding is paid late
 - the Hub must find other sources of funding to enable it to continue to provide a commissioning fund, grants and bursaries
32. The council will no longer be providing support services to York Music Hub or YAE and so these additional costs for the new entities have been reflected in the respective business plans. Set up costs, eg to buy new office equipment, are estimated at £5k. Additionally there will be an anticipated cost of £4.5k in respect of preparing the necessary pension admission agreements and this will be paid out of 2016/17 budget.

Other issues

TUPE:

33. All staff will transfer on their existing terms and conditions to YAE under TUPE.

Pension Liabilities:

34. The council will fulfil its obligation to ensure that staff transferring continue to have access to broadly comparable pension schemes by making applications to the North Yorkshire Pension Fund (NYPF) and Teachers Pension Scheme (TPS) for Admitted Body Status for YAE as a new CIC.
35. If approved by the Pension Committee, an actuarial assessment will be carried out to ascertain the future pension contribution rates for the new organisation. It is proposed that the council will act as guarantor and continue to fund the pension deficit in relation to the employees transferring to YAE that have arisen up to the point of transfer, consistent with other similar staff transfers. Admission agreements will then be drawn up setting out the details of the pension obligations of YAE. These will be signed by YAE, the council and NYPF/TPS prior to staff transferring.

Redundancy Liabilities:

36. Clearly, there is a risk that further ACE funding will not be forthcoming in the next bidding round. In that event the service would be expected to cease and the staff would be redundant. This risk is neither increased nor decreased by the decision to spin-out. YAE, as a CIC, will not have significant cash reserves on its formation and would not therefore have the ability to cover these redundancy costs. It is therefore proposed that the council provides a guarantee to the CIC in respect of redundancy costs in the event that it fails to obtain further ACE funding via the Hub or the amount of funding being reduced. This will apply to the next funding round only. This liability will apply only to staff transferring under TUPE and will not apply to any new staff employed. The maximum liability, based on the position as at 31 August 2016, would be £38,426. This figure will change over time and can be expected to reduce, for example through staff turnover.
37. This obligation would of course exist if the service remained in-house so there is no increased risk to the council inherent in this proposal. The council would not be liable to cover redundancy

costs arising from any reason other than loss of or reduction in the Arts Council funding.

VAT:

38. An exercise has been undertaken to assess the impact on the council's partial exemption status as a result of removing this activity area from the council's financial reporting remit. The calculation shows that the impact in terms of partial exemption is not significant enough to affect the council's status adversely. This is due to the fact that very little input tax is claimed in the area.

Options

39. The principal options open to the Executive are:
- to retain YAE in-house and seek to offer the service to York Music Hub
 - to agree to the spin-out of YAE as a CIC to act as York Music Hub's lead provider

Analysis

40. This is an area of activity which the council does not fund and where it is not best placed to act as service provider; however, these are important activities for young people in the city and are valued by partners. The most sensible way forward, therefore, is for the council to continue to work with the new York Music Hub and to help guide and contribute to it in its new legal form, in collaboration with the other partners, and to spin-out YAE in order to create orderly hand-over arrangements for future delivery of services.

Next Steps

41. The project plan envisages an implementation date for these proposals of 1 April, 2017. Key work streams/milestones are:
- | | |
|--|--------------------|
| • Negotiation of service contract between Hub and YAE | December - January |
| • Negotiation of transfer agreement to YAE and support services arrangements | December - March |
| • Determination of TUPE & pension arrangements | December - March |
| • Approach to ACE re novation | February |
| • Go live | April |

Council Plan

42. The proposals in this report contribute to the Council Plan objectives that “Every child has the opportunity to get the best possible start in life” and “All York’s residents live and thrive in a city which allows them to contribute”.

Implications

43. **Financial:** There will be no financial impact to the local authority arising directly from the transfer of service as these services are funded by a combination of ACE grant and customer income with no contribution from the LA base budget
44. There will be some set-up costs incurred, for example with respect to setting up new payroll arrangements, actuarial valuation fees in respect of pensions and furniture and equipment. These costs are estimated to be approximately £10k in total. A budget of £10k will be identified from minor underspends elsewhere in the Community and Equalities, or wider Children, Education and Communities budgets in 2016/17 to fund these costs on behalf of the Hub.
45. The funding received from the Arts Council has always been ring-fenced by the local authority and any surplus or deficit at the end of each financial year carried forward to the following year. At present there is a small reserve surplus, which has been used to balance year on year grant reductions. At the end of 2016/17 this surplus is currently predicted to be approximately £30k. This will transfer to the Hub/YAE on 1 April and will act as start up funding for the initial year of operation.
46. **Equalities:** The Equalities Impact Assessment screening shows no equalities impact from the proposed governance arrangements.
47. **Human Resources:** There are ongoing discussions and consultation with council staff who are affected by the outlined proposals, and with their trade union representatives. If the proposals are approved, transfer of staff to the new entities will be implemented in accordance with current TUPE legislation and in line with the council’s Supporting Transformation (Managing Change) policies and guidelines. All staff will transfer to YAE.
48. **Legal:** These are contained within the Report. Legal Services will advise the Project Group and prepare all necessary legal documentation.

49. There are no **Information Technology, Property, Crime and Disorder** or **Other** implications associated with this report.

Risk Management

50. In compliance with the council’s risk management strategy the main risks that have been identified associated with the proposals contained in this report are those which could lead to the inability to meet business objectives and to deliver services, leading to damage to the council’s reputation and failure to meet stakeholders’ expectations. The level of risk is assessed as “Medium”. This is acceptable but means that regular monitoring is required of the project plan.

Contact Details

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Wards Affected:	All	✓	
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Annexes – None

List of abbreviations used in the report:

ACE - Arts Council England

CIC - Community Interest Company

CPD - Continuing Professional Development

DBS - Disclosure and Barring Service

NYPF - North Yorkshire Pension Fund

TPS - Teachers Pension Scheme

TUPE - Transfer of Undertakings (Protection of Employment)
Regulations 1981

YAE - York Arts Education