



Risk Control

Children's Trusts



Introduction

In circumstances where Ofsted¹ and other reports indicate that a local authority's Children's Social Care Services are performing inadequately over a period of time, the Secretary of State for Education may issue a Statutory Direction requiring the local authority to transfer the service to an independent body. The type of independent body established to provide the services can take a variety of formats. However, regardless of the exact legal basis on which the independent body is based, it is important to note that the statutory duty to provide the service and associate non-delegable duty of care remains with the council at all times.

Although liability claims against children's services are relatively infrequent, they can by their very nature be sensitive and high profile, take many years to materialise following the incident and result in an exposure costing several millions of pounds. It is for this reason that even where all services are effectively transferred to an independent body with its own insurance arrangements both the council and their insurance provider continue to maintain a close working interest and involvement in the risk exposure and conduct of any associated claims.

●●● In partnership with



¹ Ofsted – Office for Standards in Education, Children's Services and Skills.

Statutory Direction

Under Section 497A(4B) of the Education Act 1996, the Secretary of State can issue a Statutory Direction on a local authority where inadequate judgements in Ofsted assessments show significant weaknesses. The Direction requires the council to take steps to improve the quality of service. In certain circumstances the Direction will require the council to work alongside a commissioner appointed by the State. Where required, a memorandum of understanding is established between the appointed Children's Services Commissioner and the council detailing the formation of a trust and its method of operation. The direction remains in force until such times as it is revoked by the Secretary of State.

Doncaster MBC

The first children's trust in the UK was established in Doncaster in October 2014 following a Statutory Direction issued by the Secretary of State. The Direction stated a need for a trust to be formed and operate for a minimum of 5 years. The trust is focussed upon improving standards and quality of care and support; and offering strong early intervention and help. It has responsibility for a number of services including fostering, adoption, intensive family support and youth offending. The trust was established as a limited company and maintains its own insurance arrangements, Chief Executive and team of social care professionals.

Following Doncaster, other Local Authorities have received Statutory Directions to form trusts including Slough, Birmingham and Sunderland. Birmingham City Council took the decision to form their trust as a wholly-owned community interest company after receiving inadequate ratings from Ofsted for six consecutive years.

In April 2017, Sunderland City Council established a new company to deliver its children's services following an inadequate rating by Ofsted in July 2015. The company – 'Together for Children' will deliver education, children's social care and early help services through the TUPE transfer of more than 800 staff into the new entity. LocalGov reported that Sunderland had broken new ground "by being the first council in the country to voluntarily transfer the day to day running of children's services out of council control in co-operation with the DfE"². The company will continue to progress the many improvements already made following the Ofsted rating.

² <https://www.localgov.co.uk/Sunderland-completes-transfer-of-childrens-services-to-new-company/42854>

Has it made a difference?

In December 2015, the Government announced plans for landmark reforms designed to address the issue of failing children's services in England. The reforms were based on a belief that to improve these services, they should be detached from their local authority parent³.

Establishing a trust is a complex process that can take many months to form after the decision has been taken to move the service away from direct local authority control. The establishment of any new organisation is expensive and time consuming and a children's trust is no different.

Whilst negotiations are taking place, children's services departments will be continuing to work to improve the service they are delivering and implement any Ofsted recommendations. However, the introduction of a new structure and operating model can lead to the fragmentation of services for children and families which can lead to other problems and weaknesses that need to be addressed.

Change and visible improvement can be slow to materialise and, if not managed well, can impact on local democracy and the role of elected members.

The positive impacts of services being transferred to trusts have been widely reported, with improvements already been seen such as in the case of Doncaster. Others will be using these examples and experiences to learn from and replicate positive results in their own entities. ⁴

The Risk Manager

The Risk Manager has a key role to play during the establishment of trusts and the transference of services. It is essential that all parties understand and acknowledge where the statutory duty for the services remains. Working together, the development of protocols is helpful in ensuring clarity of understanding on the division of responsibilities. Agreed governance arrangements will support a smooth transition of service provision and enable the commissioning authority to hold the trust to account for the delivery of children's services.

³

<http://www.communitycare.co.uk/2015/12/14/dauid-cameron-announce-landmark-reforms-tackle-inadequate-childrens-services/>

⁴

<https://www.doncasterchildrenstrust.co.uk/news/ofsted-praise-%E2%80%99significant-progress%E2%80%99-children%E2%80%99s-services-doncaster>

Support when forming a trust

Gallagher Bassett is well-placed to assist authorities in establishing clear governance and risk management processes with their new children's services arrangements. Support can be provided in the following ways –

- Engaging the insurers with governance leads in the authority to ensure adequate future insurance arrangements are built into the process.
- Triage of pre-trust formation claims potential to protect for exposure at a later date.
- Raise awareness within the council of the issue of non-delegable duty.
- Develop a protocol to set out an agreement on key issues of risk transfer and communication

To discuss any aspect of formation of a children's trust - contact your RMP Risk Control Consultant.

Further RMP Resources and Articles

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the [RMP Resources](#) or [RMP Articles](#) pages on our website. To join the debate follow us on our [LinkedIn](#) page. Additionally we have specific discussion groups for the [Education](#), [Emergency](#) and [Government](#) sectors.

Get in touch

For more information, please contact your Broker, RMP risk control consultant or RMP account director.

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