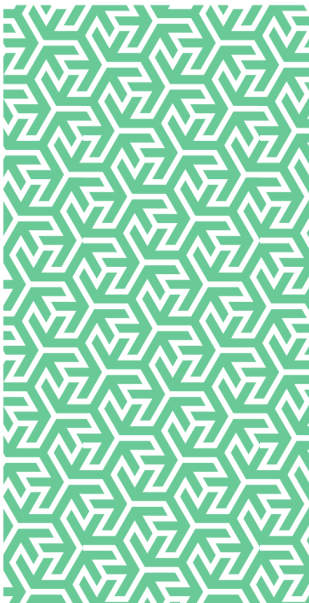




## **Risk control**

### Children's Trusts



In partnership with



# Children's Trusts

## Introduction

In circumstances where Ofsted<sup>1</sup> 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 associated 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.

## Statutory Direction

Under Section 497A (4B) of the Education Act 1996, the Secretary of State can issue a Statutory Direction<sup>2</sup> on a Local Authority where inadequate judgements in Ofsted assessments show significant weaknesses. The Statutory 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.

## Ofsted

It is important to remember that the Ofsted inspection usually only identifies the symptoms of the issues affecting the service. It is necessary to fully understand all the issues before beginning to address them. Any decisions made must be the correct ones and bring about sustainable improvement.

<sup>1</sup> <https://www.gov.uk/government/organisations/ofsted>

<sup>2</sup> <https://www.gov.uk/government/collections/improvement-notices#open-directions>

## Common Issues

There are a number of common issues<sup>3</sup> that exist in Local Authorities that are found to be judged 'inadequate' by Ofsted. Many Local Authorities will see a high turnover of staff and a negative impact on staff morale. High caseloads are a significant factor as a result of the number of vacancies which in turn have a direct impact on delivering good practice. Usually there is a need to use significant numbers of agency social workers which are expensive and often bring instability to the workforce and make it more difficult to deliver improved services as a result of the churn of frontline staff and managers. Following the judgement the situation may potentially worsen before it begins to improve. It should also be anticipated that a spike in the number of referrals may happen and will need to be managed effectively.

## 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's primary focus was 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.

After almost 5 years, Doncaster gained greater oversight and control of its Children's Trust as it was suffering from financial instability. The service eventually returned to the Council in the form of an Arm's Length Management Organisation<sup>4</sup>.

## Making a Difference

In December 2015, the Government announced plans for landmark reforms designed to address the issue of failing

<sup>3</sup> <https://www.local.gov.uk/publications/what-happens-if-your-childrens-services-are-judged-inadequate-ofsted>

<sup>4</sup> <https://www.communitycare.co.uk/2019/03/20/childrens-services-Trust-doncaster-to-revert-to-public-ownership/>

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 parent<sup>5</sup>.

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 realised such as in the case of Doncaster who received a 'good' grade from Ofsted in 2018. Others will be using these examples and experiences to learn from and replicate positive results in their own entities<sup>6</sup>.

## Signatures of Risk

A number of 'signatures of risk' originally published by the national Children's Improvement Board are still widely used in the sector. These can include:

- turnover and change in senior leadership
- service reorganisations combined with challenging budget reductions
- lack of political focus on safeguarding and care
- assuming performance standards are secure in an environment of service maintenance rather than development
- limited self-awareness and no external challenge
- inconsistent observation of practice
- professional weakness in supervision and audit
- lack of a learning organisational culture
- weak commitment from partners
- lack of focus on the child's journey or voice of the child

<sup>5</sup> <http://www.communitycare.co.uk/2015/12/14/david-cameron-announce-landmark-reforms-tackle-inadequate-childrens-services/>

<sup>6</sup> <https://www.doncasterchildrenstrust.co.uk/news/ofsted-praise-%E2%80%99significant-progress%E2%80%99-children%E2%80%99s-services-doncaster>

- poor workforce development and / or capacity
- failing to listen to or accept front line feedback
- not developing a culture of anticipation and early warning of issues.

These signatures of risk may indicate that there is a potential problem in a Children's Services Department which needs more probing and scrutiny to establish what needs to be done.

## Observations from Sandwell

Sandwell Metropolitan Council was reviewed by a Children's Commissioner<sup>7</sup>, as required by a Statutory Direction in 2016, who found despite significant efforts to address the issues:

- insufficient leadership and drive to address the identified failings in the social work service, in particular quality of practice
- failure to prioritise the right things with enough focus on frontline service delivery and frontline staff
- inadequate communication of what is happening; in particular, a coherent message on how all the planned activity will produce the desired impact
- insufficient focus on the experience of vulnerable children and the outcomes for them; and
- a lack of sufficient pace and demonstrable impact.

While addressing the concerns following a Statutory Direction other risks can be introduced which require careful management and good leadership:

- managing the introduction of a new case management system,
- ensuring that emerging staffing issues are addressed to create confidence at a time of further significant change, and
- continuing to address the quality of practice issues at a time of financial constraint for all of the public sector.

The conclusion by the Commissioner provided a range of options for the way forward. In 2018 an independent Trust was established<sup>8</sup> to enable a new start with new leadership, greater flexibility, and the potential to attract new people.

<sup>7</sup> <https://www.gov.uk/government/publications/sandwell-childrens-services-report-to-the-secretary-of-state>

<sup>8</sup> <https://www.sandwellchildrenstrust.org/about-us/>

## Role of 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 organisation to hold the Trust to account for the delivery of children's services.

## Support when forming a Trust

Gallagher Bassett is well-placed to assist Local 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 information

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.

## Get in touch

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

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