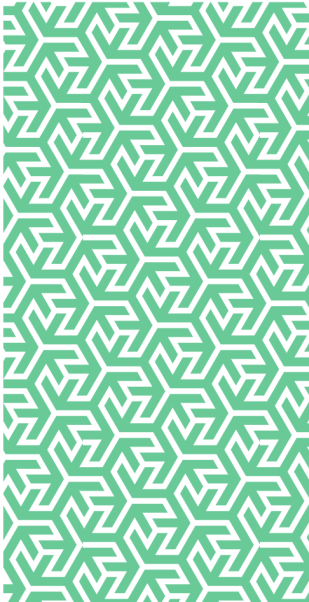


rmp

Risk control
Children's Trusts



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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 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 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.

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

² <https://www.communitycare.co.uk/2019/03/20/childrens-services-trust-doncaster-to-revert-to-public-ownership/>

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.

After almost 5 years, Doncaster gained greater oversight and control of its Children's Trust as it was suffering from financial instability. The service returned to the Council in the form of an arm's-length management organisation².

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.

³ <http://www.communitycare.co.uk/2015/12/14/david-cameron-announce-landmark-reforms-tackle-inadequate-childrens-services/>

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 entities⁴.

New Trusts continue to be formed – Northamptonshire Children's Trust was set up in 2020 after the previous service had received a number of damning Ofsted reports on how the children's service was being run at Northamptonshire County Council⁵.

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.

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.

⁴ <https://www.doncasterchildrenstrust.co.uk/news/ofsted-praise-%E2%80%99significant-progress%E2%80%99-children%E2%80%99s-services-doncaster>

⁵ <https://www.northamptonchron.co.uk/news/politics/new-childrens-trust-officially-launched-northamptonshire-3023662>

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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