

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Cllr Dine Romero, Cabinet Member for Children, Young People, & Communities	
MEETING/ DECISION DATE:	On or after 11th February 2023	EXECUTIVE FORWARD PLAN REFERENCE:
		E3443
TITLE:	Future Governance of the Music Service	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: None		

## 1. THE ISSUE

- 1.1. The future of Music Education, as required by the Department for Education (DfE) will change radically in 2023. This paper proposes actions which seek to protect the existing music offer for young people and build a vibrant and robust music education future for young people in Bath and North East Somerset (B&NES).
- 1.2. Over the last 2 years, B&NES, North Somerset and South Gloucestershire (South Glos) Music Services have been working in partnership to deliver a more robust, more universal offer for young people in our region. We now need to transform our governance model so that we can release this potential to deliver for the future.
- 1.3. In July 2022, the DfE released its refreshed vision for the governance and delivery of music education in England. This new vision is significantly different to the current model. The governance and funding of music services (through their role as Lead Organisation of Music Education Hubs) is required to radically transform.
- 1.4. Over the last 18 months, the 3 Music Services have engaged a consultant to look at how the Services can work better together. The recommendations align with the DfE's new vision for the future governance of music education
- 1.5. This report lays out the background to these recommendations and the transformation required by the DfE in the next 3 months. It proposes a new model which seeks to protect the future of the music service as a new separate organisation, sitting outside the Local Authority (LA), with senior LA officer representation at a strategic level.

- 1.6. It is felt this is the only viable option to retain the government funding on which the service relies.
- 1.7. This will enable us to retain existing services and build a robust model which will attract future funding, enabling the Music Service to deliver a bigger, better, more universal offer for young people in B&NES.

## **2. RECOMMENDATION**

### **THE CABINET MEMBER IS ASKED TO;**

- 2.1. Approve, in principle, the proposal that the Music Service merges with North Somerset and South Gloucestershire Council's Music Services, into one single service.
- 2.2. Approve, in principle, the single service being established as an independent organisation outside the 3 Councils, enabling the Service to be eligible to retain government funding, protect staff and develop a broader, more universal youth music education offer.
- 2.3. As we are yet to receive final actuarial details and proposals for any pension admission agreements for the proposed independent organisation, to delegate authority to the Director of Education and Safeguarding to make the final decision on potential transfer and the terms thereof once transfer negotiations have progressed and proposed terms can be reported

## **3. THE REPORT**

### **Background and Context**

- 3.1. The Music Service is a non-statutory service, providing music education to students, families, and schools. The Service is funded by a Department for Education (DfE) grant to deliver its role as Lead Organisation of the local Music Education Hub (see 3.c). This grant totals c. 38% of income, with the balance of income from traded services (schools and families). The Service has a staff of 2 managers, 2 administrators and 43 teaching staff.
- 3.2. The Service delivers the National Plan for Music Education (2011) – the government's vision for music education in England.
- 3.3. The DfE's model for music education is to fund Music Education Hubs to deliver the National Plan for Music Education (NPME). Hubs are informal partnerships of local music and education organisations operating as a network of providers. They are broadly aligned to LA areas. Hubs have a Lead Organisation, which receives the DfE grant, and is held to account by Arts Council England (ACE) for the delivery of the NPME. Locally, B&NES, North Somerset and South Glos Council Music Services are all Lead Organisations of the local Hub.
- 3.4. Since 2020, B&NES, North Somerset and South Glos music services have been working in partnership, with a shared management team and increasingly

homogenised strategy, development and operations, alongside greater sharing of resources.

- 3.5. The result of this partnership working is that a broader, more universal offer is being achieved because of the efficiencies gained by working together. Through partnership, the services are beginning to realise their potential to deliver a bigger and better offer for all young people from the most vulnerable to those who are gifted and talented. Through greater partnership, the 3 Music Services have the potential to achieve an even wider offer and this proposal seeks to enable this potential to be realised.
- 3.6. A consultant has been working with the 3 Music Services over the last 18 months to evaluate how the music services can improve their collaboration, ensuring that they are robust and viable for the future, making sure current services are protected and the growth potential can be realised. The report includes a recommendation that the 3 services should join together, with options for this joint service to operate a) within one of the Councils and b) as an independent organisation, delivering on behalf of the 3 Councils.
- 3.7. Since this report, the music education landscape has changed radically. There is now an urgency to transform if we are to remain viable in the near future.
- 3.8. In July 2022 the DfE launched the refreshed National Plan for Music Education (2022). Alongside this, it announced that all Services in England would need to re-bid to retain the government funding which delivers the plan.
- 3.9. The bidding process will be different to the past in that:
  - 3.9.1. the grant application process will be open and highly competitive. ACE are proactively encouraging and enabling a wide range of education and arts organisations to bid against us. This is the first time in the 50+ year history of Music Services that there has been a competitive process.
  - 3.9.2. It is very unlikely that small LA music services will be eligible to apply. DfE/ACE are expecting mergers/partnerships and that organisations will apply for a larger grant representing a wider geographic area. If B&NES Music Service were to apply alone, it is very likely to be unsuccessful and we expect DfE/ACE would force us to join with a partner prescribed by ACE.
- 3.10. The future delivery model and therefore fund-holding organisation will also be very different to the present model. DfE/ACE expect to see:
  - 3.10.1. the grant being allocated to non-LA strategic organisations, largely volunteer led, whose role is to decide strategy. This strategic body will then commission other organisations to deliver services.
  - 3.10.2. they do not wish to see funding being used to support the employment of a teaching workforce
- 3.11. This means that most English Music Services will need to prepare a radical transformation of their business model by Spring 2023 if they are to have a strong bid for future funding.

## **Preparing for the future in B&NES**

- 3.12. In recent months, the Music Hubs for B&NES, North Somerset and South Glos have merged into the West of England Music Alliance, representing the 3 LA areas. The 3 Music Services remain as joint Lead Organisations.
- 3.13. The three Music Services now work closely together; as one management team, aligned strategy and operational processes, collaborate on all projects, and share staff, music resources, projects and training.
- 3.14. The Music Service leader, supported by senior officers in the three LAs and an external consultant, have been preparing for the new DfE/ACE vision for the last 18 months. The consultant, funded by Arts Council England, engaged with key stakeholders in- and outside the Councils, including senior Council officers and service users, to review aspirations for music in the region and propose options for the future governance of the music services.
- 3.15. The 2 options presented were proposals to merge the 3 Services, with models operating within and outside the LA.
- 3.16. One option was to create a single LA shared service. However, none of the 3 LAs in the partnership are in a position to host the shared service. The host LA would be expanding the Service headcount from c. 50 to c. 150, and taking on the associated employment, redundancy and pension risks. As we do not have a guarantee of funding beyond April 2023, the risk to any one of the Councils is too high.
- 3.17. The new vision from DfE/ACE also means an LA shared service is unlikely to be sufficient transformation on which to create a strong bid for future funding.
- 3.18. The second option proposed was the merged services sitting outside the LAs, as an independent organisation. On the basis of the need for the radical transformation described above, this option becomes the only route we believe is viable to ensure a future youth music provision in B&NES which can take forward existing services, deliver an aspirational growth plan and ensure a Service which is influenced by, and dedicated to, B&NES' needs and aspirations.

## **The Proposal**

- 3.19. To implement the option outlined in para 3.18:
- 3.20. For B&NES Music Service to merge with North Somerset and South Glos Music Services and spin out of the Local Authority into an independent company; a company limited by guarantee, registered as a charity, with a trading arm.
- 3.21. The charity will operate as the strategic Hub and will apply for the DfE funding to deliver the new National Plan for Music.
- 3.22. The trading arm will offer a teaching service, which can be commissioned by the Hub to take forward delivery of existing services.

3.23. The traded (teaching) arm will be a self-sufficient commercial enterprise, operating viably as a stand-alone business without funding.

3.24. Staff will TUPE to the new organisation.

3.25. We believe this is the only viable proposal, and will:

3.25.1. Retain a music education provision and funding for B&NES, with influence from Council Officers at a strategic level

3.25.2. Enable existing services to continue with no- to minimal disruption for existing users (students, families and schools).

3.25.3. Enable the expansion of a universal offer for children and young people

3.25.4. Create an organisation which meets the aspirations of DfE/ACE, presenting a strong case to retain future funding without which the Service cannot continue

3.25.5. Remove the risk to the Council of the closure of the Music Service and related redundancies

3.25.6. Protect the future employment of approx 150 music teaching staff

3.25.7. Enable the Music Service to attract new funding, establish a regional footprint and be a significant influencer in music for young people in the region

### **Delivering the proposal**

3.26. In September 2022, North Somerset Council, on behalf of the 3 LAs, commissioned consultants to deliver the spin-out project as follows:

Oct - Nov22:	Consultants create business case and financial model
Oct - Dec 22:	Agreement is sought from the 3 LAs
Dec 22 - March 23:	Consultants complete the implementation of the new organisation
Jan - Feb 23:	The new organisation bids for future funding
March - April 23:	Funding awards are announced
April - Aug 23:	The new organisation becomes operational and transfer process completes
1 <sup>st</sup> Sept 23:	The new organisation begins trading.

## **Governance**

- 3.27. The new organisation will be totally independent of the councils i.e. it will not be a local authority trading company with council ownership or membership but it is intended to have advisory groups representing stakeholders such as the 3 LAs, schools, young people and delivery organisations.
- 3.28. A representative from each of these advisory groups will sit on the Charity's Board, ensuring the LAs are represented at a strategic level. To protect the Council, this will be an advisory, non-voting role so as to ensure clarity about the removal of Council control over the new organisation.

## **HR, Pensions and Staff transfer**

- 3.29. Staff will transfer to the new organisation, with the principles of TUPE applying to protect employee's terms and conditions.
- 3.30. The majority of staff are members of the Local Government Pension Scheme with a small number in the Teachers' Pension Scheme.
- 3.31. The new organisation will apply to LGPS for closed admitted body status and parallel arrangements with TPS to protect existing employees' pensions where it is prudent to do so. Terms will be negotiated between the Pension schemes, LAs and the new organisation ahead of the implementation phase and before any final decision under any delegations granted in line with recommendation 2.3 of this report.

## **4. STATUTORY CONSIDERATIONS**

- 4.1. The music service is a non-statutory service and is not funded by the Council
- 4.2. The move to an independent company is being made with full legal guidance from the 3 LAs and the project consultant's legal advisor.

## **5. RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 5.1. HR, finance and legal support will be required to support the process
- 5.2. The possible reduction in the required level of support staff in the Support Services Contract with Agilisys has already been communicated to the appropriate officer.
- 5.3. Implementation will result in reduced headcount in the LA.

### **Financial Implications**

- 5.4. The current Music Service is budgeted to be a cost neutral service, with an annual turnover of c. £500k. In 2021/22 the service made a surplus of £92.4k and, as a result began the 2022/23 financial year with balances of this amount.

- 5.5. The proposal seeks to remove financial risk from the Council by creating a model which will be successful in attracting continued funding.
- 5.6. The risk of not proceeding with the proposal is that the Service will not be viable for future funding which will likely lead to the closure of the service with 47 redundancies and possible pension liability costs.
- 5.7. B&NES's contribution to the transformation project is £15,000 which can be met from the Music Service reserves described above.
- 5.8. The Service's existing reserves, described above, would transfer with the new organisation. Ringfencing of reserves for use on Arts Council England agreed activity is a condition of funding. These reserves will also contribute to ensuring the ongoing viability of the new organisation.
- 5.9. An agreement will be reached between the Council and the new organisation regarding pension and other liabilities once actuarial reports have been received. These, and any other arrangements will be detailed in a transfer agreement overseen by Legal Services.
- 5.10. Due to a delay in the DfE grant tendering process, the Service will now become independent before successful grant holders are notified. If the new organisation were to be unsuccessful and have to partially, or fully, cease trading in the first few months, the Council is requested to underwrite any costs of winding up the new organisation which could not be met from its reserves. This request would be limited to:
  - 5.10.1. A quantified and agreed total amount prior to final sign-off, which will be no greater than that for which the Council would be liable if the Service were to cease trading whilst still in Council control and
  - 5.10.2. For a limited period and circumstance; that being the new organisation being unsuccessful in securing DfE funding in the 2023-24 tendering process. Announcement is expected from the DfE in early 2024.
  - 5.10.3. The new organisation would make its accounts available to the Council during this period of liability so the Council can be assured of its financial integrity
- 5.11. Employees recruited to the new organisation post-transfer will be offered an alternative pension solution.
- 5.12. The Service's stock of musical instruments, which resources teaching programmes, would transfer with the new organisation. This stock will contribute to ensuring the ongoing viability of the new organisation.

## **6. RISK MANAGEMENT**

6.1. A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance.

<b>Company Limited by Guarantee as Charity with a Trading Arm</b>			
<b>Risk</b>	<b>Impact</b>	<b>Probability</b>	<b>Mitigation</b>
Loss of financial viability – need to stand on own two feet (no local authority money to fall back on)	Very High	Medium	Professional financial management and effective marketing to drive new business development through partnerships.
Disruption to services through disengaged workforce	High	Low	High level of communication and engagement of all employees, customers, partners and other stakeholders to ensure benefits understood.
Interruption to services during transition to the new entity	Medium	Low	Detailed transition and implementation planning.
Transition and implementation project overruns	Medium	Low	Detailed planning, regular progress reviews.
DfE grant timetable is not yet known.	Medium	Medium	Detailed planning, regular progress reviews, regular consultations with ACE.
Pension and other employment liabilities too high for new entity	High	Medium	Professional pensions advisor commissioned by the new entity to support negotiation with pension funds and local authorities.
Increased competition	Medium	High	In the commercial world, the existence of competition is a motivator for innovation in all aspects of products and services. Encouraging a creative culture – one where new ideas are welcomed and every idea is evaluated for implementation – will keep WEMA relevant and competitive.
Loss of grant from ACE	Very High	Medium	ACE have been engaged throughout this process to provide insight and guidance into how WEMA can maintain status and continue to receive the grant and will be consulted throughout the re-tender process.  The Council will be asked to underwrite the cost of winding up the new organisation where costs cannot be met from reserves. This will protect staff in the initial transition phase at no increased risk or cost to the Council.
Lack of diversity and commercial experience in leadership and	Medium	High	Leadership development planned as part of implementation. An independent organisation will need new skills at Board level but will have the capacity to reallocate existing resource to



management team slows down or prevents change			other roles.
Recession will put pressure on household income and school budgets	Medium	High	Independent entity will have an enhanced ability to make individual and ensemble experiences enjoyable enough that children choose not to drop them when given the choice; need to find ways of engaging with schools – maybe through school strategy development – to develop music service of choice relationships.
Increasing cost of transport – school coaches and teachers' personal transport	Medium	High	Organising the teaching staff geographically based on where they live rather than the LA they work for will help allocate lessons with reduced mileage in mind; offering a highly-localised service will reduce reliance on coach transport for schools.
Existing grant contracts not novated	High	Medium	ACE are being consulted on their conditions for grant contract novation. Planning will take these into account to inform timing of creation and transition to the new entity; SLAs with the local authorities for the grant money to be transferred to the new entity are a fall-back option if the novation process cannot be completed by 31 <sup>st</sup> March 2023.

## 7. EQUALITIES

- 7.1. An Equalities Impact Assessment has been completed and identifies no negative impact on users or staff.
- 7.2. The proposal seeks to:
  - 7.2.1. Ensure all staff would TUPE to the new organisation, retaining their existing terms of employment
  - 7.2.2. Ensure the retention of existing services for all users in the future
  - 7.2.3. Create an enhanced offer, particularly focussing on vulnerable people and those in challenging circumstances

## 8. CLIMATE CHANGE

- 8.1. A more cohesive governance structure will enable more efficient deployment of peripatetic teaching staff, reducing carbon footprint and congestion
- 8.2. A shared operating model will eliminate duplication of resources and facilities which will reduce energy use and waste.

## 9. OTHER OPTIONS CONSIDERED

- 9.1. Apply for the new round of DfE funding as a single LA Music Service
  - 9.1.1. Very unlikely to be eligible, and if eligible, very unlikely to be successful. Does not benefit from the existing partnership work which improves the universal music offer in North Somerset. Service will most likely need to close.
  - 9.1.2. Redundancy and possible pension costs are likely to be in excess of £150k
- 9.2. Proceed with a merged Tri-LA music service, but remain within the LA
  - 9.2.1. Does not meet DfE/ACE vision so weakens our bid to retain funding
  - 9.2.2. Increased risk that a competitor's bid would be successful
  - 9.2.3. Redundancy costs (as a single Service, or merged) plus likelihood of early-retirement pension costs are high
  - 9.2.4. None of the 3 LAs are willing to host the shared service as too high risk. Therefore not a viable option

## 10. CONSULTATION

- 10.1. These proposals were supported by the Children's Services Policy Scrutiny Committee in November 2022.
- 10.2. The proposals were agreed by the Executive Committee in North Somerset on 7<sup>th</sup> December. Proposals to the Cabinet Members are at a similar stage in both B&NES and South Gloucestershire.
- 10.3. Staff have been briefed and there is approval of proposals which seek to protect their future. Consultation will take place, as required by HR policy, at the appropriate time

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<b>Background papers</b>	<p>The National Plan for Music Education (Department for Education, 2011)  <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf</a></p> <p>The Power of Music to Change Lives: A National Plan for Music Education (Department for Education, 2022)  <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086619/The_Power_of_Music_to_Change_Lives.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086619/The_Power_of_Music_to_Change_Lives.pdf</a></p> <p>Arts Council England Music Hub Investment Programme (2022)  <a href="https://www.artscouncil.org.uk/our-open-funds/music-hub-investment-programme">https://www.artscouncil.org.uk/our-open-funds/music-hub-investment-programme</a></p>

Consultation into the future governance of the Music Services for B&NES, North Somerset and South Gloucestershire (Lock, Thareja, 2022)

[www.wema.org.uk/download/wema\\_report1.pdf](http://www.wema.org.uk/download/wema_report1.pdf)

Business case prepared by The Head of Service and project consultants High Growth Knowledge Company Ltd

[www.wema.org.uk/download/business\\_case1.pdf](http://www.wema.org.uk/download/business_case1.pdf)

Arts Council England – Music Education Hubs Terms and Conditions 2022-2023

<https://www.artscouncil.org.uk/media/20187/download?attachment>

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