

CABINET

21 March 2023

Title: Secure Children's Home for London and the Pan-London Commissioning Vehicle	
Report of the Cabinet Member for Children's Social Care and Disabilities	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Director: Chris Bush, Director of Care and Support Commissioning	
Accountable Strategic Leadership Director: Elaine Allegretti, Strategic Director of People and Resilience	
Summary: <p>Children with particularly complex needs, including those who are at significant risk of causing harm to themselves or others, including risk to life, can be placed in a secure children's home to protect their welfare when no other type of placement would keep them safe. There is a significant shortage of national secure children's home provision, as highlighted by OfSTED, and London has no provision. Children who are placed in secure welfare are often placed the furthest from their home local authorities at an average distance of 192 miles disrupting stability and positive family and community relationships.</p> <p>The numbers of children placed are small, but the placements expensive. Further, where places are not available, the alternatives, often requiring multiple ratios of staff for each child, are amongst the costliest placements for children's services. For example, the Association of Directors of Children's Services (ADCS) recently highlighted more than twenty local authorities paying over £20,000 per week (equivalent to £1 million per year) and one case of £49,680 per week (equivalent to over £2 million per year).</p> <p>There are few children requiring secure welfare provision and in the eight months to July 2022 the numbers per local authority in London ranged from zero to three, with further children being referred but unable to be placed as a result of lack of capacity. There is an opportunity now to develop and establish secure children's home (SCH) provision in London to bring additional capacity to the market, with capital provided by the Department for Education, but this requires a pan-London approach.</p> <p>It is proposed that a company, known as a Pan-London Vehicle (PLV) and owned by London local authorities, should be established to oversee the development and running of the new secure children's home (SCH) provision. In the long term, it is intended that the PLV's remit will include other key pan-London commissioning arrangements that will improve the lives of London's children and young people.</p> <p>The PLV will initially oversee the development of the operating model for the new SCH provision, then the build and commissioning arrangements to run the service. The PLV</p>	

will be a means to share the risks and benefits associated with developing and running the SCH, with a key benefit being that places at the new provision will be prioritised for the London local authorities who opt in to join the PLV.

Recommendation(s)

The Cabinet is recommended to:

- (i) Agree in principle that the London Borough of Barking and Dagenham becomes a member of a not-for-profit company, limited by guarantee, provisionally to be known as the Pan London Vehicle, to:
 - (a) develop and then oversee the running of London's secure children's home provision for a five-year period from 1st April 2023 to 31st March 2028, with a break-point after three years once the refreshed business case has been developed as well as the service pricing structure, commissioning approach, operating model, practice model and the SCH's location is confirmed. Once the provision has launched, membership will be at a fixed annual cost of £20K (subject to inflation adjustment), unless an alternative model for funding the PLV, that does not require annual subscription, is agreed by members during the development phase, and
 - (b) collaborate with other PLV members on future joint commissioning programmes.
- (ii) Commit in principle to joint oversight and risk/benefit sharing of the secure children's home provision, through the PLV, for a five-year period to 31 March 2028 (with three-year break point), that includes the build, service development and service commissioning phases, subject to ratification from Legal and Corporate procurement after the revision of the SCH business case, and renewable on a 10-year cycle thereafter, with break-point after five years; and
- (iii) Delegate authority to Strategic Director, Children and Adults, in consultation with the Cabinet Member for Children's Social Care and Disabilities and the Chief Legal Officer, to make the final determination on the Council's membership of the PLV, following completion of the revised SCH business case and, if appropriate, enter into all the legal agreements, contracts and other documents on behalf of the Council required to implement and run any aspect of the PLV arrangements, including exercising any break clause on behalf of the Council; and

Reason(s)

The Pan-London Vehicle for commissioning will help the council to fulfil existing sufficiency concerns for our children and young people whilst also providing a mechanism for future provision to be developed. Securing appropriate sufficiency will allow Barking and Dagenham to meet and exceed statutory requirements and expectations set by Ofsted.

This project will align to several Council strategies such as the Joint Health and Wellbeing Strategy through ensuring vulnerable children who come into our care and meet the requirements for secure welfare can access the right type of placement with therapeutic support to build resilience. The theme of building resilience of children and young people

spans across many strategies such as the Education and Participation Strategy and Sufficiency Strategy for Children's Care and Support.

1. Introduction and Background

London's Need for Secure Welfare

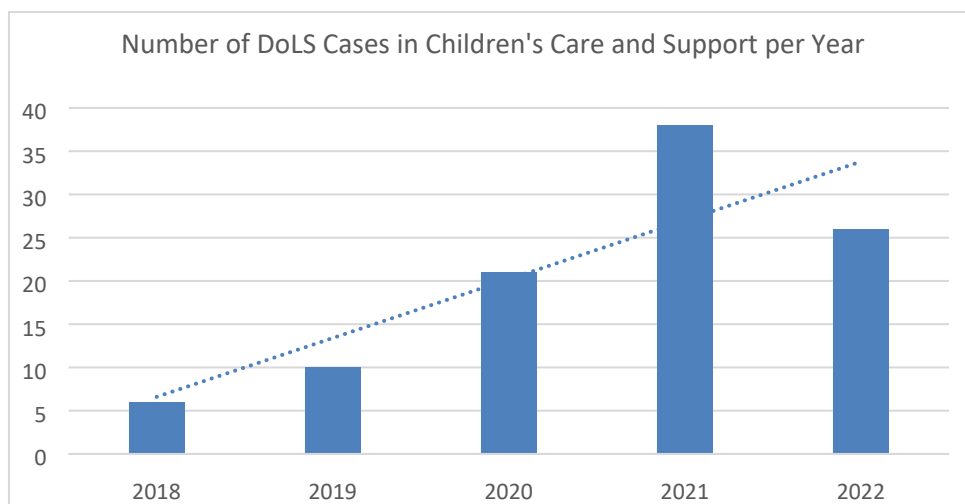
- 1.1 Children with particularly complex needs, including those who are at significant risk of causing harm to themselves or others, including risk to life, can be placed in a secure children's home when no other type of placement would keep them safe. Children placed in SCHs are likely to have experienced a number of placements that have broken down, missed a lot of education, have unmet emotional and physical health needs and have suffered a great deal of trauma in their lives. SCHs provide a safe place where these very vulnerable children can receive the care, education, and support that they need. A secure children's home is a locked environment, where their liberty is restricted, and they are supported through trauma aware and psychologically informed integrated care, health and educational services.
- 1.2 Across London, a relatively small number of children require a secure welfare placement, which is very high-cost provision and despite their complex needs, these children are often placed the furthest from their home local authorities, an average distance of 192 miles, which impacts detrimentally on children who lose contact with family and the community. Additionally, the loss of local contacts and pathways in education, training and employment has a negative impact on their development post-placement.
- 1.3 Further, there is a national shortage of provision and places are often not available when referrals are made so children are then placed in less suitable but higher cost alternatives. This shortfall in provision is particularly acute in London where there is not any Secure Provision – over three years London referred 295 children to Secure Provision but only 159 received places. The majority of requests (72%) are for children from Black, Asian and Multi-Ethnic (BAME) groups, well in excess of the London comparable profile of 41%. The current arrangements are exacerbating poorer outcomes for this group and racial disparities.
- 1.4 Pan-London analysis pre-Covid (eight-month period October 2017 to May 2018) highlighted that an average of 21 London children were in Secure Welfare provision at any one time.
- 1.5 Snapshot data taken at the end of each month, in the period between December 2021 and September 2022 shows that there is, on average, 12 of London's children in a secure welfare placement at the end of each month – this includes 3 children each month who are living in a secure welfare provision in Scotland - over 450 miles away. Although this looks like a fall in numbers compared to pre-Covid, in the same period, the data shows that 29 referrals were made but a placement was not offered. In a September 2022 survey, London local authorities reported that due to the known shortage of provision, they often do not make a formal referral at all. This indicates that the national shortage of provision is impacting even more of London's children than the data suggests.

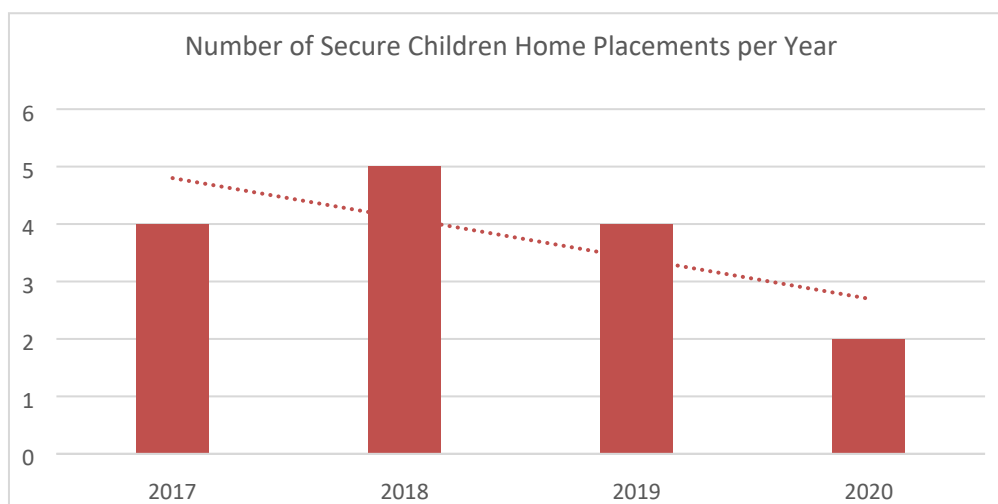
- 1.6 For example, the Association of Directors of Children's Services (ADCS) recently highlighted more than twenty local authorities paying over £20K per week (equivalent to £1 million per year) and one case of £49,680 per week (equivalent to over £2 million per year). Of a sample of 50 'alternative to secure' placements reported in a September 2022 survey, 17 related to children with a deprivation of liberty order in place. Instead of being placed in a secure children's home, as required by the court order, these children were placed in settings that are not specifically designed to keep them safe and 10 of these placements were in unregulated settings or in provisions that are not legally registered to operate as a children's home. This means these vulnerable children would be at risk of not receiving the care, education and support that they needed.
- 1.7 Financial data provided by London local authorities in the September 22 survey shows that the average cost of a secure welfare placement has increased; the average being £7K per week in 2019, rising to £10.5K per week in 2022 and some local authorities have paid up to £25K per week for secure welfare placements in that period. In the same period, local authorities have also paid up to £30K per week for placements made as an alternative to secure.
- 1.8 The numbers of children are too small and the investment required too great for any one local authority to run its own provision, but there is potential for a pan-London approach, which would enable the benefits to be shared whilst also jointly managing the risks of developing such provision. A pan-London approach also fits with recent reports from the Competition and Markets Authority (<https://www.gov.uk/government/publications/childrens-social-care-market-study-final-report/final-report>) and the Independent Review of Children's Social Care (<https://childrensocialcare.independent-review.uk/>) which recommended multi-authority approaches to develop greater understanding of need, engage with the market and stimulate new provision.
- 1.9 The need for provision was also highlighted through Her Majesty's Chief Inspector's Annual Report to Parliament (2020) which stated – *The national capacity of Secure Children's Homes remains a significant concern, with approximately 20 children awaiting a placement on any given day and the same number are placed in Scottish secure units. This increases pressure to use unregulated provision. Provision is not always in the right place, so that some children are placed a long way from their home and family.*
- 1.10 The Association of London Directors of Children's Services (ALDCS), working with NHS England and the Mayor's Office for Policing and Crime (MOPAC) commissioned a review in 2018 of the use of Secure Children's Homes by London's children and young people. This review provided detailed evidence of the need for provision in London, which has informed this report.
- 1.11 There is also a shortfall of high-cost low incidence provision in London, estimated as at least 225 places, which drives up costs resulting in overspends across London local authorities which exceed £100 million. The Competition and Markets Authority highlighted the lack of suitable local provision nationally, but particularly in London citing – *'lack of placements of the right kind, in the right place...materially higher prices...and providers carrying very high levels of debt.'*

- 1.12 In February 2022, DfE confirmed the funding to take a proposal forward for Secure Children's Home provision in London with 24 places, alongside step-down provision. The step-down provision will provide for much improved transition after placement. Over £3 million has been allocated for development, with capital of over £50+ million expected subject to completion of the development phase. The development funding is currently being held by the London Borough of Barnet on behalf of all London local authorities. DfE is reviewing progress against gateway milestones, one of which is the commitment of local authorities in London.
- 1.13 The DfE development grant will cover the PLV's costs during the development period, therefore local authorities will not be required to make a financial contribution to the running of the PLV until the SCH provision launches. During this development phase, PLV members will work collaboratively to agree how the SCH provision will be run and managed. This includes:
- developing and approving the pricing strategy and revenue model for generating financial income;
 - developing the practice model and operating model including but not limited to:
 - the approach to working with children, young people and their families,
 - safeguarding and risk management arrangements,
 - quality assurance arrangements,
 - the commissioning approach / staffing model,
 - the process for managing referrals and placement allocation.
 - Inputting into and approving a refreshed business case which will
 - revisit and update the 'case for change',
 - provide up to date and well-developed costings, informed by the final model of practice and operating model,
 - identify the benefits that will be delivered by the new model (financial and non-financial),
 - consider the most suitable route for appointing a service provider.
- 1.14 During the development period, member local authorities will also explore alternative models for covering the cost of running the PLV that does not require annual subscription.
- 1.15 Following decisions by London local authority Cabinets or equivalent decision-making bodies across London, the Pan-London Vehicle will be formed as a legal entity with members from the London local authorities who have agreed to opt in.
- 1.16 Subject to a sufficiently large number of London local authorities opting in, then the development of the London Secure Children's Home will proceed, with planned opening between 2025 and 2026.
- 1.17 Following revision of the business case, local authorities will be asked to confirm their commitment for the remainder of the five-year period based on the commitment in principle sought in this paper. At this stage, it will be possible for local authorities to opt out, but this is considered unlikely as risks are low given the demand for provision.

Barking and Dagenham's Need for Secure Welfare

- 1.18 Since 2011 our population has rapidly grown, increasing by 17.7% between the 2011 and 2021 census, the second fastest growing borough across London. This is far greater than the increase for London (7.7%) and England (6.6%), which presents a significant challenge for services that deliver locally to reach and support more residents with existing resources and funding. Barking and Dagenham's Children's Social Care needs are unique due to our local demographic, we have a high level of demand and need to take particular care that our services are equitable and accessible for all in our communities. To illustrate this Barking and Dagenham has the highest proportion of under 16s across London and a highly diverse population in terms of ethnicity and highly diverse population (67.1% BAME as per the mid-2021 population estimates).
- 1.19 Barking and Dagenham has a high rate of looked after children of 63 children per 10,000 population aged under 18, the highest of our neighbouring boroughs. The high level of entry into care is likely due to the level of socio-economic deprivation locally. Deprivation and poverty is known to correlate with the increased frequency of Adverse Childhood Event (ACEs) which result in poorer health outcomes for children and young people and increase the likelihood of entering into care. Barking and Dagenham unfortunately faces the highest Indices of Multiple Deprivation across London. The incidence of ACEs and our unique demography may increase children and young people's vulnerability to extra-familial harm due to having fewer self-protective factors, placing them at greater risk of multiple traumas which increases the complexity of need of those entering Children's Social Care. As a local authority we must ensure that both the strengths and nuances of diversity are understood and taken into consideration as best practice when delivering trauma-informed responses.
- 1.20 Where a child has a history of absconding and is likely to continue to abscond from any other description of accommodation and is likely to suffer significant harm, such as criminal or sexual exploitation or they pose a harm to themselves or others the court can agree for a Deprivation of Liberties Safeguard (DoLS) Order to be put in place. The level of complexity Children's Care and Support in Barking and Dagenham is increasing, indicated by the high number of DoLS in place this year, forecast to correlate with the previous years increasing trend.





- 1.21 Despite the greater number of DoLS in place we have fewer placements within Secure Children's Homes, unfortunately this is not likely to be due to a reduction in demand. Currently the Secure Welfare Coordination Unit manages all referrals for Welfare Secure Placements, the process is laborious and sits outside our normal commissioned arrangements. There are currently between 55 – 65 referrals at any one time, with the current availability as of 4th November 2022 as 5 beds in Secure Children's Homes available for 54 referrals. Despite having beds available placements cannot be made due to matching requirements to ensure the children already placed would not cause harm to the young person being referred and vice versa.
- 1.22 To accommodate such complex needs, our placement budget is strained through finding innovative ways to accommodate them, illustrated through the two case studies below. We requested our data from the Secure Welfare Coordination Unit to provide us with a data set
- 1.23 **Case Study A:** Child A came into our care due to challenging behaviour and her family being unable to manage their needs and behaviour at home, they have a history of absconding and can demonstrate behaviour that place both themselves and those around them at risk of harm through aggressive or violent behaviour. Child A has a severe mental health diagnosis and has been exposed to exploitation. Since the most recent placement breakdown with a foster carer a new placement is to be sought to support the family and maintain relationships. The placement must provide therapeutic care with at least 2:1 staffing. Child A would be eligible for a Secure Placement however due to the demand is unlikely to receive one, we have been quoted approximately £32k per week, £1.7M per year, for her placement in a residential home with wrap around support. Due to the high cost, the placement was refused, and the search is still ongoing at present.
- 1.24 **Case Study B:** Child B currently has a deprivation of liberties order in place and is currently in a solo placement to best meet their needs. Child B has a history of absconding from placement and has been hospitalised under the mental health act. Child B has mental health diagnoses and suspected Autism Spectrum Disorder. Child B has a live referral to the Secure Welfare Coordination Unit, however they are currently placed in a residential home with 4:1 staffing costing over £10k per week, it is anticipated that if provision stays the same, the placement for Child B will cost £975,470 for the financial year 2023/24. The current placement has given

notice and we are currently struggling to find an alternative placement due to the lack of sufficient provision nationally to meet these needs

Project Journey

- 1.25 The Association of London Directors of Children's Services (ALDCS), London Councils, NHS and London Innovation and Improvement Alliance (LIIA) have expressed unanimous support for the development of secure children's home provision and developed a business case for secure children's home provision in London. This business case, which is available on request, has formed the basis of a successful bid to Department for Education and funding has been allocated to develop the required provision for London children.
- 1.26 As well as ALDCS members, a range of stakeholders were engaged throughout the development of the business case including:
 - London Councils' Executive, Leaders' Committee and Lead Members;
 - Society of London Treasurers;
 - Local authorities (children's social care and youth offending teams);
 - Central government (Department for Education, the Mayor's Office for Policing and Crime, OFSTED, Ministry of Justice);
 - Clinical experts and practitioners within the field of children's services and health;
 - Third sector organisations delivering children's services and
 - Children and young people with lived experience of SCH
- 1.27 A Secure Children's Home and Community Project Steering Group has been established, comprising London Directors of Children's Services, together with Health, Mayor's Office for Policing and Crime (MOPAC) and the Department for Education. This group is providing oversight until the formation of the proposed Pan-London Vehicle.
- 1.28 The development funding is currently being held by the London Borough of Barnet on behalf of all London local authorities. DfE is reviewing progress against gateway milestones, one of which is the commitment of local authorities in London.
- 1.29 The DfE development grant will cover the PLV's costs during the development period, therefore local authorities will **not** be required to make a financial contribution to the running of the PLV until the SCH provision launches. During this development phase, PLV members will work collaboratively to agree how the SCH provision will be run and managed.
- 1.30 A site search has been conducted, based on the statutory criteria for a Secure Children's Home. From a long list of over 400 sites initially considered, two preferred options have been identified, one of which is being taken forward first for more detailed assessment.
- 1.31 The proposed provision will be designed specifically for London, with purpose-built accommodation. This will reduce the risk of beds needing to be held vacant after a high-risk child is placed there to maintain a safe environment. The provision is being designed with co-located step-down facilities with wrap-around support, which is an innovative approach to supporting the children post-placement. This will enable a

smoother transition and a return to the family or to the most appropriate long-term placement that will meet the child's needs. This will also prevent use of emergency placements following a 72-hour placement in secure, when the local authority may not have enough time to identify best next placement or prepare child and family for safe return home. This can lead to placement breakdowns or return to care, which incur avoidable costs and impact detrimentally on outcomes for the child

2. Proposal and Issues

2.1 The Pan-London Vehicle:

- 2.1.1 The Pan-London Vehicle will be structured as a new legal entity which will allow any provision developed to be jointly owned and managed by London Local Authorities, this will share the risk and benefits across authorities.
- 2.1.2 The Pan-London Vehicle will be established as a Company Limited by Guarantee. This model will allow for joint ownership, with limited liability to its member organisations. Any profits held within the Company must be used for the development of future provision. The tax implications of the PLV are to be outlined at a later date subsequent to tax advice to avoid unnecessary VAT consequences.
- 2.1.3 The Pan-London Vehicle will employ a small number of staff to be hosted by a larger organisation such as a lead local authority so the company can limit overheads and benefit from existing organisational capacity. The key options are for it to be hosted in the London Borough of Barnet as the current fund-holding body or to be hosted in the local authority where the new Secure Children's Home is located, which is yet to be finalised. The location of the PLV will be agreed after the location of the Secure Children's Home has been finalised.
- 2.1.4 The governance arrangements will provide for a joint committee of the PLV member LAs to comprise the Directors of Children's Services or similarly senior and appropriately skilled officers of the members' local authorities. The members of the joint committee will each act as a representative of their respective local authority at "shareholder/owner" level. The joint committee will be involved in approving the PLV's business plan, budget and the other reserved matters to be decided on behalf of the PLV member local authorities.
- 2.1.5 The PLV will subsequently oversee the development period of the secure provision for the first two years of the contract term prior to the mobilisation of an operational service.
- 2.1.6 The legal structure, governance and membership of the PLV is outlined in more detail in Appendix 1.

2.2 The Provision

- 2.2.1 This options analysis has led to the recommendation for Secure Welfare Children's Homes provision for London with capacity for 24 placements, alongside facilities for step-down accommodation and support to support the children after placement.

- 2.2.2 The proposed provision will be designed specifically for London, with purpose-built accommodation. This will reduce the risk of beds needing to be held vacant after a high-risk child is placed there in order to maintain a safe environment.
- 2.2.3 The provision is being designed with co-located step-down facilities with wrap-around support, which is an innovative approach to supporting the children post-placement. This will enable a smoother transition and a return to the family or to the most appropriate long-term placement that will meet the child's needs. This will also prevent use of emergency placements following a 72-hour placement in secure, when the local authority may not have enough time to identify best next placement or prepare child and family for safe return home. This can lead to placement breakdowns or return to care, which incur avoidable costs and impact detrimentally on outcomes for the child.
- 2.2.4 The development costs (c£3 million) and the capital costs (c£50+ million) will be provided by Department for Education, subject to completion of agreed project milestones. This is a significant investment in provision for London's most vulnerable children which will be secured for London with the commitment of London local authorities
- 2.2.5 The total annual of cost of placements at Secure Children's Homes that the new provision would replace was estimated in the original business case (2019 figures) as £7.8 million per annum. The new provision overseen by the PLV has an estimated cost of £7.5 million (2019 figures), based on the original business case – note that these costs have not been adjusted for inflation. See Appendix 2 for inflation adjusted financial modelling.
- 2.2.6 The full business case will be revised and updated following site confirmation and local authority confirmation of participation. In the meanwhile, the costs have been updated using the Consumer Price Index (CPI) and evidence from London local authorities, with summary modelling in Appendix 2.
- 2.2.7 The financial commitment by each local authority is £20K per year (payable only once the provision has launched) for the operating costs of the PLV, with an opt-out facility after three years, informed by the revised business case, detailed model and confirmed location. Additionally, once launched; each participating local authority will share in the risk and benefits of operating the Secure Children's Home provision estimated to be £8 million per year (adjusted from 2019 for inflation). As demand for provision exceeds the capacity of the new London Secure Children's Home provision, the risks are minimal and the benefits across London are significant. A range of scenarios are modelled in Appendix 2, setting out the financial impact in each case.
- 2.2.8 Provision at Secure Children's Homes costs between £7k and £10.5K per week, based on sample London data. Where Secure Children's Home provision is not available, alternative provision is very costly, typically £12k+. Nationally, the Association of Directors of Children's Services (ADCS) has highlighted more than twenty local authorities paying £20K+ per week (equivalent to £1m per year) and one example of a local authority paying just under £50k per week (equivalent to over £2m per year). Some London local authorities have no children on Secure places currently, but these are very significant costs even if only experienced once every few years.

3. Options Appraisal

3.1 The Secure Children's Home Steering Group conducted an options appraisal. For the legal basis for setting up and running the Pan-London Vehicle the following options were considered:

- Company Limited by Shares
- Company Limited by Guarantee
- Limited Liability Partnership
- Charitable Status
- Community Interest Company

3.2 Following expert legal analysis of these options, their recommendation is that the PLV should be established as a Company Limited by Guarantee. This enables joint ownership, with limited liability and any profits being held within the Company for future provision.

3.3 The business case to address the need for Secure Welfare Provision, considered a range of options as listed below:

- Do nothing
- One small Secure Children's Home (8-12 places)
- One large Secure Children's Home (20-24 places)
- Two small Secure Children's Homes (8-12 places each)
- Enhancing existing resource
- Specialised community team
- Step-down facility
- Specialised open facility

3.4 These were evaluated through stakeholder engagement and assessment against the following criteria:

- Impact on early intervention and prevention
- Accessibility of a secure placement
- Continuity of care and relationships
- Care and education in the placement
- Transition from secure to community
- Value for money
- Initial investment
- Deliverability

3.5 This options analysis has led to the recommendation for Secure Welfare Children's Homes provision for London with capacity for 24 placements, alongside facilities for step-down accommodation and support to support the children after placement. The key reasons are summarised below:

- Provision for 24 places would meet the demand in London
- Step-down provision would enable better exit planning and work to take place to support children and young people within the community, reducing the likelihood of repeat placements in secure welfare

- Step-down facilities will enable more holistic support to be provided to prevent unnecessary transitions into secure provision for children and young people on the edge of a secure placement
- The following options were rejected for the reasons given:
- Enhancing existing resource - rejected due to the complexity of allocating resource to disparate CAMHS, social care and YOT teams across London and the lack of a joined-up approach across London.
- Specialised community team - rejected due to the risk of duplicating the role of Community Forensic CAMHS teams and fragmenting care pathways

4. Consultation

- 4.1 The proposals in this report were considered and endorsed by the Procurement Board on 19 December 2022.

5. Corporate Procurement

Implications completed by: Francis Parker – Senior Procurement Manager

- 5.1 The proposed consortium approach to delivering this service will increase capacity and lead to a reduction in placement costs for the service. Officers are satisfied that this approach will offer the best value for money to the Council.
- 5.2 The exact procurement procedures have not been agreed at this stage, so further reports will need to be presented for comment and scrutiny.
- 5.3 Officers will need to ensure that all procurement rules and processes are followed if they are applicable.

6. Financial Implications

Implications completed by: Sharon Ring, Finance Business Partner, Children's Care and Support

- 6.1 Barking and Dagenham faces the highest Indices of Multiple Deprivation across London leaving the borough vulnerable to volatile price rises for very high-cost provision of secure placements for which there is a national shortage. Above inflation price increases driven by scarcity over demand have seen costs of £7K per week in 2019, rise to £10.5K per week in 2022 with some local authorities paying £25K for secure welfare placements.
- 6.2 Whilst demand is unpredictable a sample of 2 case studies revealed potential placement provision costs of £32k and £10k per week respectively due to staffing ratios and complexities for just 2 of our recent cases.
- 6.3 PLV development costs (c£3 million) and the capital costs (c£50+ million) will be covered by the Department for Education.
- 6.4 The host organisation is anticipated to be either London Borough of Barnet or the premises locality. Development funding is held by London Borough of Barnet.

- 6.5 Local authorities will not be required to make a financial contribution to the running of the PLV until the SCH provision launches.
- 6.6 Financial commitment by each local authority is £20K per annum from 1st April 2023 to 31st March 2028 for the operating costs of the PLV, with an opt-out facility after three years on 31 March 2026. The contract will then have an opportunity to extend for a further 10 years with a 5-year break clause.
- 6.7 During the development phase, PLV members will work collaboratively to agree how the SCH provision will be run and managed, including developing and approving the pricing strategy and revenue model.
- 6.8 The local authority will be responsible to cover placement cost and liable for an equal share of any losses.
- 6.9 The annual LBBD budget for secure units is currently £409,700, with a forecast underspend for 2022/23.

7. Legal Implications

Implications completed by: Kayleigh Eaton, Senior Contract Lawyer

- 7.1 This report is seeking an in-principle approval for the Council to participate in a Pan London Vehicle ("PLV") which will be jointly owned by London local authorities with the aim of developing and establishing a secure children's home. This vehicle will take the form a Company limited by guarantee with any profit being reinvested back into the company's activities. Each Council joining the PLC will be a member and will appoint directors to the board of the Company.
- 7.2 The Council has power to enter into the arrangement by virtue of the general power of competence provided by s1 of the Localism Act 2011. This enables the Council to do anything that individual generally may do. This report states that securing appropriate provision will allow Barking and Dagenham to meet and exceed statutory requirements under the Children Act 1989 and provide a suitable cost-effective place for vulnerable children to receive the care, education and support that they need. Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge or any of its functions. This power combined with the duty under the Children Act permits the establishment of this company.
- 7.3 It is noted a business case was drafted at the original stages and this is the basis on which the DFE funding was secured. This business case will be revised and updated following site confirmation and local authority confirmation of participation in year 3 for the subsequent 5 years.
- 7.4 This report sets out that the Council will need to contribute £20,000 per annum. The development and capital costs will be provided by the Department for Education, subject to completion of agreed project milestones. The Council will bear any risks associated with the vehicle along with the other local authority owners.
- 7.5 Consideration will need to be given to the Subsidy Control Act 2022 throughout the process when any financial assistance is provided to the PLV.

7.6 Legal advice has been sought and the Council should ensure that it can rely on this advice. It is also recommended that the advice is updated to reflect various legislative changes post Brexit due to this being drafted in 2019, updates to the Subsidy Control regime, current and prospective procurement regulations, power to enter into the arrangement taking account of 10.2 above, the business case and the risk to Council members of the PLV if contracting parties require guarantees because of the nature of the vehicle.

8. Other Implications

8.1 **Risk and Risk Management** - There are risks associated with joining the vehicle and oversight of the London Secure Children's Home. The wider project risks and mitigations are outlined below and will be overseen by the Secure Children's Home Steering Group. Any specific risk to the Local Authority will be escalated through internal governance and presented at the Joint Committee meeting which will have local authority representation. Commissioners will remain involved with the task and finish group to advocate for our specific needs locally and raise awareness internally to ensure it is a resource that operational colleagues will utilise.

Risk	Mitigating action
Failure to achieve expected occupancy levels leading to significant revenue loss	The shortfall in provision in London and nationally makes this a very unlikely risk, although it could be experienced temporarily such as in the initial operating period or other scenarios highlighted below. Lower occupancy in the initial operating period has been modelled. Governance, management oversight, and adequate levels of experienced staff will be key to ensuring good occupancy and these are built into current plans. The PLV and London provision will work closely with the central SCH co-ordination unit to proactively sell places to UK local authorities at a cost that will recover the loss / potential loss of revenue.
Unsatisfactory outcome from statutory inspections	Recruitment of experienced Registered Manager and other managers with experience of managing a similar provision. Regular monitoring and quality reviews will reduce this risk. Robust management and swift turnaround would be required if an inspection was less than satisfactory.
Child serious injury or death	Robust risk management policies, procedures and training. Strong practice model, safeguards, rigorous performance reviews and effective oversight, with experienced managers and staff who will be in place to minimise this risk.
Temporary closure of the provision or changes to its registration conditions that limit the full use of places – in response to safeguarding or child protection concerns	Ofsted use enforcement powers proportionately and there are a range of options open to them before the closure of a provision. Closure happens only in exceptional circumstances. Mitigation actions include robust safeguarding and child protection arrangements, policies, and training; recruitment of suitably qualified staff and robust quality assurance and monitoring arrangements.
Permanent closure of the provision	Ofsted use enforcement powers proportionately and there are a range of options open to them before the closure of a provision. Closure happens only in exceptional circumstances.

	<p>Mitigation actions include: robust safeguarding and child protection arrangements, policies, and training; recruitment of suitably qualified staff and robust quality assurance and monitoring arrangements.</p> <p>In the unfortunate and unlikely event that permanent closure happens robust business continuity arrangements will outline the steps to be followed with regards to children placed at the provision.</p> <p>Should the PLV be wound up: PLV members will agree to be liable for the debts of the PLV up to a nominal amount e.g., £1. Prior to the launch of the PLV, members will agree, with legal advice, what will happen to the SCH and other related assets and this will be included in the articles of association.</p>
Adverse publicity/Reputational damage from failure of the centre linked to the above or other factors	Proactive communications, strong practice model, safeguards, rigorous performance reviews and effective oversight, management and staffing will be implemented to minimise this risk.
Unnecessary costs through duplicate tax payments or higher tax burden as part of the arrangement.	The steering group is anticipated to commission additional tax advisory resource to review and put in place mitigations to prevent this occurring, this will be shared with legal colleagues on request during the development phase.

8.2 Contractual Issues - Ordinarily the services that are commissioned in relation to a child might be reasonably categorised as “Social work services with accommodation” (CPV Code 85311000-2) – these are subject to what is known as “the light touch regime” (“LTR”). LTR services benefit from a significantly higher competitive tendering threshold (£663,540) than for other services and greater flexibility in the design and operation of public procurement processes.

However, it is worth exploring the establishment of a joint vehicle that will not be subject to the competitive tendering requirements that councils would otherwise be subject to.

There are two exceptions in PCR 2015 to the requirement for competitive tendering that enable the commissioning of services directly from either one or more lead authority or a jointly owned vehicle. These are set out in Regulation 12 PCR 2015:

- public services co-operation arrangement;
- a “Teckal” vehicle

It is likely dependent on the findings and conclusions from the development phase and will need to be confirmed by the legal advice and the company will need to be structured in such a way to satisfy the Regulations. this will be then shared with internal procurement and legal colleagues for approval as discussion progresses.

8.3 Corporate Policy and Equality Impact – The proposal is aimed at improving a range of outcomes for Barking and Dageham's most vulnerable children and young people, including health and education. The current arrangements for secure welfare provision are exacerbating poorer outcomes for this group, particularly those from Black, Asian and Multi-Ethnic (BAME) groups who, based on Pan-London analysis, are overrepresented in secure welfare provision. As well as

securing better outcomes for Barking and Dagenham's BAME children and young people, a new London based SCH provision will help address the racial disparities and issues relating to their overrepresentation in secure welfare provision.

In partnership with other London local authorities, the Council will design the SCH provision, and any other services developed and managed through the PLV, to ensure the specific needs of Barking and Dagenham's children and young people are taken into consideration. As part of the work to develop the new SCH provision and other PLV services, an Equalities Impact Assessment (EIA) will be undertaken to consider the impact of these services on children, young people and their families, in terms of protected characteristics. We have also completed our own internal EIA screening tool which has determined a wider assessment is not necessary, Appendix 3.

Any consultation responses received as part of the EIA that raise matters related to equalities, diversity and inclusion will be addressed in the final service delivery model and kept under review, this includes any impacts to staff.

- 8.4 **Safeguarding Adults and Children** - The establishment of a legal vehicle responds directly to the recommendations set out within the Independent Inquiry into Children's Social Care and addresses an area of insufficiency for London through a collaborative and innovative manner. The retail of additional bed spaces will support to future proof sufficiency across London as funds build for future investment.

This work will support our local strategy to provide young people the best start in life through providing the right placements and quality of care in the right places to meet our needs.

- 8.5 **Health Issues** - The proposal is anticipated to better meet the health needs of those who require secure placements through improved maintenance of positive familial and peer relationships from placement closer to home. This reduced disruption to home life combined with the therapeutic wraparound support and stepdown accommodation will aim to support the resilience of young people and maintain better health outcomes, particularly in relation to mental health.
- 8.6 **Property / Asset Issues** - There is no available asset that would meet the requirement to host the provision locally due to the size of the property required and that will meet the required safeguarding threshold due to the high incidence of gang related crime within the borough.

Public Background Papers Used in the Preparation of the Report:

- London Innovation and Improvement Alliance "Improving Quality, Choice and Cost in Children's Placements 2021-2022"
<https://liia.london/search/search?query=improving+quality>

List of appendices:

- **Appendix 1:** Pan-London Legal Structure and Membership
- **Appendix 2:** Financial Modelling for the Secure Children's Home and Pan-London Vehicle
- **Appendix 3:** Equalities Impact Assessment Screening Tool