

Mayor and Cabinet			
Report Title	Savings proposals and the future of the Youth Service		
Key Decision	Yes	Item No.	
Ward	All		
Contributors	Executive Director (Children and Young People), Executive Director (Resources and Regeneration), Head of Law		
Class	Part	Date	12th November 2014

1. Summary

As part of the Council's budget strategy for 2015 - 2018, the Youth Service presents proposals for savings of at least £1.4m. The report also sets out two options for consideration on the future of the Youth Service to allow planning to proceed into future years.

Option 1 looks at the potential employee mutualisation of the Youth Service following initial reductions.

Option 2 considers reducing the Service to a statutory service only model and increasing the savings by a further £1.7m.

2. Purpose

- 2.1. The purpose of this report is to outline for the Mayor the savings reduction options being put forward in response to Council-wide savings requirements.

3. Recommendations

The Mayor is recommended to:

- 3.1. agree the base savings of £1.4m, subject to consultation including:
- 3.1.1. a reduction to youth worker capacity and removal of Council staff from two youth sites, namely Rockbourne and Ladywell
 - 3.1.2. a reduction to commissioned provision by 31% (£293,000), as set out in section 6.11
 - 3.1.3. a reduction to management and business support staff as set out in section 6.9 and 6.14
 - 3.1.4. further efficiency savings as set out in section 6.12
- 3.2. agree the reshaping of youth re-engagement services (see section 6.13):

- 3.2.1. re-specify the specialist 1:1 service and fund it from other sources
- 3.2.2. re-specify the NEET Programme in accordance with Raising the Participation Age (RPA) and alternatively fund the programme.
- 3.3. Agree that consultation proceeds as appropriate as outlined in 3.1 above and that a report is brought back for decision.. .
- 3.4. Agree that consultation is begun on the future of the Youth Service including Options 1 and 2 as set out in the report with a report being brought back prior to decision.:
- 3.5. Agree the timetable for implementation of the savings (see section 11).

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4. Policy context

Local Policy

- 4.1. The proposals within this report are consistent with the Council's corporate priorities and its need to identify significant savings over the next three fiscal years. In particular, the proposals relate to the Council's priorities regarding Young People's Achievement and Involvement, Protection of Children, and Community Leadership and Empowerment, in line with the Children & Young People's Plan of 2012 – 2015.

National Policy

- 4.2. Positive for Youth was launched in December 2011 as a broad-ranging strategy detailing the Government's approach to youth provision. The strategy calls for 'a new partnership approach' in local areas – between businesses, charities, public services, the general public and young people – to provide more opportunities and better support to young people.
- 4.3. The priorities of last year's restructure were aligned with this strategy.
- 4.4. Positive for Youth promotes early and positive support to reduce the chances of public funds being wasted in holding young people in expensive secure provision or managing the remedial effects of inadequate support and assistance as they reach young adulthood.
- 4.5. The key strategic themes contained in Positive for Youth and Lewisham's Children and Young People's Plan are as follows:
 - Helping young people to succeed
 - Promoting youth voice
 - Early intervention
 - Supporting stronger local partnerships
 - Strengthening communities and the voluntary sector

5. Background

- 5.1 Since May 2010, the Council has reduced its budget by c.£93m. In response to reductions in Government grants, the Council is planning to make further savings of £85m by the close of 2017/2018.
- 5.2 During 2013/2014, the Youth Service implemented a significant organisational restructure. The restructure released savings of £1.03m. These savings were achieved primarily by reducing staff headcount by 18.1 FTE, including a 72% reduction in management, removing youth work staff from two youth centres – Grove Park Youth Centre and Oakridge Youth Centre – and generally ensuring more efficient operations across the service.
- 5.3 The restructure created a leaner, more efficient service more capable of responding to young people’s needs. It also introduced a significantly larger commissioning pot from which voluntary sector and other providers could bid to run youth services.
- 5.4 In this first year post-restructure, the Service has been embedding performance management, income generation and contract management capabilities.
- 5.5 The Youth Service maintains the following aims:
- 1) Encourage others, as well as the Council, to deliver a vibrant range of activities for all our young people to enjoy and benefit from, and to recognise that all activities for young people across Lewisham and London are an important part of our youth offer.
 - 2) To support young people in Lewisham in need of extra help, to achieve the skills they need to become happy, healthy and successful adults.

These aims work to engender the following outcomes for young people:

- 1) Improved life skills
 - 2) Increased involvement in education, employment or training
 - 3) Staying safe and well, and preventing needs from escalating
- 5.6 The Youth Service provides and facilitates access to a range of activities for young people through a combination of direct delivery, support to access delivery provided by other organisations, and commissioning and partnering with the private, voluntary and independent (PVI) sector. The activities are now focused on developing young people’s life skills as agreed in the previous reorganisation of the service.
- 5.7 Provision includes positive activities for young people, offering them places to go and things to do, including social and cultural activities, sports and play, and

early intervention services. The Youth Service also offers informal education, advice and guidance on career choices and healthier lifestyles, and information concerning the dangers of substance misuse.

5.8 The Service's specialist support for young people in relation to education, employment and training consists of 9 specialist one-to-one youth workers, each holding a maximum caseload of 15 cases at any one time, with an annual service reach of c.270 young people. Alongside a one-stop 'holistic support' shop, Baseline, in Lewisham town centre and a variety of commissioned providers, the Service provides one-to-one youth work and information, advice and guidance for the Borough's most vulnerable including support to young fathers, young women and those considering their sexuality. Additionally, the NEET Programme has been offering four 6 week work support programmes for young people who are not in education, employment or training. As a part of the 2013/14 restructure the scheme is changing to become a 12 week Government-recognised traineeship, in partnership with Bromley College, from September 2014. The programme will run 3 times a year in line with school terms. It will continue to work with the same cohort of vulnerable young people, however the longer traineeship will allow them to achieve more robust qualifications, offer accredited numeracy and literacy support and stronger pathways post completion. The scheme will also allow participants to continue to receive out of work benefits whilst on the scheme.

5.9 All of these activities and support systems take place at 7 Council-run youth centres, 5 Council-run adventure playgrounds, via street based work, at Baseline and at a variety of non-council run venues across the Borough.

6 Savings proposal of £1.4m

6.1 With the following savings proposals, the general scope of the Service would remain intact. Under this proposal, staffing levels would be reduced to the minimum level believed necessary to operate an ELM in the future.

6.2 In order to release savings across the Service, it is proposed the Service retain 5 youth centres and 5 APGs, while removing staff from 2 youth centres and ending the Service's street based capacity, reducing front-line staff headcount commensurately. The recommendations as to which two centres would be offered to the voluntary sector or closed are based on factors such as location, the potential for the PVI sector to deliver provision from the sites, and the attractiveness of the remaining facilities to generate income.

6.3 Appendix 2 shows a map of the current youth centres and adventure playground sites.

6.4 It is therefore proposed to close or find alternative providers for youth provision at Ladywell Youth Village and Rockbourne Youth Centre. Both centres already have alternative non-Youth Service provision running from them. Rockbourne

offers short break provision two weekday evenings and Saturdays, and Ladywell offers short break provision on Saturdays. Rockbourne is due to host a scout group from October, whilst Ladywell operates as an adult day care centre the majority of the time. These proposals could allow these provisions to continue and the sites to remain open, enabling the savings to result only from the reduction of Youth Service youth work staff and their delivery of mainstream youth provision.

- 6.5 In both cases, it is proposed the sites remain open in order for short breaks to continue and potentially increase and/or voluntary sector provision to continue and potentially increase.
- 6.6 The Youth Service would continue to directly run the following youth sites:
- 1) Bellingham Gateway Youth & Community Centre, Bellingham
 - 2) Honor Oak Youth Club, Brockley
 - 3) Riverside Youth Centre, Deptford
 - 4) The New Generation Youth Centre (TNG), Sydenham
 - 5) Woodpecker Youth Centre, New Cross
 - 6) Deptford Adventure Playground, Deptford
 - 7) Dumps Adventure Playground, Bellingham
 - 8) Home Park Adventure Playground, Sydenham
 - 9) Ladywell Adventure Playground, Ladywell
 - 10) Honor Oak Adventure Playground, Brockley
- 6.7 The Youth Service's street-based outreach capacity is comprised of 3.4 FTE Support Youth Workers. It is proposed the Youth Service remove this capacity in its entirety. Street-based outreach is not currently a stand-alone team of youth workers dedicated solely to outreach work; it is staffing capacity only. Because of current support staff vacancies the Service is only operating a limited street-based outreach capacity at the moment. Current outreach is used to inform young people of what the Service offers and spur their participation at our youth sites. Our Participation and Engagement Officer's role involves outreach work and it is hoped that some of the loss of street-based capacity could be mitigated by the communications work of the Participation and Engagement Officer. Outreach work could continue with the proposed reduction in staffing, but this would impact the Service's ability to deliver centre-based activities.
- 6.8 Ending Council-run provision at 2 youth centres and removing the street-based outreach capacity would result in a staff headcount reduction of 7.5 FTE Youth Workers (3 FTE Senior and 4.5 FTE Support workers - from 17.5 FTE to 10 FTE). The Youth Service programming provision budget would be reduced commensurate with the end of activity at 2 centres. This reduction would yield a saving of £273,000.

- 6.9 It is proposed that the Specialist Support Manager post be removed from the staffing structure, enabling management of the NEET Programme to be absorbed by remaining managerial staff.
- 6.10 The current Service structure contains 60.7 FTE. The proposed structure will contain 50.2 FTE – a projected staffing reduction of 10.5 FTE and a total saving of £418,000.
- 6.11 In order to release further budget savings, but still maintain the Service's relationship with the community and voluntary sector, it is proposed that commissioning funds be reduced in line with the savings required by the Council – a reduction of 31% (£293,000). During the last restructure, commissioning funds were doubled. A reduction of 31% will still enable the Service to commission an amount greater than what was available in 2012/13. Commissioning funds are used to procure from the private and voluntary sector a broad range of provision that supplements the Youth Service's direct delivery and ensures diversity of youth provision across the borough, as well as offers elements of specialist activities that the Service could not offer alone. A process for downsizing current commissioning arrangements would commence from October/November.
- 6.12 The Service currently allocates monies for training, a level of public resource IT, print materials, stationery and other miscellaneous expenses. It is proposed the Service identifies efficiencies in this area of its budget, enabling a saving of £24,000.
- 6.13 The Service will generate income by renting space to private and community sector users and bidding for relevant, available grants. It is proposed the Service aims to generate a minimum of £100k of income to mitigate some of the reductions. Based on current projections and the retention of at least 5 youth centres and 5 adventure playgrounds, it is feasible the Service will reach this target of £100k by the end of 2015/2016.

Reshaping youth re-engagement services

- 6.14 There are three elements of the current service that are proposed to be brought together more strategically to form a youth re-engagement service that operates under the aegis of the Youth Service in the short term, but would remain with the Council if the Youth Service mutualises or is reduced to a statutory service. In the case of the former, the Council could commission an ELM to provide services, if doing so yields better value and is in the best interest of young people. This would leave a resource of £705k focused on re-engaging young people for 2015/16. The elements of this service are:
- a) Specialist 1:1 Service
 - b) The NEET Programme

c) NEET tracking services

- a) **The Specialist 1:1 Service** is an outreach service operated out of Baseline in Lewisham Town Centre. It is currently comprised of 9 FTE Specialist Youth Workers, 1 FTE Specialist 1:1 Coordinator and 1 FTE Specialist Support Manager, representing a total cost of £450k. The service works with young people and offers individual support to empower them to become resilient and support themselves through issues and to help them achieve positive life outcomes. The service also supports emergency situations, signposting to others and delivers holistic information, advice and guidance. The proposal is to remove the Specialist Support Manager post, as noted above in section 6.8, leaving a budget of £390k and then consider the best means to continue delivery. This could be via re-specification and potential commissioning of the service as part of the Targeted Family Support Service. Regardless of form, it is proposed that savings are made as set out and the reduced service be funded through use of the Government's Troubled Families Grant and income from other sources which are being currently investigated, including the Education Funding Agency and schools.
- b) **The NEET Programme** currently operates out of the The New Generation (TNG), runs four times a year and comprises 1 FTE Specialist Group Work Coordinator, 1 FTE Senior Youth Worker, 1.2 FTE Support Youth Workers and programme costs. The total current cost of the service is £197k. As a part of the 2013/14 restructure the scheme has already undergone changes set to begin in September 2014. These make the scheme a formal traineeship. Whilst the programme will continue to work with the same demographic of young people, it will reduce to 3 programmes per year, but increase the length of each to 12 weeks, offer literacy and numeracy qualifications and be funded in-part by Bromley College. It is proposed that, further to these changes, initial savings of £82k be made by removing the Specialist Group Work Coordinator post and further reducing the programming costs. This will leave a budget of £115k. The then reduced service would be funded via alternative monies from schools, colleges and the Education Funding Agency.
- c) The Council has a statutory responsibility to monitor and track NEETs and to support vulnerable NEETs. It is proposed that this element of the Youth Service remains intact, with 1 FTE NEET Tracking Manager, 1 FTE NEET Tracking Coordinator, 1 FTE NEET Tracker, the information management system and a communications budget. Minor reductions are proposed to be made to the communications budget. This will leave a budget of £200k.

The £705k total cost of a re-engagement service is:

- a) £390k for specialist 1:1 support services
- b) £115k for NEET Programme
- c) £200k for tracking young people who are NEET

7. Options for the future of the Youth Service

7.1 It is important strategically to set an end option for the Youth Service due to further Council funding reductions required in subsequent years. Annual reductions to the Service would have a detrimental effect on young people and frontline staff who serve them, making it difficult to involve young people in the face of diminishing provision and motivate and retain talented staff in the face of continuing requirements for redundancies. The following two options are proposed in order to forestall these and other negative implications. Other options, such as further reducing the service or commissioning out all or part of the service were considered by officers but have not been recommended because they do not offer either the same level of potential savings to the Council or the possibility of maintaining as much of the service as possible with reduced funding to the Council.

7.2 Option 1: mutualise the Youth Service

7.2.1 Option 1 proposes moving to an ELM after the initial savings are made. This would require a lead-in time of one year to research, develop and prepare for an ELM, and then at least three more years to support an ELM on a contractual basis.

7.2.2 Mutualisation, or the development of an employee-led mutual (ELM), refers to a council or state entity that spins-away from its parent statutory body, enjoys enhanced autonomy concerning governance and provision, and continues to deliver vital public services whilst reinvesting financial surpluses back into the organisation.

7.2.3 The initial savings proposals already described would leave intact a service model that is believed could become a viable business.

7.2.4 The benefits of mutualising the Youth Service are as follows:

- There would be a greater opportunity for involvement of young people in the Borough by allowing them to become part owners of the ELM and have an elected place on its board.
- The ELM would have greater flexibility to strategise, innovate and better meet the needs of end users and stakeholders.
- As an ELM, the entity could avail itself of grant funding streams, sponsorships and income generation opportunities currently unavailable to local authorities.
- A good level of youth provision would be maintained in the Borough long-term with reduced or potentially no funding from the Council.
- Moving to an ELM has the potential to influence positively organisational behaviour, particularly with regard to creating a shared sentiment of staff ownership, minimising sick days and increasing influence over future decisions.

- The Council would retain a relationship with a staff group that maintains already-established relationships with young people and community members in the Borough.
 - Opting out of the Council would reduce longer-term liabilities to the Council.
- 7.2.5 If Option 1 is agreed, the Youth Service would immediately enter into the planning and scoping stages of creating an ELM. This would include financial and consultative support from the Cabinet Office Mutuals Support Programme. The Council would need to be clear in the funding agreement setting up the ELM what its core requirements are while it continues to provide funds. It will be important, however, to secure for the ELM as much freedom as possible during and after the planning stages.
- 7.2.6 The Youth Service would need to retain significantly more autonomy than at present during the lead-up period and subsequent 3-5 years of operation. This would be to ensure an ELM can raise funds, adjust the balance between commissioned and direct provision, allow staff to build an organisation underpinned by a social business ethos, and form strategic alliances that would maximise the ability for an ELM to succeed.
- 7.2.7 A Youth Service ELM would continue to deliver universal and targeted youth provision whilst reinvesting any financial surpluses back into the organisation. The entity would be initially funded via a Council contract and generate income through grant funds, corporate and individual philanthropy, space rentals, charges to schools and subcontracting arrangements.
- 7.2.8 There are currently two youth service ELMs in operation in England – Epic CIC (formerly Kensington & Chelsea’s Youth Service) and Knowsley Youth Mutual (formerly Knowsley’s Youth Service). Should the Youth Service mutualise, there will be lessons to learn from those that have gone through the process and now operate as independent entities. There would also be learning from other areas of the Council that have followed similar strategies, including Wide Horizons, Education Business Partnerships, Libraries and housing.
- 7.2.9 However, the two ELMs in operation are still fairly new and it is unclear yet whether they will be able to become completely self-supporting organisations with no funding from “their” Council. While it would be the intention that our ELM would become self-supporting after 3 years, and that the Council could then realise full savings, there is a risk that it would not achieve that aim. In that case, a decision would need to be made as to whether the Council continues to support the ELM financially or not.
- 7.3 Option 2: Reduce the Youth Service to a statutory service only model, releasing further savings of £1.7m

- 7.3.1 Option 2 proposes reducing the Youth Service to a statutory service only model now, leaving intact capacity to uphold our minimum statutory requirements to facilitate access to non Council-run youth provision, track NEET young people and report results to Government using a Client Caseload Information System.
- 7.3.2 The cost of this service would be £300,000 (facilitation £100k and NEET tracking £200k), releasing a further £1.7m on top of the £1.4m proposed earlier in the report. Where the current structure is comprised of 60.7 FTE the proposed structure would be comprised of 4 FTE – a reduction of 56.7 FTE. The remaining service would be managed by the NEET Tracking Manager or by a post within the broader CYP structure. The four FTE posts remaining would be:
- 1) Participation & Engagement Officer
 - 2) NEET Tracking Manager
 - 3) NEET Tracker
 - 4) NEET Coordinator
- 7.3.3 Given this, all youth centres and APGs would be supported to be passed into the hands of others in the community to run, or they would be closed; all youth workers, managers and all but one commissioning and business support staff would be made redundant and all commissioned and direct provision would end.

8. Implications of initial £1.4m savings

8.1 On staff and service provision

- 8.1.1 The Service and its current capacity would be reduced and a level of redundancy would be unavoidable. Clear lines of management would remain and the breadth of individual responsibilities would increase in line with the terms of job descriptions.
- 8.1.2 The current structure has 60.7 FTE posts. There are currently 58.14 FTE staff in post, which is comprised of 89 people. The vacancies currently are 2.56 FTE posts.
The proposed structure will have 50.2 FTE. This is a proposed reduction of 10.5 FTE. This reduction is comprised of 1 FTE SO1, 4.5 FTE Sc5, 1 FTE PO6, 1 FTE PO3, 3 FTE PO1 . All reductions would first be made by not filling vacancies. Due to the number of part-time contracts within the current Service, it is not currently possible to calculate the exact number or make-up of employees who may be redundant.
- 8.1.3 Reducing youth worker and site capacity could cause demand to exceed supply, forcing certain sites to absorb the impact that stems from site closures. To mitigate this, the service proposes that it retain 1 fte Support Youth Worker beyond the minimum in order to provide enhanced staffing when necessary.

8.1.4 Reducing the commissioning fund may impact on some voluntary sector providers.

	Current	Proposed	Difference
Full-time equivalents (FTEs) in post	60.7	50.2	10.5

9. Implications of Option 1

9.1 On staff

9.1.1 Following the initial savings of £1.4m, any remaining staff at the point of transfer would be transferred in accordance with TUPE to the ELM. Part of the ELM development work may indicate the need for re-shaping or re-sizing prior to transfer. The details of this would be part of the ELM planning and development work as to how liabilities may be covered. This would need to include how liabilities for the Local Government Pension Scheme could be met. It is unlikely that the ELM would be able to meet these liabilities at the outset. In the two ELMs currently operating, their local authorities have kept the liabilities for transferred staff.

9.1.2 Employees of the ELM would hold non-dividend shares and share ownership of the entity.

9.1.3 Employees would be involved directly in the strategic direction and governance of the ELM. The governance structure would enable elected staff members a voting role on the board of directors.

9.1.4 Employees would be responsible to take part in business skills training to enhance their existing skill-sets and contribute commercial acumen to the ELM.

9.1.5 Youth workers would continue their roles as youth workers and maintain their existing relationships with young people.

10. Implications of Option 2

10.1 On staff

10.1.1 The Service would no longer be retained and a high level of redundancy would be unavoidable. Only those posts with responsibility for ensuring a statutory duty would be retained.

10.1.2 The current Service structure is comprised of 60.7 FTE posts (including 2.56 FTE vacancies). There are currently 89 people in post. The proposed structure would contain 4 FTE – a post reduction of 56.7 FTE. The maximum redundancy cost to the Council is estimated at £496k.

11. Timetable for savings

Activity	Date
Scrutiny Paper (publically available)	23 rd Sept '14
Scrutiny process occurs	Oct '14
Mayor and Cabinet decision	Nov '14
Consultation of Options 1 and/or 2	Nov '14 – Jan '15
Mayor and Cabinet decision	Feb '14
Full Council decision	Feb '14
Implementation of savings	April '15 – July '15
If Option 1, ELM planning process	April '15 – April '16
If Option 1, ELM spin-out and contracting	May '16 – May '19

12. Financial implications

12.1 Initial savings of £1.4m and Option 1

12.1.1 The current controllable revenue budget for the Youth Service is £3,461,000. The proposals would result in immediate savings of £801,000, use of Troubled Families Grant, alternative funding of £505,000 and income generation of £100,000. Taken together these will result in a savings to the controllable budget of £1,406,000.

12.1.2 The proposal is based on an estimated minimum saving of £1,406,000 to the Youth service controllable budget. The delivery of this in the first year will depend on the timing of implementation including notice periods of staff made redundant.

12.1.3A significant portion of the savings £505k or 36% is dependent upon alternative income sources such as the Education Funding Agency, Schools and other contributions. These sources are not yet determined and represent a risk in terms of achievability of the savings.

12.1.4 There will be redundancy costs for the Council emerging from these proposals, although at this stage it is too early to calculate the exact amount, which depends on those staff identified for redundancy. The maximum estimated redundancy cost for the service is £154,000. However, the actual redundancy cost is likely to be lower than this.

12.1.5 Any buildings no longer used by the Youth Service will need to be considered either for use by alternative community providers or placed onto the asset transfer register. Since the majority of building maintenance costs sit outside the Youth Service controllable budget, costs for sites, if open, will still need to be factored into wider council budgeting. Any revenue savings on premise running costs will accrue to the corporate asset management savings account.

- 12.1.6 Given the reductions to staff and buildings, there will be implications for the Youth Service non-controllable budget. It is expected that savings will be made, though at this stage it is too early to early to determine what the exact amount will be.
- 12.1.7 Should the Youth Service mutualise, the total costs of service delivery would need to be established. These include ICT, building maintenance, Human Resources, legal services and costs for all back office services (i.e. items not in the control of the Youth Service currently). The sum of these costs would need to accrue to an ELM's revenue budget and be controlled by the entity. The level of this further saving would be dependent on the success of the ELM and Council's strategic and financial decisions at the time. It is expected that an ELM could procure support services cheaper than current corporate contracts, specifically in terms of IT. This would be as a result of different specification for organisation-wide services and that, as a stand-alone entity, an ELM may be perceived differently and more favourably than the Council.
- 12.1.8 There would need to be consideration of how the ELM's pensions and redundancy liabilities might be met as set out in paragraph 9.1.1
- 12.1.9 After the implementation of the budget savings, the Youth Service controllable budget will be reduced by at least 41%. This decrease is proportionately greater than the proposed decrease to the total Council budget.

12.2 Option 2

- 12.2.1 The current controllable revenue budget for the Youth Service is £3,461,000.
- 12.2.2 The proposal is based on an estimated minimum saving of £3,161,000 to the Youth service controllable budget. The delivery of this in the first year will depend on the timing of implementation. After the implementation of the budget savings, the Youth Service controllable budget will be reduced by at least 91%. This decrease is proportionately greater than the proposed decrease to the total Council budget.
- 12.2.3 There will be redundancy costs for the Council emerging from these proposals, which depends on those staff identified for redundancy. The maximum estimated redundancy cost for the service is £496,000.
- 12.2.4 Any buildings no longer used by the Youth Service will need to be considered either for use by alternative community providers or placed onto the asset transfer register. Since the majority of building maintenance costs sit outside the Youth Service controllable budget, costs for sites, if open, will still need to be factored into wider council budgeting. Any revenue savings on premise running costs will accrue to the corporate asset management savings account.

12.2.5 Given the reductions to staff and buildings, there will be implications for the Youth Service non-controllable budget. It is expected that savings will be made, though at this stage it is too early to early to determine what the exact amount will be.

13. Legal Implications

13.1 Section 507B Education Act 1996 imposes a duty on local authorities, so far as is reasonably practicable to promote the well-being of persons aged 13-19 (and of persons aged up to 25 with learning difficulties) by securing access for them to sufficient educational and recreational leisure-time activities and facilities. A local authority can fulfil this duty by providing activities and facilities, assisting others to do so, or by making other arrangements to facilitate access, which can include the provision of transport, financial assistance or information.

13.2 Before taking any action under section 507B of the Education Act 1996 a local authority is required to take steps to assess whether it is beneficial for other agencies and individuals to provide services in its place and where appropriate, to secure that those services are provided by such agencies or individuals. There is also a statutory requirement to consult with such persons as the local authority consider appropriate as to whether it is expedient for the proposed actions to be taken by another person.

13.3 In carrying out its statutory responsibilities under section 507B of the Education Act 1996 a local authority is required to ascertain from young people in the authority's area their views on the existing provision and the need for any additional provision, and to take those views into account.

13.4 Local authorities are required to supply and keep up to date information regarding those leisure-time activities and facilities that are available locally.

13.5 Section 68 of the Education and Skills Act 2008 places a duty on local authorities to make available to young people and relevant young adults for whom they are responsible such services as they consider appropriate to encourage, enable or assist them to engage and remain in education or training.

13.6 The proposals set out in this report have to be consistent with the local authorities ability to meet its statutory responsibilities.

13.7 In relation to any staff reorganisations and/or redundancies the Council will have to comply with general employment legal obligations and the Council's Management of Change Guidelines.

13.8 The Recommendations in the Report refer to the exploration of further options for the delivery of the youth service. It is important that the Council, acting reasonably, does not limit its options unnecessarily when it comes to deciding upon the future of the service.

- 13.9 One option, which is to be considered amongst others in more detail and following consultation, in a further report, is the possibility of an employee led mutual (ELM) which is referred to at paragraph 7. Where two or more employees propose the setting up of a mutual to deliver Council services, this automatically triggers a requirement for a public tendering exercise under the Localism Act 2011.
- 13.10 However, the new draft Public Contracts Regulations 2015 which are due to come into force in the spring of 2015 (following an analysis of the consultation, which has just closed) permit local authorities to reserve the award of certain services including youth services to mutuals/ social enterprises. The maximum duration of such a contract is three years but this would enable a mutual to gain experience of running its own business before it is formally subject to procurement thereafter. It should be noted that it does not avoid the requirement a tendering exercise. It is expected, although not certain, that this new provision will remain in the Regulations once they become law as it is in accordance with the Directive which the Regulations are transmitting into UK law.
- 13.11 In addition, the Public Services (Social Value) Act 2012 (and the EU Directive) enables local authorities to take into account social and environment aspects of any contract they are procuring as well as the relevant skills and experience of the individuals involved when procuring any services. These changes may help a mutual.
- 13.12 It is suggested, as an option, that the mutual would become independent of the Council and the youth services will be provided outside Council responsibility. In this event, after a period of up to three years and a tendering exercise, there would be no contract between the Council and the ELM, (if it was successful in a procurement), as the Council would be divesting itself of the responsibility for the services provided by the mutual (other than the residual statutory duty under the Education Act 1996 set out above). Provided that the Council does not act in an anti-competitive manner, it may consider giving support to the ELM, either through some form of pump priming grant or the making of an asset available probably on a leasehold basis. Such support would be subject to State Aid rules but there are exemptions to and relaxations from State Aid rules for services such as these. Best value considerations would still apply.
- 13.13 The establishment of a mutual is a risky business for those involved in it. It may fail, and many personal resources may have been committed to it in a time of austerity. Those concerned with establishing such an organisation need to be conscious that once they move out of the Council they are effectively in the same position as any other external organisation.
- 13.14 Arrangements would have to be put in place to enable employees to work on establishing the mutual without coming into conflict with the Council.

- 13.15 Fuller legal implications on this option and other options put forward will be contained in the further report put to Mayor and Cabinet if the Recommendations are agreed.
- 13.16 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 13.17 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 13.18 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 13.19 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 13.20 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision-making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty

13.21 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:
<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

14. Crime and Disorder Implications

14.1 There are no specific crime and disorder implications.

15. Equalities Implications

15.1 The Equalities Analysis Assessment can be found at Appendix 1.

16. Environmental Implications

16.1 There are no specific environmental implications.

Background documents

None.

If there are any queries arising from this report, please contact Warwick Tomsett, Head of Targeted Services and Joint Commissioning, telephone 020 8314 8362.