

Creation of a Swindon Music Trust

Cabinet

Date: 6th February 2018

Author:	Cabinet Member for Children's Services and School Attainment Head of Education
Wards:	All
Parishes Affected:	All

1. Purpose and Reasons

- 1.1 This report seeks Cabinet's approval to create an independent charity to run Swindon Music Service (SMS).
- 1.2 Transferring this service from the council to an independent entity would provide protection to the council in terms of liability and secure the future of the Music Service.
- 1.3 Council Vision's Priorities and Pledges, Corporate Strategy, One Swindon, Strategic Objectives, Plans and Policies.
 - 1.3.1 **Priority 2:** *"Offer education opportunities that lead to the right skills and right jobs in the right places":*
 - 1.3.3 **Pledge 17:** *"Improve educational attainment, in particular at ages 16 – 19 so that we are above the average in England within five years".*
 - 1.3.4 **Pledge 29:** *"Work with all of the 1270 families in Swindon who are in most need of support by 2020 in phase 2 of the Troubled Families Programme":*

2. Recommendations

Cabinet is recommended to:

- 2.1 Agree to the Swindon Music Service becoming an independent charity by September 2018 or as soon as is practicable thereafter.
- 2.2 Authorise the Corporate Director of Children Services and the Head of Education, in consultation with the Director of Law and Democratic Services and the Cabinet Member for Children Services and School Attainment, to take such steps as are required to create the charity.
- 2.3 If recommendations 2.1 and 2.2 are approved, authorise the Head of Property Assets, in consultation with the Director of Law and Democratic Services, the Cabinet Member for Economy and Skills and the Cabinet Member for Children's Services and School Attainment, to negotiate an initial 2-year lease of The Platform to help the new charity establish itself. Swindon Borough Council (SBC) to review and define its property with a report to come back to Cabinet in the spring of 2020.

Further information on the subject of this report can be obtained from Peter Clark, Telephone Number: 01793 401752, pclark@swindon.gov.uk.

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- 2.4 If recommendations 2.1 and 2.2 are approved, Swindon Music Service to be authorised to carry over into the new financial year, a sum of money (no more than £15k) from its earned income towards the legal costs of establishing the new charity.

3. Detail

Music Services context

- 3.1 Until 2011, the Department for Education (“the DfE”) provided funds to local authorities to deliver music services. In November 2011, the government issued a report announcing a change in approach to music services: the *National Plan for Music Education*. In 2016, the DfE announced that there would be £300m national funding for music hubs in England to cover the period April 2016 – March 2020. This would be rolled out at £75m each year.
- 3.2 As a result of central government actions to restore responsibility to the nation’s public finances, there have been reductions in local authority funding. A significant number of music services are considering establishing (or have already established) an independent structure to deliver all or part of their music service.
- 3.3 The council currently retains central support (HR, legal, finance) for SMS to support any change in status; however, any further reduction in funding may limit the council’s capacity to support change.
- 3.4 Across England, the most popular legal structure for new independent entities running music services and receiving the transfer of service from the local authority is the charitable company limited by guarantee, with a commercial trading arm to pursue commercial activities.
- 3.5 It is proposed that SBC would agree to the music service establishing an independent charity. This would create long-term financial and organisational security for the music services we offer to schools and the local community of Swindon. These are the services that we are required to deliver through the National Plan for Music Education as set out by the DfE. As an independent charity we believe that we will be able to provide improved financial systems for our key users i.e. schools. This will be achieved by creating online ordering, invoicing and payment systems which are not currently available through SBC systems. This will be both efficient for us and more convenient for our users. Independence would free the service to explore other income streams, as well as relevant tax incentives. Furthermore, independence would not imply a complete break with the council, but would bring about a change in legal status. The option to retain the council as a trustee of the new entity would secure the council’s role in the governance of the service. SMS would wish to retain its partnership with SBC under any new structure.
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- 3.6 SMS would continue to be a good brand for Swindon; it is well respected by schools, parents and other services within the borough.

Governance of the Charity

- 3.7 The type of governance that will support the new charity will be based on an oligarchy model. In the oligarchy model each individual appointed as a trustee is automatically appointed as a member. The first three individuals will be selected by interested parties according to their skill and experience or by some other process. Further trustees will be appointed by the existing board, again according to skill and experience through an open and transparent process.
- 3.8 The board of trustees will be jointly and severally responsible for the overall governance and strategic direction of the charity, its financial health, the probity of its activities and developing the organisation's aims, objectives and goals in accordance with the governing documents, legal and regulatory guidelines.
- 3.9 Provision will be made for the board to include the Chief Executive, a staff representative and other key stakeholders such as the local authority and schools. This would provide a greater balance in involvement of the various key stakeholders. The staff representative will be elected by the staff whilst the Chief Executive will be an ex officio position. This model is simpler to manage and administer and, to date, the majority of the music services that have spun-out of the LA have been set up with this governance structure. A job specification has been written and a copy can be obtained from the report author.

The Platform and opportunities for future use

- 3.10 To have a better chance of ensuring current levels of quality, stability and diversity in its provision for young people, SMS would prefer to retain The Platform for at least an initial 2-year period as the town's music centre. The next financial year (2018-19) will see SMS taking on all running costs of The Platform in its contribution to cost savings forecast to SBC.
- 3.11 The new charity would wish to continue to offer, at a reduced competitive rate, The Platform for hire to the local community. It would also be able to look to market corporate hire rates.
- 3.12 The terms of any lease would need to be negotiated as a part of the agreed process of the music service spinning out to protect the borough's best interests. Issues that would need to be addressed include, among others: duration of lease; type of lease (fabric of the building etc.); get out clause dependent on continued funding from DfE.
- 3.13 The Platform, as SBC's contribution to the Music Education Hub for Swindon, would enable and enhance the music service to continue with applications for

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funding to ensure the C&YP in Swindon can continue to flourish in terms of musical opportunities.

- 3.14 The music service has in place the infrastructure to be able to manage the building and to offer the local community the opportunity to use the facility in the future.

4. Alternative Options

- 4.1 Cabinet could choose to retain the music service within the council. However, with the demands on the council's resources, the degree to which the current range of services could be maintained could be in doubt.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 Costs in support of the spin-out process will be met by earned income generated through the SMS. We have identified some income from this financial year that will be accrued across to the next financial year.
- 5.2 Estimated legal costs quoted by Bates, Wells & Braithwaite (BWB) are between £20,000 and £25,000 (exclusive of VAT).
- 5.3 Pension costs legal fees range from £5,000 to £7,000 (exclusive of VAT).

Legal and Human Rights Implications

- 5.4 Legal and Human Rights considerations have been taken into account in compiling this report. It is considered that the recommendations of this report are compatible with Convention Rights.

All other implications (including staff, sustainability, health, rural, crime and disorder)

- 5.5 Safeguarding of Children and Vulnerable Adults in the new proposed charity: SMS will continue to ensure all staff receive enhanced DBS checks and that relevant safeguarding policies are in place.
- 5.6 The four SBC staff working for SMS have been and will continue to be consulted all the way through this process and support the spin out. All other staff engaged through Pertemps will continue to work in the same way.
- 5.7 The social implications of the spin out include: ensuring that diversity and inclusion remain central to the new charity's core values; continuing to provide a range of cultural opportunities within music; working with school communities to make best use of resources and influence decision-making.

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- 5.8 Community music includes young people from rural communities; all Swindon schools would continue to be served by the new charity (including rural schools).

Diversity Impact Assessment

- 5.9 A Diversity Impact Assessment has been completed. No adverse impact or significant issues were found. A copy of the DIA can be obtained from the report author.

Risk Management

- 5.10 A risk assessment has been completed and the risks and their mitigation can be found in the business plan risk register. A copy of the risk assessment can be obtained from the report author.

6. Consultees

- 6.1 The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 Unpublished documents used as reference: BWB paper outlining the proposed due diligence and options available for creating a new entity.

8. Appendices

- 8.1 Appendix 1: BWB Paper for Swindon Music Service. *(The appendix is available online at the Council's website or on request from Committee and Member Services).*

9. Key Decision/Decision in Cabinet Work Programme

- 9.1 This is a Key Decision and is included in the Cabinet Work Programme and Forward Plan for February 2018.