

## Slough Borough Council

**REPORT TO:** Cabinet

**DATE:** 19<sup>th</sup> December 2022

**SUBJECT:** Approval of In-Year Change Request for Slough Children First Limited (SCF)

**PORTFOLIO:** Cllr Christine Hulme, Children's Services, Lifelong Learning & Skills

**CHIEF OFFICER:** Stephen Brown – Chief Executive

**CONTACT OFFICER:** Sarah Wilson – Principal Lawyer  
Jane Senior, Associate Director People Strategy and Commissioning  
Peter Robinson – Nominated Council Finance Representative

**WARD(S):** All

**KEY DECISION:** YES

**EXEMPT:** Public, except Appendix 1 as it contains information that is protected by legal professional privilege and Appendix 4 as it contains information about the business activities of the Council and SCF.

**DECISION SUBJECT TO CALL IN:** YES

**APPENDICES:** Confidential Appendix 1 – SCF summary for UASC  
Appendix 2 – SCF summary for pay award pressure  
Appendix 3 – SCF summary for contract inflation pressure  
Confidential Appendix 4 – Minute of Strategic Commissioning Board

### **1 Summary and Recommendations**

- 1.1 This report requests approval for an in-year change request under the Service Delivery Contract (SDC) for Slough Children First's (SCF). SCF is wholly owned by the Council and contracted to provide statutory children's social care services.
- 1.2 The SDC provides a contractual mechanism for making in-year changes to the Contract Sum. SCF has submitted a request to cover funding pressures for 2021/22 and 2022/23. This is the second such request this financial year, the first being for the sum of £343k for 2022/23 and was agreed by Cabinet in September 2022.

## **Recommendations:**

Cabinet is recommended to:

- Agree a one off non recurrent in-year increases in the contract sum to Slough Children First of approximately £1,786k relating to 2021/22 and 2022/23, being £613k for 2021/22 and £1,172k for 2022/23 for the demand pressures highlighted in Appendix 1 to 3, increasing the 2022/23 contract sum to £33.565m.
- Note the current in-year forecast losses and that the Council's £5.000m working capital loan is being used to cover these losses, putting a risk on repayment of the loan, unless alternative sources of funding are found either via savings in future years, or a further in-year change request is agreed, subject to submission of a compliant and accepted submission.
- Delegate authority to the Executive Director of Finance and Commercial, in consultation with the Lead Member for Children's Services, Lifelong Learning & Skills, to agree the final in-year increase figure, including releasing it on a phased basis for 2022/23 based on actual spend.

## **Reason:**

To ensure that Cabinet agrees appropriate levels of funding for SCF in accordance with the contractual mechanism and that decisions are taken informed by the wider financial risks and financial position and the impact this has on Council services and the budget as a whole

## **Commissioner Review**

The in-year request is for the 2021/22 and 2022/23 years only and should not be built into the base budget. This is particularly relevant in relation to the loss of public health grant as it is only appropriate to fund this on a one year basis due to the expectation that this grant would be available. The working capital loan is still repayable at the end of the contract and future budgets need to be set on the basis that this needs to be paid back.

## **2 Report**

### **Introductory Paragraph**

- 2.1 SCF became wholly owned by the Council on 1 April 2021, with new Articles of Association setting out its governance arrangements. The Company was previously Slough Children's Services Trust, incorporated on 12 March 2015 and has been responsible for the delivery of statutory children's social care functions within Slough from 1 October 2015.
- 2.2 SCF delivers statutory children's social care functions under a direction of the Secretary of State and in accordance with a service delivery contract between SCF and the Council. Improvement activity to support this across children's services are a critical part of the Council's improvement journey and the Council and SCF need to work together to ensure that the services can be delivered in a cost-effective way, contributing to the delivery of required financial savings to enable the Council to become financially sustainable within the medium term.

- 2.3 In February 2022, an interim business plan for SCF for 2022/23 to 2024/25 was approved by Cabinet. This set out the strategic priorities for the company as well as the financial strategy. The report included concerns relating to the deliverability of the plan and it was recommended that the plan was approved on an interim basis only. Update reports on progress on the business planning process and governance arrangements in place to manage SCF were reported to Cabinet in October 2022.
- 2.4 SCF has twice formally raised risks insolvency. The current draft business plan from 2023 requires significant increases in the base budget and SCF officers have highlighted significant deficits in 2021/22 and 2022/23.
- 2.5 Following advice from Council officers, SCF has submitted a Type One In-Year Change request to cover specific in-year funding pressures.

### **Slough Corporate Plan**

- A borough for children and young people to thrive

The Council's corporate plan emphasises the need for children and young people to be able to access services that keep them safe and secure. This includes a focus on delivering preventative help to children and families. It also includes a focus on raising aspirations and delivering opportunities for young people to prosper. Support for children and young people should be seen as a whole Council responsibility. The Council needs to focus on delivering effective and cost efficient services and should make funding decisions on receipt of suitable evidence to demonstrate that this meets the Council's best value duty.

- A council that lives within our means, balances the budget and delivers best value for taxpayers and service users

In their report to DLUHC published 28<sup>th</sup> July 2022, Slough Borough Council Best Value Commissioners expressed uncertainty regarding the deliverability of the Council's current savings plan. Also, that the financial pressures arising from the current model of delivery of SCF are not possible to contain without an impact on service delivery. The Council has worked with SCF officers to ensure this in-year change request is focused on those areas that can be properly evidenced as being due to unforeseeable pressures that were not containable. SCF also has wider deficits for both 2021/22 and 2022/23 which it is using its cashflow loan for. It is unclear at this stage how the Council might support or justify any additional requests for funding for these pressures, due to the Council's financial situation. The Council will consider longer term invest to save proposals as part of the business planning process, which includes setting the Contract Sum for 2023/24. Further information will be presented to Cabinet following the review being undertaken by the People Scrutiny task and finish group.

### **Options considered:**

The model of delivery for children's social care in Slough is based on a statutory direction from the Department for Education. The service delivery contract includes two types of in-year change mechanisms, one based on demand pressures and one based on an invest to save proposal. The Council is obligated to consider such a request, if made properly in accordance with the contract. The Council has two broad options: to accept the change and provide additional funding on an in-year basis or to refuse the change (albeit some elements could be agreed and some not).

As the sum is above the key decision threshold, the decision is one for Cabinet to make. If the Council chooses not to fund this request, the contract contains a dispute resolution process which would need to be followed. The Council would need to demonstrate it has taken account of the impact of such a decision and the reasonableness of its approach. Council officers have worked with SCF officers and recommend that this request is approved, as it represents a reasonable request supplemented by evidence of the increased demand.

## **Background**

- 2.6 The arrangement for delivery of children's social care services is governed by a detailed service delivery contract (SDC) which contains a number of schedules. In addition, the Council's children's social care services are under the statutory intervention of the DfE and there is a governance side agreement setting out what Council powers are subject to the consent and consultation with the Secretary of State for Education.
- 2.7 Schedule 5 of the SDC set out the financial mechanism. This includes provisions to agree an annual Contract Sum, which is paid via 12 equal monthly instalments. There is a dispute resolution process if the parties cannot agree the Contract Sum. The Council provided SCF with a £5.000m working capital loan and the contract confirms that this is not repayable until the final invoice is settled at the end of the Contract Term. There are provisions in relation to adjusting the Contract Sum if it was calculated as a result of material errors and/or omissions. Neither party has alleged that this has happened in relation to the setting of the Contract Sum for 2021/22 or 2022/23, although concern was raised about the deliverability of some of the savings proposals contained in the business plan for 2022-2025.
- 2.8 Schedule 5 contains detailed requirements in relation to monthly reporting. Schedule 5 also contains provisions for in-year changes. There are two types of in-year change, firstly a Type One request, based on an increase in demand for the Services or additional cost to SCF that could not have reasonably been anticipated and secondly a Type Two request, based on a business case proposal to deliver an improvement in the Services requiring a short term increase to the Contract Sum. SCF has submitted a Type One In-Year Change Request. The request must contain prescribed information and should be considered by the strategic commissioning group which comprises officers from the Council and SCF. Officers have worked with SCF officers to ensure that the request contains the prescribed information and is in a format that would justify a recommendation to approve.
- 2.9 Due to the amount of funding sought, officers do not have delegated authority to approve the request. Therefore, whilst it was discussed by officers who would attend the strategic commissioning group, SCF officers were informed that the request needed to be submitted to Cabinet for a decision.
- 2.10 Schedule 5 also sets out a mechanism for management of surpluses and deficits. SCF is obligated to inform the Council as soon as reasonably practicable and manage any deficits in the following order of precedence:
- Take action, wherever possible, to contain the expenditure;
  - Subject to review under the annual review process, to vire underspends which it is entitled to retain;

- Consider whether it can cover the deficit from other resources outside of these arrangements;
- Submit a Type One In-Year Change Request for additional funding.

2.11 SCF has notified the Council that it has a £1.332m deficit for 2021/22 and is projecting a £4.939m deficit for 2022/23. Council officers have advised that the evidence supplied for items not covered by the new Type One In-Year Change Request, are not sufficient to demonstrate that SCF has taken action to contain the expenditure. To ensure SCF has enough funds to continue trading it has taken the decision to focus on areas that are more straightforward to agree before the end of the calendar year.

2.12 SCF are likely to submit a further in-year change request before the end of the financial year, likely to be submitted to Cabinet in February 2023, alongside its business plan for 2023/24 – 2025/26 in order to agree its budget for 2023/24. Council officers have advised that it would be preferable to submit focused requests on single issues, as opposed to including all overspend in one request, as this makes it easier to analyse and evidence.

2.13 On 25 October 2022 SCF submitted an In-Year Change Request for the total sum of £1.880m. This covered deficits for 2021/22 and 2022/23, but for certain areas it only covered 6 months of expenditure for 2022/23. Following advice and meetings between SCF and Council officers, the request was split up into four areas and further information supplied. The individual requests have been updated and the total request reduced to £1.786m. The four areas cover the following areas of spend:

- **Unaccompanied asylum-seeking children (UASC) £650k** – SCF have notified the Council that there is pressure on its budget as a result of an increase in UASC in its area. Home Office funding is provided for UASC, however the rate of funding depends on the route of transfer to the Borough. Of the UASC, 9 were in the system as at 1 April 2021, this rose to 26 by 31 March 2022 and 31 at September 2022. Only 5 have come via the national transfer scheme, the remaining 26 have arrived through other routes and Home Office funding is not available until their status is confirmed. Appendix 1 to 3 provides further information on the increase in demand and how this is being managed. Costs include placement costs, support, subsistence, translation services, legal fees and costs of undertaking age assessments. There is a backlog of age assessments due to the specialist nature of the work, however SCF is taking active steps to increase resources for staff able to undertake this work and for appropriate adults. SCF also takes legal advice on any pre-action or issued legal proceedings challenging its decision-making and further information is provided in confidential appendix 1.
- SCF is also taking a number of steps to manage the cost pressures arising from this increased demand, including sharing best practice and developing the skills of its social workers, ensuring that UASC can be transferred under the national transfer scheme where appropriate, working with a local provider to develop a new provision tailored to UASC specific needs and looking at commissioning opportunities to develop a model of semi-independent placements with support tailored to individual needs. It is recommended that this in-year pressure is funded by the Council;

- **Pay award pressures £548k**– SCF assumed a pay award of 0% in 2021/22 and 2% in 2022/23. A pay award of 1.75% was settled for 2021/22 and it is assumed a fixed pay award that will equate to an average increase of 4% will be settled for 2022/23 together with changes in NI contributions. This has resulted in a budget pressure of £189k for 2021/22 and £358k for 2022/23. It is reasonable for the Council to fund the agreed pay awards and increased NI contributions incurred by SCF, further information is provided in confidential appendix 2. It is recommended that this in-year pressure is funded by the Council;
- **Inflationary uplift request for placement costs £88k** – due to rising inflation, SCF commissioned PeopleToo to introduce a robust process for negotiating inflationary requests on 4 May 2022. This requires contractors to submit a completed proforma. Two providers submitted the proforma and SCF agreed uplifts of 4-6% for one contractor and 18-36% for a second provider. The original requests totalled additional expenditure of £108k, however SCF officers have negotiated this down to £88k. SCF has a reasonable process in place to manage requests for inflationary increases and the inflationary pressure has been a direct result of national and international pressures and were therefore not foreseeable, further information is provided in confidential appendix 3. It is recommended that this in-year pressure is funded by the Council;
- **Loss of public health grant £500k** – SCF’s budget was set on the understanding that £500k of public health grant would be available to fund discretionary services to support the wider public health outcomes. A review of the use of the public health grant has meant that this funding is no longer available to SCF. This has led to a pressure on its budget which was not foreseeable. It is recommended that this in-year pressure is funded by the Council;

2.14 The in-year change request was discussed at the contractual strategic commissioning group on 25 November 2022. A minute of this meeting is appended at Appendix 4 as a confidential appendix.

### 3. Implications of the Recommendation

#### 3.1 Financial implications

- 3.1.1 The contract sum for services provided by SCF in 2022/23 agreed by Cabinet in February 2022 and approved by Council in March 2022 was £31.436m. Cabinet also approved a working capital loan of £5m in March 2021 that is due to be repaid at the end of the contract.
- 3.1.2 SCF incurred a deficit of £1.332m in 2021/22 and are forecasting a deficit for 2022/23 of £4.939m, an accumulated deficit of £6.271m at 31 March 2023. Assuming savings planned are delivered and the current forecasts are realistic. The current projections would mean SCF would be insolvent by the year end if no additional funding is agreed with the Council or DfE.
- 3.1.3 An in-year change request of £0.343m was requested by SCF in August 2022 and approved by Cabinet in September 2022, increasing the contract sum for 2022/23 to £31.779m.

- 3.1.4 The in-year request recommended for approval in this report is for a further £1,786k relating to 2021/22 and 2022/23, being £613k for 2021/22 and £1,172k for 2022/23. This will increase the contract sum to £33.565m in 2022/23. This is an in-year change request and does not change the base budget for future years. The Contract Sum negotiation for 2023/24 is in progress and Council will agree what it can finance as part of its budget setting process.
- 3.1.5 The increases in funding will be financed from an ongoing review of the Council's financial position as it moves to close down previous years accounts and manage the in-year position.
- 3.1.6 SCF have indicated that they will be preparing a further in-year change requests to cover the remainder of their deficit which if agreed and is affordable will be submitted for Cabinet consideration in February 2023 along with their business plan and proposed budget for 2023/24. Cabinet will at that stage be advised what the Council can finance.
- 3.1.7 Work is underway as part of the SCF delivery plan to look at overall costs with partner organisations to examine overall expenditure on children to determine whether working more closely together could deliver efficiencies.

## 3.2 Legal implications

- 3.2.1 The Secretary of State for Education has powers to issue a direction in relation to specified social services functions relating to children under s.497A of the Education Act 1996. Various directions have been issued in relation to statutory functions in Slough since 2014. The sixth statutory direction was issued in April 2021. This requires that the Council secures that prescribed children's services functions are performed by SCF and the Council jointly and other prescribed children's services functions are performed by SCF on behalf of the Council. The Council was also directed to enter into a new service agreement to implement the discharge of these functions and continue to comply with any instructions of the Secretary of State, his representatives and the Children's Services Commissioner in relation to i. ensuring that the Council's children's social care functions are performed to the required standard; ii. the terms of the Service Agreement that require the Secretary of State's consent or approval; iii. the operation of the Direction.
- 3.2.2 The SDC sets out the contractual provisions applicable to the in-year request. This process has been followed and officers recommend that the in-year funding request is approved. If this is not approved, the formal dispute resolution processes will need to be utilised.
- 3.2.3 Council officers and the DLUHC appointed commissioners continue to have constructive discussions with the DfE around options for financial sustainability for these statutory services. A new DfE appointed commissioner commenced in role in October 2022 and has met key stakeholders. He is very cognisant of the need for financial prudence and to demonstrate value for money and has already picked up on key recommendations from a DfE commissioned review of the draft business plan to focus on managing demand within the existing staffing cohort as opposed to seeking additional funding to respond to demand pressures.

### 3.3 Risk management implication

<b>Risk</b>	<b>Assessment of Risk</b>	<b>Mitigation</b>	<b>Residual Risk</b>
Children and Families at risk.	Very High  The Company has raised a serious issue that children and families will be at significant risk due to a rise in demand pressures, should solutions and mitigations not be found.	A Type-one in year change request has been submitted seeking additional funding to address some of the risks raised.  Recruit to the existing vacancies to deal with the demand and effectively assess and intervene to mitigate risk of harm to children.	High
Insolvency risk is hard to properly assess without a finalised business plan.	Very High  The Company has raised an issue in respect of its solvency.	The in-year request for funding will help alleviate the risk of insolvency. The draft business plan 2022-29 has been reviewed by Mutual Ventures and is being reviewed by the Council's People Scrutiny task and finish group. Future necessary action will be determined following the conclusion of this review.	High

### 3.4 Environmental implications

None

### 3.5 Equality implications

This in-year funding request supports services to some of the Council's most vulnerable families and children. This is particularly relevant in relation to UASC who are more likely to come from specific ethnic and religious groups and whom have arrived in the country claiming asylum with limited family support.

### 3.6 Procurement implications

None

### 3.7 Workforce implications

None

## **4. Background Papers**

None.