

OPTIONS APPRAISAL for Brent Council – Shaping the future for Youth



Contents

1. Executive Summary	1
2. Background	2
3. Drivers for Options Appraisal	3
3.1 Maintaining the Legal Requirement	3
3.2 Funding Constraints – Brent Council Overall	4
3.3 Funding Constraints – Youth Services	5
3.4 Key Issues	6
4. Our Methodology	6
4.1 Viability Assessment of Current Service Provision	7
4.2 Options Appraisal	8
4.2.1 Options Review Matrix for Potential Organisational Structures	9
4.3 Delivery Models	19
4.3.1 Contracting / commissioning with third party organisations	19
4.3.2 Independent Commissioning Organisation – Brent Youth Organisation / a Possible New Delivery Model	20
4.3.3 Employee/Staff Led Mutual	27
4.3.4 State Aid	29
4.3.5 Corporate Vehicles	29
4.3.6 Charitable Status	38
4.4 Diversification Assessment	41
4.4.1 Critical Success Factors for Diversification of Services	42
5. Finance, HR and Resources Issues with Governance	43
5.1 Emerging 5 Year Financial Plan for the Independent Commissioning/Delivery Organisation – the headlines	44
6. Property	47
6.1 Roundwood Youth Centre	47
6.2 New Occupational Arrangements	47
6.3 Additional Considerations	48
7. High Level Risk Analysis	49
8. Plan for Implementation	50

1. Executive Summary

Brent Council, via the Cabinet Office, has engaged Geldards LLP to produce an Options Appraisal and Implementation Plan to review ways to deliver Youth Services in the Borough under the Delivering Differently for Young People Support programme supported by the Cabinet Office. Our findings will help inform Brent of its next steps in deciding the direction of travel for Youth Services from 2016/17 onwards, against a challenging backdrop of a potentially substantial future cut in Youth Services' financial budgets.

An independent report was commissioned by the NCS Trust in February 2014 called **Introducing Generation Citizen**¹. Some of its key findings and recommendations are directly relevant to the young people in Brent, as we discovered during our work, namely:

1. Today's teenagers (14-17 year old people surveyed in the report) are more engaged with social issues both globally and locally than previous generations of teenagers
2. Teenagers see themselves as less engaged with traditional politics than previous generations of teenagers, and teachers agree
3. Teenagers see charities and social enterprises, alongside personal volunteering and social action, as the most important agents for positive change in their local communities
4. Today's teenagers are highly active through volunteering and other forms of social action
5. Teenagers who volunteered reported higher levels of wellbeing, social cohesion and employability
6. Although teenagers prefer real world engagement in their communities, teenagers are increasingly using social media for social action
7. Getting a job, living costs and bullying concern teenagers the most
8. Teenagers see negative media portrayals as having a detrimental impact on their lives and future
9. Teenagers desire careers that change the world for the better and help people less fortunate and the majority are ethical consumers
10. British teenagers cite inspirational leaders and celebrities who use their fame for positive action as role models

Securing the right service and interventions in the community is critical to the future prosperity of young people in Brent and the commissioning role is fundamental in achieving this, as is the knowledge and skills of the present staff cohort in Brent. Clearly the former needs to be developed and reflected in a new organisational framework. The latter needs to be maintained as far as is possible to minimise the risk of losing some experienced youth support workers, to the detriment of young people and the entire community in Brent. **However, whatever options are adopted, all require significant cash investment including the cessation of youth services, with its attendant staff redundancy and empty building and finance cost obligations on Brent. We have observed from our numerous discussions with Brent staff that there is some uncertainty about the £900k planned budget cut in 2016/17, as to whether it is formally agreed or yet to be agreed by Brent. We have assumed that the £900k budget cut is yet to be agreed for the purposes of this report.**

Some of the stakeholder observations we have gathered have expressed the need to ensure funding allocations for services for a new independent youth services organisation to be sustainable with new funding from sources such as grant providers, EU funds and charitable sources.

Stakeholder observations about past commissioning include:

- Too much money being thrown in the past at initiatives with variable levels of success and limited accountability.
- Need to move commissioning strands under one umbrella organisation
- Need to focus on outcomes rather than just raising money
- Encouraging more involvement of housing associations in the commissioning and delivery process
- Get reluctant partners to engage with cash not just non-cash based support, i.e. Brent Schools Partnership and Head Teachers Association – schools pay for Right Track but there is scope for further funding support linked to academic attainment targets.
- Ask some key organisations to help corral both funding and provider support i.e. Brent CVS and John Lyon Trust. They can become influencers and supporters of a new delivery organisation in Brent that is sustainable and can grow over time.

¹ Demos – Jonathan Birdwell and Mona Bani – Introducing Generation Citizen – 2014 www.demos.co.uk

- Engage better through active commissioning i.e. working with smaller organisations, including VCS, faith based and other smaller groups to help achieve realistic and sustainable outcomes.
- Better integration of health and social care (especially, safeguarding issues, Public Health intervention and promotion, CAMHS and School Nursing support) for young people. This requires CCG/NHS Trust/Brent/Youth Trust working closely together on commissioning and outcomes.
- Identifying key targeted interventions which have largest cost/benefit implications – i.e. excluded young people from school and young people outside school system i.e. in gangs or displaced family situations.
- Integration with faith communities to tackle Sexual health, FGM, and relationship issues, linked to more proactive new commissioning activities.

Our conclusions therefore find that the “do nothing” option is a marker for evaluation purposes, but not a real option. The planned financial budget cuts mean Brent has to “do something”, even if it is a cut to the current in-house services provision or a cessation of all Youth Services, both of which will adversely impact on the short and longer term welfare of young people in Brent. There is a potential increased risk over time, of social cohesion breakdown and the knock on effect of the rising costs of health interventions, police and probation costs and crime and disorder, and threats to the education attainment levels in the borough outweigh the dis-benefits of not maintaining Youth Services.

The “do minimum” option may just maintain the status quo at present, with a reducing budget envelope for the core in house Youth Services, and third party let contracts to various VCS and other organisations over time on targeted services from 2016/17. Again, this would, over a longer period of time, in our opinion, create the same problems for young people in Brent as the faster, “do nothing” option of service reduction/cessation through significant budget cuts.

We set out below our proposed “do something” option that seeks to improve and foster better relationships across the stakeholder community in Brent and to simplify commissioning structures. This would involve establishing an independent commissioning organisation (which we will call a Brent Youth Organisation (BYO)). This model is subject to more detailed vires, governance, charity, VAT, funding availability and procurement assessments to be undertaken in the implementation stage. It is also subject to discussion with the Council, and if the Council is agreeable, with a very wide range of stakeholders, young people and providers. This model also incorporates a new organisation established to maintain most of the current youth services, but requiring a sizable core contract from Brent of £1.2m in 2016/17 tapering down by £100k pa each year until 2020/21 to £800k. This will require in 2016/17 the need to find external funding of c£525k rising to just under £1m in 2020/21.

Alternatively if Brent was able to provide only £400k pa budget, then this smaller budget could potentially provide a reduced youth service offering that could allow:

- **Keeping Roundwood open providing similar levels of youth services from Roundwood – c £155k plus £110k = £265k (or reduced services via Roundwood combined with a small outreach service);**
- **Keeping a slightly slimmed down Youth Parliament - £60k;**
- **A very much reduced but appropriate management structure;**
- **Right Track service as fully funded from schools - £75k; and**
- **Minimal signposting through social media and internet via the Brent website.**

2. Background

Brent Council (Brent) through the Cabinet Office has engaged Geldards LLP to explore a range of new delivery models for their youth service including an arms-length youth trust with involvement from Brent and other stakeholders, moving into different management arrangements and a traditional fully integrated outsourcing model for youth services.

Youth Services forms one of 4 key areas within Brent’s Children and Young People’s department.¹

The four facility locations where Youth Services are currently discharged from are Centre Based hubs. Our Options Appraisal (OA) report sets out what can be done to enable Brent to continue to deliver services, providing open access centre based youth work, targeted by location. This is based on the existing 2014/15 youth services budget of £1.4118m, as advised by Brent Finance Team in March 2015 updating previous YSSP updates in October 2014². Youth Services are currently staffed by 47 people working in 25.09 FTE posts (2.69 FTE vacant). This budget of £1.414m pa is part of a £3.48m

¹ Brent Council, Children and Young People – Youth Support Services Plan 2014/15 March 2014 updated October 2014

² Brent Council, Children and Young People – Youth Support Services Plan 2014/15 March 2014 updated October 2014

total revenue budget overall for Youth Support Services provision in Brent in 2014/15.¹ This larger budget includes other statutory and non-statutory services.

The current Youth Service budget compares with a figure of £2.7m in 2008/09, having risen from £1.5m in 2003/04. We are aware of the savings gained through transfers of responsibilities to schools and other service providers for Connexions, the youth delivery services hub for the Beneficiary for 13-19 year olds (up to age 24 for people with multiple, complex learning and physical disabilities), along with the centralisation of certain corporate functions and procurement activity resulting in various costs now being held centrally.

The main youth centre facility is the Roundwood Youth Centre in Harlesden, redeveloped through an award of a £5m My Place grant (totally funded by Big Lottery Trust) in 2008. There were 43 staff working at Roundwood at its peak, of whom 80% were youth workers. Since 2008/09 youth services savings have been made through transfers of some youth services to Connexions (part in house, and part third party procured), reductions in staff, partly through amalgamation of Youth Services with the Youth Offending Service, and through reductions in front line services, such as careers guidance. Connexions utilise space at Roundwood. The other 3 main centres are Granville Youth Arts, Poplar Grove and Wembley.

Most of the “low hanging fruit” savings in all services, including Youth Services, have now been made mostly through targeted service cost savings for Brent Council overall, totalling around £75m in the three years to 2013/14 and more in the current year. Brent wishes to explore a range of service options including a new delivery model for Youth Services that captures a wider engagement with the local VCS and Charity organisations, against a background of large scale cuts to LA budgets across London in coming years.² This OA report sets out an analysis of the various options available to Brent, supported by some recommendations.

3. Drivers for Options Appraisal

3.1 Maintaining the Legal Requirement

The duty on local authorities in respect of leisure activities for young people is set out in section 507B of the Education Act 1996 (inserted by the Education and Inspections Act 2006) and states that:

‘A local authority must, so far as reasonably practicable, secure for qualifying young persons in the authority’s areas access to-

- (a) Sufficient educational leisure-time activities which are for the improvement of their well-being, and sufficient facilities for such activities;*
- (b) Sufficient recreational leisure-time activities which are for the improvement of their well-being, and sufficient facilities for such activities.*

A qualifying young person means any person between the ages of 13-19 and those with learning difficulties to the age of 24.

The statutory provisions are not prescriptive on the particular activities or services which are to be provided or the way in which the local authority must provide these. The local authority has a wide discretion and a number of options to meet their duty, they may;

- (a) Provide facilities for activities (this may include establishing, maintaining and managing places at facilities)
- (b) Assist others in the provision of such facilities (this may include financial assistance)
- (c) Make arrangements for facilitating access to such facilities (this may include the provision of transport, finance or information)
- (d) Organise activities
- (e) Assist others in the organisation of such activities (this may include financial assistance)
- (f) Make arrangements for facilitating access to such activities
- (g) Enter into agreements or make arrangements with any person in connection with anything done or proposed to be done under any of the above
- (h) Take any other action which the authority thinks appropriate.

¹ Brent Council, Children and Young People – Youth Support Services Plan 2014/15 March 2014 updated October 2014

² HARD TIMES, NEW DIRECTIONS? THE IMPACT OF THE LOCAL GOVERNMENT SPENDING CUTS IN LONDON, 2014, LSE. <http://sticerd.lse.ac.uk/dps/case/spcc/wp07.pdf>.

Funding of youth services is not mandatory.

Before taking any action, the local authority must consider whether it is beneficial for the proposed action to be undertaken by another person and if so take all reasonable steps to enter into an agreement or arrangement with that person. This should include any consultation that the local authority thinks appropriate.

In addition there is a particular duty on the local authority to involve qualifying young persons in deciding how their functions shall be exercised and the activities that are to be provided. The local authority must take steps to ascertain the views of qualifying young persons about the activities and facilities in their area, the need for any additional activities and facilities and access to these activities. As well as seeking their views, the local authority must ensure that these views are taken into account when determining their local offer.

The duty to secure activities is supplemented by a duty to publicise information about the activities/facilities available and to keep this information up to date.

A local authority is permitted to charge for any provision they provide.

In meeting their above duties, the local authority should bear in mind any guidance published by the Government under section 507B for meeting this duty. The current guidance, Statutory Guidance for Local Authorities on Services and Activities to Improve Young People's Well-being, was published by the Department for Education in June 2012 (although the responsibility for youth strategy and policy was transferred to the Cabinet Office in July 2013).

The guidance sets out the types of activities which a local authority could provide as part of meeting their duty and how these could benefit young people, for example having activities that:

- Connect young people with their communities
- Offer young people opportunities in a safe environment to take part in a wide range of sports, arts, music and other activities
- Support the personal and social development of young people
- Improve young people's physical and mental health and emotional wellbeing
- Help those young people at risk of dropping out of learning to engage and attain education or training
- Raise young people's aspirations, build their resilience and inform their decisions.

Structured arrangements should be put in place for consulting with young people (for example allowing young people to inspect and report annually on the quality of the services). The guidance also suggests that it may be beneficial to involve young people actively in service design, delivery and governance.

The local authority should take the strategic lead in setting their local offer which is sufficient to meet local needs. They should work with young people; the voluntary, community and social enterprise sector; health and well-being boards; schools and colleges; and agencies including health and police. Working together they should understand the needs of young people; determine what facilities and activities are available and what is required and the level of funding available and needed; ensure the inclusion of third parties and other voluntary organisations; effectively publicise the local offer; and ensure providers have capacity and skills to offer a quality service.

3.2 Funding Constraints – Brent Council Overall

The latest Draft Brent Corporate Plan April 2015-December 2016 sets out clear goals to maintain a wide range of services across Brent, whilst being mindful of Brent's overall budget envelope reduction of £55.8m by March 2017, and a further £5.9m in future years from its 2014/15 current position.

Planned Budget reductions by Brent Council¹

2015/2016 (£m)	2016/2017 (£m)	Future Additional Years (£m)	Total (£m)	Comments
20.6	12.5	1.8	34.9	Driving organisational efficiency
2.6	8.4	3.3	14.3	Building independence and community resilience
2.0	0.9	0.5	3.4	Leveraging in resources and income
8.1	0.7	0.3	9.1	Stopping Services Completely

3.3 Funding Constraints – Youth Services

Youth Services falls under the category of cost reductions through building independence and community resilience within its delivery and operating model. We understand the intention that Brent is considering scaling down the net cost of this overall service provision from £1.414m (including external income and grants) in 2014/15 to £1.3m in 2015/16 and to £0.4m in 2016/17, with the possibility of further budget cuts which may remove the expenditure entirely from 2017/18 onwards². The scope for further savings is limited without a major service redesign and the ability to attract external financing which this report will inform. Major budget cuts would leave a minimal core service with signposting by Brent going forward. **On 2nd April 2015, Brent Council's Cabinet will review this Options Appraisal to decide on the future of Youth Services from April 2016 onwards.**

The “do something” and “do minimum” options involve exploring alternative delivery methods, including the development of an independent commissioning body e.g. the BYO, which could access funding which currently neither the council nor Brent's youth voluntary sector organisations are able to access. This could put Brent's youth provision on a more sustainable footing, with a new organisation able to act as a consortium lead and enabler for local organisations harnessing the expertise of Brent's experienced and skilled youth workers. As part of this process, alternative funding sources would have to be identified to mitigate the potential loss of services from the possible budget reduction of at least £900k in 2016/17. Staff primarily assigned to existing Youth Services that are carried out by a new delivery organisation are likely to transfer under their existing terms and conditions of employment to that organisation. This may result in a number of tiered employees, each employed under their original terms of employment. A new organisation may not be able to deliver the same range of services – either because an alternative offer is preferred, or due to financial constraints.

The “do nothing” option may effectively terminate or at best, leave a minimal provision of Youth Services and will probably lead to the termination of the current delivered service (signposting on Brent website may continue) and redundancies will ensue. This would probably lead to wholesale staff redundancies (full time and sessional workers as well as managers). The services terminated could be:

- Outreach and Detached Team and Youth Bus – which has a key preventative role in relation to youth disorder and gang violence
- Poplar Grove Youth Club – year round provision targeting young people from Chalkhill and surrounding areas.
- Mosaic LGBT Project – award winning provision for a key group of young people liable to risk and discrimination
- Duke of Edinburgh Award – Brent is a very successful provider with a high success rate
- Granville Youth Arts Centre – youth arts provision which supports re-engagement in education and work
- Brent in Summer – the youth contribution to this programme has good attendance
- Brent Youth Parliament
- Wembley Youth Centre – high quality provision
- Roundwood Youth Centre may have to be transferred to an organisation willing to meet all running costs and TUPE relevant staff, since closure may require very large scale repayment of government grant on demand.

¹ <http://democracy.brent.gov.uk/documents/s28287/budget-app1.htm>

² Supplement Budget Report 2015/16 and 2016/17 and Appendices – Brent Council 15 December 2014

Some of the present services have partial external funding ¹, (in Particular Right Track – funded by Schools/DSG) and with alternative funding sources being found, some provision could remain and officers would need to work with partners to ensure this happens.

3.4 Key Issues

We have identified some key issues that need to be addressed by any new Youth Services organisation that reflect the more challenging financial context and changes in national and local policy context including:

- Fragmented commissioning with key partners, specifically local charities, other departments within Brent Council, i.e. Public Health and wider stakeholder organisations including but not limited to the Metropolitan Police, Probation Service, Schools, Health and MOPAC.
- A need for an increased engagement with the VCS sector and working more closely with successful, well-funded larger charities i.e. John Lyon Trust and partner organisations such as Housing Associations (some of whom have their own youth services provision resource).
- Increased local delegation through a potential new commissioning and/or new delivery model for local decision making and local involvement of young people.
- Better targeted, early help interventions to reduce demand on statutory services through direct commissioning through a better commissioning model.
- Identifying alternative sources of soft and hard revenue i.e. grants (soft) in the light of reduced direct Brent Council commissioning (from April 2016) for core youth services still retained under direct Council responsibility and commercial revenue opportunities (hard) in a new commissioning or delivery model
- Improving quality, co-production and focus on outcomes. This would include use of the Outcomes Framework for Young People's Services to measure impact of youth services provision for providers and commissioners².
- Encouraging VCSE bodies to drive innovation and transformation of service delivery through greater collaboration and joint working in service delivery, and sharing of assets and resources to improve outcomes and achieve efficiencies that can be re-invested
- Increasing value for money and evidence of impact achieved.

Tackling these in a cohesive manner will require improvements in funding capacity and capability, improving co-production, more focus on alliance contracting (providers partnering together), monitoring of outcomes and quality as part of the commissioning process, to evaluate social returns on investment as well as specific youth/health/crime/education outcomes.

4. Our Methodology

We have considered a range of service delivery options that are not mutually exclusive (linking back to key issues and drivers) and suggestions for the options for the future delivery of services include:

- A Brent Youth Organisation (as an independent commissioning organisation) – a voluntary sector organisation at arms-length from the council, with council involvement alongside local voluntary sector representation and other stakeholders – a key aspect here is not just examining the availability of VCSE groups to provide staffing and support to young people, but of overall funding and how resources can be most effectively mobilised and/or shared. We have identified potential funding partners for such a venture, although the scale of such funding could be significant i.e. capacity building or funding to outsource commissioned services.
- Moving specific aspects of services to different management arrangements e.g. management oversight by schools, greater role for housing providers, youth offending services or alternative education and/or full-cost recovery, given that many such savings have already been made in the past 5 years, further options need to be explored;
- Charitable and non-charitable entities. Charitable status organisations are able to access wider sources of funding streams and tax benefits that are not available to non-charitable entities;
- Traditional fully Integrated Youth Support Service (IYSS) outsourcing. This might be in an independent body i.e. a youth organisation or could be a mixed market model e.g. possibly to envisage a commissioning body and some outsourcing of key services in tandem. Some existing Brent assets i.e. hubs, may go due to alternative uses found by the Council; and
- A staff led mutual.

¹ Youth Support Services, Youth Service - External Funding during 2013-2014 and 2014-2015 year to date

² <https://www.gov.uk/government/publications/framework-of-outcomes-for-young-people>

We have considered 'do-something', 'do-minimum' and 'do nothing' options to assess how best to achieve significant improvements to the efficiency and effectiveness of the service in-house, knowing that a 'do-nothing' option is just a measure to compare with other options, not a default position, i.e. there should be no 'do nothing' option. **All the options we have mapped will be compared against the present in-house delivery base line shown in our financial model. This is reflected in an accompanying Financial Overview of Youth Services Financial Paper to support this Options Appraisal report with an outline 5 year financial model based on a delivery organisation maintaining a similar level of service in 2016/17 from 2015/16 levels. Our model is based on the minimum annual revenue requirement required to broadly continue the existing youth service provision "as is".**

4.1 Viability Assessment of Current Service Provision

Brent's Youth Services provision has been a success in recent years against a challenging financial and budgeting backdrop, by using a commissioning approach that focuses on the desired outcomes for young people rather than the specifics of what is to be delivered. Commissioning intentions are developed which then in turn shape future commissioning and front line services. The commissioning intentions for the re-commissioning of Youth Services from 2016-17 onwards are clear from a financial envelope perspective. Our 5 year financial model (discussed later in this report) reflects the 2014/15 baseline and adjusted 2015/16 budget position and can be interrogated with a series of flexible "what if" assumptions, based on adjusted staffing costs included, following discussions between Geldards and Brent Finance Team during March 2015, available Brent funding, and other asset costs. Our baseline model assumes a tapering down of the 2015/16 Youth Services budget figure of c. £1.3m by £100k pa over a 5 year period. At worst, a one off £900k budget reduction in 2016/17 could result in a very basic Youth Service of signposting and limited service provision (commissioning and/or delivery) for around £400k pa. We have to consider the loss of service in 2016/17 if a new independent commissioner / provider organisation that may be established is unable to secure enough sustainable funding for continued Youth Services commissioning (and thus delivery) provision.

However, our work has reaffirmed the need for Brent to maintain key aims:

- Pathways to employment for all
- Early help for young people in need
- Integrated specialist youth support
- Management of crime and disorder issues with young people
- Early prevention and intervention in key youth public health issues and substance misuse episodes

Commissioning intentions from Brent from 2016/17 onwards will be shaped by the findings from our report and the decisions arising from the Cabinet and Brent Council upon review of our findings.

It is clear from our financial assessment of the present youth service (see later in this report), that the viability of a new organisation that is based on retaining the current service delivery model is just not feasible with a reduced budget envelope of £400k that may be provided by Brent from 2016/17, together with the attendant costs that have been centralised within Brent over the past 5 years. We have produced a model reflecting this scenario.

As our financial model is predicated on the 2014-15 financial envelope, we are using the 2014-15 figures but note that a further review has taken place that identifies that the true costs of providing current Youth Services are considerably higher than the 2014-15 budget. Additional cost pressures of around £175k have been identified.

If a "no service" option was taken it would relieve an additional cost pressure going forward.

Had this options appraisal review of youth services taken place in 2008/09, then an option to reduce the staff cohort in Brent and still maintain current core services may have been possible, supported by a core, block contract for 5 years, to facilitate a smooth period of transition, as has been the case with a number of mutualising spin outs of LA services elsewhere in England.

By way of a recent example, more radical mutualisation organisational transfers are now being put into place. It was announced by Northamptonshire County Council (NCC) in February 2015, that its 4000 staff would be reduced to 150 core organisational staff as 4 new commissioning/delivery bodies were established for child protection, health and wellbeing, care of vulnerable adults and improving the county which will receive a collective cash contract envelope that is £68m

below current 2014/15 levels.¹ **The key here is that NCC is supporting all of its new bodies with a 5 year core contract each, albeit with a reduced funding envelope, but retaining the same staff cohort largely, with some staff savings.** . This has separated the commissioning role and spinning out delivery organisations by NCC. This allows time to facilitate transformation and mutualisation and to develop efficiencies and flexibility in each organisation. NCC also owns 100% of each of the bodies, during this process. If successful, then NCC has the option to spin these entities out as independent organisations in the future.

4.2 Options Appraisal

We have reviewed 5 options in a review matrix analysis.

1. No service – subject to delivery of statutory duties
2. Restricted service – in house
3. Restricted service – commissioned
4. Independent Commissioning/Delivery Organisation
5. Employee/Staff Led Mutual

As outlined in 4.1, the first three options shown above have been addressed in our risk matrix appraisal table hereafter and that any reduction in budget or removal of budget will have an adverse impact on Youth Services. The no service option is the default position realising full service cuts and immediate cash releasing savings to Brent of £1.3m in 2016/17 apart from whatever would be required to meet the council's statutory duties.

A more detailed explanation of models 3 to 5 can be found in section 4.3.

Our review matrix set out below has considered the potential advantages, disadvantages, risks and benefits that may arise under each of these options.

¹ <http://www.bbc.co.uk/news/uk-england-northamptonshire-31544256> - 19 February 2015

4.2.1 Options Review Matrix for Potential Organisational Structures

Options (across Risks/Dependencies/Benefits/Dis-benefits (below))	No service	Reduced Service – in house	Reduced Service – Commissioned	Independent Commissioning and Delivery organisation	Staff Led Mutual
Structural and Organisational Impacts on Brent Council					
Continuity	N/A – but still required to meet duties under Education Act.	Small staff cohort retained –in key strategic and operational posts. Some dis-benefit and associated risk in losing core staff and support assets e.g. hubs, Youth Bus etc.	As reduced service –in house –may require strategic staff, and make all operational staff redundant. Could lead to fragmented delivery	Reduced risk and dis-benefit from this. Could become major benefit, although dependency risk increases over time regarding the chosen organisations with whom Brent partners with. Brent controls continuity and service levels through contract	As Independent Commissioning/Delivery organisation. High financial risk against backdrop of financial budget reductions. Low risks for young people seeing “business as usual”. Brent dependency by mutual is high and overall this is a higher risk option for Brent to consider.
Legal	Removal of universal open access provision (Risk and Dis-benefit). Continuing requirement to meet core statutory duties	As no service –but with core retained services. Brent retains legal responsibilities and control of in house services. (Risk and Dis-Benefit to Brent and Young People)	Retain legal responsibilities and control of service delivery through contract management.	Potentially fully funded services by LATCO. Commissioned services overseen via BYO. Brent retains statutory duties but delivered via LATCO and BYO. Subject to confirming details of services, this model is capable of meeting Brent’s core statutory duties under the Education Act.	Services contracted to and delivered through mutual but Brent retains statutory duty. Subject to confirming details of services, this model is capable of meeting Brent’s core statutory duties under the Education Act.
Financial	Short Term Saving of £1.3m from 2016/17 less costs of meeting statutory duties; potentially resulting in unintended consequences and expensive downstream costs and community issues -	As no service - Short Term Saving of £900k from 2016/17 – unknown longer term benefits/costs. Short term cash releasing benefit –	As reduced service – in house. Some cost of contract management. Cash releasing benefit also from reallocation of current hub property facilities. May also be a	Potential services uplift through efficiencies from independent organisation augmented by additional funding that independent organisation sources.	Brent – gains from transferring costs of TUPE and Pensions funding – Mutual potentially at risk for future pension and TUPE liabilities – and reduced budget envelope. Mutual

Options (across) Risks/Dependencies/Benefits/Dis- benefits (below)	No service	Reduced Service – in house	Reduced Service – Commissioned	Independent Commissioning and Delivery organisation	Staff Led Mutual
	unknown longer term benefits/costs associated with loss of service (potential risk and community dis-benefit). Potential empty property costs (4 hubs) – on-going maintenance and running costs and debt service costs (Roundwood). Also associated staff cost issues managing centres e.g. duty managers, etc. (risk of redundancy costs inside CYP and for other departments in Brent).	longer term dis-benefit for young people. Also dis-benefit to related CYP services (put under more pressure). Benefit for external providers – may provide better integration of commissioning.	risk and cost to Brent for voids/vacant hub properties in short term.		will need to raise additional funds for capacity building to be sustainable.
Staff	Redundancies – after formal consultation period (initial cash releasing benefit and longer term pension liability reduction). Need to examine cost of pensions as “strain cost” for redundant staff could be significant. Risk of loss of staff expertise and commitment and local experience and knowledge of young people community.	Retain core cohort of key service staff. Partial Redundancies required. Perhaps benefit to Brent CYP reshaping into targeted only Youth Service.	Commission external providers to deliver services either with own staff or taking on some Brent staff possibly subject to TUPE. Partial or full Redundancies. Some dis-benefits losing control of service provision and ceding trust to other providers. If TUPE applies, LGPS membership would also be relevant and would have to be funded.	In the event that TUPE does not apply, same as no service. If TUPE does apply, some Brent staff could transfer. If TUPE applies, LGPS membership would also be relevant and would have to be funded.	In scope employees, could be subject to TUPE. Brent could “draws line in sand” on Pensions Liability risk from date of transfer. Potential risk transfer here. Mutual needs to fund “Admitted Body” status under LGPS scheme for Brent. Greater control for staff

Options (across) Risks/Dependencies/Benefits/Dis-benefits (below)	No service	Reduced Service – in house	Reduced Service – Commissioned	Independent Commissioning and Delivery organisation	Staff Led Mutual
Governance (please see more detailed analysis in section 4.3)	Cabinet/Council officers to oversee provision and outcomes management. (Benefit to Brent for less organisational risk management –but retains legal obligations)	CYP overall responsible for smaller staff cohort and reduced budget. No major OD changes.	As reduced service in house except CYP manages contract letting and oversees outcomes and reporting. Contract management provides benefit through contractual tool to measure outcomes and reporting – dis-benefit is lack of direct council engagement” with young people.	Controlled by Brent through contracts, linked to legal obligations for service provision. Brent controls LATCO but BYO (if charity) will have degree of independence from the Council. Brent will not necessarily have control over how charity distributes funding.	Mutual could be majority ‘owned’ and controlled by employees. Brent will control delivery of services via services contract with mutual. Brent could have a “non-conflicted seat” on Mutual Board. Scope for Young People to become actively involved in Mutual Board and Strategic management.
Funding from Brent	N/A apart from statutory duties – Immediate Cash releasing saving (short term advantage). Longer term costs of funding vacant or void property assets, and potential downstream costs and community issues	Potentially £400k pa 2016-17 and beyond	Potentially £400k pa 2016-17 and beyond	Potentially £400k pa 2016-17 or possibly more, if Brent decides to increase funding envelope up to £1.3m. Brent can choose to decrease (or increase) funding on contractual, outcomes basis of contracts offered. More targeted service. Risk of BYO not being able to lever in sufficient funding to sustain this model. Reputational risk for Council if model is not sustainable.	Requires £1.3m budget in 2015/16 transferred as a block 5 year contract for mutual subject to procurement requirements (see section relating to procurement below) – as core funding to support transfer of present service. Mutual has time to develop new funding sources during 5 year Brent core contract period and replace funding in future. Risk for mutual of competitive providers bidding in 5 years. Risk that mutual unable to diversify its ‘offer’ beyond spin out contract.

Options (across) Risks/Dependencies/Benefits/Dis- benefits (below)	No service	Reduced Service – in house	Reduced Service – Commissioned	Independent Commissioning and Delivery organisation	Staff Led Mutual
Property (please see more detailed analysis in section 6)	4 empty hubs with on-going maintenance costs – need to find alternative use/occupiers – possible development potential in keeping with wider council plans - possible claw-back of capital grant (where relevant) on disposal/change of use – potential for disposal resulting in income stream/capital receipt – potential to maximise use of currently underused facilities and fill unmet need elsewhere within local services.	Reduction in number of hubs resulting in empty properties with on-going costs including maintenance costs – need to find alternative use/occupiers of hubs surplus to requirements - possible development of surplus hubs in keeping with wider council plans - possible claw-back of capital grant (where relevant) on disposal/change of use – potential for disposal of surplus hubs resulting in income stream/capital receipt – opportunity to use better performing hubs for youth service delivery and off-load others under new arrangements to maximise use and fill unmet need elsewhere.	If services delivered from provider facilities see “no service” – if services delivered in whole or part from existing hub facilities see “reduced service – in house” – also need to settle new occupational arrangements between Brent and commissioned providers and decide how property costs/liabilities will be apportioned.	Brent decision required as to extent of use of existing hub facilities by new independent commissioning/delivery organisation – use of all hubs considered unlikely (Roundwood being seen as most likely hub for continued use) so see “reduced service – in house” – also need to settle new occupational arrangements between Brent and new independent commissioning/delivery organisation and decide how property costs/liabilities will be apportioned.	See “independent commissioning/delivery organisation”.
Other Grant & External Funding	N/A	Limited provision (based on current position)	As reduced service in house.	Has wider scope to bid for funding outside Brent availability – so potentially positive for service in future.	Depends on legal framework for mutual. Charitable and other not for profit vehicles likely to be more successful in securing funding

Options (across) Risks/Dependencies/Benefits/Dis- benefits (below)	No service	Reduced Service – in house	Reduced Service – Commissioned	Independent Commissioning and Delivery organisation	Staff Led Mutual
Procurement (please see more detailed analysis at para 4.3)	N/A	N/A	Contracts potentially subject to Public Contract Regulations and “light touch” regime.	Contract with LATCO potentially exempt under Public Contract Regulations. Management contract subject to Public Contract Regulations dependent upon value.	Services contract potentially subject to Public Contract Regulations and “light touch” regime. Possible use of procurement restriction to “mutuals” but limited to a 3 year contract.
Monitoring & Reporting	Minimal work required – small core Brent CYP executive team to manage? (Potential cost and time dis-benefit for CYP team)	In proportion to size of service.	Contract(s) to specify monitoring and reporting requirements. In house capacity required to manage the contracts. External reporting as separate entity.	Contract(s) to specify monitoring and reporting requirements. In house capacity required to manage the contracts. External reporting as separate entities.	Contract(s) to specify monitoring and reporting requirements. In house capacity required to manage the contracts. External reporting as separate entities.
Strategic Involvement of Young People	Limited scope for strategic involvement. Absence of youth services support team and possibly hubs, could alienate Youth Parliament and Young people in Brent. Risk of deterioration in social cohesion.	Reduced capacity for engagement.	Reduced capacity for engagement	Could have young people representatives on the Board	Could have young people representatives on the Board
Impacts on Other Services in Brent					
Safeguarding	CYP to liaise with Youth Support Services team overall. (increase in operational risk and time/cost dis-benefit over time). Greater dependency on other provider organisations and remaining staff cohort.	As No Service	As No Service. Risk of fragmented service delivery affecting young people. Safeguarding obligations to be addressed in contracts.	Safeguarding obligations to be addressed in contracts.	As independent commissioning/delivery organisation

Options (across) Risks/Dependencies/Benefits/Dis- benefits (below)	No service	Reduced Service – in house	Reduced Service – Commissioned	Independent Commissioning and Delivery organisation	Staff Led Mutual
Police and YOS	CYP to liaise with remaining service teams. Will need to report outcomes of no service over time. Increased pressures on YOS team and related services.	As no service	As no service. Risk of fragmented service delivery affecting young people.	Will need to use contractual KPI's to report back on targeted services let.	As independent commissioning/delivery organisation
NHS/CCG	No direct cost to Brent – but risk of increased cost burden of management of young people with mental health, substance misuse and sexual health conditions to NHS and GPs. Benefits could be through greater use of PH budget to create new targeted Youth services.	As no service	As no service	As no service Strategic approach to commissioning could drive significant benefits and efficiencies across public services	As independent commissioning/delivery organisation
Schools	No cost – Right Track is paid for direct to CYP by schools – Brent assumed to run cost neutral service. Dis-benefit to young people if schools refuse to collaborate to use existing assets after school for young people.	As no service	As no service – might be commissioned out to schools (some of Right Track is already delivered by teachers)	Might be commissioned to third party by Brent – based on CYP team being able to manage service – some of which is provided by schools staff under CYP control and guidance -	As independent commissioning/delivery organisation
Housing Associations	Could take up some slack from Brent service cessation – but only within their existing cost and staff envelopes. May cherry pick targeted service delivery work from Brent for them? Indirect benefit to Brent (cost and services).	N/A	Might be commissioned out to HA's with teams and sites that can become hubs – depends on targeted services -	As Reduced service – commissioned. Body may be able to leverage greater partnership working with housing associations	Mutual may need to establish links with HA's as part of its approach to delivering services that may be transferred under an initial block contract agreement from Brent.

Options (across) Risks/Dependencies/Benefits/Dis- benefits (below)	No service	Reduced Service – in house	Reduced Service – Commissioned	Independent Commissioning and Delivery organisation	Staff Led Mutual
Charities and VCS Orgs	No cost to Brent. Some VCS organisations may take up specific challenges but not a “whole service” replacement. Depends on VCS funding availability to deliver “ceased services”.	N/A	No cost to Brent apart from CYP management of let contracts and attendant outcomes reporting and management.	Real need to leverage income and greater partnership working. CYP management of contracts and outcomes.	Requires mutual to forge new links either as co-providers or collaborators to source additional funding and /or bidding for more contract work. Mutual may be established as a charity.
Other Organisations (including business)	Only if interested, otherwise N/A	As no service	As No Service	There is a real need to leverage income and greater partnership working from as wide a range of partners as possible.	Requires engagement by Mutual to develop new sources of funding, assets, people or combination of these.
Borough Wide Impacts					
Socio/Demographic Challenges	Increased risks of more NEET, FGM, and CSE, incidence and declining health and wellbeing of young people. More young people over next decade will reach 13-19 key demographic – harder to manage young people’s expectations and aspirations. Greater dependency on VCS/ Police/YOS/Probation/NHS/GP services.	As no service but reduced negative impacts over longer period.	As reduced service in house	If achieves improved and more flexible delivery/commissioning methods may yield better value for money and other outcomes	As independent commissioning/delivery organisation
Families and Community	Given diverse nature of families in Brent, will put increasing transfer of risk onto this group from Brent Council – unsure of impacts at this stage, but likely to become	Some transfer of risk to families	Impact will depend upon level, volume and quality of work commissioned.	Impact will depend upon level, volume and quality of work commissioned.	As reduced service-commissioned but with added benefit that staff delivering services will have the opportunity to focus on core and sustainable

Options (across) Risks/Dependencies/Benefits/Dis- benefits (below)	No service	Reduced Service – in house	Reduced Service – Commissioned	Independent Commissioning and Delivery organisation	Staff Led Mutual
	increasing dis-benefit to community overall.				positive outcomes in key targeted areas.
Young People as Service Users	May fall away from positive activities i.e. Duke of Edinburgh, and at same time, increased risk of becoming susceptible to lower academic attainment and more exclusion risk. In turn this could create higher risk of substance misuse, criminal activity etc. Gradually increasing dis-benefits.	As no service but effects potentially mitigated.	As no service but effects potentially mitigated.	Potential to sustain engagement and usage of youth services in a more creative, and flexible manner, working with young people in a proactive and innovative manner.	As independent commissioning/delivery organisation.
Young People's Health	May deteriorate increasingly over time – hard to quantify at this stage.	As no service	As no service	Will have young people's health as a priority outcome.	Will have young people's health as a priority outcome.
Direct benefits/dis-benefits of Youth Services for Young People in Brent					
Value of Youth Parliament	Political and reputational risk of "not being seen to care for Youth Services". Already picked up in local press.	Potential to sustain meaningful Youth Parliament engagement	As reduced service in house. Contracts could make provision for Youth Parliament engagement.	As reduced service in house. Contracts could make provision for Youth Parliament engagement.	As independent commissioning/delivery organisation
Service Innovation	N/A – None – long term dis- benefit.	Possible opportunity to do this through service redesign and focus on key retained targeted outcomes	As reduced service in house – but third party providers incentivised to offer innovative delivery solutions through bidding	Potentially more capacity to secure innovative delivery solutions.	As for Independent Commissioning/Delivery Organisation but mutual contractually required to secure continuous improvement.
Direct Engagement with Young People	Likely to decline over time. Reputational risk of being perceived as not concerned about young people.	As no service – but effects may be reduced.	As reduced service in house	Could be positive if the reduced budget sums commission targeted work	Potentially good outcomes if staff adapt to new, more empowered regime where they make key decisions working with young people.

Options (across) Risks/Dependencies/Benefits/Dis- benefits (below)	No service	Reduced Service – in house	Reduced Service – Commissioned	Independent Commissioning and Delivery organisation	Staff Led Mutual
Flexibility	N/A – No flexibility.	Limited based on what CYP considers a “core retained targeted service need”	Subject to budget could be written into contracts.	Flexibility can be built into objects although charities can only deliver exclusively charitable objects. Also dependent on budget envelope.	Flexibility can be built into objects although charities can only deliver exclusively charitable objects. Also dependent on budget envelope.
Time	Impact of no service likely to be felt at an early stage although time period unknown.	Impact on outcomes likely to be over a longer period than for No service.	As Reduced Service in house	Full impact will probably not be apparent for at least 12 months.	Full impact will probably not be apparent for at least 12 months.
Wider Community Benefits/Dis-Benefits					
Integrated Commissioning/Service Delivery	N/A	Brent could consider working more closely with public health and CCG to provide an integrated pathway for youth services – preventative commissioning i.e. early stage interventions to prevent more costly reactive commissioning at future stage.	As reduced service in house – opportunity to commission providers already working in an integrated pathway and with youth services experience.	As reduced services – commissioned	As reduced services – commissioned but with mutual organisation forging its own relationships with other providers and /or commissioners in a new delivery model. Potential for more widespread working with VCS organisations who have previously not engaged with Brent.
Reputational	High Risk of poor public perception and adverse media coverage.	Reduced but still negative risk of poor public perception	As reduced service in house	Unless the BYO is perceived as genuinely independent stakeholders may not be prepared to engage	Unless placed on a reasonable robust platform at the outset could be perceived as being set up to fail.
Alliance Contracting (with other providers/orgs)	N/A	May provide further opportunities for alliance contracting	May provide further opportunities for alliance contracting	As reduced services – commissioned	Limited scope if mutual is main provider.

Options (across) Risks/Dependencies/Benefits/Dis- benefits (below)	No service	Reduced Service – in house	Reduced Service – Commissioned	Independent Commissioning and Delivery organisation	Staff Led Mutual
Business	Perhaps lack of young people employment engagement without Youth Services active involvement in apprenticeships/mentoring	As no service – insufficient staff resource within Brent to develop	Potential benefit if providers have strong links in local business community	As reduced service – commissioned. Some stakeholders may have active business links so potential benefit	Potential for mutual to develop beneficial relationships with businesses.

4.3 Delivery Models

4.3.1 Contracting / commissioning with third party organisations

One delivery option would be for Brent to enter into contract(s) with VCS bodies or other organisations like Prospects, Children’s Society or other similar organisations for the provision of youth services. The contractual arrangements between Brent and the organisation will be contained in an agreement (either an outsourcing agreement or contract). The agreement will set out the responsibilities of both of the parties.

Key issues for Brent to consider would include:

- Whether or not the Council would have a budget to externally commission such services
- Economic and financial standing of the organisation – this should be considered to ensure that the organisation will be able to fulfil its contractual obligations under the agreement.
- Taking into account the views of young people, including service users and Youth parliament members, and integrating them into decisions on future provisions – to evolve, innovate and keep relevant and up-to-date the portfolio of youth services offered.
- Increasing socio-demographic pressures – not just from incoming migrants, but also from a growing pressure from adjacent central London boroughs “pushing” more people into Brent due to lack of affordable housing, jobs etc.
- Key young people outcomes i.e. safeguarding, need to be protected
- Contract management – a contract with a separate organisation should contain appropriate and proportionate provision to regulate the relationship and ensure the services are being provided in accordance with the contract i.e. service quality, measurable outcomes (KPI’s).
- TUPE and pension implications
- Property – would commissioned providers have use of any of the existing hub facilities, and if so, under what type of occupational arrangements? What alternative use(s) of surplus sites might there be? Restrictions/conditions on proposed disposals by Brent to be considered.
- Procurement requirements

Procurement – Contract(s) with third parties

We have assumed for the purposes of this Report that the commissioning of youth services with third parties will be via contracts for the supply of services rather than via grant funding arrangements. The former, unlike the latter, may be subject to the public procurement rules. The key difference between a contract for the supply of services and a grant funding arrangement is that the former creates legally binding obligations on the organisation to deliver the services and on the council to pay the organisation for the provision of the services. Whereas under the latter there is no legally binding obligation on the recipient organisation to deliver the services although the latter could and usually would include an obligation to repay the grant if it is not used for the purposes intended.

The Public Contract Regulations 2015 (2015 Regulations) came into force in February 2015 and replaces the previous 2006 regulations. Like the 2006 regulations, the 2015 Regulations require public sector contracts above certain specified threshold values that are not expressly excluded from the scope of the 2015 Regulations to be competitively tendered.

Where it can be demonstrated for some or all of the services there is no market for them it may be possible to utilise a single negotiated tender procedure.

Although there is no longer a distinction between Part A and Part B services in the 2015 Regulations, there is a new light touch regime for health, social, education and certain other services contracts (regulations 74 to 77). Those services which fall with the light touch regime are set out in Schedule 3 to the 2015 Regulations and are based on the CPV codes. We have considered whether youth services fall within the light touch regime and it is possible that some or all of the contracts may fall within this regime depending on the type of services in question (for example, relevant CPV codes to which the light touch regime applies include youth education services, services to the community and services provided by youth associations). Careful consideration will need to be given to the types of services to be included in each contract to ascertain whether or not such services fall within Schedule 3 to the 2015 Regulations.

The light touch regime will apply to contracts for any of those services listed in Schedule 3 where the value of the contract is above the relevant threshold (currently £625,000). The light touch regime is designed to give as much flexibility as possible to contracting authorities and allows them to design the procurement process to be used. The new light touch regime for above threshold contracts includes the following requirements:

- The publication of a contract notice or prior information notice in the OEJU (except where the negotiated procedure without prior publication could have been used)
- The publication of a contract award notice following each procurement
- Compliance with the treaty principles of transparency equal treatment and non-discrimination
- The procurement must be conducted in accordance with the information provided in the OJEU advert (i.e. conditions for participation, time limits, award procedure)
- Any time limits imposed on suppliers must be reasonable and proportionate.

If the value of the contract for services is below the threshold, these do not need to be advertised in the OJEU unless there are concrete indications of cross border interest. The general rules on below threshold contracts would then apply to these contracts (see further below).

The 2015 Regulations include a new provision which allows contracting authorities to limit participation in the procurement procedure for contracts for the provision of certain specified Schedule 3 services to qualifying organisations such as mutual and social enterprises (regulation 77). This is not a direct award, rather the Council will need to follow the light touch regime in running the procurement (as explained above) but participation will be limited to these particular types of organisations. Not all of the Schedule 3 services are covered by this provision so again the services falling within the particular contract will need to be checked to see if this provision is available. If the procurement is to be restricted, qualifying organisations would need to meet the following conditions in order to participate in the procurement: (1) its objective is the pursuit of a public service mission linked to the delivery of services, (2) its profits are reinvested with a view to achieving the objective, (3) the structures of management and ownership of the organisation are based on employee ownership or require the active participation of employees, users and stakeholders, and (4) the organisation has not been awarded a similar contract of services by the council in the previous three years. A key point to note with regard to this provision is that any contract awarded pursuant to this provision cannot exceed three years in duration.

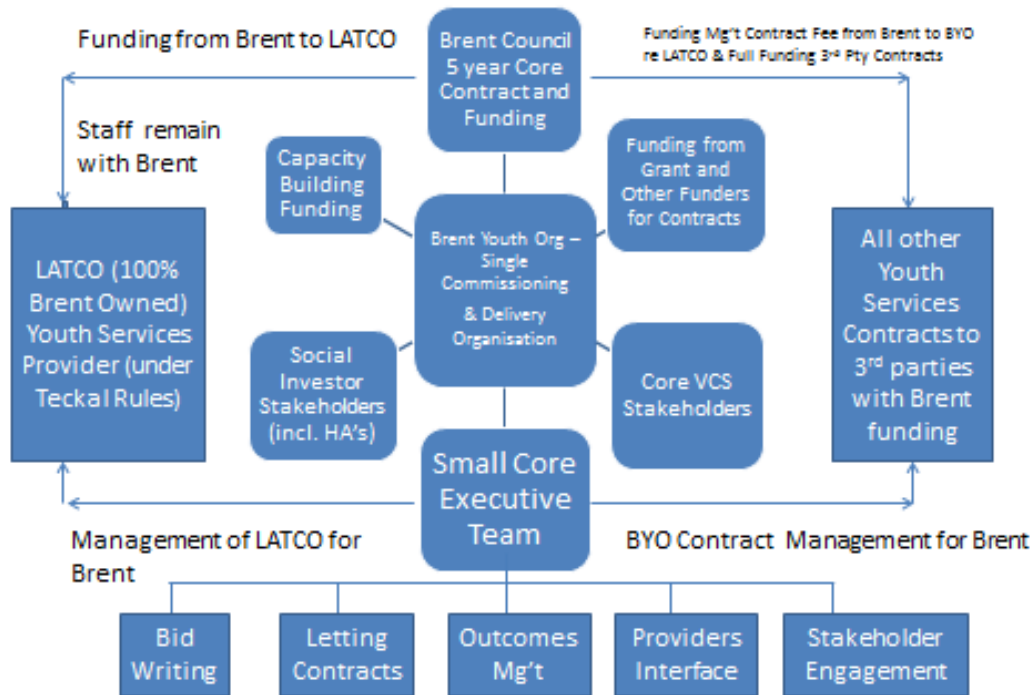
For services that fall outside Schedule 3 and the value of which exceed the relevant threshold the full procurement regime will apply to contracts which have a value above the threshold (and this is explained further on page 28). If below threshold, there is also a small number of requirements which we explain below on page 28.

Another possible option could be a number of below threshold outsourcing contracts and/or grant funding or a mix to such existing third party organisations with perhaps the Brent Youth Organisation managing all of the contracts to ensure consistency and no gaps in provision.

4.3.2 Independent Commissioning Organisation – Brent Youth Organisation / a Possible New Delivery Model

We illustrate our independent commissioning/delivery model structure in more detail. The model we have suggested is a commissioning only model initially, but could expand into a commissioning/delivery organisation over time. This is predicated on the assumption that the organisation is supported by a fully funded core contract that Brent lets to the organisation to manage on its behalf (subject to the procurement rules), and that the organisation raises its own funds to capacity build itself and to start to become both a recipient of new funds for youth service provision (mostly targeted) and to manage contracts such as Brent on their behalf.

Suggested Independent Brent Youth Org Model



This suggested new delivery model is a “single independent commissioning/delivery organisation” that takes on the sole commissioning responsibility for Brent Council to discharge its legal obligations to provide Youth Services, both directly and through this new organisation. Our proposed structure assumes that a new Brent Youth Organisation (BYO) will also capacity build and increase its pool of funding so that overall, over time, the current level of services can be maintained. It blends a variety of attributes seen in social business organisations into one new structure.

In outline, Brent would commission the LATCO to deliver Youth Services (scope to be confirmed) on its behalf. The LATCO is wholly owned and controlled by the Council (a Teckal entity). Brent commissions BYO to manage this and other third party youth services contracts on its behalf. This is explained in more detail below.

The illustration above does require the core support of Brent Council as a core starter contract, with a long term commitment based on a “tapered” core contract value from Brent to LATCO (as reflected in our baseline financial modelling) based on £1.3m 2015/16 budget carried forward less £100k taper reduction as follows:

- 2016/17 - £1.2m
- 2017/18 - £1.1m
- 2018/19 - £1.0m
- 2019/20 - £0.9m
- 2020/21 - £0.8m

The thinking behind this model is that BYO as a new commissioning organisation would take a management fee from all contracts it manages, including the proposed core block contract from Brent for existing in house services (5 years + 1 + 1). Five years contract duration provides a platform from which BYO can build and evolve sustainably. The core contract should have an extension option, at the discretion of Brent Council for extension by 1 or 2 further years on a “1 + 1 basis”.

Our financial modelling is predicated on the existing budgeted provision, including the £100k reduction in 2015/16 to cover staffing. What we have not modelled is the commissioning arrangements for this new proposed model. The LATCO arrangement proposed is 95% funded Brent to LATCO and 5% management fee from Brent to BYO that manages the LATCO contract for Brent. Other Brent contracts that may be let to 3rd party contractors would be managed through BYO which would take a 10% management fee from Brent i.e. using 90% of Brent funding for 3rd party providers.

We have also considered the costs of retaining the current staff cohort. Clearly a new organisation will not have the wherewithal to be able to sustain TUPE/Pensions obligations even with a core contract for a 5 year period, with a reducing cash value year on year, as suggested above. Therefore, we propose that the staff remain under the umbrella of Brent Council, and instead work for a 100% owned LATCO (Local Authority Trading Organisation) as secondees. Brent may have more opportunities for managing displaced staff and to better control the management of its core contract through BYO. Brent can retain the staff cohort under existing contracts through the LATCO, and have direct responsibility for its continued service. Over time, BYO may be able to reshape the provision of services, perhaps in a more targeted manner, as opposed to a more universal service offering, as is the current case, to meet the ever changing needs of young people in Brent in the future.

In addition, we would suggest that Brent passes over full management responsibilities for all third party contracts let by Brent, so that BYO has full control over all Youth Service activities in Brent. There would need to be a financial adjustment from Brent to the new organisation to cover the cost of “contract management” for all other contracts, including those with Connexions and other third party VCS providers. As those contracts fall due for renewal, then Brent and BYO can agree the available financial envelope and scope of each contact, so that BYO can action this for Brent. This creates a simplified, more flexible arrangement for Brent, whilst retaining the community facing provision and resultant outcomes. It also promotes co-commissioning and encourages alliance contracting by providers working together.

BYO may also be able to raise additional funds in its own right, and may then be able to make up any shortfalls in funding from existing let youth services contracts by Brent to third party providers. BYO will also focus on the VCS providers in particular, who are most vulnerable to contract value reductions or increased work scope for the same value as maturing contracts. By being able to attract additional funding, not available to Brent previously through its in house service provision, BYO may be able to “gap fill” any funding shortfalls, where services providing good or excellent outcomes need to be maintained and in some cases developed and expanded. The structure would potentially be flexible and enable services to be sustained and maintained whilst allowing flexibility in delivery and management of these and future contacts over time.

If there is the possibility that BYO could commission some services in future on its own behalf as well as on behalf of Brent, careful consideration would need to be given to whether BYO is itself a contracting authority subject to the procurement rules or whether it is only subject to the rules when acting on behalf of Brent.

In order to make up the funding / working capital shortfall for BYO, BYO will then identify and seek to raise funds from various grant and social investors sources e.g. BLF, JLT, City Bridge Trust, Henry Smith Trust, HA's and local business organisations to make up the difference. This will require a significant stakeholder engagement and influencing by a new organisation to secure and sustain this level of new funding. It will not be easy. The extra funds required (in our baselined financial model, we have estimated c £525k in 2016/17 rising to c £1m, by 2020/21 (assuming a 5 years contract between Brent and LATCO) would then be used to support and create additional youth services provision, either by making up the full value of contracts let to third parties, on a fully funded (as opposed to mostly funded) basis. Also there is scope to create new and more targeted services. Also, there is a need to manage the cost of covering shared services costs like HR, Finance, Legal and Insurance currently undertaken by Brent centrally.

This model also deals with the existing support staff by allowing them to continue to remain as Brent employees, working for the LATCO and BYO does not have the burden of staff transfer risk from Day 1. BYO could even be staffed by secondees from other organisations (and paid by them) as part of the delivery model, with a strong, but compact Board of Trustees overseeing the organisation on behalf of the Brent community.

Legal analysis

Power to establish and participate in corporate vehicles

Section 1 of the Localism Act 2011 provides the Council with a general power of competence. This provides that the Council ‘has the power to do anything that individuals generally may do’. The Council is no longer obliged to identify a particular benefit accruing to its area. Under this power, it is not possible to delegate a function to a company and therefore it will be necessary to enter into a contract with the entity (see further below).

In our opinion this power would allow the Council to enter into these arrangements with the BYO and to establish the BYO and the LATCO.

Legal Structure – BYO

The Brent Youth Organisation could take the form of a number of corporate structures i.e. Company limited by guarantee, Community Interest Company, Charitable Incorporated Organisation or Community Benefit Society. More details on each of the different corporate structures can be found in our table in para 4.3.5.

In order for BYO to obtain additional funding for third parties, it may be beneficial for it to become a charitable entity (either a charitable CLG, CIO or a charitable community benefit society).

Of the three charity structures above, perhaps the least likely to fit the desired model would be the charitable community benefit society. At present these bodies cannot register with the Charity Commission and are exempt charities. As such their charitable position is more difficult for the public and funders to understand. In addition they are more time consuming, problematic and expensive to establish.

Therefore, in reality BYO would need to be either a charitable CLG (incorporated with Companies House and then registered with the Charity Commission and HMRC) or a Charitable Incorporated Organisation (CIO) (incorporated by way of registration with the Charity Commission and then registered for tax relief with HMRC).

The advantages of using a CLG are that it is the more common model, the CIO only having been available since January 2013. The only other advantage that some within the sector perceive is that Companies House maintains a register of company mortgages which is searchable by external bodies. No such register exists for charges granted by CIOs.

That said, the more modern governance approach is the CIO as it is designed specifically for charities, does not involve regulatory or administrative interaction with Companies House only the Charity Commission and can be set up with either a wider membership (“association”) model or a narrow membership (restricted to those who are the charity trustees) (“foundation”) model.

A further advantage of a CIO is that at present it can be set up with a local authority member without any of the provisions relating to local authority controlled or influenced companies applying.

If Brent were to be one of the members of the CIO, then even if it were the only member, who was not also a charity trustee of the CIO, the association model constitution for the CIO would be used. This “association” model would allow for other stakeholders to be members if they wished. For example this might be a suitable way to engage with bodies such as the CVSs or the Youth Parliament. Like a CLG, a CIO can have some charity trustees aged 16-18. The individuals who would serve as the charity trustees could be elected by the members, appointed by external bodies, appointed by trustees themselves, or any combination of these options (e.g. some elected, some appointed by Brent or other bodies and some appointed by the trustees themselves).

Other administrative issues such as appointment/election of a chair of charity trustees would also need to be determined and can be dealt with in a variety of different ways to suit the needs of Brent and the youth sector served.

The fundamental issues to enable registration as a charity are that BYO must have:

- Exclusively charitable objects (such as “the relief of needs of children and young people”);
- Exclusively charitable activities in furtherance of those objects (conducted itself or in conjunction with others);
- AND
- It must be independent of the state (and this includes local government);
- It must benefit the public or a sufficient section of the public;
- Any private benefit must be incidental (i.e. a mutual set up by and for the benefit of employees cannot be a charity)

Independence does not totally preclude Brent involvement but the application to the Charity Commission for registration will need to demonstrate that any such involvement is limited in such a way as to ensure that the charity trustees are not simply following a local authority agenda and are able to make decisions at their own discretion.

The first trustees would be individuals identified by Brent on the recommendation of a more detailed consideration of the requirements for governance of the BYO charity. This would also determine the other matters which are mentioned including who the members would be; how trustees were elected/appointed; length and number of terms of office and identity of the chair of the trustee and other officers, their role and delegated responsibility.

BYO could provide funding to third party youth services providers (whether charitable or non-charitable) as long as the funding is to be used by the recipient for an activity to further the charitable purposes of BYO. This would need to be made clear in an appropriate grant agreement.

More information regarding charitable status is set out in section 4.3.6.

Legal Structure – LATCO

The LATCO could take the form of any of the vehicles explained in paragraph 4.3.5 except for charitable entities and their key characteristics are set out in section 4.3.5.

Local authority companies

If the LATCO is controlled by the Council, the Council will need to bear in the mind the provisions relating to controlled companies and ensure they meet any requirements.

The criteria for local authority companies is set out in the Local Government and Housing Act 1989 which provides that the following entities could satisfy the criteria of a ‘company’ for the purposes of the Act – a company limited by shares, a company limited by guarantee, a co-operative or community benefit society. Therefore any of the possible vehicles, except for a charitable incorporated organisation would meet this definition.

The Company will be controlled by the Local Authority if:

- the company is at that time a subsidiary of the local authority; or
- the local authority have the power to control a majority of the votes at a general meeting; or
- the local authority have the power to appoint or remove a majority of the board of directors; or
- the company is under the control of another company which is itself under the control of the local authority.

In relation to the power to control a majority of votes at a general meeting, this can be through the holding of votes by the local authority, by a group of members of the company the composition of which is controlled by the local authority and by persons who have contractually bound themselves to vote in accordance with the instructions of the local authority.

In order to meet the Teckal requirements (in Regulation 12 of the 2015 Regulations) set out below, the Council will need a high level of control over the entity (i.e. sole ownership by the Council), and therefore if it meets those requirements it will also meet the test for controlled companies under the 1989 Act.

There may be accounting implications if the company is controlled and we would advise that the Council consults with its own accountants, in particular as to whether or not there is any requirement to consolidate the accounts of the company with those of the Council for the period that the company is and remains controlled.

The Local Authorities (Companies) Order 1995 applies to England and Wales and sets out a number of requirements applicable to companies subject to the control of local authorities. The requirements are as follows:

- The company shall mention on all relevant documents (i.e. business letter, notices) the fact that it is a company controlled by a local authority and the name of that local authority
- The company shall not pay a director of the company, who is also a member of the authority, remuneration and expenses in excess of the maximum amount payable to the member by the authority
- The company shall not publish any material which the authority would be prohibited from publishing by section 2 of the Local Government Act 1986 (as amended)
- The company must make arrangements to remove any Directors who have been disqualified from membership of the authority otherwise on the grounds of being employed by a local authority or controlled company
- The company shall provide or instruct its auditors to provide
 - To the auditors in relation to the accounts of the authority, such information and explanation about the affairs of the company as they may require for the purposes of the audit of the authority’s accounts; and

- To any person authorised by the Audit Commission (or its successor), such information as that person or the Commission may require for the discharge of any function under Part III of the Local Government Finance Act 1982 (as amended)
- The company shall provide to a member of the authority such information about the affairs of the company as the member reasonably requires for the proper discharge of his/her duties
- A controlled company shall, before it appoints an auditor of the company, obtain the consent of the Audit Commission to that appointment.
- A company shall make available for inspection by any member of the public a copy of the minutes of any general meeting of the company for up to four years after that meeting. However, this will not apply to any matter the disclosure of which would be in breach of any enactment or of an obligation owed to any person.

Power to trade commercially

Subject to the requirements below on Teckal entities (in Regulation 12 of the 2015 Regulations) and their limitations, it may be possible for the Council to set up the LATCO so it has the ability to trade services. Section 4 of the Localism Act 2011 permits the council to do, for a commercial purpose, anything that they are empowered to do by statute, as long as they do so through a company. However there are restrictions on local authorities trading mandatory functions and, if this option was pursued, it would be necessary to undertake an assessment of which youth services functions could be traded and how. . The company must be set up in one of the forms prescribed by the Act which includes a company within the meaning of the Companies Act 2006 (company limited by shares or company limited by guarantee which in our opinion includes CICs) or a co-operative or community benefit society.

Procurement - Contract for Services between Brent Council and LATCO for provision of youth services

As explained above there are a number of contracts which may be excluded from the provisions of the 2015 Regulations. One exception is in relation to contracts awarded to controlled entities. This was previously known as the Teckal exception but has now been codified in the 2015 Regulations.

Regulation 12(1) states that: A public contract awarded by a contracting authority to a legal person falls outside the scope of the full regime of the 2015 Regulations where **all** of the following conditions are fulfilled:

- The contracting authority exercises over the legal person concerned a control similar to that which it exercises over its own departments.
- More than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority.
- There is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

A contracting authority shall be deemed to exercise the required level of control where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person, or the control is exercised by another legal person, which is itself controlled in the same way by the contracting authority (Regulation 12(3)).

If the LACTO is set up and operates in such a way as to comply with these conditions Brent will be able to award the contract for youth services to the LACTO without going through a competitive procurement exercise under the public procurement rules.

If the LATCO is wholly owned by Brent Council, there will be no private participation and as Brent will be the sole member/shareholder and responsible for the strategic decisions, it would meet part of the first requirement. The entity would need to remain as a wholly owned company and the Council should not divest itself of all or part of ownership or admit private owners into the entity otherwise this would trigger a requirement to re-tender the contract competitively. The Council would also need control at board/management level to be able to fully satisfy the requirements, although this would not prevent them from having young people representatives or other stakeholders on the board provided they are in the minority for decision making and that Brent retains control over decision making and there is no private capital being invested. It is also important to recruit a range of people to the board who have the necessary skill set, for example finance, HR, legal and governance.

The current proposal is for the LATCO to deliver the youth services on behalf of Brent Council through a services contract and therefore, at least initially, the only activities undertaken by LATCO would be for Brent Council. In order to continue to meet the requirements, more than 80% of the LATCOs activities must always be for Brent.

Procurement - Contract for the Management of Services between Brent Council and BYO

As explained above the Public Contract Regulations 2015 came into force in February 2015. The rules on procedures for procurement set out in the regulations will apply to public services contracts where they are above the threshold and are not excluded from the scope of the rules.

The detailed scope of services would need to be considered to ascertain what procurement regime would apply. The provision of contract management services are not likely to fall within Schedule 3 and the light touch regime nor any other exemption set out in the 2015 Regulations.

Therefore, the full procurement regime will apply if the value of the contract is above the threshold (the current threshold for services contracts is £172,514). This will mean the contract must be competitively tendered through a contract notice in the OJEU using one of the prescribed procedures.

If the value of the contract is below the threshold but above £25,000, although the main procurement regime does not apply, regulations 109 to 114 do set out some requirements for below threshold procurements including:

- If the contract opportunity is put in the public domain, it must also be published on the government Contract Finder website. The advert must clearly specify the time limits to respond, how to respond and any other conditions for participation.
- Pre-qualification questionnaires cannot be used for these contracts.

If below threshold, consideration would also need to be had as to whether there is the possibility of any cross border interest and if so the need to comply with the general treaty principles (transparency, equal treatment, non-discrimination).

One possible alternative to avoid a procurement requirement would be to constitute BYO also as a Teckal entity. However this would mean it could not be established as a charity and may not attract external funding if it is controlled by the Council. Also this appears to contradict the rationale for BYO. Another option would be to let the management contract(s) at a value which was below the procurement threshold (subject to compliance with the anti-avoidance provisions in the 2015 Regulations).

Alternative variation to this model

Note there is a possible variation to our proposed independent commissioning/delivery model structure. One of our stakeholder consultation meetings with John Lyon Trust, a Charity focused on Children and Young People that has existed in the Brent Area since 1572, has proposed an organisational model, which is a commissioner based organisation. It makes a tacit assumption that the existing Youth Service would cease and that Brent Council will handle and fund all associated redundancies, or if staff are primarily assigned to the services carried out by the new service provider (provided they retain their identity) the staff would transfer under their existing terms and conditions of employment, together with all rights, obligations and liabilities. In the event the youth services are sufficiently distinct from the previous, it may well be that there is not a relevant transfer under the TUPE regulations or that staff are primarily assigned to any residual services retaining their identity, in such circumstances TUPE would not apply. In its place, there would be a Youth Brent Foundation (which may inherit some or all of the services), as a commissioning trust only or commissioning and delivery based organisation. It would have a dual role, as a funding organisation supported by a range of funding providers, including local charities, larger national charitable organisations, Brent Council (subject to any state aid issues) and interested social investors. It would be a charity organisation and be accountable to the Charity Commission and provide a central hub for both commissioning and intelligence gathering and reporting. We include this proposal for information only having not analysed it in any detail.

- Registered Charity
- Membership organisation available to any group that works with Children and Young people in the borough
- Trustee Board that will include the voluntary sector as well as other partners.

- Representation from Local Authority, Voluntary sector, Police , CCG, Housing Associations, Faith organisations, uniformed groups, Corporate sector and funders
- Activities in furtherance of a recognised charitable purpose (in simple terms - to relieve the needs of young people) :
 - To work as a consortia to fundraise collectively from sources such as Lottery and ESF, attracting funds to a sector that needs more income
 - Support the sector to build an organisation strong enough that can be commissioned by the Local Authority
 - To deliver sector specific capacity building
 - Share venue space
 - Grow the Children and Young People’s sector in the borough and safeguard existing provision
- Three main strands of work
 - Capacity building, central fundraising based on a consortia approach
 - Venue Bank (Youth Centres, Churches, Scout Huts)
 - Small grant fund devolved
- Communication through interactive website, app and events and Venue calendar
- Key stakeholders in Brent
 - Making the Leap
 - BANG
 - MAMA Youth
 - Hornstars
 - CVS Brent
 - Firm Foundations
 - SWAY
 - Brent Play Association
 - QPR
 - Tricycle
 - Brent Centre for Young People
 - Help Somalia Foundation
- Funders - Local Authority, CCG, Police, Housing associations, JLC, possibly City Bridge and Lottery
- Other partners
 - London Youth
 - Children England
 - Partnership for Young London
 - TSIP/Project Oracle
 - GLA Young Peer Advisors
 - NRCSE

This example highlights the need to consider a wide range of options in looking at a new youth service model. This would need to address:

- Fragmented commissioning
- Better co-operation, collaboration and co-production
- Increased use of CVS youth service providers and related CVS organisations.
- Integrated commissioning using a wide cohort of suppliers and commissioners

4.3.3 Employee/Staff Led Mutual

Over the past 10 years, there has been a gradual trend towards “mutualisation” in England of in-house public services into new independent organisations that can successfully compete and be competitive and effective in delivering services as an autonomous body. The term ‘mutual’ is now used rather loosely to include co-operative and community benefit societies, social enterprise businesses, and employee-owned businesses. There are four key features of a mutual:

1. Purpose - Mutuals are established for a shared purpose – that can be to serve a closed community of members and share economic benefits among them; or they can be set up for an altruistic community purpose
2. Ownership - Mutuals are ‘owned’ by their members (often the employees). This ownership is vested in the membership community but is held in common – no individual is entitled to a share of the underlying assets.

3. Control - Mutuals normally operate democratic voting systems, on the basis of 'one member: one vote', so there are no interest groups or 'majority shareholders' who can automatically outvote the others.
4. Representation of Stakeholders - Mutuals have a governance structure which ensures that different stakeholders can play an appropriate role i.e. advisory role, in running the organisation; this could include staff, service users and external participants. There are a variety of ways to achieve this.

The term 'public service mutual' is used by the Cabinet Office to describe an organisation that has spun out of the public sector, continues to deliver public services and involves a high degree of employee control.

As to the legal form of a mutual, a company limited by guarantee, a company limited by shares, a community interest company, community benefit society, a charitable company, and a charitable incorporated organisation could all qualify as mutuals, provided that their constitutional documents include these features. An explanation of each of these is set out in the table in para 4.3.5.

It is important to recruit a range of people to the board who have the necessary skill set, for example finance, HR, legal and governance. Consideration should also be had as to whether there are to be employee representatives or youth representatives (although note the minimum age for persons on the board is 16 years old) on the board or whether there are to be separate advisory groups for these stakeholders who can report back to the board but in an advisory capacity only. Further, the Council may wish to have a representative on the board either in a voting or non-voting capacity.

Consideration would need to be had by the Council as to how the mutual will be awarded the contract to deliver the services and what the requirements under the public procurement rules may be. The position will be similar to the commissioning model with third parties. It may be that the light touch regime, new provisions for mutuals and the possibility of use of a single negotiated bid are relevant in this model in the same way (please see explanation above in 4.3.1). Alternatively, (subject to what we advise above and to any state aid issues) a grant agreement could be considered as the commissioning mechanism.

The potential benefits of a mutual are:

- Likely to be popular with end-users because they are rooted in community involvement and is likely to enhance the level of trust and engagement with the entity
- If well run, more tailored and responsive services through deeper understanding of client group
- Increase efficiency as front-line staff more motivated by holding a stake in the organisation. It can empower staff (more control over destiny) and has a beneficial impact on involvement, commitment, creativity and performance.
- Leaner structures - free of corporate overheads and recharges and can review and assess the resources required
- They are accountable to the wider stakeholders and community
- Front line professionals are given the freedom to improve their business, they can innovate and act as "social entrepreneurs" (i.e. power to trade, control over budget, generate independent revenue streams)
- Publicly-funded assets can be safeguarded for future public benefit

The potential disadvantages of a mutual are:

- Employees, service users and wider community may not have appetite & skills for the enterprise
- Mutual may not be able to improve service quality and scale up to size
- Offers no particular guarantee of job security - subject to market pressures (applies to all model options discussed)
- May struggle to achieve cost-savings and innovation
- Commissioner/host may perceive high degree of risk?
- TUPE/pensions/assets may be inherited from the local authority

Any team contemplating setting up a mutual for service delivery will need to give careful thought to the business plan. Starting a business is a demanding and potentially life-changing experience and therefore the team will need to have the appetite to do so and have the right skills, expertise and experience (or be able to access these skills).

A staff led mutual can replicate the provider position of LATCO, as an independently owned organisation. However, that independent mutual organisation would:

1. Need a five year block contract from Brent for Youth Services with the 2015/16 budget envelope to give the mutual a fighting chance of survival and evolution ~ (subject to the procurement restriction referred to above);
2. Bear the direct full financial and operational risk (Brent can help initially by providing this support for an initial period) for creating a back office resource (it will have to get HR, Finance, Legal and Governance experience very quickly);
3. Require some staff to assume strategic and governance risk from day 1 i.e. becoming directors, of the mutual, when previously they were Brent employees;
4. Be expected to transition into a new organisation by 31 March 2016 – mutuals have often operated in shadow and parallel running form, within a Teckal organisation owned by the local authority or just a shadow organisation (with no direct organisational change) until ready to formally spin out as a mutual organisation; and
5. Possibly bear some or all of the full financial risks of TUPE and Pension Liability

In the case of Brent Youth Services, this is not likely to be a mutual “spin-out” of existing services, by which it becomes a stand-alone new entity. This is because the underlying financial budget envelope is being reviewed to explore a possible cut from £1.4m in 2014/15 to £0.4m in 2016/17 with the possibility of a cessation of a substantial part of current Youth Services. **This means that the present staff cohort is at risk as a new organisation would be unable to assume the financial burdens of TUPE/Pensions transfer risk of some or all of the staff presently employed.**

We believe the staff led mutual option, in the current circumstances and the potential financial cuts, is not a viable option for either Brent or its staff, without serious commitment to make it succeed on both sides, both financially and organisationally.

4.3.4 State Aid

A preliminary state aid assessment is set out on page [] on the Implementation Plan.

4.3.5 Corporate Vehicles

As described earlier, there are a number of corporate vehicles which could be used for the chosen delivery model. **For the purposes of this report, we are not considering any corporate vehicles that have a private sector structure primarily designed to generate profits for investors and shareholders, for example, Joint Ventures, Companies Limited by Shares (except as they may be relevant for Community Interest Companies), Limited Liability Partnerships, Management Buy Out companies and Asset Backed Vehicles.** These forms of organisations would not be able to access the routes to grant and other soft revenue funding sources that a new Youth Services organisation will require in delivering its objectives and achieving its outcomes. We also believe that these forms of private sector structured organisations have limited scope to secure any commercial value from a contract commensurate with the present service and associated budget currently in place for Youth Services within Brent Council, e.g. Roundwood with its planning consent restrictions on opening times and restricted use conditions.

Instead, we are focusing on a blend of employee or community owned and charitable organisation structures which would be able to access routes to funding outside the present compass of Brent Council, especially regarding grant and other funding streams to support a future Youth Services provision vehicle. This also potentially could involve Brent Council taking an active and inclusive stakeholder role.

The table below sets out the key differences between the corporate vehicles.

	Company Limited by Guarantee (and Company Limited by Shares) (CLG/CLS)	Community Interest Company (CIC)	Community Benefit Society [and Co-operative Societies] (formerly Industrial and Provident Societies)	Charitable Incorporated Organisation (CIO)
Relevant Legislation and Regulator	Governed primarily by the Companies Act 2006. Regulated by Companies House and the Charity Commission where a CLG is registered with the Commission.	CICs are governed primarily by the Companies (Audit, Investigations and Community Enterprise) Act 2004 and The Community Interest Company Regulations 2005. Regulated by Companies House and CIC Regulator.	Governed by the Co-operative and Community Benefit Societies Act 2014 Regulated by the Financial Conduct Authority.	The legal framework for CIO's is set out in the Charities Act 2011 and two sets of Regulations which came into force at the beginning of 2013; the Charitable Incorporated Organisations (General) Regulations 2012 (General Regulations) and the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (Dissolution Regulations). Regulated by the Charity Commission.
Explanation of corporate vehicle	The members of the CLG give a guarantee for a nominal sum which will be the maximum amount that they will be liable to contribute if the company is wound up. Compare this against a Company Limited by Shares where the members own the shares in the company and the extent of their liability on winding up does not extend beyond any sums that they have yet to pay to the company to purchase their shares. Perhaps the most significant distinction between the two forms of company is the ability to pay dividends to members/ shareholders. A company limited by shares may pay dividends but this means of profit distribution is not available to companies limited by guarantee. In that sense a company limited by guarantee can operate as a not for profit/asset locked body and can be registered as a charity.	A CIC is a form of company regulated by the CIC Regulator. It can either be a share or guarantee company (CLS/CLG). It has the same governing documents as a limited company and is subject to the same procedures as a company, such as a duty to inform Companies House if a director or company secretary is appointed or resigns.	Societies have separate corporate legal personality and limited liability for participants and fall into two categories: <ul style="list-style-type: none"> • Co-operatives Society – an organisation formed for the benefit of its members, rather than the society at large, and which represents the core values of a co-operative. In our opinion, this has no relevance to Brent and will not be examined any further in this report. • Community Benefit Society – one which pursues a wider public good rather than just its members' interests. It cannot distribute profits to members nor can assets be distributed to members on dissolution. Consequently, the Community Benefit Society will often qualify as an 'exempt charity' if it meets the criteria for charitable status. 	The CIO is a new form of incorporated vehicle which has been available since January 2013. A CIO provides some of the benefits of being a company but without some of the burdens. The CIO was introduced as it was felt that there were too many problems for charities with the existing formats. A CIO is an incorporated structure for a non-profit making organisation with limited liability where there are one or more members. The organisation is solely registered with, and regulated by the Charity Commission. A CIO is a corporate body that can own property, employ staff and enter into contracts in its own name (rather than in the name of the trustees).

	Company Limited by Guarantee (and Company Limited by Shares) (CLG/CLS)	Community Interest Company (CIC)	Community Benefit Society [and Co-operative Societies] (formerly Industrial and Provident Societies)	Charitable Incorporated Organisation (CIO)
Key Features to Note / Principles	<p>CLSs are traditionally associated with profit-making enterprises but along with CLGs have been increasingly used by the social enterprise sector as purpose built vehicles to pursue social or not for profit objectives.</p> <p>Companies represent a recognised corporate structure and provide for transparency. They are likely to be vehicles that are familiar to commissioners and other stakeholders.</p> <p><i>Limited liability</i> – the liability of the members is restricted to the amount guaranteed.</p> <p><i>Two-tier management and governance system</i> – members will decide the most important decisions regarding the company such as changing the governing documents and winding up, whilst the directors will carry out the day-to-day running of the company</p> <p><i>A separate legal entity</i> – the company is able to borrow money (secured or unsecured including by way of overdraft), employ people, trade, enter into contracts with third parties and hold assets and interests in land in its own name if it makes provision for such in its articles of association.</p> <p>For a company, only one member and one director is required (although at least one director must be a person) and the roles of</p>	<p>Launched as a custom made vehicle for social enterprises in 2005. It must have objects which are exclusively for the benefit of the community.</p> <p>An important point to note about CICs is that they are dual-regulated both by Companies House and the CIC Regulator. They therefore have obligations above and beyond what is required for other limited companies and this additional paperwork must be borne in mind.</p> <p>The CIC format is popular amongst the social enterprise/not-for-profit sector as it is considered to allow more flexibility and less regulation than a charity, but still offers a reassuring brand which third parties can feel confident in engaging with. Commissioners are also becoming more familiar with CICs. Becoming a CIC may also open new avenues of funding such as grants and loans available to social enterprises / not for profit organisations.</p> <p><i>The 'Asset Lock'</i> – assets, cash and property can only be used for the stated community purpose. Organisations can name another 'asset-locked' body to receive any surplus assets upon winding up. If no such body is named, the Regulator will award the assets to an asset-locked body which has similar objects</p> <p><i>The Community Interest Test</i> – organisations must demonstrate that a</p>	<p>The FCA provides guidance on what conditions it would normally expect a Community Benefit Society to satisfy in order to be registered. These are:</p> <ul style="list-style-type: none"> • The business must be run primarily for the benefit of people who are not members of the society, and must also be in the interests of the community at large. It will usually be charitable or philanthropic in character. • It is unusual for a community benefit society to issue more than nominal share capital (for example, one £1 share per member). • The society's rules must not allow either profits or the society's assets to be distributed to the members. Profits must generally be used to further the objects of the society by being ploughed back into the business. Where the rules of the society allow assets to be sold, the proceeds of the sale should be used to further the society's business activities only. • The society's rules must not allow its assets to be distributed to its members on dissolution. The rules should state that the assets should be transferred, for example, to some other body with similar objects or used for similar purposes. 	<p>Separate legal entity which can enter into contracts in its own right.</p> <p>Trustees better protected from liability than an unincorporated form (i.e. a charitable trust).</p> <p>Accountable only to the Charity Commission i.e. not subject to regulation by Companies House.</p> <p>One of the most distinguishing features of the CIO is the opportunity for a charity to obtain the benefits of limited liability without the confusion and extra administration of dual regulation. Otherwise a charity wanting limited liability has to incorporate as a company limited by guarantee. This entails registering with and being regulated by two bodies, the Charity Commission and Companies House. A CIO avoids this.</p>

	Company Limited by Guarantee (and Company Limited by Shares) (CLG/CLS)	Community Interest Company (CIC)	Community Benefit Society [and Co-operative Societies] (formerly Industrial and Provident Societies)	Charitable Incorporated Organisation (CIO)
	<p>member and director can be fulfilled by the same person or entity.</p> <p>Companies have basic requirements under company law which they must adhere to, but otherwise are allowed a degree of flexibility as to how they are structured internally. A company may have sub-tiers of management, such as directors delegating to committees. They may also have rules such as a certain number of members or directors having to represent a particular stakeholder group or organisation.</p>	<p>reasonable person would perceive their activities as being for the benefit of the community. The community must not be an unduly restricted group or have political motives or activities. It is possible for employees of a CIC to benefit from its activities but only if such benefit is incidental to a wider primary community purpose.</p> <p><i>The Dividend Cap</i> – payments out of a CICs profits to private investors are restricted by a dividend cap. Private investors are essentially any persons or bodies who are not asset locked bodies. The maximum aggregate dividend cap is currently 35% of the funds available to pay dividends.</p> <p><i>Two-tier management and governance system</i> – members will decide the most important decisions regarding the company, such as changing the governing documents and winding up, whilst the directors will carry out the day to day running of the company.</p> <p><i>A separate legal entity</i> – the company is able to borrow money, employ people, trade and enter into contracts with third parties, hold assets and land in its own name provided it has made provisions for this in its articles</p>	<p>Community Benefit Societies can apply an 'asset-lock' which prevents any assets or cash from being distributed other than to creditors on a winding up or to another asset-locked body, such as a charity or a CIC.</p> <p>Societies benefit from a privileged position in their ability to issue shares to the public which can be useful if the body wishes to raise substantial capital from members of the public.</p> <p>One of the drawbacks of this format is undoubtedly that it is a less familiar creature to funders and investors than a company.</p>	
Governing Document and Process	A limited company's governing document is known as the articles of association. The memorandum of association contains the	The governing document of a CIC is the articles of association. This will be the same in nature as the articles of a	The participants agree to be bound by a set of Rules which represent the constitution of the Society. All Rules must be registered	To set up a CIO an application will need to be made to the Charity Commission, and will need to include a copy of the

	Company Limited by Guarantee (and Company Limited by Shares) (CLG/CLS)	Community Interest Company (CIC)	Community Benefit Society [and Co-operative Societies] (formerly Industrial and Provident Societies)	Charitable Incorporated Organisation (CIO)
	<p>names and signatures of the subscribers or founders that wish to form the company and, in the case of a company limited by shares, a commitment by the subscribers to take at least one share each.</p> <p>The articles of association give details of the company's structure, scope of activity, internal management affairs, the running of the company and its liability and can be tailored to the particular circumstances of the company. Thus, it is possible to include provision that specified articles can only be amended or repealed if conditions are met requiring a majority vote of members exceeding 75%.</p> <p>. The fees payable to Companies House for incorporating a company are £40 for standard incorporation and £100 for same day incorporation.</p>	<p>company, but there are some mandatory provisions which have to be included. The CIC Regulator is very strict about the inclusion of these provisions and will reject an application which does not adhere to the exact wording required. There are three schedules of mandatory provisions in the CIC Regulations:</p> <ul style="list-style-type: none"> • Schedule 1 is for a CIC with no share capital i.e. limited by guarantee • Schedule 2 for a CIC with share capital but where dividends will only be paid to 'Asset-Locked' bodies (i.e. charities, other CICs or Community Benefit Societies) • Schedule 3 is for a CIC with shares where dividends can be paid to private investors <p>Along with the memorandum and articles, a Form CIC 36 must be completed. In this Form, the organisation must define the community they wish to benefit, state what its activities are and how these activities will benefit the community. The processing fee payable to Companies House for setting up a CIC is £35. The registration process should take up to 3-4 weeks provided there are no complications.</p>	<p>with the FCA on incorporation. The legislation sets out a number of pieces of information which must be included in the rules including objects, registered office, voting etc.</p> <p>The rules of a Society must also provide for the scale and right of voting, and technically at least it seems that on both these matters the rules may make such provision as is desired. The rules of a Society may make provision for different classes of shares. Society members typically have equal voting rights regardless of their shareholding ('one member = one vote').</p> <p>Application for Registration is submitted to the FCA and there are model rules for Societies produced by various sponsoring bodies in particular sectors and the use of these models reduces the cost and time for incorporation. The cost of registration is £40 if model rules are used rising to £950 if a bespoke draft is submitted.</p>	<p>organisation's Constitution containing the required provisions as well as other administrative documents.</p> <p>A CIO will be governed by a Constitution which will need to include details of the name of the CIO, its principal office and the amount which the members will be liable for upon winding up. It will also detail who is eligible to be a member or trustee, conditions of eligibility and the process for appointment. Using these models will ensure that new CIOs meet all the necessary legal requirements (i.e. that it contains all the mandatory provisions) and that it complies with good practice.</p> <p>The objects of the CIO must be exclusively charitable and for the public benefit (and regard will need to be had to the Charity Commission's Public Benefit Guidance).</p> <p>Once the constitution has been decided, an online application will need to be made to the Charity Commission to register the CIO. There is no charge for registration or for the filing of information. The Charity Commission may refuse to register a CIO if it is not satisfied that the CIO would be a charity at that time, or if its constitution does not meet the requirements set out in the Regulations. The Charity Commission will normally be able to make a decision within 30 working days where the model governing document and objects are used.</p>

	Company Limited by Guarantee (and Company Limited by Shares) (CLG/CLS)	Community Interest Company (CIC)	Community Benefit Society [and Co-operative Societies] (formerly Industrial and Provident Societies)	Charitable Incorporated Organisation (CIO)
				If the application is more complex or there are significant amendments to the model documents, it may take longer.
Management and Structure	In a company there is usually a two tier management structure. The members will approve the important decisions such as changing the articles, whilst the board of directors will make the key day-to-day decisions. The articles of association will set the parameters within which the board of directors operate, such as how many directors are required to make a quorum and how votes are conducted.	A CIC will have the same management structure as a Company.	<p>Unlike the Company structure, there is very little statutory interference in the role of the board and membership. The detailed distribution of powers and functions between the board and the membership is highly flexible and a matter for the Society Rules and therefore can be tailored to particular circumstances. The management structure is essentially two-tier with a management committee or 'board' accountable to a wider membership.</p> <p>In theory, the members hold the board to account at general meetings since they elect or approve board members, appoint auditors, receive the accounts, and amend the Society's rules. It is possible to create an executive committee made up of a smaller number of officers who meet more frequently and make day-to-day decisions.</p> <p>A Society must have at least 3 members. All Societies must have a Secretary who looks after the corporate administration.</p>	<p>Like a company, a CIO has a two tier management system; the members will be responsible for making the key constitutional decisions and the charity trustees will be responsible for managing the affairs of the CIO. The constitution will set out how members and charity trustees can be appointed and what their duties and responsibilities are. The Charity Commission have published two model constitutions for use by CIOs:</p> <ol style="list-style-type: none"> 1. Association Model Constitution – for use by CIOs with voting members other than its charity trustees. The membership can be open to anyone who is interested in furthering the purposes of the CIO. In this model the wider voting membership will have the power to make certain decisions (i.e. amending the constitution) and will appoint some or all of the charity trustees who will be responsible for the affairs of the CIO and who will make the day to day decisions. 2. Foundation Model Constitution – for use by CIOs whose only voting members are the same as its charity trustees. In this model, a small group of charity trustees will make all the key decisions as they will be both the members and trustees

	Company Limited by Guarantee (and Company Limited by Shares) (CLG/CLS)	Community Interest Company (CIC)	Community Benefit Society [and Co-operative Societies] (formerly Industrial and Provident Societies)	Charitable Incorporated Organisation (CIO)
				of the charity. In addition to the constitution, the charity trustees have the power to make reasonable rules or bye-laws which are necessary for the running of the CIO, provided they do not contradict the constitution.
Roles and Responsibilities of Directors/ Board Members	<p>Directors must comply with a number of general duties to the company. These duties are now set out in the Companies Act 2006 and include:</p> <ul style="list-style-type: none"> • Acting within the powers set out in the Articles; • Promoting the success of the company in terms of: <ul style="list-style-type: none"> ▪ Exercising independent judgement; • Exercising reasonable care, skill and diligence; • Avoiding conflicts of interest; and • Declaring personal interests in any proposed transaction or arrangement with the company (the last two being of particular significance for elected members who are also directors) 	<p>The same director's duties under the Companies Act apply.</p>	<p>The Board Members/Directors of a Society owe a number of duties to the Society. Unlike for Company Directors there is no codified set of duties in the legislation for Societies. However there are similar duties which have been developed by the courts and which are owed to the society as a separate legal person and not to individual members. These are</p> <ul style="list-style-type: none"> • Duty to obey the law and comply with the society's rules • Duty to use powers only for the purposes for which they were conferred • Duty to act in good faith in the best interests of the society and to act fairly between different classes of membership • Duty to exercise independent judgment • Duty to exercise reasonable skill, care and diligence • Duty to avoid conflicts of interest • Duty not to misapply society assets or make a secret profit 	<p>The primary duties of charity trustees are:</p> <ul style="list-style-type: none"> • To act independently and in the charity's best interests, bearing collective responsibility for decisions • To use reasonable skill and care in their work to ensure the charity is well run and efficient, taking professional advice when in doubt • Not to profit personally from their role as a trustee • To act with integrity and objectivity and avoid any personal conflicts of interest or misuse of the charity's assets or money • To ensure that there is no breach of the charity's rules as set out in the governing document and that it remains true to its purposes • To ensure that the charity complies with relevant laws and regulations and that it submits returns, accounts and reports on time • To take special care when investing the charity's funds, borrowing money for

	Company Limited by Guarantee (and Company Limited by Shares) (CLG/CLS)	Community Interest Company (CIC)	Community Benefit Society [and Co-operative Societies] (formerly Industrial and Provident Societies)	Charitable Incorporated Organisation (CIO)
			<ul style="list-style-type: none"> Duty of confidentiality 	<p>the charity to use or when disposing of land</p> <ul style="list-style-type: none"> To ensure that they carry out their charity's aims for the public benefit and to report on their charity's public benefit in their Trustees' Annual Report
Statutory Requirements	<p>The company will have a duty each year to produce annual accounts, containing the directors' report. The first accounts must be submitted within 21 months of incorporation. The deadline for submitting subsequent accounts is 9 months after the company's accounting reference date. The company also has to submit an Annual Return within 28 days after the specified date (i.e. date of anniversary of incorporation). The annual accounts are subject to audit unless exemption (as a small company) is claimed in accordance with Companies Act 2006.</p>	<p>The CIC is required to complete an Annual Community Interest Company Report which contains information such as directors' salaries, any assets transferred and a description of how it has benefited the community and involved stakeholders. The aim is to satisfy the Regulator that the CIC is continuing to satisfy the community benefit test. This Report will be submitted alongside the Annual Accounts and Directors' Report. The CIC also has to submit an Annual Return like other companies. Other requirements which apply to limited companies are also applicable to CICs.</p> <p>The CIC Regulator is described as a 'light touch' regulator. The Regulator will monitor CICs by means of the Annual CIC Report but will not actively investigate a CIC unless it has received a complaint or a concern has been raised.</p>	<p>The Society is required to file an annual return plus revenue accounts and balance sheet within 7 months after the end of a specified accounting period.</p> <p>In this context the FCA can fairly be described as a light touch regulator, in that it makes an initial check on the Rules of the Society at the time of registration and thereafter requires an annual return of board members and shareholders, but otherwise leaves the participants to their own devices, unless someone makes a complaint about the Society's activities. Ultimately, the FCA has the power to cancel or suspend registration if the Society does not adhere to its stated purposes.</p>	<p>The CIO will be required to submit annual returns and accounts to the Charity Commission. The accounts will be produced under charity law, rather than company law, which will allow smaller CIOs to submit simpler accounts. Unlike companies, there are no fines for late filing of documents however some breaches of the Regulations may result in legal offences.</p>
Charitable Status	<p>A company limited by guarantee can become a registered charity if it has objects which are exclusively charitable and for the public benefit, but a company</p>	<p>A CIC cannot be a charity.</p>	<p>A Community Benefit Society can be charitable if it has exclusively charitable objects. Charitable Societies are currently exempt charities and therefore they</p>	<p>A CIO is a charity and solely registered with the Charity Commission.</p>

	Company Limited by Guarantee (and Company Limited by Shares) (CLG/CLS)	Community Interest Company (CIC)	Community Benefit Society [and Co-operative Societies] (formerly Industrial and Provident Societies)	Charitable Incorporated Organisation (CIO)
	with a shareholding will usually not qualify. See further details below on charitable status.		cannot register with the Charity Commission, but are otherwise subject to charity law. Currently, to benefit from charitable tax reliefs the society will have to register with HMRC using form ChA1 and comply with HMRC requirements. It may then benefit from the same tax privileges as a registered charity, but without coming under the regulatory scrutiny of the Charity Commission.	
Tax	<p>A company limited by shares and a company limited by guarantee (unless CLG is a registered charity) are liable to corporation tax. It will be chargeable on trading profits and on investment income and gains.</p> <p>The regulations relating to VAT apply for all business entities. Specific rules can apply to charities relating to the nature of the supply that can give rise to irrecoverable VAT input. If charity some minor reliefs of VAT may be available. Charities can be entitled to relief on business rates.</p> <p>If a charitable vehicle is chosen we recommend that the Council commission specialist VAT advice to assess the VAT implications of the model.</p>	<p>A CIC (as a limited company) is liable to corporation tax under the same rules as a limited company. It will be chargeable on trading profits and on investment income and gains. It will be eligible for any reliefs available to companies, however, there are no specific tax exemptions or reliefs available.</p> <p>The regulations relating to VAT apply for all business entities.</p>	<p>Unless registered as a Charity, a Community Benefit Society is a corporate body and therefore liable to corporation tax in respect of profits which are computed in accordance with normal rules, subject to some specific exemptions.</p> <p>The regulations relating to VAT apply for all business entities.</p>	<p>Principles and regulations governing tax and excise duties for Charities also apply to CIOs.</p>

4.3.6 Charitable Status

It is important from the outset to note that apart perhaps from the CIO a charity is not a legal form in itself. An organisation will establish a legal form and then this form can become charitable. One way of thinking of it is a charitable 'wrapper' around the legal form, which brings with it additional benefits and burdens. Regardless of their legal form, they will all be bound equally by the law and principles of charities. As discussed earlier, several kinds of organisations can qualify as a charity:

- Registered Charity:
 - Company limited by Guarantee
 - Charitable Incorporated Organisation
- Exempt Charity:
 - Community Benefit Society

What is Charitable?

In order to be a charity, an organisation must have purposes that are recognised as charitable in law and must be able to demonstrate that it exists to benefit the public in some way. To be charitable, an organisation must have exclusively charitable purposes and be established for public benefit. The Charities Act 2011 sets out the list of established charitable purposes.

Public Benefit Test

'Public Benefit' is the legal requirement that every organisation set up for one or more charitable purposes must be able to demonstrate that its purposes are for the public benefit if it is to be recognised, and registered, as a charity in England and Wales. There are two key aspects of the requirement, both of which must be met in order to show that an organisation's purposes are for the public benefit.

1. Benefit Aspect – is the purpose beneficial?
 - a) a purpose must be beneficial
 - b) any detriment or harm that results from the purpose must not outweigh the benefit
2. Public aspect – to whom the purpose benefits?
 - a) the purpose must benefit the public in general or a sufficient section of the public
 - b) it must not give rise to more than incidental personal benefit

The Public Benefit requirement must be met for each of the charity's purposes and the Charity Commission will look at each purpose on its own to determine whether it meets the requirement. The fact that one purpose meets the public benefit cannot be used to offset any lack of public benefit in another.

Within each of these requirements there are further factors which must be considered in all cases. These are:

1. Identifiable benefit or benefits (Benefit Aspect)

- (a) It must be clear what the benefits are and these must be identifiable.

The benefits to the public should be capable of being recognised, identified, defined or described but that does not mean that they also have to be capable of being quantified or measured. However, in some cases an organisation's purposes may be so clearly beneficial to the public that there will be no need for the organisation to provide evidence to demonstrate that there is a benefit. Where it is not so clear, the Charity Commission may seek evidence to show that it is beneficial. The benefit cannot be based on personal views.

- (b) Benefits must be balanced against any detriment or harm. The purpose will not be charitable where any detriment or harm resulting from it outweighs the benefit. 'Benefit' means the overall or net benefit to the public. Again this will need to be based on evidence and not on personal views.

2. Benefit to the public, or a section of the public (Public Aspect)

- (a) The purpose must benefit either the public in general or a sufficient section of the public. The beneficiaries must be appropriate to the purposes of the charity.

'Public in general' means that all of the public can benefit. If the purpose does not state the intended beneficiaries, it will generally be taken to mean the public in general.

'Sufficient section of the public' means an appropriate group or section of the public (public class) which relate to the specific purpose. There is no set minimum number of people required in a public class and it will vary depending on the purpose in question. Whether the section in question is sufficient will be determined on a case by case basis.

A section of the public can be defined in a number of ways, for example:

- by people living in a geographical location
- by people or communities with particular charitable needs
- by reference to a 'protected characteristic' in the Equalities Act provided that the restriction is justified in relation to the purpose. The protected characteristics include age, disability, sex, sexual orientation, gender reassignment, marriage or civil partnership, pregnancy and maternity, race or nationality, and religion or belief
- by reference to a person's occupation or profession (although this will be dependent on the particular circumstances)
- in the case of relief of poverty only, by reference to family relationship, employment or membership of an association

The Charity Commission guidance sets out examples of where a public class will not be a sufficient section of the public. In particular, a purpose cannot be defined by reference to their skin colour.

- (b) Any private (or personal) benefits must be incidental to carrying out the purpose. Charities can provide private benefits to people other than their beneficiaries, so long as those benefits are incidental.

Private benefits will be incidental if it can be shown that it is a necessary result or by-product of carrying out those purposes, having regard to both the nature and amount of the benefit. Some examples of personal benefits include:

- financial benefits
- non-financial benefits or payments in kind
- benefits to trustees
- benefits to owners of property that a charity uses or occupies
- enhancing the reputation of a person or organisation
- benefits to funders
- business benefits to commercial organisations

The need for independence

For the proposed vehicle to be a charity, it must be independent. It must exist in order to carry out its charitable purposes, and not for the purpose of implementing the policies of a government authority (including local government), or of carrying out the directions of a governmental authority, i.e. trustees fundamental discretions as to selection of beneficiaries and the provision of services would be preserved. A body set up to carry out the policies or directions of a government authority might engage in much the same sort of activities that a charity might undertake. But it would be carrying out those activities to further the purposes of a non-charitable body, not to further a charitable purpose.

Process of applying to become a charity

The first step is for the organisation concerned to put together a governing document, with objects that are exclusively charitable and satisfy the public benefit test. The Charity Commission provides model governing documentation on its website. The advantage of this is that the Commission has already approved the documents, which will speed up the application process. However, template documents may not meet an individual charity's needs in the long run.

The Commission will also require supporting documentation to demonstrate how the organisation will meet its charitable aims, such as newspaper cuttings, annual reports, pamphlets, and advertising materials and so on. Lastly, if applicable, the last three years financial accounts must be included or a business plan showing future projections. There is no fee payable to the Charity Commission for processing the application.

Exempt Charities

Up to now, certain charities have been classified as 'exempt charities' and have benefited from a lighter regulatory regime. In particular, they have not been under the supervision of the Charity Commission. The Charities Act 2011 now distinguishes between exempt charities that have a Principal Regulator and those that do not. Principal Regulators will be an existing regulatory body, and their role will be to promote charity law compliance. In order to implement these proposals, the Government now intends that where proposed Principal Regulators are ready to take on their new role, they will be so appointed. Where there are exempt charities for whom no Principal Regulator has been appointed they will become 'excepted' charities. However, charities with more than £100,000 income will still be required to register with the Charity Commission. For those organisations where a Principal Regulator has not been identified and their annual income is over £100,000, they will become excepted charities, and will have to register with the Charity Commission. Arrangements are yet to be confirmed for some groups of exempt charities, including charitable Community Benefit Societies, and no timetable has been set for these.

Trustee Responsibility

Charity trustees are the individuals who serve on the governing body of a charity. Charity trustees are responsible for the general control and management of the administration of a charity. Charity trustees must accept responsibility for directing the affairs of the charity, ensuring it is solvent, well-run and delivering charitable outcomes. A charity may refer to its trustees by some other title, such as governor or director, but a member of the board with responsibility will be a charity trustee. The responsibilities of a charity trustee will be above and beyond the responsibilities they have as, for example, a company director.

The primary duties of charity trustees are:

- To act independently and in the charity's best interests, bearing collective responsibility for decisions
- To use reasonable skill and care in their work to ensure the charity is well run and efficient, taking professional advice when in doubt
- Not to profit personally from their role as a trustee
- To act with integrity and objectivity and avoid any personal conflicts of interest or misuse of the charity's assets or money
- To ensure that there is no breach of the charity's rules as set out in the governing document and that it remains true to its purposes
- To ensure that the charity complies with relevant laws and regulations and that it submits returns, accounts and reports on time
- To take special care when investing the charity's funds, borrowing money for the charity to use or when disposing of land
- To ensure that they carry out their charity's aims for the public benefit and to report on their charity's public benefit in their Trustees' Annual Report

Role of the Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales and ensures that charities are accountable, adhere to the legal requirements and that they are run effectively. The Commission provides a central register where the public can access information on registered charities. The Charity Commission will usually investigate if a complaint is made about a charity and, although it is not a prosecuting authority, it will work in conjunction with other authorities such as the HM Revenue and Customs and the police if necessary.

Advantages of Charitable Status

- Public Confidence – a charity has a certain respectability that gives confidence to the public, businesses and lenders. It is a form which is generally familiar to commissioners
- Tax Benefits – there are considerable tax benefits to a charity, such as no corporation tax payable on profits as long as it is derived from primary purpose trading and is applied to furthering the charity's objects. Gifts by individuals and organisations also attract tax relief. The acquisition of property is exempt from Stamp Duty Land Tax
- Rate Relief – charities can get up to 100% (80% mandatory minimum) relief from business rates for the premises which they mainly or wholly occupy for charitable purposes
- Asset Lock – the founders of the charity are able to ensure that the assets of the charity are always applied to its objects and that future participants cannot profit personally from the charity

Disadvantages of Charitable Status

- Charity trustees cannot normally be paid for their services. There are also restrictions on trading activities between the charity and bodies in which the charity's directors have an interest. Any inter-group activity would require disclosure in the accounts and transactions be at a commercial rate at "arms-length"
- The Charity Commission have adopted a general assumption against employees being trustees of a Charity. Individual consent applications have to be made to the Commission to enable employees to become trustees. If such an application was not approved this could mean that an employee led mutual would have no employee directors.
- Trading restrictions – a charity is restricted in the trading activities in which it may become involved. Trading must usually be 'primary purpose' i.e. it is carried out in fulfilment of what the charity is set up to do. However charities are permitted to trade through subsidiary companies.
- A Charity's activities are constrained by its objects which must be exclusively charitable. It cannot pursue objectives which are not charitable and this may limit its ability to diversify its activities
- Administration and regulation – charities are subject to regulation by the Charity Commission and part of this entails providing regular information at least annually, including audited accounts

4.4 Diversification Assessment

We have identified that there are many partners with a young people focus who have had limited direct engagement with Brent Council over time. This is because the core universal services have been retained in house by Brent Council. It may also reflect historic weaknesses in local CVS leadership and management and their interaction with Brent. The sheer diversity of groups/organisations can also be a barrier to successful integration and shared values. However, this has created a vacuum in terms of wider community engagement (and its attendant funding) over time.

Young people in education provide a bedrock of achievement, attainment and self-esteem until age 16 (or beyond) and the Education provision in Brent is broadly speaking effective, from an academic perspective. However, there seems to be a general disconnect strategically, as opposed to operationally at ground level with young people directly, between all of the various commissioners with an interest in helping and supporting young people. There is not a clear integrated commissioning strategy. **This is a central commissioning conundrum.**

The Dedicated Schools Grant (DSG) for 2013/14¹ (and 2014/15) has been ring fenced by the present government but in the next 5 years from 2015/16 onwards, will not keep pace with the rate of inflation, but be provided as a ring-fenced flat cash sum i.e. same cash value as 2014/15. This will directly affect funding that schools have to manage in areas such as exclusion, health and wellbeing and extra curricula activities.

The National Careers Service² now part of the Skills Funding Agency within Department for Business Innovation and Skills, has taken their link with Education to relate directly to academic attainment, starting with Year 9 choices for GCSE and working beyond into higher education or adult employment. There does not seem to be a clear strategy between schools to provide more than the basic tools to support young people with a lower academic attainment (or no academic attainment) capability, who leave school at 16 (or sometimes earlier) to then become "lost" to the Education system. Schools may disagree with this view. Youth Services does its best to pick these young people up, and working with VCS organisations provide some practical mentoring and organised learning and activities to at least mitigate this problem. However, it is not fail safe, and as demographic pressures increase over the coming decade, so this problem could worsen, linked to housing shortages and increases in multi-family units living in cramped, single or double room conditions. Brent has low NEET levels compared to other London Boroughs, but socio-economic pressures on Brent may adversely impact on this in future.

There seems to be a disconnect between the work of the National Careers Service and the National Citizen's Service and that there is a lack of co-ordinated strategic thinking, which in turn directly affects service commissioning decisions.

¹ Dedicated Schools Grant 2013/14 – December 2013 (updated February 2014) - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284955/DSG_Operational_Guide_2014-15_-_Feb_2014.pdf

² National Careers Service – Age 13-16 - <https://nationalcareersservice.direct.gov.uk/youngpeople/Pages/School-yourFAQs.aspx>

More work needs to be done by Brent Council in future, particularly in public health i.e. better understanding of mental health issues in young people through early interventions identified in the Brent Joint Strategic Needs Assessment iterative review work (JSNA). There is still work to be done to improve Youth Services collaboration and co-delivery with the Education leads and Head Teachers Association for Secondary schools in Brent, the Brent Schools Partnership and with Youth Services, linked to Health, Police, Probation, Housing Association organisations, and the VCS community, many of whom deal with young people outside school hours, to provide much needed direct support.

What needs to happen in Brent in our view is a “holistic young people’s service approach” that captures all of the good work and networks of people providing direct (and indirect) services to young people and to integrate this in a focused manner. This requires thought around

- Pioneering approaches to solving social issues
- Link Brent JSNA to stakeholder engagement
- Identifying and accessing potential new revenue streams and diversify service offerings
- Risk assessment of a new Youth Services venture
- Assembling and managing project teams
- Develop comprehensive and actionable plans for implementation
- Increased focus on brokering partnerships.

What is clear is that a new vision for Youth Services in Brent will have to be very different from the present offering. We have examined the current model and used this and the 2014-15 financial budgets as our baseline from which to draw out our findings.

With a reduced budget envelope for the present provision of universal services, the new model structure will need to harness the offerings from other organisations that are funded through a variety of mechanisms, including grant, public body funding, and to shape this into a single, cohesive Youth Services strategy. This would build in some discipline and resilience to the current diverse range of provider services and providers themselves, under a single unitary model. Each provider would continue to provide its services, but may find over time, as existing funding arrangements and contract arrangements fall away and end, that a new integrated commissioning model is the way forward. In order to manage diversification effectively, there needs to be a central organisation that oversees both the way services are commissioned, and measures and reports the outcomes in order to assess value for money on fiscal, economic and social benefits derived from all Youth Services provided. This would be reflected in contracts that are let to provider organisations.

4.4.1 Critical Success Factors for Diversification of Services

Under a single independent commissioner/delivery model we observe the need to achieve:

FINANCIAL	OPERATIONAL
1. Deliver approved targets for income, expenditure and contribution to the organisational reserves (for future capacity and organisational building).	1. Demonstrate and promote good scoping and good contract letting, and support to providers for contract compliance and reporting.
2. Manage income and expenditure effectively (through well scoped and targeted commissioning linked to all grant and other revenue funding obtained to support service provision across Brent).	2. Encourage innovation from providers as well as from intelligent commissioning. Allow staff to develop a flexible working relationship with all providers.
3. New Organisation to be financially sustainable – about long term planning for Youth Services and to ensure continuity for the young people of Brent.	3. Always refresh engagement with young people – seek to iterate review of outcomes to ensure that aims and objectives set for each service is delivered, is maintained and strive for improvements constantly.
4. Maintain sufficient assets including reserves to meet and match needs.	4. Create a broader, more integrated evidence base, not just focusing on single or set service provision, but examining the indirect effects on other services. Again, linked to a cost benefit appraisal approach.
5. Diverse income sources (whilst Brent can upskill front line staff in running services, an independent commissioner organisation may need to capacity build a central bid writing team to secure as wide a range of funding money as possible from a diverse investor and lender base).	5. Demonstrate delivery of appropriate quality services.
6. Provide and demonstrate value for money – e.g.	6. Share the knowledge and raising quality standards – find ways of communicating good work to as wide an audience, not just Young People as service users.

<p>Youth Outcomes Framework approach or by using the Cost Benefit Analysis tool used for the evaluation of Social Impact Bonds – but applying this across all services commissioned and provided.</p>	
<p>HUMAN RESOURCES</p>	<p>CUSTOMERS</p>
<ol style="list-style-type: none"> 1. Ensure that staff is appropriately skilled – both internally within the organisation and for staff from each provider delivering services. 2. Retain and develop successful staff. 3. Create a culture of engagement through a committed staff team promoting advocacy and support across Brent Youth Services, and others. 	<ol style="list-style-type: none"> 1. All stakeholders’ needs help to shape Youth Services especially the needs of Young People. 2. Maintain funder and stakeholder bases and develop new and diverse ones – create a sustainable organisation. 3. Ensure young people satisfaction of all Youth Services is high.

Our overall view is that there should be a more direct, and integrated commissioning structure to Youth Services, and involving young people within this process. This needs to tie in with Brent’s strategic commissioning function. CYP can co-ordinate this within Brent working with other service providers that Brent commissions that directly or indirectly affect the daily lives of young people. This would also involve working with CCG/NHS and other organisations in some form of alliance contracting structure¹ seen in health and social care commissioning. This can have a positive impact on young people in relation to their own perceived place in the Brent community.

An alliance contract is a contractual arrangement between the commissioner(s) and an alliance of parties who deliver the project or service. There is a risk share across all parties and collective ownership of opportunities and responsibilities associated with delivery of the whole project or service. Any ‘gain’ or ‘pain’ is linked with good or poor performance overall and not to the performance of individual parties.

This may mean that Brent may need to create some internal co-commissioning structure, or creating a new commissioning protocol. The 'Partners for Brent' (PFB) is the borough's Local Strategic Partnership (LSP) - a multi-agency partnership. This can be better used to promote and encourage change in strategic commissioning and in provider behaviours towards a new Youth Services organisation to take on the current role and remit that Brent Council currently staffs and funds.

5. Finance, HR and Resources Issues with Governance

We have spent some time with the Brent Council Finance team discussing the current costs of running the service. Over the past few years, Brent has centralised its finance function and has also brought back to the core, all costs relating to HR, Legal, Finance, and Estates.

It has been challenging to be able to unpick all costs that would be incurred by a “stand alone, cost centred” service, as many of the costs incurred in past years have been absorbed centrally.

However, we have managed as far as possible, to identify the key costs and have prepared a high level analysis of the overall costs of the Youth Service today, but have had to make a number of assumptions to enable us to baseline costs to reflect a fully costed model. We have had to baseline this by extracting data for centrally held costs and putting these into our five year financial model, to show the full and true current cost of the present Youth Service and then to extrapolate this over 5 future years from 2016/17 in order to understand the true cost of maintaining the present services in their current form. This forms our baseline for our 5 year financial model i.e. comparing today’s position with a range of future service options.

To put this into context, our baseline financial analysis reflects the core options principles we are examining in our report.

1. Current services are withdrawn by Brent. Some employees are likely to be made redundant. Some may be employed by other organisations. Others primarily assigned to the services, may transfer to a new employer under TUPE if there is a service provision change. This is the “do nothing” option. We have not modelled this.

¹ http://www.kingsfund.org.uk/sites/files/kf/media/linda-hutchinson-alliance-contracting-27.03.14_0.pdf

2. Some staff are retained in a scaled down service, perhaps with a budget as small as £400k pa offering essential targeted Youth Services only. Some staff will be made redundant. This is the “do minimal” option of which there are two – in house and commissioned out. We have not modelled these.
3. We have explored a new Commissioning / Delivery Model created to offer a potentially broader youth service. This would use most if not all of the 2015/16 budget available, from 2016/17 onwards supplemented by third party funding from other sources. Our model suggests the creation of a second organisation – a Local Authority Trading Company (LATCO) under Teckal rules (regulation 12 of the 2015 Regulations), that is 100% owned by Brent, and which has its direct funding from Brent managed by a new Youth Organisation on Brent’s behalf. Other currently 3rd party let contracts by Brent to outside providers would also in future be fully managed by the Youth Organisation. The independent organisation would charge Brent a management fee for all contracts. The key element here is that the staff remain within Brent’s control and responsibility. The new organisation manages a youth services contract from Brent to its 100% owned LATCO. We have modelled this.
4. We also considered a staff led mutual. This would in some ways look similar to the independent organisation but with one crucial and critical difference. Staff would be TUPE transferred across to the new mutual organisation. This would transfer Pension Liability risk to the new mutual. This materially places the mutual at financial risk without the support of a fully funded long term (5 year) contract at 2015/16 budget levels, with appropriate adjustments regarding services and attendant delivery costs. We have not modelled this, as the financial risks to the mutual would be too great, notwithstanding the financial benefits Brent could receive.

5.1 Emerging 5 Year Financial Plan for the Independent Commissioning/Delivery Organisation – the headlines

A summary financial plan covering the 5 years 2016-17 to 2020-21 is set out below. The Council has agreed to reduce the funding available for providing the youth service by £100k in 2015-16 with possible further reductions in 2016-17 and beyond. The 5 year financial plan assumes the core funding from Brent Council will be tapered by a further year on year reduction of £100k per annum but allows this to be changed, and identifies the level of external income that then will be required to maintain the existing service provision based on a range of assumptions. The model shows the funding that would be needed to support a new commissioning/delivery model. In 2016/17, this would amount to c. £525k to establish this BYO through additional external grant funding in addition to funding from Brent. It does require the core support of Brent Council to make this happen, with a long term funding commitment based on a “tapered” core contract value (as reflected in our baseline financial modelling) as follows¹:

- 2016/17 - £1.2m (down from £1.3m in 2015/16)
- 2017/18 - £1.1m
- 2018/19 - £1.0m
- 2019/20 - £0.9m
- 2020/21 - £0.8m

The core contract should have an extension option, at the discretion of Brent Council for extension by 1 or 2 further years on a “1 + 1 basis”. This will help sustain transition into a new organisation. This is a gradual budget tapering reduction and not the current levels of budget reductions being contemplated.

The 5 year financial model spreadsheet is designed to be interrogated by Brent to provide a series of “what if” scenarios for funding streams, which it can investigate. There is also a cost of service breakdown based on Brent’s budget provisions, including, , staffing levels and their attendant costs, contract income and revenue figures and property costs (i.e. if 4 hub model becomes 1 or 2 hub model –what will the cost implications be?).

Our Financial Model Background Paper and 5 year financial model supporting this Options Appraisal sets out the current budget provision directly allocated for the service within the Children and Young People division, and in the context of likely future funding intentions of Brent Council , gives consideration to the issues and related financial challenges, opportunities and risks that will arise for the service as an autonomous entity outside of the direct control of the Council. A range of assumptions have had to be made in developing the plan and a number of discussions still need to take place.

The Youth Services Financial Paper covers:

- historical and current position for 2014-15
- future funding intentions and what this means

¹ Before 5% proposed fee payable to BYO to manage the LATCO contract

- maintaining the service – 5 year financials and income requirements
- key lines of enquiries and assumptions to underpin the 5 year financial plan and income requirements covering such areas as tax, staff, property, infrastructure and governance costs, operating surplus
- emerging 5 year operating plan – the headlines
- references to cash flow, balance sheet and future financial reporting requirements
- key financial risks

The financial plan highlights that in 2016-17 further income totalling c £525k will need to be secured to maintain the existing service provision rising to c £1m by 2020/21. The key components giving rise to this are:

- reduction in 2016-17 base plus alternative model commission - £160k
- exclusion of non-recurrent income with the exception of Right Track - £60K
- governance costs and additional support - £80k
- potential VAT exposure c £110k
- inflationary pressures c £25k
- national insurance £25k
- generation of surplus £65k

The amount of external income that needs to be secured to maintain the existing service provisions, increases to almost £1m by 2020-21, which reflects the tapering down of value of the present budget baseline in 2014/15. The challenge to a new organisation wishing to maintain the present level of service (with staff cohort) is to find at least £525k in Year 1 and more each year thereafter.

However, if Brent was able to provide only £400k pa budget, then this smaller budget could potentially provide a reduced youth service offering that could allow:

- Keeping Roundwood open providing similar levels of youth services from Roundwood – c £155k plus £110k = £265k (or reduced services via Roundwood combined with a small outreach service);
- Keeping a slightly slimmed down Youth Parliament - £60k;
- A very much reduced but appropriate management structure;
- Right Track service as fully funded from schools - £75k; and
- Minimal signposting through social media and internet via the Brent website.

We have modelled this smaller financial budget from Brent in the context of our suggested LATCO model, which illustrates the additional external funding needed to sustain the present level of youth services Brent offers.

We with Brent have identified further cost pressures relating to property hub costs. There could be some global potential savings (reduction in required external income and grants requirement) that could be made by reducing a 4 hub service down to a one hub service at Roundwood, according to Brent’s finance team. However, Brent may centrally carry additional costs of maintaining empty buildings. This would not affect Youth Services’ budget as we understand. The potential property cost figures are shown below. The 2015/16 update position reflects the inherent financial pressures within the existing baseline, and therefore the additional amount cannot be treated as a saving from the baseline envelope, although it will alleviate an increasing pressure that will require funding unless alternative options are agreed.

Property costs	2014/15 budget	2015/16 updated
	£K	£K
Granville	90	180
Poplar Grove	57	111
Total	147	291

	Youth Entity 5 Year Summary				
	2016-17 Year 1	2017-18 Year 2	2018-19 Year 3	2019-20 Year 4	2020-21 Year 5
	£	£	£	£	£
Income					
Service delivery - Brent Council	1,140,000	1,045,000	950,000	855,000	760,000
Funding of corporate costs -flow through	308,700	311,900	315,164	318,493	321,889
Fees and charges inc Right Track	273,997	279,477	285,067	290,768	296,584
External Income and Grants required	528,862	645,938	763,451	881,410	999,822
Total Income	2,251,559	2,282,315	2,313,682	2,345,671	2,378,295
Employee related	1,140,873	1,163,690	1,186,964	1,210,703	1,234,917
Premises related	314,207	315,586	316,988	318,413	319,862
Transport	42,862	42,862	42,862	42,862	42,862
Supplies and Services	318,857	318,857	318,857	318,857	318,857
Corporate support and governance	261,000	265,800	270,696	275,690	280,784
Vat exposure	108,181	109,045	109,926	110,825	111,742
Total Expenditure	2,185,980	2,215,840	2,246,293	2,277,351	2,309,024
Operating Surplus	65,579	66,475	67,389	68,321	69,271
% return on total expenditure	3%	3%	3%	3%	3%

Note to table:

The income line 'funding of corporate costs flow through' represents the estimated costs/value of corporate support services, building insurances and certain supplies and services that are currently paid for by the Council and the indicative rental/lease cost for premises. These costs will need to be met by the new entity. As often with public sector spin-outs the value of these services is provided for in the funding stream, enabling the entity to buy back the service from the Council. The arrangements are cost neutral to both parties in the short-term.

6. Property

We understand that Brent currently delivers youth services from a number of sites across the Borough, namely four hub facilities known as Roundwood Youth Centre, Granville Youth Arts Centre, Poplar Grove Youth Centre and Wembley Youth Centre.

We are instructed that only RYC is currently within scope in terms of appraising future options for service delivery and alternative organisational structures. The other sites are earmarked for potential alternative primary use and/or redevelopment pursuant to Brent's wider strategic estate plans.

[Note: further clarification needed regarding possible future use of Poplar Grove.]

6.1 Roundwood Youth Centre

RYC is considered a key youth services hub delivering a wide range of services to meet a wide range of objectives. RYC opened its doors in 2012 and is a new-build facility funded through the MyPlace programme by a £5m capital grant.

RYC is owned by the London Borough of Brent under freehold title number NGL220638. The Land Registry information does not reveal any third party interests (such as a Lease) in the facility.

[Note 1: further consideration required regarding possible additional titles following receipt of additional information from Brent/Land Registry.]

[Note 2: Brent to provide information regarding any unregistered interests, informal arrangements and any third party use/occupation.]

6.2 New Occupational Arrangements

Proposals for the new organisational model may include a transfer or creation of a property interest in RYC (depending on what is eventually decided by Brent). For example, based on the "do something" option and the possible creation of a new independent commissioning/delivery organisation, Brent will need to determine whether such an organisation will acquire its own property interest in RYC, and if so, on what terms.

In formulating any disposal proposals, Brent will need to consider the following options:

Freehold transfer

A full transfer of ownership (i.e. a transfer of the freehold interest) from Brent would result in Brent losing its entire interest in the asset and therefore control of the premises. The opposite would be the case for the new delivery body: it would acquire a valuable asset, one which might constitute adequate security for future borrowing. If such a transfer is contemplated, Brent needs to consider a number of issues carefully including appropriate terms of transfer (namely the price payable for the asset) and any restrictions on its ability to deal freely with the premises in this way. The new delivery body would be concerned as to the state of repair and condition of the premises, their suitability for current/intended use and how acquisition costs are to be funded.

Grant of a lease

A Lease to the new delivery body would mean that Brent retains its superior freehold title in the premises (and therefore ultimate ownership) as well as some control over its asset through tenant covenants and reserved access rights. The new delivery body would have the benefit of exclusive occupation of the premises for a fixed period to the exclusion of Brent (except to the extent that there are reserved rights of entry in favour of Brent) and others (unless it chooses to share occupation with others under separate arrangements). As with any freehold transfer, the terms of any Lease would require careful consideration, particularly length of term, rent and repairing obligations.

This type of arrangement is more common in service delivery transformation projects, with the term of the Lease being co-terminus with the services contract between the local authority and service provider. Advantages for Brent would include

retention of its asset while securing a fixed period of income (through rent) and having the certainty of regaining possession of the premises at the end of the Lease (on the basis that it has been properly contracted out under the 1954 Landlord & Tenant Act). For the tenant entity, such an arrangement would offer certainty of occupation for a fixed period, aiding business/operational planning, with Brent having only limited rights to access the premises and interfere with the tenant's use/occupation.

Informal/flexible arrangements

Alternatively a Licence to Occupy might be contemplated – this would be a more informal arrangement compared with a freehold transfer or grant of a Lease in that the new delivery entity would enjoy use with permission on a non-exclusive basis. This would be appropriate if a number of different organisations were to share use of the same premises (e.g. to maximise use/occupation and to share costs), with users occupying under separate occupational arrangements. Any such Licence might impose a 'licence fee' but this is to be distinguished from a 'rent'.

A Tenancy at Will is unlikely to be acceptable as a basis for future occupation – such an agreement is not an estate in land and gives very little security/certainty to either party. This type of tenancy is regarded as a personal agreement which can be ended at any time by either party on no notice.

Licences and Tenancies at Will are often attractive options where an occupier is seeking only short term occupational arrangements. However, as mentioned above, in service transformation projects, it is common to see property arrangements which are co-terminus with the contractual arrangements between council and provider regarding service provision. Such contractual arrangements normally run for a number of years and can be for up to 5 years.

We understand from Brent's Strategic Property team that Brent will consider the grant of a Lease if new property arrangements are to be put in place. However, the different types of occupational arrangements outlined in this section 6 should be revisited in more detail once a preferred organisational model is identified and more detail emerges on possible terms of disposal.

6.3 Additional Considerations

Restriction(s) on future dealings/use

Brent's freehold title is burdened by a restriction on dealings in favour of the Big Lottery Fund ("the BLF"). The restriction requires the consent of the BLF to any freehold transfer or Lease in excess of seven years because the Land Registry will not register such dealings without evidence of the BLF's consent.

This title restriction is likely to relate to the MyPlace capital grant referred to above. Although Brent has not been able to provide us with a copy of any Grant Agreement and project specific documentation, we have seen a copy of the standard terms and conditions for the MyPlace grant scheme. Assuming these were incorporated into the Grant Agreement for RYC, we note:

- The BLF's written agreement is required to particular changes including aims, structure, delivery, outcomes, duration or ownership – arguably this might not apply post project delivery but may still be subsisting (clause 2.1)
- Notification of any disposals (within 20 years from the date of the Grant Agreement) is required – this includes sales, lettings and other types of disposal – we understand we are still within the 20 year period (clause 8.7)
- On any sale or disposition the BLF may require repayment of the whole or part of the grant and the BLF may impose further conditions (clause 8.7)
- The BLF may demand repayment at its absolute discretion if there is a significant change of purpose or ownership within a reasonable period after project completion meaning that the grant is unlikely to fulfil the purpose for which it was made (clause 12.3)

The practical effect of this is that consultation with the BLF (or the scheme's successor body) is likely to be required regarding future plans affecting RYC, especially if changes are proposed to the use of the premises and to ownership. Brent is aware of this requirement and will consult with regards its proposals.

The Grant Agreement (and any associated documentation) may include further provisions relating to proposed disposals, and in particular might restrict use and provide for repayment (or claw-back) of all or some of the capital grant in

additional circumstances. A copy should be located and considered before any proposals for future occupational arrangements of the premises are settled.

Redevelopment of RYC was authorised under a planning consent granted in September 2010. A number of planning conditions were imposed under the consent which affect and/or restrict operations at RYC. Condition 5 restricts general hours of use; condition 6 restricts use of outdoor space and terraces and the making of amplified noise from external parts; condition 7 restricts use of the MUGA and requires lights to be turned off during particular hours; and condition 9 imposes noise restrictions so that no music/amplified sound is audible beyond the site boundary.

Tax

A freehold transfer or grant of a Lease would potentially attract a charge to Stamp Duty Land Tax (SDLT) depending on the terms of the transfer or letting (e.g. sale price/rent) and the status of the new delivery body (e.g. charitable or non-charitable). This would be payable by the new delivery body as transferee or lessee.

Genuine Licences to Occupy and Tenancies at Will are outside the scope of SDLT and are exempt.

Potential SDLT liability should be revisited in more detail as and when more detailed disposal terms emerge, as well as any VAT implications. Specialist tax advice should be commissioned by the Council.

Disposal at undervalue

Should proposals emerge involving a gift of RYC or disposal on terms other than market terms, Brent will need to consider whether this is within its statutory powers and whether any specific consents will be required. In addition to potential issues raised by restrictive grant funding conditions, as a starting point the best consideration reasonably obtainable must be obtained under the Local Government Act 1972. If a disposal at under value is proposed, the specific consent of the Secretary of State might be needed unless (1) the disposal is a short tenancy (e.g. a Lease of less than 7 years) or (2) the disposal will help secure the promotion or improvement of the economic, social or environmental well-being of the area (where the undervalue can be properly assessed at £2m or less). This should be revisited in more detail as and when more detailed disposal terms emerge with reference to Brent's established strategy/policy on Community Asset Transfers (if any).

State aid

Any disposal on terms other than market terms would require Brent to consider European state aid rules. When disposing of land at less than best consideration authorities are providing a subsidy and must ensure that the nature and amount of subsidy complies with the state aid rules, particularly if there is no element of competition in the disposal process. Failure to comply might mean that the aid given is unlawful, and may result in the benefit being recovered with interest from the recipient.

7. High Level Risk Analysis

Based on our assessment of the potential loss of the present Youth Service provision in its current form in March 2016, we refer to the findings from the recently published report on Rotherham Metropolitan Borough Council¹ that was commissioned on the 10th September 2014 by the Secretary of State, who appointed Louise Casey CB under section 10 of the Local Government Act 1999 to carry out an inspection of the compliance of Rotherham Metropolitan Borough Council in relation to some of its services, including those for children and young people. The report emerged from a series of extreme events over a long period affecting 1400 children. The context of mentioning this within the body of this report, is to highlight the potential for increased risks for the wellbeing and health of children and young people in Brent, through a loss of the current universal Youth Services provision, unless it is suitably replaced by similar services provided by a range of accredited and acceptable organisations within Brent and external providers working in Brent to "gap fill" the potential void created from loss of current Brent funded and provided Youth Services.

¹ Report of Inspection of Rotherham Metropolitan Borough Council Author: Louise Casey CB reported to the House of Commons on 4 February 2015.

It is critical that Brent Council ensures that a new delivery organisation is able to use and capture the information gathered, and wherever possible, to retain the human capital (i.e. the youth support staff workers) that have the local knowledge and trust of young people in Brent, especially those in more challenging and less advantaged situations either from a family, drugs / substance misuse, or sexually related risk profile.

From our stakeholder meetings and review of outcomes achieved in recent years, the strengths of Brent Council's current Youth Service staff show that–

- They have collected information about young people for Brent Council, (noting the recent Brent Council young people consultation survey outcomes – Autumn 2014). This must be retained and shared with all organisations that require it to deliver and/or sustain services in future.
- They developed relationships with young people. The trust they develop potentially allows a greater engagement and encouragement to become more involved in Youth Services activities and to avoid slipping into problems leading to marginalisation, criminality, abuse or homelessness, amongst other potential negative outcomes.
- They take a proactive approach to helping young people. This is especially true with work done in Right Track, Mosaic LGBT, Youth Bus and other relevant initiatives that are in tune with the ways young people socially engage in today's society.

8. Plan for Implementation

This Options Appraisal is accompanied by a high level Implementation Plan.