



City of Westminster

# Cabinet Member Report

**Meeting or Decision Maker:**

Cllr Tim Roca, Cabinet Member for  
Young People Learning and Leisure

**Date:**

05/01/2023

**Classification:**

General Release - (Exempt from  
Disclosure – Appendix A on the grounds  
that:

- (i) it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972,
- (ii) it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under paragraph of Schedule 12A of the Local Government Act 1972;

and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

**Title:**

SECURE CHILDREN'S HOME FOR  
LONDON AND PAN-LONDON  
COMMISSIONING VEHICLE

**Wards Affected:**

ALL

**Policy Context:**

Social Care and Complex Needs

**Key Decision:**

Key Decision, to which an entry has been included for 28 days on the list of forthcoming decisions

**Financial Summary:**

The Cabinet Member for Young People Learning and Leisure is asked to commit to spend of £20k per annum over a 5-year period once provision is launched

**Report of:**

Cllr Tim Roca, Cabinet Member for Young People Learning and Leisure

## 1. Executive Summary

1.1 Children with particularly complex needs, including those who are at significant risk of causing harm to themselves or others, including risk to life, can be placed in a secure children's home (SCH) when no other type of placement would keep them safe. Section 25 of the Children Act 1989 sets out the 'welfare' criteria that must be met before a Looked After Child may be placed in secure accommodation, these are that:

- The child has a history of absconding and is likely to abscond from any other description of accommodation; and
- If the child absconds, (s)he is likely to suffer Significant Harm; or
- If the child is kept in any other description of accommodation (s)he is likely to injure her/himself or others.

Any decision to place a child in a secure placement on welfare grounds can only be made with approval of the Director of Children's Services, or the Secretary of State for Education for children under the age of 13.

1.2 Currently, there is a significant shortage of national secure children's home provision, as highlighted by OfSTED, and London has no provision.

1.3 The numbers of children placed in these setting is small, but the placements are expensive. In the eight months to July 2022 the number of children requiring secure welfare provision per local authority in London ranged from zero to three. Further, where places are not available, the alternatives, often requiring multiple ratios of staff for each child, are amongst the costliest placements for children's services. For example, the Association of Directors of Children's Services (ADCS) recently highlighted more than twenty local authorities paying over £20K per week (equivalent to £1 million per year) and one case of £49,680 per week (equivalent to over £2 million per year).

1.4 There is an opportunity now to develop and establish Secure Children's Home (SCH) provision in London and bring additional capacity to the market. The Association of London Directors of Children's Services (ALDCS), London Councils and London Innovation and Improvement Alliance (LIIA) recognised that no single local authority could manage the risk of creating and maintaining provision of this type independently. Instead, they've set out a pathway to develop a company, limited by guarantee, jointly owned by London local authorities to oversee the development of a new SCH provision. This company is referred to in the rest of this report as a 'Pan-London Vehicle ("PLV")'.

1.5 Department for Education, have allocated c£3m of development funds, with c£50m+ of capital funding to the SCH. This is subject to the successful establishment of the PLV, and other project milestones surrounding the SCH.

1.6 The PLV will initially oversee the build and contribute to the development of the operating model for the new SCH provision, as well as the commissioning arrangements to run the service. The PLV will be a means to share the risks and benefits associated with developing and running the SCH, with a key

benefit being that places at the new provision will be prioritised for the London local authorities who opt in to join. In the long term, it is intended that the PLV's remit will include other key pan-London commissioning arrangements that will improve the lives of London's children and young people.

- 1.6 Uptake of this proposal will support Bi-Borough Children's Services in its aim to ensure the best possible outcomes for children leading to productive and successful adult lives as outlined within The Bi-Borough Children's and Young People's Plan.

## **2. Recommendations**

- 2.1 The Cabinet Member for Young People Learning and Leisure, is recommended to agree that the Council:

2.1.1 becomes a member of a not-for-profit company, limited by guarantee, provisionally to be known as the Pan London Vehicle, to:

(i) develop and then oversee the running of London's secure children's home provision for a five-year period from 1<sup>st</sup> April 2023 to 31<sup>st</sup> March 2028, with a breakpoint after three years. Once the provision has launched, anticipated to be 2025/26, membership will be a fixed annual cost of £20K (subject to inflation adjustment), unless an alternative model for funding the PLV is agreed during the development phase.

(ii) collaborate with other PLV members on future joint commissioning programmes.

2.1.2 Commit in principle to joint oversight and risk/benefit sharing of the SCH provision, through the PLV, for a five-year period to 31<sup>st</sup> March 2028, that includes the build, service development and service commissioning phases, subject to ratification after the revision of the SCH business case, and renewable on a ten yearly cycle thereafter, with breakpoint after five years.

2.1.3 Delegate authority to the Executive Director of Children's Services in consultation with the Director of Law to:

i) approve the necessary governing documents that will enable the Council to set up, join and run the PLV and

(ii) make the final determination of the Council's membership following completion of the revised SCH business case and, if appropriate, enter into the necessary legal agreements and related arrangements on behalf of the Council required to implement and run any aspect of the PLV arrangements.

## **3. Reasons for Decision**

- 3.1 Children with particularly complex needs, who are at significant risk of causing harm to themselves or others, including risk to life, can be placed in a SCH when no other type of placement would keep them safe. Children placed in SCHs are likely to have experienced a number of placements that have broken down, missed a lot of education, have unmet emotional and physical health needs and have suffered a great deal of trauma in their lives. SCHs provide a safe place where these very vulnerable children can receive the care, education and support that they need. Unlike any other placement type for looked after children, a SCH is a locked environment, where their liberty is restricted.
- 3.2 There is a national shortage of provision and places are often not available when referrals are made so children are then placed in less suitable but higher cost alternatives. This shortfall in provision is particularly acute in London where there is not any Secure Provision. A review commissioned in 2018 by the Association of London Directors of Children's Services (ALDCS), working with NHS England and the Mayor's Office for Policing and Crime (MOPAC) found that over three years, London referred 295 children to Secure Provision but only 159 received places.
- 3.3. There is evidence to suggest that the national shortage of provision has resulted in a demand for SCH. Pan-London analysis pre-Covid (between October 2017 to May 2018) highlighted that an average of 21 London children were in Secure Welfare provision at any one time. Whilst snapshot data taken between December 2021 and September 2022 shows that there were, on average, 12 of London's children in a secure welfare placement at any one time. Although this looks like a fall in numbers compared to pre-Covid, the data shows that 29 referrals were made but a placement was not offered.
- 3.4 The Children Act 1989 stipulates local authorities to take steps to ensure, as far as reasonably practical, sufficient accommodation is available for children in care within their local authority area. Given the absence of provision in London, children requiring secure provision are placed on average, 192 miles away from their home local authority which results in them losing contact with their family and community. Additionally, the loss of local contacts and pathways in education, training and employment has a negative impact on their development post-placement.
- 3.5 In a September 2022 survey, London local authorities reported that due to the known shortage of provision, they often do not make a formal referral at all. This indicates more of London's children are impacted by the shortfall in provision than the data suggests. Instead, children and young people are placed in alternative settings. Of a sample of 50 'alternative to secure' placements reported in a September 2022 survey, 17 related to children with a deprivation of liberty order in place. Instead of being placed in a secure children's home, as required by the court order, these children were placed in settings that are not specifically designed to keep them safe and 10 of these placements were in unregulated settings or in provisions that are not legally registered to operate as a children's home. This means these vulnerable children are at risk of not receiving the care, education and support that they need.

- 3.6 The need for SCH provision has been highlighted through Her Majesty's Chief Inspector's Annual Report to Parliament (2020) which stated –

*The national capacity of Secure Children's Homes remains a significant concern, with approximately 20 children awaiting a placement on any given day and the same number are placed in Scottish secure units. This increases pressure to use unregulated provision. Provision is not always in the right place, so that some children are placed a long way from their home and family.*

- 3.7 In London, there is an overall shortfall of 225 high-cost low incidence provision, which includes SCHs. This deficit drives up costs and has resulted in overspends across London local authorities exceeding £100 million. The Competition and Markets Authority highlighted the lack of suitable local provision nationally, but particularly in London citing – '*lack of placements of the right kind, in the right place...materially higher prices...and providers carrying very high levels of debt.*'
- 3.8 Financial data provided by London local authorities in the September 22 survey shows that the average cost of a secure welfare placement has increased; the average being £7K per week in 2019, rising to £10.5K per week in 2022 and some local authorities have paid up to £25K per week for secure welfare placements in that period. In the same period, local authorities have also paid up to £30K per week for placements made as an alternative to secure.
- 3.9 The numbers of children are too small, and the investment required too great for any one local authority to run its own provision, but there is potential for a pan-London approach, which would enable the benefits to be shared whilst also jointly managing the risks of developing such provision. A pan-London approach also fits with recent reports from the Competition and Markets Authority<sup>1</sup> and the Independent Review of Children's Social Care<sup>2</sup> which recommended multi-authority approaches to develop greater understanding of need, engage with the market and stimulate new provision.
- 3.10 The sign up of London local authorities to the PLV will secure a significant amount of funding from the DfE who have allocated c£3m of development funds, with c£50m+ of capital funding to the SCH. This will cover the PLV's costs during the development phase, meaning local authorities will not be required to make any financial contributions to the running of the PLV until the SCH provision launches. The provision is expected to launch between the end of 2025/beginning of 2026, subject to the project achieving the relevant milestones.
- 3.11 Our bi-borough Children's Social Care Placements Sufficiency Strategy sets out our ambition to 'continue to strive for the best outcomes for our children and young people,' This means ensuring that our most vulnerable and high-risk children and young people, who may require SCH provision, are able to access

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<sup>1</sup> <https://www.gov.uk/government/publications/childrens-social-care-market-study-final-report/final-report>

<sup>2</sup> <https://childrensocialcare.independent-review.uk/>

the right placement, which offers the correct level of care, education, and support, helping children and young people to reduce their risks and where applicable, step down to less restrictive placement settings.

- 3.12 In Westminster, there are no young people currently residing in a SCH on welfare grounds. Yet, there is evidence of masked demand. Westminster's highest cost placement last financial year, £11k per week, aligns with the previous description of 'alternative to secure' provision. The care package consisted of 52-week residential placement, out of borough, with a high staff ratio and a deprivation of liberty order in place. This was deemed the best setting to keep a young person safe, due to their significant challenging behaviour and mental health needs.
- 3.13 As part of the development of the business case to address the need for Secure Welfare Provision, an options analysis was undertaken, the details of which are included in Appendix 2.

#### **4. Background, including Policy Context**

- 4.1 SCHs are unique, as restriction of liberty is not permitted in any other type of children's homes. There are two routes to be referred into a SCH, court ordered via youth justice, or on "welfare grounds". Legal safeguards ensure SCHs are used appropriately, those referred on welfare grounds, must meet specific 'welfare criteria' (Section 25 of the Children Act 1989) and require approval from the Director of Children's Services.
- 4.2 Children considered for secure welfare demonstrate a range of challenging behaviours, including self-harm, violence to others, risk of criminal and sexual exploitation. Typically, this is accompanied by a lack of insight and/or denial of the risks. Many children also have mental health, emotional and developmental issues. Most have been known to social services since early childhood but were late entrants to the care system and experienced several disrupted placements.
- 4.3 The number of SCH places in England has declined significantly since 2004 when there were more than 25 SCHs, compared to only 14 in 2022. This change was driven by the reduced demand for youth justice placements as fewer children have been remanded by criminal courts. Without the predictable revenue that youth justice block-booked beds provided, many local authorities could no longer independently operate an SCH. This has significantly affected availability of placements on welfare grounds.
- 4.4 The Association of London Directors of Children's Services (ALDCS), London Councils, NHS and London Innovation and Improvement Alliance (LIIA) have expressed unanimous support for the development of SCH provision. The Department for Education has allocated c£3m of development funds, with c£50m+ of capital funding subject to progress in against key milestones. However, to secure the capital funding, the support of London local authorities is required.

- 4.5 It is proposed that a Pan-London Vehicle (PLV) is established to oversee the development of new SCH provision. The PLV will be a company limited by guarantee (“CLG”) and jointly owned by the London local authorities. The PLV will not be focussed on profit generation, and it is intended that any surplus generated by the PLV will be reinvested into its activities.
- 4.6 The PLV will initially oversee the build and contribute to the development of the operating model for the new SCH provision, as well as the commissioning arrangements to run the service. The current proposal is for the SCH provision to contain 24 beds, in one or two sites across London. The PLV will be a means to share the risks and benefits associated with developing and running the SCH, with a key benefit being that places at the new provision will be prioritised for the London local authorities who opt in to join the PLV.
- 4.7 The specific terms around the PLV and its operation will be consolidated during the development phase once local authority membership to the PLV has been confirmed.
- 4.7.1 During this development phase, (expected to run from April 2023 to the end of 2025/beginning of 2026) PLV members will work collaboratively to agree:
- Pricing strategy and revenue model;
    - practice/operating model
    - safeguarding and risk management arrangements,
    - quality assurance arrangements,
    - the commissioning approach / staffing model,
    - the process for managing referrals and placement allocation
  - A ‘refreshed’ business case which will:
    - revisit and update the ‘case for change’,
    - provide costings, informed by the final forecast of operating model,
    - finesse benefits (financial and non-financial),
    - consider the most suitable route for appointing a service provider
    - Notice period re. leaving PLV
- 4.7.2 Once the practice model, operating model, pricing strategy, revenue model and business case have been agreed, local authorities will be able to make an informed decision about ongoing membership.
- 4.7.3 The DfE grant will cover the development and capital costs associated with the construction of the 24-bed SCH.
- 4.7.4 Once the provision is launched, member local authorities will be required to start paying the £20k fee for a 5-year period, with an opt-out facility after three years.
- 4.7.5 Subject to a child or young person being placed in the SCH, placement fees will be charged to the local authority at placement cost.

#### **4.8 Proposed legal vehicle to share risks and benefits**

4.8.1 The following models were assessed to determine the best approach for risk-sharing, commissioning and oversight of the new provision:

- A lead London local authority
- An existing pan-London entity
- A new pan-London entity
- Joint venture with a third party

4.8.2 Following analysis and evaluation of the risks and challenges of each option it is recommended that the Pan-London Vehicle is structured as a new legal entity allowing the new provision to be jointly owned and managed by London local authorities as the risk of investment and operating costs is too great for any one local authority. This new Pan-London Vehicle will manage the commissioning and oversight of the new provision, so the benefits and risks are shared across local authorities. It also means that all member local authorities will be on an equal or close to equal footing in decision making.

4.8.3 The following options have been considered as the legal basis for setting up an running the PLV:

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

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

4.8.5 The PLV will be hosted in a larger organisation as it will comprise a small number of staff. The key options are for it to be hosted in the London Borough of Barnet as the current fund-holding body or to be hosted in the local authority where the new Secure Children's Home is located, which is yet to be finalised. The location of the PLV will be agreed after the location of the Secure Children's Home has been finalised.

4.8.6 Tax implications for the agreed structure will need to be fully understood, so as to avoid unnecessary VAT consequences.

4.8.7 The legal basis, membership and decision-making processes are set out in more detail in Appendix 1.

## **5. Financial Implications**

- 5.1 The development costs (c£3 million) and the capital costs (c£50+ million) will be provided by the DfE, subject to completion of agreed project milestones. This is a significant investment in provision for London’s most vulnerable children which will be secured for London with the commitment of London local authorities.
- 5.2 The financial commitment by each local authority is £20k per year for a 5-year period, with an opt out facility after three years. The £20k fee will cover the operating costs of the PLV, with an opt-out facility after three years. The annual fee is payable once the facility is available for use, and this is estimated to be 2024/25.
- 5.3 The total indicative cost to London have been estimated by the London Improvement and Innovation Alliance (LIIA) and the Association of Directors of Children’s Services (ADCS) using detailed modelling from 2019, accounting for inflated 2022 prices using CPI:

<b>Cost Types</b>	<b>Estimated costs 2022</b>
Running cost for 24 beds inc. provider profit margin	£8060000
PLV Annual Cost	£465000
Secure Transport Cost	£70000
<b>Total</b>	<b>£8,595,000</b>

- 5.4 At present, provision at SCH costs between £7k and £10.5k per week, based on sample London data. Where SCH provision is not available, alternative provision is very costly, typically £12k+. Nationally, the Association of Directors of Children’s Services (ADCS) has identified more than twenty local authorities paying £20k+ per week, with one local authority paying just under £50k per week.
- 5.5 Placement costs in the PLV run SCH will be funded by individual local authorities using budgets currently deployed on children’s placements. The modelling indicates that this will be less costly than at present. Placements for London local authorities which opt to be members will be charged at cost, whereas other London local authorities will be charged a higher fee, to cover the cost of voids, with all surplus income supporting future provision.
- 5.6 LIIA and ADCS modelling depicts an estimated weekly placement price the SCH would have to charge to break even at different levels of occupancy. This includes covering the costs of the PLV and secure transport.

<b>Occupancy</b>	<b>Break Even Placement Price</b>
<b>10%</b>	£68,870
<b>20%</b>	£34,440
<b>30%</b>	£22,960

<b>40%</b>	£17,220
<b>50%</b>	£13,770
<b>60%</b>	£11,480
<b>70%</b>	£9,840
<b>80%</b>	£8,610
<b>90%</b>	£7,650
<b>100%</b>	£6,890

5.7 The risk of the lower occupancy scenarios being realised is low as there is a shortfall of provision nationally so places could be taken up from outside London if agreed. Although, provision would be prioritised for the London local authorities which have opted into membership.

5.8 Further, there are additional financial benefits as outlined below:

- Reduction in staff travel time to out of region Secure Children’s Homes
- Reduction in staff time sourcing placements
- Reduction in secure transportation costs
- Reduction in use and cost of unregulated/bespoke provision, often sourced at short notice and at extremely high costs (over £12,000 per week)
- Potential for the PLV to gain a share of any margin achieved and consequently reduce the cost of membership
- Potential further savings through other joint commissioning projects
- Will enable joint pan-London market intelligence and market shaping, including developing new private, voluntary, independent, and local authority provision.

## **6. Legal Implications**

6.1 The Council is seeking approval to become a member of a Pan-London vehicle, namely a company limited by guarantee, for an initial period of five years from 01 April 2023 to 31 March 2028. The Council may terminate the arrangement after three years as set out in the report. Thereafter the Council’s membership can be renewed for a term of ten years with provision to terminate after five years.

6.2 There are well established powers for the Council to form a company. Appendix 1, which has been shared by London Councils, sets out a legal analysis of the proposed legal structure and membership.

6.3 Legal Services should be engaged throughout as the proposal and the various legal agreements are developed. The report seeks delegated authority to the Bi-borough Director of Children’s Services to finalise the legal documents in consultation with legal services.

- 6.4 Section 22(3) of the Children Act 1989 places a duty on local authorities to safeguard and promote the welfare of looked after children. Local authorities should ensure that in commissioning services from providers of children's homes they comply with their responsibilities under the Children Act. The Council has a legal duty outlined in Section 22G of the Children Act 1989 to 'take steps that secure, so far as reasonably practicable, sufficient accommodation within the authority's area which meets the needs of its looked after children and those who would benefit from being accommodated'. Securing sufficient accommodation is a vital step in delivering improved outcomes for looked after children.

## **7. Carbon Impact**

The decision for the Bi-Borough Children's Services to join the PLV will have no carbon impact at this stage.

## **8. Equalities Implications**

- 8.1 These proposals are aimed at improving a range of outcomes for Westminster City Council's vulnerable children and young people, including health and education. The current arrangements for secure welfare provision are exacerbating poorer outcomes for this group, particularly those from Black and Minority Ethnic (BAME) groups who, based on Pan-London analysis, are overrepresented in secure welfare provision.
- 8.2 As well as securing better outcomes for the Westminster City Council's BAME children and young people, a new London based SCH provision will help address the racial disparities and issues relating to their overrepresentation in secure welfare provision.
- 8.3 In partnership with other London local authorities, the Council will design the SCH provision, and any other services developed and managed through the PLV, to ensure the specific needs of Westminster's children and young people are taken into consideration.
- 8.4 As part of the work to develop the new SCH provision and other PLV services, we assessed the impacts on the protected characteristics covered by the Equality Duty. From our analysis, we do not foresee any significant impacts on any of the protected characteristics. However, we will continue to monitor the potential implications of the proposal on the protected characteristics of children, young people, and their families.

## **9. Consultation**

- 9.1 The Association of London Directors of Children's Services have conducted a wide range of consultation on the proposals outlined within this report to ensure it accurately reflects the aspirations and priorities of London local authorities. The groups that have been consulted include:

- London Councils' Executive, Leaders' Committee and Lead Members;
- Society of London Treasurers;
- Local authorities (children's social care and youth offending teams);
- Central government (Department for Education, the Mayor's Office for Policing and Crime, OFSTED, Ministry of Justice);
- Clinical experts and practitioners within the field of children's services and health;
- Third sector organisations delivering children's services and
- Children and young people with lived experience of SCH.

9.2 Consultation with relevant groups will be ongoing throughout the development phase, once local authority membership has been confirmed. This will include engagement, consultation and coproduction with children, young people, and their families as appropriate.

**If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:**

Justine May, Head of Transformation and Innovation

[Justine.may@rbkc.gov.uk](mailto:Justine.may@rbkc.gov.uk)

## **APPENDICES**

**Appendix 1 PLV Legal Structure and membership (exempt from disclosure)**

**Appendix 2 Options, Analysis and Proposal**

*NB: For individual Cabinet Member reports only*

For completion by the **Cabinet Member** for Young People Learning and Leisure

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
NAME: **Cllr Tim Roca**

State nature of interest if any:

*(N.B: If you have an interest, you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendation(s) in the report entitled

SECURE CHILDREN'S HOME FOR LONDON AND PAN-LONDON  
COMMISSIONING VEHICLE and reject any alternative options which are referred to but not recommended.

Signed: \_\_\_\_\_

Cabinet Member for Young People Learning and Leisure

Date: \_\_\_\_\_

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the

criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

