

CABINET

6 JUNE 2017

MEDWAY MUSIC EDUCATION HUB

Portfolio Holder:	Councillor Andrew Mackness, Children's Services (Lead Member) Councillor Martin Potter, Education Attainment and Improvement
Report from:	Ian Sutherland, Director of Children and Adults Services
Author:	Jacqui Moore, Head of School Organisation and Commissioning

Summary

This report sets out proposals to alter the governance arrangements for the delivery of music education in Medway. Currently Medway Council is the lead partner for Dynamics – The Music Education Hub. Now that the Music Education Hub has developed firm foundations, it is proposed that a community interest company is set up to act as lead partner. The community interest company (CIC) would be set up independently to Medway Council. Although Medway Council would have no ownership of the CIC, it would have Member representation on the board of directors with a public interest veto. This proposal will allow Dynamics to flourish as a Music Education Hub with continued support of existing partners, but a greater level of flexibility and agility. A move to a CIC model also presents an opportunity to enhance future sustainability should the level of Arts Council England funding change and a more commercial operation be required. A CIC rather than a charitable organization gives this commercial flexibility. Medway Council would work with Arts Council England to agree novation of Arts Council England (ACE) funding agreement to the proposed CIC.

1 Budget and Policy Framework

- 1.1 The decision is within the budget and policy framework. The proposals in the report will continue to support children achieving their potential in schools (Council Plan) and will have no impact on the Council's budget, therefore, this is a matter for Cabinet.

2 Background

- 2.1 Prior to 2012, central government funding for music services was devolved through Local Authorities.

- 2.2 Following a review of music education, requested by the Government, the National Plan for Music Education (NPME) was published in November 2011.
- 2.3 The NPME for music education continued the provision of funding for music education, but devolved by Arts Council England to newly formed Music Education Hubs in each local area. The hubs were formed through a bidding process arranged by Arts Council England and established from 2012.
- 2.4 Although there was no requirement for Local Authorities to bid to set up Music Education Hubs, Medway Council chose to bid for funding and Dynamics – The Medway Music Education Hub was formed in 2012.
- 2.5 The provision of music through music hubs differed from the previous arrangements in that music hubs are partnerships of organisations, such as Local Authorities, schools, other hubs, community or voluntary organisations working together to provide music education in response to local need to meet the requirements of the National Plan for Music.
- 2.6 Medway Council is currently the Dynamics – The Medway Music Education Hub Lead Partner and therefore has the accountability for the funding and governance of the hub.
- 2.7 The grant recently allocated for the purposes of music education provided by Dynamics –The Medway Music Education Hub is set out in the table below:

Year	Grant
2015/16	£413,023
2016/17	£414,151
2017/18	£407,759

- 2.8 The funding for 2017/18 is the final year of funding within the current funding agreement. The funding arrangements for 2018/19 - 2019/20 have recently been announced by Arts Council England. Music Education Hub lead partners will be given the opportunity to continue leading their hubs into a new funding agreement. There had been an expectation that there would be an open bidding process for organisations to run Music Education Hubs from April 2018, but this is now not the case.
- 2.9 Medway operating as lead partner has brought many benefits to Dynamics in the last 5 years. This includes close communications with schools, access to data and a strong governance structure. Dynamics has been rated at the lowest level of risk by Arts Council England since its inception.
- 2.10 However, as the Hub has developed, the need has arisen to allow the Hub more flexibility to embrace partnership working in a more agile way and also to be in a position to ensure sustainability should ACE funding levels change. A new funding agreement in April 2018 brings an opportunity to review the governance arrangements for the Hub and the role of Medway Council as lead partner. With reduced resources in the Local Authority and with more schools converting to academies it is timely to consider alternative governance arrangements. The Dynamics Task Group led by the Portfolio Holder – Education Attainment and Improvement was set up to appraise the options for future development of the hub.

3 Options

3.1 'Making every child's music matter' – Music Manifesto Report no. 2 (2006) set out that:

'hubs should be unbureaucratic, light-touch and flexible, focused on the effective delivery of a broader, richer music offer for all children and young people in their local community. They should build on the strengths and value of each area's music providers, especially music services and community musicians, and deliver additional mutual benefits to them.'

The aspiration for partnership working is developed through the Arts Council England funding agreement which expects hubs to work in strong partnership with local music providers including schools.

3.2 Prior to the initiation of the task group the functional requirements of a new governance arrangement had been established and agreed by Dynamics, as set out below:

F1	<p>Deliver the objectives and priorities for music education in Medway:</p> <ul style="list-style-type: none"> • Deliver high quality music education: • Provide opportunities for children to learn a musical instrument (so that every child between 5 and 18 has the opportunity to learn a musical instrument, other than the voice) • Provide opportunities for children to play and sing with others, and to perform • Provide a range of inspiring musical experiences and events for children • Develop musical talent and widen the horizons of both pupils and the music workforce • Challenge and support schools so that they can deliver and evaluate accurately a high quality music curriculum to their pupils • Ensure that music education in Medway is coherently coordinated, that the best value for money is achieved and that local needs are met
F2	Secure continued core funding from DfE via Arts Council England
F3	<p>Secure such other funding as is necessary to enable the Hub's activities to be sustained and developed into the long-term future and to do this entrepreneurially, efficiently and accountably. Including:</p> <ul style="list-style-type: none"> • Seeking additional sources of funding for specific projects • Sharing resources, including 'in kind' and joining together funding pools • Maximising contributions and receipts
F4	To handle all back office matters efficiently and cost-effectively, including matters connected with; the employment of staff (HR function, payroll, office accommodation): IT: effective reporting; taxation and other relevant legislation (DBS checks, Right to Work, Data Protection.)
F5	To conduct the above in a transparent manner that is available to public scrutiny, as is appropriate for the use of public funds and the education of young people.

3.3 Based on these functional requirements an options appraisal had also been undertaken previously by Dynamics. The following options were considered:

AB = Accountable Body = Lead Partner

DB = Delivery Body

Option	Benefits	Limitations
Status quo AB = Medway Council DB = Contractor (Currently DBA Ltd)	Strong accountability and governance representing the community and public interest.	Local authority regulation limits opportunity to respond with agility to different working models.
AB = charitable body limited by guarantee (CLG) DB = trading arm	Benefits of charitable status, for example Gift Aid and the ability to bid to an increased range of funding streams.	Level of reporting associated with this arrangement would increase the bureaucracy and reporting Having two organisations would be more complex than having a single organisation
AB = charitable incorporated organisation (CIO) DB = community interest company (CIC)	The CIO model provides the benefits of charitable status but reporting is lighter touch than the CLG Benefits of charitable status, for example Gift Aid and the ability to bid to an increased range of funding streams. The community interest company would be able to trade.	Although the CIO is lighter touch on reporting and therefore makes this charitable organisation more agile, having two organisations is more complex than a single organisation.
Variants of charitable organisations	Benefits of charitable status, for example Gift Aid and the ability to bid to an increased range of funding streams.	Regulatory requirements increase bureaucracy alongside lack of ease of access to commercial opportunity
AB + DB = community interest company	A single CIC would give flexibility and agility. Supports community focused ethos.	As a single organisation, the governance structure should ensure community and public interest is fully accounted for.
Merger with another hub	The potential to share overhead costs	Dynamics is well established, successful and has a clear identity. A merger with another hub could lose that identity and dilute the currently high level of impact.

4. Advice and analysis

- 4.1 As a result of the options appraisal, the Dynamics Task Group (a task group of stakeholders led by the Portfolio Holder – Education Attainment and Improvement) agreed a community interest company (CIC) as the preferred new governance arrangement. It was also agreed that the community interest company should be proposed as the lead partner for Dynamics – The Medway Music Education Hub.
- 4.2 A CIC is the recommended model as this supports a community focused ethos clearly written into the articles of association and there is precedent that this is a model supported by ACE. This model also gives reputational assurance that any incoming revenues will be reinvested for the community interest. A CIC gives the opportunity to earn income to reinvest in provision of music services, providing resilience and sustainability should the level of ACE funding change. ACE would need to support the model in order to secure novation. A charity has been discounted as the level of reporting and administration is much greater than a CIC. However, there is potential for a charitable arm in the future once the CIC is established.
- 4.3 Ownership of the CIC was explored by the Dynamics Task Group with particular emphasis on ensuring agility of the organisation. It was determined that ownership of the CIC was not the important factor for Medway Council, the key factor was to ensure that community and public interests were assured. For this reason it was proposed that the CIC was developed as an entity independent of Council ownership, but with the Portfolio Holder Education Attainment and Improvement as a Director of the CIC with a public interest veto. The proposal that a Dynamics CIC should take on the role of lead partner from April 1 2018 was agreed by Dynamics stakeholder representatives at their meeting on 28 April 2017.
- 4.4 It is proposed that the Dynamics CIC is developed by DBA Ltd, a delivery partner for Dynamics, currently undertaking day to day management of music provision, as per the Arts Council England funding agreement, on behalf of Medway Council.
- 4.5 It is proposed therefore that Dynamics CIC would replace Medway Council as lead partner, but continue to work with the existing range of partners and models of delivery to ensure continuity of provision and sustainability but also allow for more agile development in the future. The proposed governance structure is shown in Appendix 1.
- 4.6 There will be a position on the board of directors for a Medway Council Cabinet Member who will have a public interest veto. The public interest veto provides the ability to prevent any decision that would not be in the public interest.
- 4.7 This approach establishes 4 routes of accountability for the CIC:
- Regular reporting to Arts Council England which is a requirement of their funding agreement
 - CIC reporting to Companies House
 - Medway Council Cabinet position on board of directors and associated public interest veto

- Stakeholder Consultation Group

- 4.8 The current instrument stock would be retained by Medway Council and leased to Dynamics CIC for their use in educational music provision at a peppercorn rent. The Dynamics CIC would be responsible for maintaining an asset register and instrument repair and maintenance. A disposal protocol will be agreed. Any new instruments would be purchased directly by the Dynamics CIC from their funding. Where Dynamics CIC require any services from Medway Council, for example legal or finance, these will be charged at a market rate. Continued use of the current instrument stock would be dependent on the Medway Council position on the board of directors and the associated public interest veto.
- 4.9 There is no obligation for the Council to act as lead partner for Dynamics and the proposed approach reduces the administrative responsibilities for the Council and enables officers to clearly focus on priorities in other areas. Dynamics is now ready to become more autonomous and this will also facilitate the agility necessary to fully reap the benefits of partnership working.
- 4.10 A diversity impact assessment screening has been undertaken. In principle, the frontline provision will continue in its current model. The key change will be in governance with the CIC replacing Medway Council as the lead partner. There is, therefore, deemed to be no impact on individual groups. The diversity impact assessment screening is shown at Appendix 2.

5. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Delivery failure	The community interest company fails to deliver against Arts Council England funding agreement criteria	<p>The CIC will be set up by a team with demonstrable leadership and experience of excellent music delivery in Medway against ACE criteria.</p> <p>The directorship of the company will show breadth of skill and will encompass Medway Council Portfolio Holder</p> <p>The CIC will be accountable directly to Arts Council England and will be subject to their risk management and monitoring processes.</p>	D2

Quality of music provision for Medway children and young people decreases	The community interest company fails to deliver the high quality of music provision which Medway children and young people have come to expect.	The CIC will maintain the current range of delivery partners so that frontline provision is maintained or exceeded.	D2
Loss of instruments or damage to instruments	Loss of instruments or damage to instruments occurs which is not rectified by the CIC	The CIC will be required to maintain an asset register agreed with Medway Council, alongside a clear disposal policy. The CIC will be required to ensure that any damage is repaired or any lost instruments are replaced at no cost to the Council.	D2
Rogue practice protection	Associated external independent organisations could represent a reputational risk to Medway Council	There will be a place on the board of directors of the CIC for a Medway Council Cabinet Member with a public interest veto. The lease of instruments and support through a service level agreement is dependent on this position and this public interest veto.	D2
Reduction of funding from Arts Council England	The funding from Arts Council England to the CIC is reduced.	The CIC is able to operate on a commercial basis to earn income to support music provision.	D2

6. Consultation

- 6.1 The Dynamics Hub Board is formed of representatives of schools, and the community that Dynamics serves. This board has been consulted throughout all stages of the development of this proposal.
- 6.2 A stakeholder task group led by the Portfolio Holder Education Attainment and Improvement was set up specifically for the purposes of consultation. This group has been involved with detailed discussions on the options and proposed model.

7. Financial implications

- 7.1 From 1 April 2018, the role of lead partner and accountability body for the Arts Council England funding would transfer to the new Dynamics CIC.
- 7.2 Novation of the funding agreement from Medway Council Dynamics to the new Dynamics CIC would take place via the Arts Council England using their prescribed novation process.

- 7.3 To date Dynamics has been supported with officer time with a small amount of funding (~£1800pa) being retained as a contribution towards this. The new governance arrangement requires a fully costed SLA agreement for any services required, and these services would be charged at market rates.

8. Legal implications

- 8.1 A Community Interest Company (CIC) can be companies limited by shares or guarantee but with the primary purpose of benefitting the community and not its owners, directors or employees and as such it must use its income, assets and profits for the community it is formed to serve. A CIC cannot transfer its assets (including any profits or other surpluses generated by its activities) for less than market value unless transferring them to another CIC or charity, this is known as “asset lock”. CICs can turn a profit but this is not their primary purpose. CICs cannot have charitable status. CIC is a private company regulated by the Companies Registry (Companies House) under the Companies Act 2006 but is also regulated by the Office of the Regulator of Community Interest Companies, which ensures that the CIC is meeting its community interest statement through annual reporting.
- 8.2 Because the CIC is primarily funded by the Arts Council, it will be classified as a contracting authority under the Public Contracts Regulations 2015. However as the CIC will be privately owned, it will not be considered to be a public body in the way that Local Authority Controlled Companies are, there is therefore less regulation with the proposed model. The Council’s representation on the CIC’s board through the appointment of one director is sufficient to ensure that risks associated with setting up an independent entity to deliver the music hub are mitigated. The public interest veto on board decisions given to the Council’s representative director can be used to ensure that board decisions are always in the public interest.
- 8.3 The Dynamics CIC would be responsible for ensuring delivery of the Dynamics Business Plan and formulating future vision for the Hub. National scrutiny would be provided by the Arts Council and Ofsted.
- 8.4 Should the CIC engage in any trading activity, the Council must be careful not to be seen to be providing unlawful state aid to the company. The company must be capable of meeting its own costs and that would include the costs of any services or facilities the CIC obtains from the Council.

9. Recommendations

- 9.1 Cabinet is recommended to agree, subject to formal Arts Council England approval, that the role of lead partner for Dynamics – The Medway Music Education hub is conferred to a newly formed community interest company, independent of Medway Council, for the provision of music education in Medway, with effect from 1 April 2018.
- 9.2 Cabinet is recommended to agree that the Portfolio Holder for Education Attainment and Improvement takes a Director role on the Board of the community interest company with a public interest veto and note that the Chief Executive will make the necessary appointment established under his delegation from Full Council in consultation with Group Whips.

10. Suggested reasons for decision(s)

- 10.1 It is not a requirement for local authorities to lead local Music Education Hubs. This proposal will provide for a governance model which allows the successful current provision to continue to develop in an agile and flexible manner whilst maintaining partnership links with the Local Authority.

Lead officer contact

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Appendices

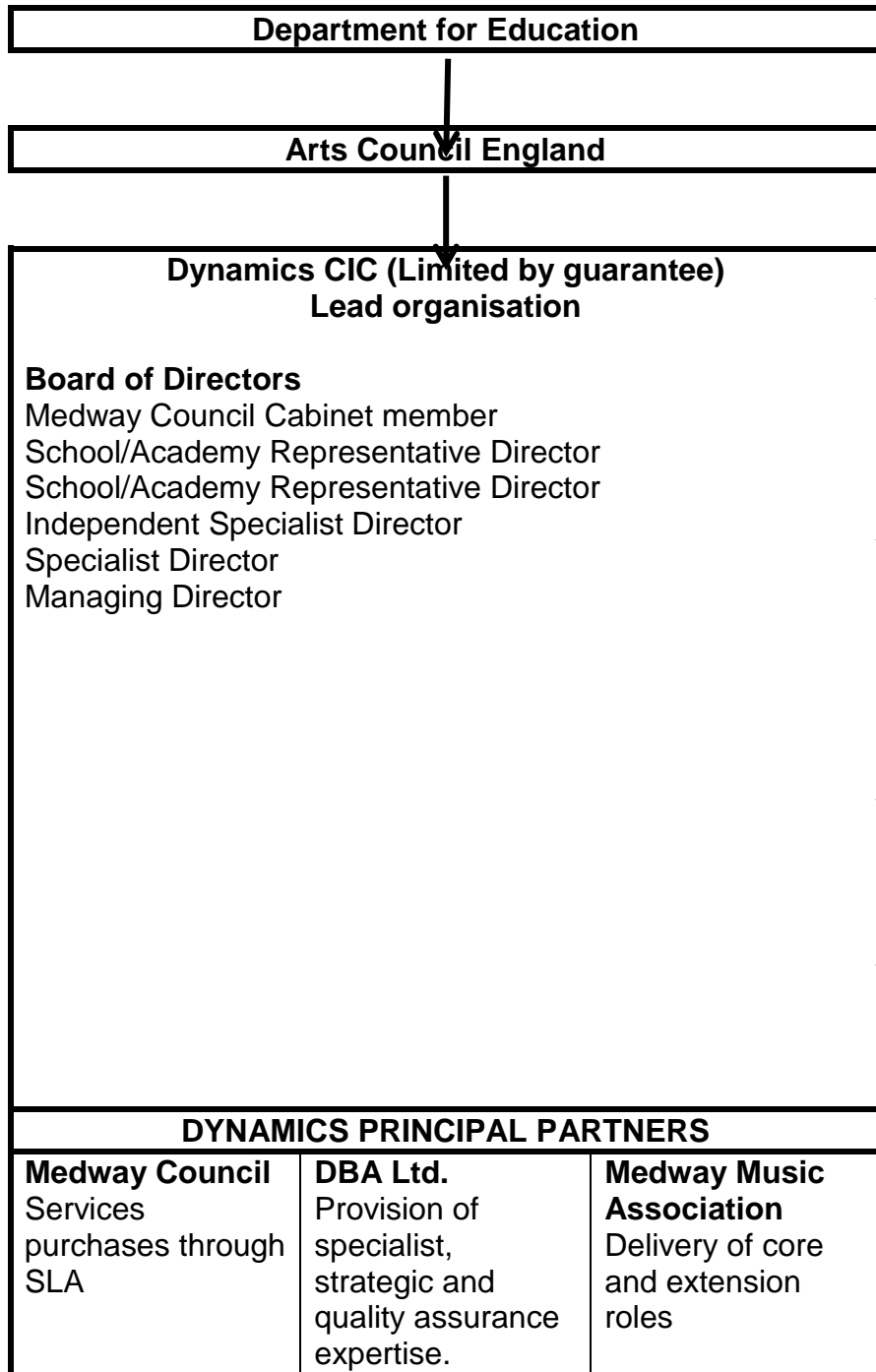
Appendix 1: Dynamics CIC proposed governance structure

Appendix 2: Diversity Impact Assessment Screening

Background papers

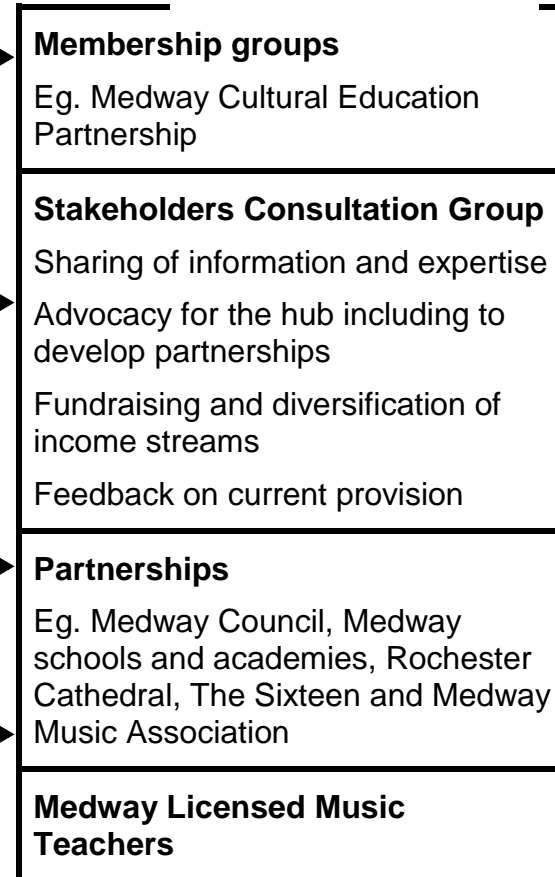
The importance of music: a national plan for music education

<https://www.gov.uk/government/publications/the-importance-of-music-a-national-plan-for-music-education>



Dynamics: indicative governance structure

← - - - → = Sharing of expertise
 → = Direction of control



Diversity impact assessment

Appendix 2

TITLE <i>Name / description of the issue being assessed</i>	Dynamics – The Medway Music Education Hub
DATE <i>Date the DIA is completed</i>	April 2017
LEAD OFFICER <i>Name, title and dept of person responsible for carrying out the DIA.</i>	Jacqui Moore – Head of School Organisation and Commissioning

1 Summary description of the proposed change

Although there is no requirement for local authorities to lead a Music Education Hub, in 2012 Medway Council bid to Arts Council England for funding to set up a Music Education Hub for the Medway area.

To date Dynamics – The Medway Music Education Hub has worked very successfully with partners to deliver high quality music education in the area, consistently rated at the lowest level of risk by Arts Council England.

There is a need now to develop more flexible and agile partnership working and it is considered that this would be best achieved by transferring leadership and accountability for Dynamics to an independent community interest company. The model would retain the current model of delivery and associated personnel, but accountability to Arts Council England and management would fall to the new community interest company.

2 Summary of evidence used to support this assessment

There is no requirement for local authorities to lead a music education hub. Consultation has taken place with representatives of schools and the community throughout the options appraisal and decision making process. Considerations of the group have been taken into account into the final proposal.

In consideration of the final proposal models of implementation from other areas of the country have been reviewed.

Diversity impact assessment

3 What is the likely impact of the proposed change?

Is it likely to :

- Adversely impact on one or more of the protected characteristic groups?
- Advance equality of opportunity for one or more of the protected characteristic groups?
- Foster good relations between people who share a protected characteristic and those who don't?

(insert ✓ in one or more boxes)

Protected characteristic groups	Adverse impact	Advance equality	Foster good relations
Age N/A			
Disability N/A			
Gender reassignment N/A			
Marriage/civil partnership N/A			
Pregnancy/maternity N/A			
Race N/A			
Religion/belief N/A			
Sex N/A			
Sexual orientation N/A			
Other (eg low income groups) N/A			

4 Summary of the likely impacts

- Who will be affected?
- How will they be affected?

As the proposal will maintain the current delivery model and frontline services it is not envisaged that any groups will be adversely affected.

The increased agility and flexibility that the proposed governance model offers for partnership working has the potential to foster good relations generally but is unlikely to be selective to any particular group.

Diversity impact assessment

5 What actions can be taken to mitigate likely adverse impacts, improve equality of opportunity or foster good relations?

It is envisaged that the increased flexibility that the model offers to work in a more agile way with a wide range of partners offers opportunities to continue to build on the high quality and inclusive approach to music provision.

6 Action plan

Action	Lead	Deadline or review date

7 Recommendation

The proposal for a Dynamics CIC as lead partner for the Medway Music Education Hub will provide greater organisational agility and flexibility. This in turn will facilitate strong partnership working ensuring high quality and inclusive music education across Medway.

8 Authorisation

The authorising officer is consenting that:

- *the recommendation can be implemented*
- *sufficient evidence has been obtained and appropriate mitigation is planned*
- *the Action Plan will be incorporated into the relevant Service Plan and monitored*

Assistant Director

Helen Jones
Assistant Director Commissioning, Business and Intelligence

Date

20 April 2017