



Author/Lead Officer of Report: Pam Smith, Head of Primary and Targeted Intervention

Tel: 2930968

Report of: *Jayne Ludlum, Executive for People Services Portfolio*
Report to: *Cllr Dore, Leader of the Council*
Date of Decision: *1st August 2017*
Subject: *Transfer of Educational Services, E-Learning and Governance Improvement Service, from Sheffield City Council to Learn Sheffield*

Is this a Key Decision? If Yes, reason Key Decision:- Yes No
- Expenditure and/or savings over £500,000
- Affects 2 or more Wards

Which Cabinet Member Portfolio does this relate to? *People Services Portfolio*
Which Scrutiny and Policy Development Committee does this relate to? *Children, Young People and Family Support Scrutiny and Policy Development Committee*

Has an Equality Impact Assessment (EIA) been undertaken? Yes No
If YES, what EIA reference number has it been given? 1013

Does the report contain confidential or exempt information? Yes No
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-
Appendix C is not for publication because it contains exempt information under Paragraphs 3 & 4 of Schedule 12A of the Local Government Act 1972 (as amended)."

Purpose of Report:

This Report sets out proposals for certain educational services currently delivered by the Council (SCC) to be delivered by Learn Sheffield.

Recommendations:

That the Executive Leader:

1. approves the E-Learning Service and the Governance Improvement Service being commissioned on a concession basis from Learn Sheffield with effect from 1st November 2017, on the basis set out in this report;
2. delegates authority to John Doyle, Director of Business Strategy, in consultation with the Interim Director of Finance and Commercial Services and the Director of Legal and Governance, to agree the terms of and award the contract.

Background Papers:

Appendix A: Learn Sheffield Method Statement- E-Learning Service and the Governance Improvement Service

Appendix B: Schedule of Assets

Appendix C: Financial and Commercial Implications

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: Paul Jeffries 10.07.2017
		Legal: Sarah Bennett 14.07.2017
		Equalities: Bashir Khan 12.07.2017
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>		
2	EMT member who approved submission:	Dawn Walton 19.07.2017 Jayne Ludlum 20.07.2017
3	Cabinet Member consulted:	Councillor Julie Dore 24.07.2017
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: Pam Smith	Job Title: Head of Primary and Targeted Intervention
	Date: 17/07/2017	

1. PROPOSAL

Background

- 1.1 Learn Sheffield is a school company established in accordance with the Education Act 2002, the School Company Regulations 2002 and the Companies Act 2006. The company is limited by guarantee and has 2 cohorts of membership – Sheffield City Council (SCC) holds 20% of the voting rights and schools (including academies and colleges) hold 80%. SCC is also the “supervising authority” for the purposes of the School Company Regulations 2002.
- 1.2 The company was established following Cabinet approval on 22nd July 2015 and was subsequently commissioned to manage and deliver school improvement services across Sheffield for three years, until the end of the 2017-18 academic year in August 2018.
- 1.3 Learn Sheffield is keen to grow its business model and, as such, requires opportunities to do so. Under the “Teckal” exemption to the usual procurement rules, the Council is able to award work directly to Learn Sheffield and so discussions have been ongoing to determine other educational services that could be commissioned for delivery and how they would operate in practice.
- 1.4 As part of these discussions consideration was given to the following key criteria:
- The level of financial risk to Learn Sheffield, to allow it to continue current levels of service on a fully traded basis with the school sector and with no funding from SCC, has to be acceptable to both Learn Sheffield and SCC.
 - The service has to have the potential for commercial expansion through Learn Sheffield developing it in line with their market intelligence, in order to contribute to the core cost of Learn Sheffield, as funding from its core School Improvement services reduces in line with changes to funding as Government policy around school funding changes.
 - Changes must comply with legal requirements around TUPE and SCC HR and Employment policies in order to protect the employment rights of the people affected by any transfer.
- 1.5 Learn Sheffield provided a Method Statement (Appendix A) for each of the services under consideration and SCC used this information to make a decision about which of the services would be viable for transfer. The E-Learning Service and the Governance Improvement Service were identified as suitable to transfer on the basis that Learn Sheffield could seek opportunities for financial growth and strengthen their market position as well as supporting the ethos of school improvement.
- 1.6 SCC is developing a final service specification, using the information provided by Learn Sheffield, which will set down the deliverables for each service and will form the basis of the contract.

Current Delivery of the E learning Service

- 1.7 The focus of the service is improving outcomes for children and young people through the effective and purposeful use of learning technologies, so that all children and young people can reach their full potential. The service has the skills, experience and equipment to support schools in implementing technology in a way which is proven to support teaching and learning. The main themes of the service include:
- Schemes available for SEN learners
 - Supporting literacy development using tablet devices or online learning
 - Online safety support for schools and settings, including a new online safety curriculum,
- 1.8 Financially the current service is funded from the following sources:
- Traded income with schools
 - Income from internal SCC work (e.g. online safety)
 - Income from the BSF programme up until 31st October 2017

Current Delivery of the Governance Improvement Service

- 1.9 The purpose of this service is to ensure that school governing boards, trusts and individual governors have access to the latest information about good governance and what is expected of them. The service also offers a trained dedicated clerk who is able to provide information and advice; support in recruiting suitably skilled governors, strengthening partnership governance structures; implementing changes driven by DfE/ Ofsted including changes to legislation, regulations, policies and guidance. In addition the service offers advice and support to ensure that the school governing board is able to fulfil their duties to the highest possible standards.
- 1.10 The School Liaison function also sits within the Governance Improvement Service and includes:
- Investigating Ofsted Safeguarding referrals and drafting responses for the Director of Children's Services
 - Investigating other complaints against schools where they are escalated to the Local Authority
 - Responding to Monitored Mail enquiries
- 1.11 This function includes investigating and responding to complaints and queries including those received from Council Members, MPs, parents, OFSTED etc. and sits with the ongoing statutory duty of the Local Authority to advocate for learners and their families. The School Liaison function will continue to be delivered in house.

Proposed Delivery of the E-Learning Service

- 1.12 It is proposed that:
- The service will be delivered with incremental change as per the method statement (Appendix A).
 - The scope of staff transfer will not include staff that are currently

funded to deliver the BSF ICT programme.

- Staff and resources will be accommodated at the Learn Sheffield Training & Development Hub.
- The service will be fully traded with schools and settings, supplemented by some income from other commissions (e.g. Online Safety has traditionally been commission by SCC and it is expected that this would continue to be the case albeit under separate contract).

1.13 Expected benefits post transfer

The service:

- would support Learn Sheffield's achievement of objectives outlined in the Sheffield Priorities document.
- has an experienced team with good reputation in schools and regional/nationally recognised expertise in identified areas of delivery.
- has begun to attract external funding and trade outside the city - further external trading could be developed in a scalable way.
- has begun to develop an associate workforce model and is ready to capitalise on greater connectivity to the school system.
- has the potential to be in surplus immediately and subsequently to contribute a surplus of approximately 5% of turnover over three years.
- can provide ICT technical capability that will support the Learn Sheffield organisation.

Proposed Delivery of the Governance Improvement Service

- 1.14
- Learn Sheffield intend to reshape the Governance Improvement Service
 - Learn Sheffield is confident in its ability to recruit, develop and retain both high quality clerks and professional support for governors through an associate workforce. It is also able to draw upon partnership agreements with other organisations, for example the National Governance Association, to enhance the offer to schools and academies.
 - A more flexible workforce will be essential as the number of governing bodies reduces and academy trusts require more specialist services.
 - The Governance Improvement Service will be responsible for managing the governance development training offer post-transfer (delivered by Learn Sheffield since September 2016).
 - The School Liaison function will be retained by SCC.

Further service delivery information is contained in Appendix A.

1.15 Expected benefits post transfer

The service:

- supports the successful delivery of school improvement strategy and wider Sheffield priorities.
- strengthens Learn Sheffield's ability to coherently impact on leadership in schools.
- can achieve improvement and simplification in service delivery by adopting associate workforce and providing a single point of support and challenge.
- links with the governance training offer, which Learn Sheffield is currently delivering successfully.
- has consistently retained subscriptions despite clear areas for development and improvement.
- has the potential to be in surplus immediately and should subsequently be expected to contribute a potential surplus of 5% of turnover.
- has the scope, over time, to grow new markets and income streams outside the city.

Proposed Contract Arrangements

1.16 A concession contract is proposed for the commission of the E-Learning Service and the Governance Improvement Service from Learn Sheffield. This contract model places the onus on Learn Sheffield to grow the service and bring in income from schools while ensuring that SCC has a level of control over the services post transfer. Monitoring and regular review periods will be established to ensure the services are being deployed effectively and opportunities are being maximised. Performance Indicators will form part of the contract in order to measure performance effectively.

1.17 Both services will form part of the same contract rather than having separate ones as this simplifies the process for both organisations. However, it is proposed that provisions are included in the contract to provide for termination/expiry of part enabling the Council to separate the two services should there be a need to do so, for example if there were performance issues on the part of Learn Sheffield. The Council will also be able to bring the services back in-house should Learn Sheffield cease to trade for any reason.

1.18 It is proposed that the contract is let for a period of two years and 10 months with provision for the Council to extend the contract by a further two years should it wish to do so, giving an overall potential contract term of just less than five years. The first year will run from 1st November 2017 until 31st August 2018, this will then align with the academic year.

2. HOW DOES THIS DECISION CONTRIBUTE?

2.1 The proposal supports the commitment in the Corporate Plan for all

schools becoming great schools and more young people being engaged in education, employment and training. It has strong links with a number of corporate priorities around: thriving neighbourhoods and communities; tackling inequalities and strong economy.

2.2 Commissioning Learn Sheffield to deliver E-Learning and Governance Improvement Service supports the ethos of school improvement and should enable the organisation to develop stronger relationships with schools. The education services should thrive in Learn Sheffield because it is a school led company that can be reviewed and shaped to meet the needs and demands of Sheffield schools. The schools are aware of gaps in service delivery and can support Learn Sheffield in developing an offer that meets their requirements better than SCC.

2.3 Learn Sheffield has already been successful in gaining buy-in from maintained schools and academies in Sheffield and they have the market position to further build on this success potentially trading outside of the city.

3. HAS THERE BEEN ANY CONSULTATION?

3.1 There is no statutory requirement to consult on the proposals.

3.2 Neither service is provided directly to members of the public and the negotiation process has been tabled at the Learn Sheffield Trust Board which includes representatives of Sheffield schools. Members of the board have had input into the recommended delivery of each service post transfer.

3.3 The transfer of Educational Services was also discussed at the Schools Forum and attendees fed into the process.

3.4 Schools will remain free to select their preferred provider of these services and will have no obligation to purchase them from Learn Sheffield.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

4.1.1 Decisions need to take into account the requirements of the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010. This is the duty to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

4.1.2 The Equality Act 2010 identifies the following groups as a protected characteristic: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

4.1.3 An Equality Impact Assessment has been carried out and highlights the TUPE process is not expected to result in any negative impact on employees. Some of the changes may result in a positive impact where Learn Sheffield offers additional benefits to staff. It is recognised that the transfer to Learn Sheffield may be seen as negative by some staff and this will need to be managed holistically as well as specific actions with individual protected characteristics.

4.2 Financial and Commercial Implications

4.2.1 Each of the services would transfer without any funding from SCC on the understanding that Learn Sheffield would fully trade them with the school sector, although some functions, such as e-Safety and the School Liaison function will continue to be delivered by SCC.

4.2.2 Commercially the commissioning of this concession arrangement falls under the “Teckal” exemption of the Public Contract Regulations 2015 (as per 4.4 above and 4.3.5 – 4.3.9 below) and as such there will be no formal procurement exercise. The terms of the contract will be negotiated and agreed directly with Learn Sheffield.

4.2.3 Refer to Appendix C for further information.

4.3 Legal Implications

4.3.1 The Council has a general duty to contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education and secondary education are available to meet the needs of the population of their area. In addition it must exercise its education functions with a view to

- (a) promoting high standards,
- (b) ensuring fair access to opportunity for education and training,
and
- (c) promoting the fulfilment of learning potential by every person to whom this subsection applies.

4.3.2 Securing the availability of high quality governance improvement and e-learning services helps to meet these duties.

4.3.3 The Council also has a statutory duty to respond to Ofsted safeguarding complaints. The service currently performs this role by investigating and preparing a response to each complaint on behalf of the Director of Childrens’ Services.

4.3.4 To the extent that the proposals in this report are not covered (and are not restricted) by this legislation the Council also has a general power of competence in Part 1 of the Localism Act 2011 to do anything that an individual may do (subject to any specific statutory restriction none of which apply in this case).

- 4.3.5 Learn Sheffield's company structure and governance arrangements mean that the full EU procurement regime does not apply to contracts which the Council wishes to award to it as the company comes within the "in-house" or "Teckal" exception under the Public Contract Regulations 2015.
- 4.3.6 This exception applies where the members of the company are all "contracting authorities", "public bodies" and exercise the sort of decisive control over the company as they do over their own departments. This is the "control" test.
- 4.3.7 There is also a "function" test which relates to the proportion of its functions that it delivers for members as opposed to non-members (80% of the company's turnover must be from its members) and this means that the company's accountants must ensure that income streams are closely monitored within the company so as to retain this exception.
- 4.3.8 Finally there must be no direct private capital participation in the company which rules out non-publically funded bodies or institutions from joining the company, although they could purchase services from it, up to a maximum of 20% of the company's turnover.
- 4.3.9 Learn Sheffield currently meets all of these tests.

4.4 Other Implications

Pension cost and liabilities

- 4.4.1 Under TUPE any people that transfer to Learn Sheffield will need to have access to an equivalent pension scheme to their current Local Government Pension Scheme (LGPS). As there is no equivalent scheme available then any staff that transfer would remain entitled to continued access to the LGPS.
- 4.4.2 To facilitate this, Learn Sheffield has Admitted Body Status to the LGPS, which was established when the School Improvement cohort were transferred to Learn Sheffield by TUPE on 1 September 2016.
- 4.4.3 The Admitted Body Agreement allows Learn Sheffield to admit new members to the LGPS, but only with the express permission of SCC. This was agreed for the purpose of facilitating future TUPE transfers into Learn Sheffield.
- 4.4.4 In acting as guarantor, SCC will underwrite the pension costs for staff transferring as part of this arrangement. This provision will only apply if Learn Sheffield ceases to exist as a going concern.
- 4.4.5 It is proposed that SCC retains responsibility for the pension deficit which exists at the point of transfer. This will not crystallise immediately but will be added to the overall SCC pension liability and managed over a longer timescale. The level of liability for the two services ready for transfer has yet to be calculated by South Yorkshire Pensions but is estimated to be in the region of £100,000.

Assets

- 4.4.6 E-Learning has a compliment of assets that support the service delivery, this is broadly Information Technology and includes items such as monitors, cameras, software etc. the combined value of the equipment is in the region of £75,000 at the time of this report. It is proposed that the schedule of assets will transfer to Learn Sheffield along with the service itself. Providing the assets to Learn Sheffield will ensure:
- staff transferring with the service have the expertise and knowledge to use some of the complex software programmes and equipment, the equipment may be surplus to requirement if it remains with SCC post transfer.
 - service delivery is not disrupted, Learn Sheffield can build on the existing equipment over time and remain competitive in the market.
 - Learn Sheffield can benefit from using the equipment in a variety of settings aside from E-Learning, for example, Governance Training
- 4.4.7 The schedule of assets is included in Appendix B.

5. ALTERNATIVE OPTIONS CONSIDERED

SCC to continue delivery

- 5.1 Both services are broadly cost neutral and do not generate a profit for SCC, there is also limited appetite to develop the service offer further. As such, should the services remain with SCC there are potentially other market competitors available offering better services than we can provide to schools. Learn Sheffield is better placed to maximise the potential of both services and potentially access funding that can be invested to further develop and enhance the offer.

Cease delivery of service

- 5.2 Both services are critical to the schools in Sheffield. Ceasing these services would break down strong relationships and good practice citywide. The result of ceasing these services could see school improvement compromised city wide and vulnerable children missing out on opportunities.
- 5.3 The Governance Improvement Service ensures a consistent approach across both maintained schools and Academies that chose to pay for the service. Withdrawing the service could lead to school working in silos and good practice and knowledge not being shared.

Transfer service with no contract

- 5.4 SCC would have no input into the services going forward from the point of transfer. SCC has a vested interest in the successful delivery of both services; both are recognised in supporting and driving school improvement and overall outcomes for Sheffield children. . The recommendation for a concession contract ensures the services will

continue being delivered and the performance of the services can be monitored going forward.

Transfer services on a concession basis

- 5.5 This contract ensures that SCC has a level of influence over the services post transfer; monitoring and regular review periods will be established to ensure the services are being deployed effectively and opportunities are being maximised. Performance Indicators will form part of the contract in order to measure performance effectively. Transferring on this arrangement also presents the opportunity for SCC to bring the services in-house at some point in the future. This is the recommended option.

6. REASONS FOR RECOMMENDATIONS

- 6.1 SCCs negotiation stance is for these services to transfer to Learn Sheffield on a concession basis. The final terms of the contract will be subject to agreement through the detailed negotiations. The reason for this recommendation is on the basis that:

- SCC will retain some control of the services being managed by Learn Sheffield.
- SCC can help shape the service as it evolves, sharing knowledge and best practice.
- Performance Indicators will be used to measure the service performance, SCC will ensure there are triggers in place to manage any issues effectively.
- It is proposed that the contract is let for a period of two years and 10 months with provision for the Council to extend the contract by a further two years should it wish to do so.
- E-Learning and the Governance Improvement Service build on the ethos of School Improvement already being delivered successfully by Learn Sheffield.
- Learn Sheffield continues to develop and maintain strong relationships with schools in Sheffield, given the Local Authority's role in education delivery is reducing; this ensures a centralised city approach and builds on the good work already undertaken.
- SCC is not able to invest further into E-Learning and Governance Improvement Service however Learn Sheffield has identified enhancements that could be made to make both services more competitive on the market and to improve overall delivery.