



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

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Report of: *Jayne Ludlam, Executive for People Portfolio*

Report to: *Cllr Dore, Leader of the Council*

Date of Decision: *20th November 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

Has an Equality Impact Assessment (EIA) been undertaken?

Yes ☒ No ☐

If YES, what EIA reference number has it been given?

79

Does the report contain confidential or exempt information?

Yes ☐ No ☒

Purpose of Report:

This Report provides an update on the transfer of the E-Learning and Governance Improvement Services to Learn Sheffield which was approved by the Leader on 1 August 2017 and seeks approval for a revision to the basis of that transfer.

Recommendations:

That the Executive Leader:

1. notes that the transfer is now unlikely to be able to take place prior to the 1 December;
2. approves the inclusion in the concession contract with Learn Sheffield of an option for the Governance Improvement Service and/or the E-Learning Service to be transferred to Learn Sheffield on a permanent basis at the end of the initial term of the contract on the basis set out in this report;
3. delegates authority, to the extent not already delegated within the Leader's Scheme of Delegations, to John Doyle, Director of Business Strategy, in consultation with the Director of Finance and Commercial Services and the Director of Legal and Governance, to make any decision to extend the contract.

Background Papers:

Report of the Leader entitled "Transfer of Educational Services, E- Learning and Governance Improvement Services from Sheffield City Council to Learn Sheffield" dated 1 August 2017 and the Leader's decision to accept the recommendations in that report of the same date.

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 14/11/2017
		Legal: Sarah Bennett 14/11/2017
		Equalities: Bashir Khan 14/11/2017
<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:	Jayne Ludlam 10/11/2017 John Doyle
3	Cabinet Member consulted:	
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: 14th November 2017	

1. PROPOSAL

- 1.1 On 1 August 2017 the Leader made the decision to approve the transfer of two educational services, Governance Improvement and E-Learning, to the Sheffield schools' company, Learn Sheffield, on a concession basis for a period of two years and 10 months with provision for the Council to extend the contract by a further two years. Staff working in both of the services will transfer to Learn Sheffield under TUPE and in consultation with Trade Unions.
- 1.2 During negotiations to agree the specific terms of that concession contract Learn Sheffield expressed concern that the initial period of the contract did not give them sufficient time to recoup the investment that would be needed to make the services more successful.
- 1.3 Consequently, it is now proposed that the concession contract should include an option for a business transfer of either or both of the services at the end of the initial term if they are performing well. This contract model provides an incentive to Learn Sheffield to invest in and grow the service while ensuring that when the services first transfer from being in-house services to being delivered by Learn Sheffield the Council has a level of control over the quality and shape of the services.
- 1.4 It is still proposed that the initial term of the contract will end on 31 August 2020. However, success criteria will be developed, which will form part of the annual review process, and if these criteria are met Learn Sheffield will have the option to take a transfer of those services on a permanent basis at the end of the initial term. At this point there would be no further monitoring of the services by the Council.
- 1.5 In the event that the success criteria are not met or that Learn Sheffield decides not to exercise the option, the Council and Learn Sheffield will still have the option to agree an extension of the contract of up to two years – an overall potential contract term of just less than five years.
- 1.6 Provision will also still be made for the termination/expiry of part enabling the Council to separate the two services should there be a need to do so and for services to be brought back in-house should Learn Sheffield cease to trade for any reason.
- 1.7 In the event that the Council and Learn Sheffield decide not to extend the contract or the contract is terminated for any reason then the Council could decide, at that time, to:
- i) allow delivery to cease entirely;
 - ii) bring the service(s) back in house and continue delivery;
 - iii) seek a new contractor to deliver the service(s).
- 1.8 The options will be fully evaluated as part of that decision-making process.

2. HOW DOES THIS DECISION CONTRIBUTE?

- 2.1 The overall proposal still 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. It supports the ethos of school improvement and should enable the organisation to develop stronger relationships with schools. The education services can continue to thrive and further develop in Learn Sheffield because as a school led company. The schools can directly shape services to meet their changing needs as part of the company.

- 2.2 The Council are keen to see investment in the services and this revised proposal facilitates this.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 There is no statutory requirement to consult on the proposals.
- 3.2 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 Trade Union Partnership meeting and Schools Forum. Attendees at the meetings fed into the process, albeit there has been no specific discussion about the business transfer option.
- 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.
- 3.5 Neither service is provided directly to members of the public.

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 When the company was first formed it was awarded a contract to deliver School Improvement for three years with an option to extend. This arrangement was on the basis that Learn Sheffield would receive reducing funding and ultimately move toward a subscription based model. Arrangements proposed in this report for the contract is consistent with this approach and do not alter the position set out in the previous report. Each of the services would transfer without any funding from the Council on the understanding that Learn Sheffield would fully trade them with the school sector.
- 4.2.2 There are no immediate financial implications, other than those already described in the previous report. If the situation described in para 1.7 arises the decision to be taken at that time may have financial implications, (e.g. transition costs of bringing a service back in house). However, these would be fully evaluated at the time as part of the further decision making process.
- 4.2.3 Commercially the commissioning of this concession arrangement falls under the “Teckal” exemption of the Public Contract Regulations 2015 and as such there will be no formal procurement exercise. The terms of the contract will be negotiated and agreed directly with Learn Sheffield.
- 4.2.4 The proposal to include an option for the services to transfer on a permanent basis may be interpreted as aid from the State to an economic operator. However, as the subsidiary is owned by the contracting authority, state aid exemptions may apply. Appropriate steps will be taken prior to the contract being entered into to ensure full compliance with the necessary legal provisions and Treaties.

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 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).
- 4.3.4 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.
- 4.3.5 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.
- 4.3.6 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.
- 4.3.7 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.
- 4.3.8 Learn Sheffield currently meets all of these tests.
- 4.3.9 The proposal to include an option for the services to transfer on a permanent basis could potentially be interpreted as aid from the state to an economic operator. Appropriate steps will be taken prior to the contract being entered into to ensure that any aid is given lawfully.

4.4 Other Implications

- 4.4.1 The inclusion of an option for the services to transfer on a permanent basis does not alter the HR implications set out in the previous report.
- 4.4.2 The position on the assets also remains unchanged.

5. **ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 The alternative options to the proposal above that have been considered are:
- 5.1.1 No change to the previously approved arrangements - This option is not recommended as it is likely to mean that either Learn Sheffield will feel unable to enter into the concession contract or will enter into the contract

but will then be disincentivised from investing in the services leading to minimal growth.

- 5.1.2 A longer concession period – This option is not recommended as Learn Sheffield have indicated that this would not be of interest to them due to the risk of services not being successful coupled with a longer period of obligation to deliver the services and limited ability to change the specification.

6. REASONS FOR RECOMMENDATIONS

- 6.1 Transfer to Learn Sheffield on a concession basis with the option for a business transfer at the end of the initial period is the option most likely to secure the continued delivery and improvement of these services.
- During the initial term the Council will retain some control of the services being managed by Learn Sheffield.
 - Expertise from the Council can help shape the service as it evolves, sharing knowledge and best practice.
 - Service performance will be monitored and there will be an annual review between both organisations to manage any issues effectively.
 - E-Learning and the Governance Improvement Service will 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.
 - The Council 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 in the market and to improve overall delivery.
 - The services will only transfer on a permanent basis if they are successful and if Learn Sheffield actively wants to continue to deliver them.