



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

Tel: 2930968

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

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

Date of Decision: *16 March 2018*

Subject: **Sole Transfer of the Governors Improvement Service 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:

Purpose of this report is to recommend that the transfer of the E-Learning Service is deferred beyond the 1st April, 2018 to allow further discussion to take place but continue with the transfer of the Governance Improvement Service to Learn Sheffield as agreed.

Recommendations:

That the Executive Leader:

1. notes that the transfer of two educational services, namely Governance Improvement and E-Learning, is now unlikely to be able to take place at the same time prior to 1st April, 2018;
2. approves to transfer in stages
 - a. transfer of Governance Improvement Service on or after 1st April, 2018; and
 - b. transfer of E-Learning Service to be deferred to allow further investigation and discussion to take place.

Background Papers:

Leader Report Title	Date
Transfer of Educational Services, E-Learning and Governance Improvement Services from Sheffield City Council to Learn Sheffield	01/08/2017
Transfer of Educational Service (E-Learning and Governance Improvement Service) from Sheffield City Council to Learn Sheffield	27/11/2017

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 27/02/2018
		Legal: Rachel Ma / Marcia McFarlane 27/02/2018
		Equalities: Bashir Khan 27/02/2018
	<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 06/03/2018
3	Cabinet Member consulted:	Council Leader Cllr Dore 08/03/2018
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: 08/03/2018	

1. PROPOSAL

- 1.1 On 1st 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.
- 1.2 On 27th November, 2017 the Leader made a further decision that proposed 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.
- 1.3 This report proposes changes to the timing of the transfer of services to Learn Sheffield.
- 1.4 The Governance Improvement Service is ready for transfer to Learn Sheffield and this can take place without delay; whereas the Council and Learn Sheffield wish to have further discussions in relation to E-Learning Service.
- 1.5 Consultation with Trade Unions and members of staff in the Governance Improvement service has been ongoing. Maintained schools and academies have also been informed of the possible transfer. Learn Sheffield is in a position to offer the service to schools from April 2018.
- 1.6 It is recognised that transferring the Governance Improvement Service will support Learn Sheffield in developing its traded service offer and supports the ethos of school improvement. Transferring the Governance Improvement Service from April will ensure marketing is simpler for the service and schools are clearer that they are purchasing from Learn Sheffield rather than Sheffield City Council. Learn Sheffield is also keen to start developing the service further to strengthen the market position of the service and to attract new customers.
- 1.7 This recommendation to transfer in stages will:
- allow Learn Sheffield to start utilising the Governance Improvement Service to strengthen the market position and to attract new customers; and
 - allow Sheffield City Council to continue discussions with Learn Sheffield about the transfer of E- Learning service
- 1.8 Both of the above transfers can occur without inordinate delay.

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 Governance Improvement Service can continue to thrive and further develop in Learn Sheffield because as a school led company schools can directly shape services to meet their changing needs as part of the company.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 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 the Governors Improvement service post transfer.
- 3.2 The transfer of Governance Improvement Service was 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.
- 3.3 Consultation with Trade Unions and members of staff in E-Learning Service has already occurred and the team will be working closely with the Council and Learn Sheffield to facilitate further investigation and discussion.
- 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 Governance Improvement nor E-Learning 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.

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.
- 4.3.10 Commercial and pension related documents have been reviewed and revised to effect the change from a simultaneous transfer of both services to separate transfers of services. TUPE consultation on the transfer of E-Learning Service should continue until that part of the service transfers and revised Employee Liability Information also required for that process.
- 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 option to the proposal above that have been considered is:

5.1.1 To delay the transfer of Governance Improvement Service until such a time that the E-Learning Service is in a position to transfer – This option is not recommended as there is no timescale currently for the transfer of E-Learning Service and therefore this could cause considerable delays.

6. REASONS FOR RECOMMENDATIONS

6.1 Solely transferring the Governance Improvement Service to Learn Sheffield from 1st April will:

- allow Learn Sheffield to begin shaping and developing the service going forward
- build a customer base with schools
- simplify the marketing of the service rather than transferring the service at some time during the school year of 2018/19. A lack of clarity around the organisation offering the service could see a decline in customers

The Governance Improvement Service supports the ethos of School Improvement and therefore sits better with Learn Sheffield.

Members of staff working in the service have already be subject to delays in the transfer process. In the interests of staff morale it is important to support them in transitioning from 1st April. Confidence and willingness to engage in the process may be compromised if the delay extends beyond April.

Maintained schools / academies have been made aware of the possible transfer of the Governance Improvement Service with effect in April