

**Author/Lead Officer of Report:**

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Report of: *Executive Director, People Services Portfolio*

Report to: *Lead Cabinet Member for Education and Skills*

Date of Decision: *Monday 23rd July 2018*

Subject: *School Improvement Commission*

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? *Councillor Jayne Dunn*Which Scrutiny and Policy Development Committee does this relate to? *Education*

Has an Equality Impact Assessment (EIA) been undertaken?

Yes ☒ No ☐If YES, what EIA reference number has it been given? **287**

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:-

*"The (**report/appendix**) is not for publication because it contains exempt information under Paragraph (**insert relevant paragraph number**) of Schedule 12A of the Local Government Act 1972 (as amended)."*

Purpose of Report:

The report seeks approval:

- to extend the end date of the Council's current contract for the provision of school commissioning services with Learn Sheffield for up to 2 months from its current end date of 31 August 2018 to 31 October 2018 (the latest) in order to allow sufficient time for both parties to negotiate and conclude terms for the new commissioning which will be subject to the Cabinet Member's approval of the recommendations in this report; and

- for Learn Sheffield to continue delivering the school improvement services to schools for another 3 years after the expiration of its current contract with the Council.

Recommendations:

That the Cabinet Member:

1. approves the extension of the current contract for the provision of school commissioning services with Learn Sheffield for up to 2 months from its current end date of 31 August 2018 to 31 October 2018 (the latest).
2. approves the commission of school improvement services to Learn Sheffield on a new three-year contract with effect from 1 November 2018 on the basis set out in this report;
3. delegates authority to the Director of Business Strategy (or the equivalent grade officer) in consultation with the Director of Commissioning, Inclusion and Learning, the Director of Finance and Commercial Services and the Director of Legal and Governance,
 - a. to decide the procurement strategy for and the award of the new contract;
 - b. to enter into negotiations with Learn Sheffield and agree the terms of the new contract; and
 - c. to take all other necessary steps not covered by existing delegations to achieve the outcomes outlined in this report.

Background Papers:

(Insert details of any background papers used in the compilation of the report.)

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications	Finance: <i>(Insert name of officer consulted)</i> Paul Jeffries 27/06/2018

	indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Legal: <i>(Insert name of officer consulted)</i> Rachel Ma 06/07/2018
		Equalities: <i>(Insert name of officer consulted)</i> Bashir Khan 27/06/2018
	<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 03/07/2018
3	Cabinet Member consulted:	Councillor Jayne Dunn 03/07/2018
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: 09/07/2018	

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 22 July 2015 and was subsequently commissioned to manage and deliver school improvement services across Sheffield for three years from 1 September 2015 until 31 August 2018.
- 1.3 Learn Sheffield has demonstrated an innovative approach to delivering school improvement services and is also responsible for delivering some statutory duties on behalf of SCC.
- 1.4 The current commission (2015-2018)
- Learn Sheffield is currently commissioned to:
- Categorise all Sheffield schools and academies.
 - Self-evaluate on behalf of the city in relation to performance.
 - Deliver the statutory entitlements for maintained schools.
 - Provide support and co-ordination to ensure that appropriate education partnerships continue to be developed.
 - Provide additional support for vulnerable schools.
 - Provide system co-ordination within the city to maximise funding and partnership for Sheffield schools and academies.
- 1.5 The commission from SCC to Learn Sheffield is outcomes based. SCC measures Learn Sheffield on the following performance areas:
- Partnership Outcomes
 - School/Academy Outcomes
 - Pupil Outcomes
 - Outcomes for vulnerable learners
- Overall Learn Sheffield has performed effectively against each of the performance areas within the existing commission.
- 1.6 Proposal of Learn Sheffield to continue delivering the school improvement service

Learn Sheffield has been successful in delivering school improvement services for the previous three years. The organisational offer has recently grown with the Governance Improvement Service also transferring to Learn Sheffield in April 2018.

Learn Sheffield now maintains a strong market position and is continuing to build positive relationships with the schools and a reputation for delivering its service objectives.

Financial support has been agreed and allocated via the Schools Forum for a further three years.

In light of the above, officers believe that it would be more cost-effective for Learn Sheffield to continue delivering the school improvement service for a further 3 years from a financial perspective. Due to the level of engagement it has and continues to develop with schools, Learn Sheffield appears to be best placed to continue delivering school improvement services.

1.7 Outline of the proposed new commission (2018-2021)

The proposed new commissioning arrangement with Learn Sheffield will be tightly focused on key priorities which contribute to SCC delivering statutory duties to Local Authority maintained schools and a clear target setting process improving outcomes for all Sheffield children including vulnerable learners. SCC will continue the drive to improve the quality and standards of education in all Sheffield schools.

The commission will be delivered via a collaborative approach to partnership working across the city. It will build upon the previous commission and will include a clear monitoring and evaluation framework which will provide a firm basis that allows the commission to be rigorously monitored and evaluated regularly.

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 continue delivering school improvement services supports the ethos of a school focused organisation. School improvement services should continue to 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 and also to assist in addressing the school improvement

challenge in the city. The schools are aware of gaps in service delivery and can support Learn Sheffield in developing an offer that meets their requirements more appropriately 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.
- 2.4 The current contract will expire by the end of August 2018. Extending the contract for up to 2 months until 31 October 2018 (the latest) will allow uninterrupted delivery of the school improvement services and to allow both parties to negotiate and conclude terms for the new commissioning in a timely and considered manner.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 There is no statutory requirement to consult on the proposals, and there is no significant proposed changed upon which to consult
- 3.2 School improvement services are not provided directly to members of the public and the commissioning arrangements have been tabled at the Learn Sheffield Trust Board which includes representatives of Sheffield schools and SCC.
- 3.3 The continuation of the school improvement commission was also discussed at the Schools Forum and attendees contributed to 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

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.

An Equality Impact Assessment has been carried out and highlights that Learn Sheffield will continue to work with schools across the city and support schools to meet the needs of all Sheffield pupils regardless of their characteristics and backgrounds to enable them to achieve the very best outcomes.

4.2 Financial and Commercial Implications

- 4.2.1 The value of the new commission, as outlined in paragraph 1.7, will be £320k per annum from September 2018 for 3 years.
- 4.2.2 Learn Sheffield will be funded at the rate of £26,667 per month (i.e. one twelfth of £320k) from 1 September 2018 for the duration of any extension.
- 4.2.3 Learn Sheffield is developing a subscription model with schools to deliver non statutory services not covered by the new commission.
- 4.2.4 SCC recognises that Learn Sheffield may not be able to fully implement a subscription model and has made available £185k of transitional funding.
- 4.2.5 Access to the transitional funding (as described in paragraph 4.2.3 above) will require Learn Sheffield to demonstrate through open book accounting the need for funding and also the agreement of the Head of Commissioning, Schools and Learning. SCC's decision of the access to the transitional funding shall be final. All public sector procurement is governed by both European legislation and UK national law. In addition, all procurement in SCC must comply with its own procurement policy, and internal regulations known as 'Contracts Standing Orders' (CSOs).
- 4.2.6 The requirements of CSOs applying to the procurement of services, goods or works shall be followed in full by SCC. Subject to the Cabinet member's approval of the recommendations in this report, the contract for delivery of the outcomes set out in this report will be directly awarded to Learn Sheffield.

4.3 Legal Implications

- 4.3.1 According to the Education and Inspections Act 2006, school improvement is a process that involves a wide range of partners, including schools, school improvement partners, Ofsted, local authorities, and central government. These different sectors are

expected to work in partnership to ensure that every pupil is provided with fair access to opportunity for education and training.

- 4.3.2 As a local authority, SCC is responsible:
- for taking a strategic role in supporting schools to improve; and
 - for monitoring schools' progress in responding to the challenges that are raised by Ofsted in their evaluation of schools.

- 4.3.3 Further to the decision made under the Cabinet Report dated 22 July 2015, Learn Sheffield was incorporated in 2015 as a school company in accordance with the Education Act 2002, the School Companies Regulations 2002 and the Companies Act 2006.

- 4.3.4 Since its incorporation, Learn Sheffield has been acting as a vehicle to lead on and coordinate school improvement and also to address the relevant challenge in Sheffield. Commissioning Learn Sheffield to continue delivering school improvement services helps SCC meet the duties as set out in the above paragraph 4.3.2.

- 4.3.5 As confirmed in the last Cabinet Report dated 22 July 2015, Learn Sheffield was within the "Teckal" exemption in accordance with Regulation 12 of the Public Contract Regulations 2015.

The exemption works on the basis that the contract being awarded is not a "public contract" for the purposes of the EU procurement directives and, as a result, the Public contract Regulations do not apply and EU law will not require the contract be put out to tender.

In other words, SCC may directly award a new contract for the commission of school improvement service to Learn Sheffield without going through the full EU procurement regime provided that Learn Sheffield meets all the "Teckal" tests, namely:

- i. the "Control" test – all members of Learn Sheffield (including the Council) are all "contracting authorities", "public bodies" and exercise the sort of decisive control over Learn Sheffield as they do over their own departments;
- ii. the "Function" test - 80% of Learn Sheffield's turnover must be from its members (i.e. the Councils and the publicly funded schools); and
- iii. there must be no direct private capital participation in ownership or involvement and preferably no possibility of issuing shares to private sector participants at a later date.

According to SCC's contract monitoring arrangements, Learn Sheffield is still "Teckal" compliant.

- 4.3.6 Subject to the Cabinet Member's approval of the proposed

commissioning, SCC shall arrange for regular monitoring and reviews to ensure that Learn Sheffield will continue its compliance with the above “Function” test throughout the term of the new contract for the provision of school improvement services.

4.3.7 Officers shall also ensure that any other arrangements between SCC and Learn Sheffield are State Aid compliant.

4.3.8 For the purpose of the School Companies Regulations 2002, SCC shall also continue its role as the “supervising authority” to:

- monitor the management and finances of Learn Sheffield; and
- notify members of Learn Sheffield and relevant local education authorities if it considers that the company is poorly managed or there is a risk of the company becoming insolvent.

4.3.9 As both of the EU General Data Protection Regulations and also the UK Data Protection Act 2018 coming into force in May 2018, Learn Sheffield will also be required to enter into an updated version of a data processing agreement with SCC.

4.4 Other Implications

4.4.1 Nil

5. **ALTERNATIVE OPTIONS CONSIDERED**

5.1 **Option 1 – SCC to extend the existing contract with Learn Sheffield for no more than 12 months and then to decide the arrangement**

According to the terms of the existing contract, SCC is entitled to request an extension of the contract for no more than 12 months. This is a possible option if Cabinet Member wishes to have more time to consider and decide the arrangement for the school improvement service.

However, this option is not recommended as the Council is keen to implement a new contract which sets down clearer performance monitoring (than the existing contract) and includes clear objectives.

5.2 **Option 2 - SCC to elect to bring the service back in house**

This option is not recommended as:

- SCC is not equipped financially to bring the service back in house. The Local Authority’s role in Education is diminishing

and as such it should be progressively working with third parties to identify new opportunities for the management and delivery of services.

- Also, SCC transferred the staff of its in-house school improvement service to Learn Sheffield in 2015 under a TUPE transfer. The costs for transferring any and all existing staff of Learn Sheffield involved in school improvement services back to SCC would be high and this is not a cost effective option.
- Learn Sheffield has now established a subscription based funding model which means SCC will contribute less than 40% to the overall running costs. This basis will form part of the new commission.

5.3 **Option 3 – SCC to offer the service on the open market**

Unless the performance of Learn Sheffield is poor, this option is not recommended as

- Learn Sheffield is a “Teckal” company so SCC may award contracts directly to Learn Sheffield without going through the normal procurement process (see paragraph 4.3.5 above). This will help minimise the relevant administrative time and costs in SCC; and
- the tendering process will take time and it may not be cost-effective given Learn Sheffield is able to continue delivering the service subject to the Cabinet Member’s approval.

6. **REASONS FOR RECOMMENDATIONS**

6.1 **Learn Sheffield to continue delivering the services**

The recommended option is for school improvement services to remain with Learn Sheffield on a commission basis for a further period of three years. The reason for this recommendation is on the basis that:

- SCC will retain control of the services being managed by Learn Sheffield.
- SCC can help shape the service as it continues to evolve, 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.
- Learn Sheffield is a school focused organisation and has already successfully demonstrated its ability to deliver school improvement services.
- 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.