



<b>Report to:</b>	Sutton Shareholdings Board	<b>Date:</b>	20 September 2017
<b>Report title:</b>	Update from Sutton Education Services Ltd		
<b>Report from:</b>	Tolis Vouyioukas, Strategic Director - People		
<b>Ward/Areas affected:</b>	Borough Wide		
<b>Chair of Committee/Lead Member:</b>	Councillor Simon Wales		
<b>Author(s)/Contact Number(s):</b>	Tracey Burley, Managing Director - Sutton Education Services Ltd, 020 8770 4039		
<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>• An Open Council</li> <li>• A Green Council</li> <li>• A Fair Council</li> <li>• A Smart Council</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>		<b>Date:</b>	8 September 2017

## 1. Summary

- 1.1 The purpose of report is to update on the current position of Sutton Education Services (“the Company”).

## 2. Recommendations

The Sutton Shareholdings Board is recommended to:

- 2.1 Note the challenges faced by the Company.
- 2.2 Note the rationale for the change in business name and registered address.
- 2.3 Agree the change to the Articles of Association of Sutton Education Services Ltd as set out in paragraph 3.15 below.
- 2.4 Note the confirmation of the Board of Directors.

## 3. Background

### Challenges faced by the Company

- 3.1 There are three thematic headings under which the challenges faced by the Company can be grouped. These are:
- company set-up



- financial barriers
- commissioning arrangements

3.2 The Managing Director will attend the meeting of the Sutton Shareholdings Board and provide A Shareholders with the same presentation as that provided to B Shareholders based on the above.

Company name and registered address

- 3.3 The original intention was for the Company to establish itself as a commercial organisation able to trade both within and outside of Sutton. The name Sutton Education Services does not appear dynamic and is potentially limiting.
- 3.4 The Company has undertaken a consultation exercise with staff and the Board of Directors who have approved that the Managing Director propose that the Company name be changed to “Cognus”.
- 3.5 The name was developed based on potential links to the word “cognition”. The purpose behind this is that the vision for the future of the Company is to provide quality services to schools with decreasing funding, therefore schools are seeking services that build capacity, sometimes in place of face to face delivery. “Cognus” will be used with a variety of strap lines:
- Cognus....thinking about education
  - Cognus....thinking about sensory impairment
  - Cognus....thinking about special educational needs
- 3.6 This allows sub-branding of services and creates the potential to move into an idea leadership position within the market, supporting schools with the latest thinking in each service area.
- 3.7 The Company also proposed to change the registered address from the Civic Centre in Sutton to Denmark Road in Carshalton.
- 3.8 The reason for this is that important and urgent documents addressed to the Company and the Managing Director have sometimes been delayed. This change will reduce the risk of future delays.
- 3.9 As stated above, the Company has experienced a number of issues relating to the setup of the Company with one such issue relating to the shareholders’ agreement. The Company has checked and noted that the shareholders’ agreement has not been entered between the Company and the Council because there is no record of a correctly signed copy. The shareholders’ agreement is therefore not active and whilst a number of schools and academies have followed the procedure under the shareholders’ agreement to be admitted as B Shareholders in the Company, it is not possible to admit them as members of the Company until that the shareholders’ agreement has been signed by the Company and the Council.
- 3.10 In this situation, and in the absence of a shareholders’ agreement, it is the Companies Act 2006 which applies to the Company by default. It is therefore for the Council, as the subscribers to the Memorandum and the sole shareholder to pass shareholder resolutions.

- 3.11 As per Part 5, Paragraph 48 of the Council Constitution, the urgency procedure was invoked to request that the Council, as the sole shareholder, pass the shareholder resolutions and consent to the name change and change of address of the Company.
- 3.12 The urgency procedure has been used in order that the Company can launch the new name in September 2017 as schools return to the new academic year. This will immediately suggest positive change both within the business and with our potential customers and will enable the Company to ensure it receives documents in a timely manner.
- 3.13 This change will also increase the potential of the Company to trade with a proposed website launch in September and an e-commerce facility to launch in October.
- 3.14 The Council and the Company are keen to rectify the position on the Shareholders' Agreement swiftly and will be obtaining the required signatures so that the Shareholders' Agreement can come into effect for both A and B shareholders. As part of this process the company intends to write to B shareholders setting this position out. It should be noted that the Deeds of Adherence already signed by some schools refer to the Shareholders' Agreement dated 1 December 2016. Given that the final draft of the Shareholders' Agreement is yet to be signed these Deeds are null and void. Revised Deeds of Adherence will be issued to prospective shareholders referencing the correctly dated Shareholders' agreement and only when those revised Deeds of Adherence are correctly signed and returned to the Company will share certificates be issued. Once this process is complete, the directors of the Company shall then enter the B shareholders onto the register of members of the company and submit the relevant forms at Companies House (SH01) to reflect the issue and allotment of shares to the B shareholders. It should be noted that the share certificates in relation to the B shares shall be signed and then held on the Company books (in accordance with the shareholders agreement (cl. 3.3))
- 3.15 In order to complete this process a change to the Articles of Association is required. Currently, the Articles of Association only authorise the managing director to issue shares up to a nominal amount of £100 on aggregate (refer to para 24.3 of the Articles of Association). Given that there will be more than 10 schools that will be B shareholders this limit will need to be changed by the A shareholder (the Council) by ordinary resolution. As such it is requested that Sutton Shareholdings Board approve an amendment to paragraph 24.3 in the Articles of Association for Sutton Education Services Ltd such that the nominal amount of share capital would be up to a maximum of £1000. The following paragraph would be inserted with the change in text underlined below:

*"24.3 - The Directors shall be generally and unconditionally authorised for the purposes of section 551 of the Companies Act 2006 to exercise all the powers of the Company to allot (or grant rights to subscribe for or to convert any security into) shares up to an aggregate nominal amount of £1000 in the share capital of the Company during the period from the date of adoption of the Articles until the fifth anniversary of that date unless the authority is varied or revoked or renewed by the Company in general meeting, provided that this authority shall entitle the Directors to make at any time before the expiry of this authority an offer or agreement which will or may require relevant securities to be allotted after the expiry of the authority.*

Confirmation of the Board of Directors



- 3.16 The Sutton Shareholding Board requested confirmation of the Directors of the Company.
- 3.17 The following were appointed as A Directors:
- Paul Darvell
  - Roz Hills
  - Lesley Hobbs
  - Ian Comfort (Chair of the Board)
- 3.18 The following were appointed as B Directors:
- Ros Sutton
  - Alan McIntosh
- 3.19 The sole Executive Director, the Managing Director, is Tracey Burley.
- 3.20 Due to changing work commitments, Roz Hills resigned from the Company as she felt unable to provide the level of support and attention required by the position.
- 3.21 Due to circumstances outside of his control, Alan McIntosh has resigned from the Board.
- 3.22 The B Shareholders must appoint a new Director, by notice in writing to the Company.
- 3.23 The B Shareholders shall organise in such manner as they see fit the means of canvassing opinion between them.
- 3.24 The A Shareholders must also appoint a new Director, by notice in writing to the Company.
- 3.25 The Board of Directors has identified, via a skills audit, the need for a Director with a strong commercial and financial background.
- 3.26 The Managing Director supported by A Directors, shall canvass for appropriate candidates including pursuing the Sutton Music Service Advisory Board. This would facilitate greater integration between the Music Service Advisory Board and the Board of Directors.
- 3.27 The A Shareholder representative shall undertake due process and write to the Company appointing the new A Director.

#### **4. Issues**

- 4.1 The Company is still in the early stages of its development and is facing challenges.
- 4.2 Consent has been gained from the A Shareholder to change the Company name and registered address through use of the Council's urgency procedure. These changes will be notified to Companies House.
- 4.3 The Company is confirming the current Board of Directors and the necessary replacements.

#### **5. Options Considered**



- 5.1 Alternative names for the Company were considered by the Board of Directors and stakeholders. They included Coeus, Serapis, Cognis, Lucidity, LIFT, SOAR and WASPS.
- 5.2 The Board of Directors recommended Cognus on the basis of stakeholder feedback, fit with the vision for the Company, web domain availability, Companies House availability and distinction from existing companies.
- 5.3 Alternatives for the registered address included a status quo or a move to the Grove, The status quo was not a realistic option due to the issues already highlighted and the Grove may not provide a long term solution.
- 5.4 The appointment of Directors has no alternative option.

## **6. Impacts and Implications**

### Financial

- 6.1 The Company remains in a loss making position and actions are underway to remedy the situation.
- 6.2 The Managing Director's presentation will provide additional information.

### Legal

- 6.3 The change of Company name and registered address is a reserved matter and has been progressed as such.
- 6.4 The appointment of Directors will follow the Company's Articles of Association.

### Risk Assessment

- 6.5 The Company name is seen as a barrier to trading outside of Sutton and the registered address is preventing sometimes time critical documents from reaching the relevant person within the Company. Changing the name and address as proposed will remove this risk.
- 6.6 The Company is to operate with a minimum of 7 Directors. Action must be taken to appoint new Directors.
- 6.7 The Sutton Shareholdings Board should be cognisant that B shareholders have been briefed on the current position of the Company. It is a requirement that both A and B shareholders receive equal updates and information.

### Equality Impact Assessment

- 6.8 Changing the Company name and address will not have any impact on the accessibility to services for customers, employees or any other stakeholders.
- 6.9 The appointment of the new A Director will be based on the skills audit and business. An appropriate gender balance will be retained.

## **7. Reasons for lateness and urgency**



- 7.1 Urgent legal advice was required and sought in relation to the status of the shareholders' agreement and in order to confirm the validity of the records of decision already published under urgency. Further advice was also sought on the required changes to the Articles of Association in order for the company to issue share certificates correctly.
- 7.2 In order to issue share certificates to B shareholders correctly, changes to the Articles of Association are required as set out above. Given the delays to this process already, it would be unsatisfactory and not in the interests of the Company or the Shareholders to wait until the next Sutton Shareholdings Board meeting in December.

**8. Appendices and Background Documents**

<b>Appendix letter</b>	<b>None</b>
None	

<b>Background documents</b>
None

<b>Audit Trail</b>		
Version	Final	Date:8 September 2017
<b>Consultation with other officers</b>		
Finance	Yes	Phil Butlin
Legal	Yes	Fabiola Hickson
Equality Impact Assessment required?	No	N/A