

<b>Report Title</b>	Delivery Arrangements for Education Services		
<b>Committee</b>	People Committee		
<b>Committee Date</b>	15 October 2020		
<b>Committee Chair Lead Member</b>	Councillor Marian James, Lead Member for People		
<b>Report From</b>	Nick Ireland, Strategic Director of People Services		
<b>Report Author(s)</b>	Sam Barker, (Interim) Assistant Director of Customers and Commissioning, 020 8770 5141		
<b>Wards Affected</b>	All Wards		
<b>Ambitious for Sutton priorities</b>	Being Active Citizens Making Informed Choices Living Well Independently Keeping People Safe		
<b>Open/Exempt</b>	Open		
<b>Signed</b>		<b>Date</b>	7 October 2020

## 1. Recommendation

- 1.1. To approve the council continuing to commission education support services from Cognus, with a revised service specification, for a further period of three (3) years from November 2021 - October 2024.

## 2. Summary

- 2.1. The Council is ambitious for our children and young people and wants them to be able to achieve the best possible outcomes, whatever their starting point, and to prepare them effectively for adulthood. Education Support services are an important part of this especially for our most vulnerable children and young people and this report describes how the council can best achieve the benefits of continuity and improvement in these important services.

2.2. The report sets out the proposal to continue to commission education support services from Cognus. It does so on the basis that the current levels of service are maintained and strengthened further, ensuring that children and young people will continue to receive good services. The Local Authority will continue work to ensure Cognus becomes a wholly owned local authority company with greater involvement from all schools and that these revised arrangements will:

- Ensure continuity for the high quality services provided by Cognus.
- Ensure that there is further alignment between the Council and Cognus supported by support services and stronger relationships.
- Ensure that both Cognus and the Council reap the benefit of shared expertise and strengthened accountability.
- Ensure that Cognus can continue to provide services to schools outside of Sutton deriving economies of scale with any trading income being available to the Council to invest in education services.
- Ensure the ongoing confidence of schools and parents with greater involvement of all schools through representation in the Board of Cognus and via the stakeholder forum.

### **3. Background and Key Information**

3.1. In June 2016, the Council's Children, Family and Education Committee agreed to set up a Teckal compliant company limited by shares (with the Council holding a majority shareholding) to deliver (as far as legally possible) all educational services on behalf of the Council. The rationale for setting up the company is as set out in the [June 2016 committee report](#) at Appendix A. Cognus Ltd (formerly Sutton Education Services) was established and commissioned to provide statutory and non-statutory education services on behalf of the Council. The scope of the commissioning contract was:

- to deliver services in exercise of the Council's statutory education duties;
- to meet the requirements of the Sutton Schools' Forum acting on Sutton schools' collective behalf to secure centrally-funded provision where appropriate to achieve best value in the spending of the Dedicated Schools Grant (DSG); and
- to provide other services on a traded basis with individual educational institutions both in Sutton and elsewhere to bring income in to be re-invested in education services.

3.2. The commissioning contract commenced in November 2016 for an 'initial period' of five (5) years to the end of October 2021. The contract allows for automatic extensions beyond the initial term, until 12 months written notice is given to the provider. The aim of the initial 5 year period was to provide the Council with a checkpoint against delivery and

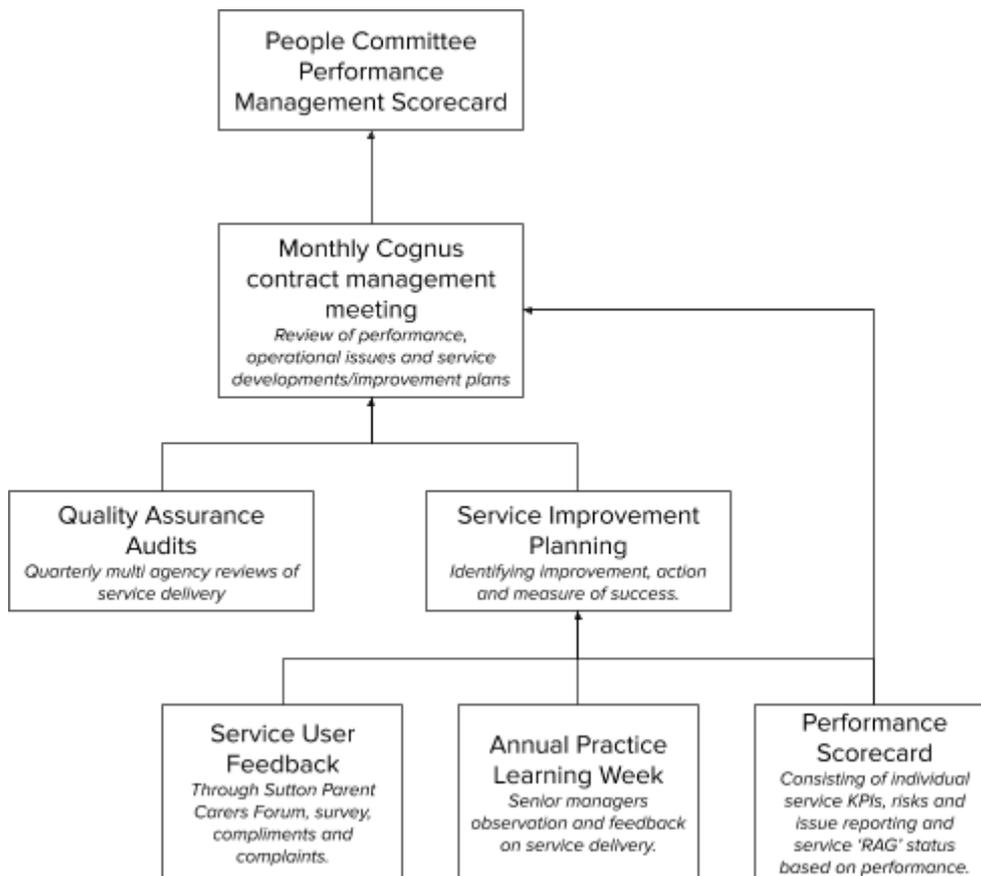
to allow a review of the service specification to ensure it reflects the Council's future commissioning intentions.

- 3.3. Cognus is commissioned to provide services that support and maintain the development of a coherent, robust and stable local school system that helps Sutton children and young people to be safe and to succeed. Key services that are part of the agreement include:
- The School Admissions Service
  - The Virtual School (for Children in our Care)
  - The Early Years' and Childminders' Advisory Service
  - Assisted Travel services for children with SEN
  - Paving the Way Early Intervention Service
  - The Special Educational Needs (SEN) Service
  - The Educational Psychology Service
  - The Speech and Language Therapy Service
  - The Occupational Therapy Service
- 3.4. A full list of the services provided under the contract can be found in Appendix B.
- 3.5. As the contract comes to the end of the initial term and in order to ensure service continuity of our education functions, the Council has:
- Reviewed the service delivery, quality and performance of the contract against the service requirements.
  - Reviewed the assessment of delivery and outcomes for residents from the Independent Expert report.
  - Reviewed the outcome of our regulatory inspections.

This has been undertaken to ensure a decision on the future delivery arrangements can be made within the initial 5 year term. The details and outcomes of these reviews are set out throughout this report.

### **Contract performance**

- 3.6. The council has an established contract performance approach with Cognus, which is set out in the diagram below:



- 3.7. As set out in Appendix B, Cognus delivers a broad range of services. In the main, the Council and most parents and service recipients have expressed satisfaction with the services provided. Going forward into the new contract management period, it will be an important contractual requirement that service satisfaction is met including building trust with parents. It is a feature of the contract that where there are improvement plans for specific areas, they are delivered and monitored.

Key performance highlights to date include:

- Cognus co-ordinates the school admissions process on behalf of Sutton schools. Over 90% of children in Sutton continue to get a top three preference place for school (on average about 93% for primary and 92% for secondary). This is the second highest performance in London.
- Support provided by the Virtual School ensures Children in our Care continue to flourish (as at September 2020):
  - All new Children in our Care (CIC) are placed in a Good or Outstanding setting.
  - The number of NEET CIC young people (Children in Care who are Not in Education, Employment or Training) has reduced from 16 in 2018/19 to 6 in 2019/20.
  - KS1 shows a three-year trend of improved reading scores for Sutton CIC.

- KS2 shows Sutton CIC scores well above National CIC three years in a row.
  - At KS4 13% of young people achieved a good pass (grade 5+) in English and Maths (compared to 6% the previous year) and 29% achieved a grade 4+ in English and maths (up from 6% the previous year).
  - Progress (Prog 8) from Key Stage 2 to 4 has improved year on year for 3 years.
  - Post 16 Sutton CIC educational destination statistics are significantly higher than National figures. Of the pupils in year 11 in 2019/20, 96% had a firm destination for September 2020.
- 100% of children known to the Cognus Inclusion team and receiving alternative education due to exclusion from school or otherwise have been reviewed to ensure their education is suitable.
  - Over the past 12 months, 99% of Education, Health and Care (EHC) Plans have been completed within the statutory 20 week timescale, compared to 60.4% nationally in 2019.
  - 100% of children receiving support via Paving the Way make progress in at least 1 or more of the 6 key domains of support.
  - 100% of parents surveyed reported that Paving the Way support has had a positive impact on family life.
  - More needs are now being met locally and therefore more funds are being invested in the local area: by January 2020 only 5.9% of Sutton pupils with EHCPs were being educated in the Independent Non Maintained (INM) sector, compared to 12.7% in March 2017.
  - Parents and carers continue to provide positive feedback on the Sutton Information and Advice Support Service (SIASS).
  - Newly created service level feedback surveys show that parents and carers are satisfied or very satisfied with the majority of services they receive from Cognus.
- 3.8. The services provided by Cognus on behalf of the Council are in general meeting our performance expectations and delivering good outcomes for our residents. Through our contract and performance management process the Council's assessment is that although there are areas for further development within Cognus (for which there are plans in place and as is the case with any other commissioned provider) there are also significant areas of success.

### **Independent Expert review**

- 3.9. As part of the Council's continuous improvement journey and feedback from parents, in preparation for the expiry of the initial term of our contract with Cognus in 2021, the Council appointed an Independent Expert to review the delivery of Special Education Needs Provision. SEN provision is just one element of a wider set of the 27 services that

Cognus delivers on behalf of the council. The Expert reported back to the Council and the People Committee in January 2020 on her view of service provision. In her [report](#) at Appendix C, she noted:

- that the front facing operational services are, in the main, working well and this is confirmed through the customer satisfaction services carried out by Cognus and reviewed by the Council on a regular basis.
- that there had been improvements with the SEN service (since the Written Statement of Action or 'WSOA') and confirmed that it is compliant with SEND statutory duties.
- a much strengthened and appropriately constituted multi-agency SEN panel that is considering EHC assessment requests appropriately, and
- a strengthened and more effective leadership team within Cognus which is now able to engage with the Council much more collaboratively and agree a joint future direction of travel for education support services in the borough.

3.10. In addition to the appraisal of service delivery, the Independent Expert recommended that there should be greater alignment between the Council and Cognus. This was supported by the People Committee which resolved that Cognus should become a wholly owned Council company, and that the governance arrangements and makeup of the Board of Directors of Cognus should be reviewed to support this.

### **Outcomes of Regulatory Inspections**

- 3.11. In January 2018, a regulatory inspection of Special Educational Needs and Disabilities (SEND) services in the Sutton Local Area was carried out jointly by Ofsted and the Care Quality Commission (CQC), which included some services provided by Cognus. At the time of the inspection the Local Area was judged to not be meeting the requirements of the Children and Families Act 2014 and was required to develop a WSOA.
- 3.12. Now, just over two (2) years on, the change in the approach, provision and services provided for children and young people with SEND has been significant: a "seismic shift" - as the inspectors quoted - has been achieved. The local area was re-visited in March 2020 and in the [inspection outcome letter](#) (at Appendix D, published in May due to delays resulting from the Covid-19 pandemic) inspectors confirmed that Sutton's Local Area services for children and young people with SEND had made "sufficient progress" - the sole criterion - in all three areas identified in the SEND Local Area inspection in 2018. As a result, Sutton no longer required a WSOA.
- 3.13. The progress made by the Local Area, including Cognus' SEND related work, was further endorsed in a letter from the Parliamentary Under-Secretary of State for Children and Families, Vicky Ford MP, in which she stated that:

*"I was pleased to read about the positive actions Sutton has taken following its original inspection, and about the impact of the Written Statement of Action which*

*was developed in response to the Ofsted and CQC findings. I was particularly encouraged by the joint working now taking place in Sutton across education, health and care - and by the impact this is having on children's confidence; the quality of Education, Health and Care plans and feedback from parents. I know that this positive revisit report comes as the result of a great deal of commitment and hard work on the part of the local authority, the Clinical Commissioning Group, families and front line staff across education, health and social care."*

### **Proposal for continuation of the commissioning agreement between the Council and Cognus**

- 3.14. The outcome of the regulatory inspections and independent expert assessment referenced above have independently verified and endorsed the Council's view, through the Council's performance management and quality assurance processes, that Cognus is providing good and improving education support services. These independent assessments have provided assurance that the Council understands where the strengths and areas for development are within the service it commissions and has appropriate plans in place to further develop and improve both those elements that are not as strong as they should be (such as performance on updating EHCPs following an annual review).
- 3.15. Therefore the Council is proposing to commission education support services from Cognus, with a revised service specification, after the expiry of the initial term of the commissioning agreement in November 2021. Whilst it is not necessary to stipulate a further term as the commissioning agreement allows for continuous extension until twelve (12) months notice is given, in line with good practice, the Council will put in a review point after three (3) years (November 2024) to enable a future review to take place and inform commissioning intentions at that point. That does not mean that changes are not possible within the three (3) year period and will take place within the change control provisions of the commissioning agreement.
- 3.16. In reaching the recommendation to continue to commission education support services from Cognus, the Council considered a number of options. These are set out below, along with the reasons they are not recommended:
- **Extend the existing contract with no changes to the specification and contract schedules:** Although performance and service quality has been assessed to be good and Cognus has been in receipt of positive feedback arising from Ofsted inspections and service users, it is recognised that the existing service specification requires review in order to reflect the future ambitions of the Council in respect of its delivery of education support services to children, young people and families. A specification review will allow the Council to ensure that the commissioned service is able to meet the required outcomes going forward and in particular is able to meet the recommendations of the High Needs Block Review, namely providing support sooner to appropriately meet need at the earliest opportunity.
  - **Bring statutory services in house and leave the non-statutory services in Cognus:** Services within Cognus are not split into statutory and non-statutory teams:

teams and individual practitioners work across both elements and therefore it would not be feasible or practical to separate the functions out.

- **To bring both statutory and non-statutory services in-house:** This option would return all delivery of education services into the Council. It has been discounted for the following reasons:
    - Cognus has built up a reputation for delivering education services and has good relationships with schools. This has led to them successfully trading with other Local Authorities and schools, which brings in additional income which can be reinvested into services that benefit children, young people and families. By bringing the service back in house it is likely that this would be adversely affected and would consequently reduce (in volume and scope) the offer available to children, young people and families.
    - The costs the Council will incur in bringing these services back to the Council. The issues to be taken into account are, for example, the different terms and conditions for employees, e.g. pay scales and pension schemes. This is in addition to the costs of officer time and capacity to oversee the transition process.
    - There would be unnecessary disruption to service delivery received by children, young people and families, which would be unwarranted based on the current service performance by Cognus.
  - **Undertake a competitive tendering exercise to seek a new provider able to deliver the full range of education support services:** There is not currently a sufficient or diverse market of alternative providers delivering the range of statutory and non-statutory education services provided by Cognus. There are organisations providing a traded service for schools but very few with the capacity and capability to provide the breadth of services required by the Council. Undertaking a full procurement process with no guarantee of achieving quality services or financial efficiency would be a significant risk and could result in new structures which fragment services for children and families. Furthermore, there is the risk that whilst the Council undertakes a complex procurement exercise, there could be a destabilising effect on service delivery in both the short and medium term.
- 3.17. Between now and November 2021, the Council will continue to monitor and work with Cognus through the Service Development and Improvement Plan to deliver the required service developments and improvements and embed agreed business processes in order to further align them to the Council's agreed timetable. The Council will revise the commissioning agreement including reviewing the financial envelope and service specification, to ensure:
- it appropriately reflects the Council's intention to commission an outcomes focused and flexible education support service that is able to react to the changing education landscape.

- that Preparation for Adulthood is a key theme running through all service delivery.
- that support, developed in collaboration with parents/carers and partners, is provided at the earliest appropriate point in order to reduce the need for higher level interventions.
- that children and young people continue to be safe and protected in education settings.
- that services are redesigned to be able to support the recommendations of the High Needs Block Review.

This will be supported by revised Key Performance Indicators (KPIs) and a performance management framework.

- 3.18. This report sets out the rationale for extending a new commissioning agreement with Cognus on the basis of the quality of the services overall and the benefits to young people, schools and families from the traded model and the continuity which this brings. In making this case, it is acknowledged that there are challenges and room for improvement in services, both in structure and in Cognus' operations.
- 3.19. Earlier this year in pursuit of greater alignment as set out in the Independent Expert's report, the People Committee approved a recommendation to initiate a process by which Cognus would become a wholly Council owned company with a stronger Board and greater involvement by local schools. With certainty both in terms of the commissioning relationship and ownership, Cognus will seek to reinforce its stability and operating model by recruiting a permanent Managing Director.
- 3.20. There is also a shared view between Cognus and the Council that aligning support services (with a priority given to finance services) will ensure a shared confidence in the accuracy and timeliness of financial information provided to the Company and the Shareholder, and the management of the commissioning relationship. Challenges in recent months have resulted in information being presented late in the day and the need for in-year financial provision of £229k from the Council to support service delivery. More recently the external auditors of the company have had to become more involved in the 2020/21 budget preparation to provide assurance to the company and the shareholder about the position.
- 3.21. The Council's S151 officer and the Chair of the Cognus board have taken steps to assure themselves that issues of accounting and record keeping (rather than of service provision) need resolution and that a shared finance service will both resolve the matter and support the robustness of the arrangements between company and shareholder going forward. This is in addition to the recent strengthening of the Board of Cognus by the appointment of three council officers:

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- **Ian Geary** - Head of Financial Reporting and Control for Sutton Council, overseeing the financial reporting activities and the exercise of strong financial governance across two London boroughs.
- **Kieran Holliday** - Kieran Holliday is Head of Pupil Based Commissioning for Sutton Council. Kieran works closely with schools across the Borough on a range of different areas across education (pupil place planning, schools funding, SEND) building stronger relationships and developing partnerships throughout.
- **Bradley Peyton** - Bradley Peyton is Head of Insurance and Pensions Administration for Sutton Council. Bradley has developed high-performing, revenue-generating services for Sutton Council and will bring expertise in this area to the board.

3.22. This development is to enable the company to focus on service delivery whilst accessing the expertise of the council. This will address twofold suboptimal financial reporting by Cognus whilst also facilitating closer alignment between the Council and Cognus.

#### **4. Benefits to Sutton and its Residents**

4.1. Continuing to commission these services from Cognus will allow the Council to deliver our ambition to provide high quality education services to children, young people and their families. The Council will ensure continuity of service and be able to continue to strengthen and improve key statutory and non statutory education support services provided to children and young people across Sutton, including those with special educational needs. The partnership with Cognus will ensure these services are delivered to meet needs and create positive outcomes as quickly and effectively as possible, in particular, through continuing to:

- improve partnership working with schools to provide high quality education and education support services across the borough and to meet the needs of our children and young people as early as possible.
- ensure that we continue to strengthen our Special Educational Needs and Disabilities (SEND) service and outperform other Local Authorities as we currently do (in certain aspects of the service delivery) and further improve our Local Offer with our residents where needed to deliver even better outcomes.
- bring investment into the borough which can be used to continually improve education services for children and young people.

4.2. Main beneficiaries will be:

4.2.1. Children, young people and their families, schools and early years settings will benefit from continued and consistent service delivery.

4.2.2. The local authority benefits from continued service delivery with no change in provider but also Cognus will continue to function strongly and generate

business and traded income in other areas that can then be recycled back into the funding of education services.

## 5. Implications

- 5.1. In the short term the implications of agreeing to the recommendation of continuing to commission education support services from Cognus will be continuity of service provision to our residents. It will mean that the local area can continue to improve provision with a key provider and this will best safeguard and promote the welfare of children and young people in the borough.
- 5.2. In the long term, once a revised outcomes focussed service specification is in place (from November 2021 at the latest), the Council will have the ability to commission a service that will meet future needs in a flexible needs led way and be able to adapt as the needs of our population change.
- 5.3. If the recommendation is not agreed it is likely to destabilise a good service because its long term future will be unclear. Service quality, service development, trading and financial sustainability are likely to be impacted. This will lead to poorer outcomes for children, young people and families.

## 5.4. Finance and Legal Commentary

### Finance Comment:

- 5.5. The Council's Commissioning Agreement with Cognus Ltd for 2020/21 is funded from the Council's General Fund (£2.013m) and Dedicated Schools Grant (DSG) (£2.382m), a combined contract value of £4.395m. In addition there is a DSG budget allocation of £2m in 2020/21 for a range of other services.
- 5.6. The proposal is that the Council will deliver a finance function to the company in the future. This is expected to be cost neutral for both the Council and the company as a starting point compared to the current arrangements. The review of other support services will look at the arrangements in place and make proposals for improving those to the benefit of the council and the company.
- 5.7. The Company is reporting to the meeting of the Sutton Shareholdings Board on the financial position. As at the 31st March 2020 the company had reserves on its balance sheet of £348k. They are reporting an in year deficit for 2020/21 of just over £50k. The company is forecasting traded income of £1.437m in 2020/21.

### Financial Risks:

- 5.8. There are increasing levels of demand on the DSG budget, particularly from the high needs block, which will need to be managed and mitigated through close partnership working with the service provider.

- 5.9. The report details current performance levels of services delivered by Cognus Ltd. It is clear there is no underlying concern that would make it necessary to consider commissioning a new organisation or bringing the services in house in order to improve performance. It would not be value for money to incur the transition costs of changing provider or in-sourcing services, and detract from our capacity to manage the existing financial risks in these service areas, without any underlying performance or service need to do so.
- 5.10. There is a risk that the Council will need to consider a variation to the services specification in future as funding reductions and pressures impact across all services and create impetus to change how we achieve our desired outcomes. The report makes clear that the proposed three year review period will not prevent us from doing this if needed at any time before the three years are complete.

Legal Comment:

- 5.11. The powers relied on to establish the company are Section 111 Local Government Act 1972, Section 1 Local Government (contracts) Act 1979, and the general power of competence under the Localism Act 2011. The council has delegated functions to Cognus in reliance on and under Orders made in the Deregulation and Contracting Out Act 1994.
- 5.12. Cognus Ltd was established to comply with Regulation 12 of the Public Contracts Regulations 2015 (the *Teckal* rules). A contract awarded to a company which meets the conditions in Regulation 12 falls outside the scope of the Public Contracts Regulations and competitive procurement is not required. To benefit from the exemption set out in Regulation 12(1), Cognus satisfies the following three requirements:
1. The first relates to the control that the Council exercises over the legal person in question (i.e. Cognus). This condition is fulfilled as the Council currently does exercise the required level of control. If in the event the Council becomes a sole shareholder of Cognus the exercise of control will remain.
  2. The second requirement relates to the percentage of activities that Cognus carries out on Sutton's behalf. Again, that condition is satisfied.
  3. The third requirement that there must be no direct private capital participation is also satisfied.
- 5.13. The commissioning contract entered into by the Council provided for an initial term of 5 years and thereafter to continue until the Council chose to give 12 months' notice of their withdrawal from the agreement. The Council has carried out an options appraisal as to the optimum model to carry out these services. The results of the options appraisal are addressed in paragraph 3.15 and the outcome has led to the recommendation to continue commission services from Cognus.

- 5.14. In making a decision on the commissioning of services, the Council must take account of its duty under the Equality Act 2010 to have due regard to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' under the Act and those who do not share a protected characteristic. A 'protected characteristic' is defined in the Act as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. An Equalities Impact Assessment is included at Appendix E.
- 5.15. The Sutton EHCP Crisis Group of parents has sought crowd funding to bring a "judicial review against the Local Authority for outsourcing [SEN services] to Cognus Ltd." No challenge has been received and it is not accepted that there are grounds for such a challenge. The Council received a letter on 21 August 2020 from solicitors acting on behalf of a member of the group and her son, which alleged that there was an appearance of bias by Cognus in relation to decisions on EHC Needs assessments and on EHC Plans and seeking an assurance that the Council would not extend its contract with Cognus and would carry out a public consultation on the decision to renew. The letter also questioned the application of the Teckal exemption to Cognus. The Council has responded noting that there was no allegation of actual bias present in the Council's and/or Cognus' actions and that there is no basis for suggesting that the Council's contract with Cognus gives rise to any appearance of bias. It is not accepted that there is any legal duty to consult prior to any decision to renew arrangements with Cognus beyond October 2021. Appendix F sets out this correspondence.
- 5.16. The council will ensure that in any change of arrangements for providing services there is continuity of service to ensure that the Council continues to fulfil its statutory duties.

**6. Appendices and Background Documents**6.1. Appendices

<b>Appendix Letter</b>	<b>Appendix Title</b>
A	Future Funding and Delivery of Education Services (June 2016)
B	Cognus Service Overview and Performance
C	Independent Expert Report on Special Educational Needs in the London Borough of Sutton
D	Inspection Outcome letter on the Joint area SEND revisit in Sutton
E	Equalities Impact Assessment
F	The Sutton EHCP Crisis Group letters and replies

6.2. Background Documents

<b>Date of Expiry</b>	<b>Background Document</b>
N/A	N/A

**7. Audit and Consultations Trail**

<b>Consultees</b>	<b>Yes/No</b>	<b>Officer</b>	<b>Date of Comments</b>
Finance	Yes	Victoria Goddard Assistant Director - Finance	16 September 2020
Legal	Yes	Fabiola Hickson Head of Law, Property and Commercial	16 September 2020
EQIA	Yes	Simon Breeze	1 October 2020
<b>Version</b>			<b>Date</b>
Corporate Management Team			23 September 2020
Strategic Team			4 September 2020
Draft			30 September 2020
Final			7 October 2020