



<b>Report to:</b>	Children, Family and Education Committee	<b>Date:</b>	16 June 2016
<b>Report title:</b>	Future Funding and Delivery of Education Services		
<b>Report from:</b>	Tolis Vouyioukas, Strategic Director, People Directorate		
<b>Ward/Areas affected:</b>	Borough Wide		
<b>Chair of Committee/Lead Member:</b>	Councillor Wendy Mathys		
<b>Author/Contact Number:</b>	William Clapp, Head of Transformation, tel: 020 8770 6357		
<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>• An Open Council</li> <li>• A Fair Council</li> <li>• A Smart Council</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>	Tolis Vouyioukas	<b>Date:</b>	1 June 2016

## 1. Summary

- 1.1. The report sets out both the Business Case for a 'spin out' Joint Venture Company to deliver Statutory, DSG and non-statutory services to schools and education following the Children, Family and Education Committee decisions of 25 February 2016. The paper also sets out the Business Plan for such a 'spin out' setting out the financial issues and assumptions and taking account of the budget position with regard to education service provision as per the Council's agreed budget as at April 1 2016.

## 2. Recommendations

The Children, Family and Education Committee is recommended to:

- 1 Authorise the Strategic Director, People Directorate (in consultation with the Chair of the Committee) to make all necessary arrangements to establish 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 including making decisions on all legal issues required including:-
  - The objects of the company
  - The articles/constitution of the company
  - The constitution of the board of the company
  - The arrangements between the shareholders of the company ;
- 2 Authorise the Executive Head, Education & Early Intervention (in consultation with the Chair of the Committee), to invite governing bodies of schools maintained by the Council, academy trusts for schools situated in Sutton, and other organisations as he judges expedient and whose involvement would not threaten the Teckal status of the company, to

- (a) become owners jointly with the Council in the proposed company and/or
  - (b) enter contracts for the purchase of services from the Company;
- 3 Authorise the Strategic Director, People Directorate (in consultation with the Chair of the Committee and in discussion with procurement officers) to negotiate and agree the necessary contracts between the Council/community schools and the Company to ensure the delivery of the agreed services by the Company;
- 4 Request the Strategy & Resources Committee to consider and decide
- (a) the arrangements for the governance oversight of the company and
  - (b) any arrangements for financial support of the company
- 5 Note the decisions of the Schools Forum on 18 May and authorise the Executive Head, Education & Early Intervention to do everything necessary and lawful to progress the project and to take any necessary decisions concerning the employees and their representatives in relation to the project.

### **3. Background**

- 3.1. On 25 February 2016, the Children, Family and Education Committee considered six possible alternative delivery models for the future delivery of services to schools and education. A short summary of these previously considered options is attached for reference at Appendix A.
- 3.2. The Committee's preferred delivery model in February 2016 was to establish a trading company, jointly owned by the Council, Sutton school governing bodies and Sutton academy trusts, to which a broad range of educational services would be transferred.
- 3.3. As a result the Committee tasked officers with developing both a Strategic Business Case (set out at Appendix B and summarised in section 4 and 5 of this report) and a Financial Business Plan for the proposed spin out of model of delivery (set out in Appendix C and summarised at section 9 of this report). Given the significance of this potential strategic step for the Council, it is important for the Committee to be able to 'test' the proposed spin out against the status quo arrangement. Therefore, the purpose of this paper is two fold.
- 3.4. Firstly it allows CFE members to consider what the potential strategic benefits and risks might be in any decision to transfer service delivery to a joint venture trading company, effectively comparing the spin out model of delivery with the current in-house approach (the Strategic Business Case)
- 3.5. Secondly the paper is intended to allow CFE members to consider the financial viability of the proposed spin out company (the Business Plan).
- 3.6. At its budget meeting in March 2016 the Council agreed significant reductions in net funding for education services, adding to the amounts that had already been agreed at its equivalent meeting in March 2015. The overall effect of these decisions is that the service has to make reductions in net expenditure of:



2016/17 financial year	£946,000
2017/18 financial year	<u>£460,000</u>
Total	£1,406,000

- 3.7. The broad strategy to meet this net expenditure reduction in the Council's budget has two key elements: to robustly assess what services are needed to deliver the Council's current statutory duties and what capacity those services will need to meet those duties at the minimum level necessary for statutory compliance; and to reduce the Council's investment in non-statutory services so that the costs are either met by traded income or by ceasing the delivery of those services altogether. In addition, although not part of the Council's budget, we are required to commission services, which are funded from the Central Blocks of the Dedicated Schools Grant. It is for the Schools Forum to consider what services are provided from that grant and it is for the Council to determine how it should then provide those services. Currently the Council delivers most of these services through direct in-house provision. In keeping with the overall strategy to meet the net expenditure reduction, should the Schools Forum discontinue the funding to a specific service in the future, then the Council will either reduce the capacity to a level which can be 'traded' to schools at no cost to the Council or the Council will cease to provide that service.

#### **4. Strategic Context**

- 4.1. The strategic context for this proposal is set out at paragraphs 12 to 39 within the attached Strategic Business Case at Appendix B. There are both local aspects and national aspects. The education landscape has continued to change in recent years. All the indications are that this will continue, and indeed will possibly gather pace, in the near future. The almost ever-changing nature of that education landscape means there can be no absolute certainties so the report sets out our knowledge to date and our expectations and interpretation for the future of education in Sutton.
- 4.2. In considering the context and the case for an alternative model of delivery through a spin out to the proposed joint venture company with schools we have focused on four key strategic aims within that changing educational landscape: how to maintain and improve upon the high quality of education provided currently; how to maintain and improve on the existing good relationships between schools and between schools and the Council; aligning the Council's role to national and local strategic developments; and the drive to reduce costs in the system.
- 4.3. The education performance in Sutton is a long-term strength and offers massive potential for the future. Performance in Sutton has been rising year on year for some time and the combined quality of education, provided in the Primary, Secondary and Special school sectors, is arguably the best in England. The proportion of good and outstanding schools is extremely high and as a result most pupils in Sutton can access educational provision which helps ensure they reach their full potential



- 4.4. Although the number of schools needing additional support has been low over time the partnership working between the Local Authority and schools has demonstrated that when it is needed, there is the capacity and talent in the system to drive rapid and sustained improvement.
- 4.5. Beyond having the capacity to provide additional support the system also needs to be able to work collaboratively in areas where we need to continue to improve on existing priorities such as accelerating the attainment and progress of pupils who entitled to free school meals at all key stages as key way to mitigate the potential impact of poverty and relative disadvantage and also give us the scope to respond to new emerging priorities such as ensuring our young people will have the knowledge, skills and aptitudes to help them benefit from the Council-led economic regeneration within the borough generally and the proposed London Cancer Hub in particular.
- 4.6. Over time the Council's support services have played a part in driving the improvement in the education system. In return school level work has been a part in helping to drive improvement in the services the Council deliver to schools and been part of the drive to improve safeguarding across all agencies within the borough. There will always be a debate about the extent to which the quality of education overall is about the extent to which Local Authority services influence the overall quality of educational provision but the inspection frameworks from OfSTED at either individual school or in the Local Authority School Improvement Service Framework clearly set a view that there is a correlation between the actions of Local Authorities and the outcomes for pupils
- 4.7. Schools have had a growing degree of autonomy for some considerable time and as a result the Local Authority has worked much more in partnership with schools than ever before. Relationships are more than ever focused on our capacity to motivate, persuade and encourage schools, which are a core universal service within the borough. They typically have a critical understanding of the needs of local communities and are an integral part of the 'early intervention radar' for challenges and emerging problems that some children and families face.
- 4.8. The recent White Paper 'Educational Excellence Everywhere' indicates that further significant periods of change for the education sector lie ahead and although the provision in Sutton is arguably closer to providing that 'Education Excellence Everywhere' ambition than any other local authority in the country, it is clear that the drive to improve further and the implementation of national policy will lead to further system change.
- 4.9. The school system in Sutton has become increasingly diverse as it has responded to changing education policy with most of Sutton's secondary schools now academies, a small but growing number of primary academies, federations between schools and some sponsored primary academies. In the near future we know this diversity will grow further with free schools, school level education as part of the proposed London Cancer Hub, more Academy Trusts and schools from outside of Sutton becoming part of some of the Trusts within borough.
- 4.10. Officer engagement with primary schools however identifies some concerns about the future, including financial challenges and concerns about loss of independence and autonomy at individual school level within collaborations such as academy trusts.
- 4.11. Recent government announcements about forced academy conversions have been revised but there is still both a national ambition and expectation that schools will move to academy status



arrangements by 2022. At the same time government have announced that they intend to significantly reduce the role of Local Authorities in education. While the recent White Paper indicates that there will be a greater role for local authorities than government statements might have indicated, there is still a clear driver to reduce the role for authorities to brokerage and the delivery of services to meet statutory duties

- 4.12. So while the Council's responsibilities for education will change there are clear indications that government intends Councils to have some education responsibilities in the future. The specialist education law firm Browne Jacobson summarised the future of local authorities in education as a government vision where "local authorities remain key partners in delivering educational excellence through their core functions: ensuring the needs of children are met and working with pupils, parents and the local community. In addition, the Government appears to be considering expanding the role of local authorities in relation to school admissions, proposing consultation on them having responsibility for handling all school admission appeals and being required to co-ordinate in-year admissions".
- 4.13. While there may be a debate about the extent to which school budgets and school funding arrangements have been insulated from the effects of the national austerity, there is no doubt that the education sector has received a greater level of insulation than other parts of public sector. Equally there is little doubt that individual schools and the education sector overall are beginning to experience financial challenges.
- 4.14. The recent government consultation on National Formula Funding arrangements is at an early stage but this is likely to have considerable implications for the level of funding delegated to individual schools and potentially the level of funding with the central parts of the DSG which fund a number of support services to schools and pupils.
- 4.15. The Council has faced significant budget pressures over the period since 2010/11 and this will continue into the medium term. This is due to a combination of government funding reductions, for example revenue support grant is expected to reduce from £42m in 2013/14 to less than £7m in 2019/20, and demand pressures from demographics, in particular increased numbers of older people and children and young people.

## **5. Strategic Benefits**

- 5.1. Just as the Strategic Context set out above has four key strategic aims (as at paragraph 4.2), those same aims have been used to assess the strategic risks and benefits of the proposed spin out to a joint venture company. The detailed case for change is set out in the Strategic Business Case in paragraphs 40 to 69 in Appendix B.
- 5.2. Schools, elected members and residents would all share an ambition for schools in Sutton to remain as successful as they are currently, given the obvious benefits to our families and residents. There is however the need to assess the extent to which the proposed spin out to a JVC might contribute to securing that ambition
- 5.3. The Council priorities aim to 'make Sutton a place of choice to live and work' and the quality of our schools is inevitably a key attraction for many of our residents. The proposed company



would give the Council a role in linking up the capacity to improve with the undoubted systemic and financial changes that lie ahead.

- 5.4. The reputation enjoyed by Sutton's schools has huge potential for trading outside of the borough boundaries. However the capacity to do this sits partly in schools and partly within the Council so a JVC would ensure that the combined capacity of the LA and schools can continue to be used in a collaborative way to secure the biggest impact.
- 5.5. While a JVC is not the only way to maintain relationships with schools it offers us the potential to maximise the benefits of those relationships, not only for education outcomes but also for outcomes for children and families who are experiencing difficulties or where there is a risk of harm. A recent Association of Directors of Children's Services statement described schools as "the eyes and ears of children's social care". This is true of Sutton whether it is in identifying and addressing risks or in delivering early help support to families and young people.
- 5.6. Aligning the Council's role in education with policy direction is complicated at present by a combination of shifting national priorities and the scale of the change in the system at present. Although government policy asserts the benefits in academy conversion, a number of LA maintained schools in Sutton are unsure about the future structural arrangements for their school and they remain less than enthusiastic about the benefits of academy conversion.
- 5.7. The government ambition for no role for LA's in school improvement will place the responsibility solely on schools themselves to arrange peer to peer or other support. The LA role will be about brokerage and a JVC would facilitate that making it easier to align resources and capacity to meet needs, promoting collaboration within the system and sharing capacity and talents so that we retain the capacity to be at the forefront of school improvement.
- 5.8. At the heart of the case for change though is ensuring that as we look to capitalise on the benefits and opportunities that a JVC with schools could offer, it must also deliver the cost savings and efficiencies we will need.
- 5.9. The establishment of the JVC can enable management costs and other overheads to be spread over a broader cost base, therefore keeping unit costs down.
- 5.10. One key principle in the JVC is that for schools which join as partners, the focus for the JVC will be on ensuring that those schools can buy what they might need from the spin out company in ways which will sustain capacity while at the same time being lower cost to them than buying the same service on the open market.
- 5.11. Given funding constraints facing schools and the Council, there will be a continuing need to demonstrate efficiency in delivering services to schools and this is easier to do if the services remain in one place rather than being split up between the LA, external providers and schools themselves.
- 5.12. An alternative delivery model of a JVC would give the Council greater opportunity to deliver its statutory duties at minimum cost, particularly compared to in-house delivery where it will be increasingly difficult to hold down unit costs as the volume of activity shrinks.



- 5.13. We have also assessed the possible strategic risks, and the scope to mitigate those risks, against each of the four key strategic aims (as at paragraph 4.2). As with the possible strategic benefits, the detail on the possible strategic risks is set out in the Business Case in paragraphs 45, 46, 50, 51, 59, 67, 68 and 69 in Appendix B.
- 5.14. In summary the key risks are in essence driven by two core concerns – predicting the future of education policy, practice and funding arrangements and in ensuring that the proposed JVC with schools moves to a position of being at least cost neutral in line with the projections and expectations in the attached Business Plan, as set out in Appendix C.
- 5.15. Adapting to the future direction of education policy, practice and funding will in many respects present a challenge to both the Council and to schools regardless of any subsequent decision on the proposed JVC with schools. The key consideration therefore has been on whether or not the proposed model of service delivery might make those challenges any greater than they would otherwise have been and on whether or not the proposed model will give us the flexibility to respond to change in order to mitigate risk.
- 5.16. The proposed model of a JVC with schools means that the Council's budget reductions will be passed onto the company in the form of reduced contract payments. Whilst this provides the Council with a degree of certainty within its budget management arrangements it does not eliminate financial risk, but merely transfers it to the Council's company (for which the Council remains in the end responsible). There will be cost benefits for the Council in delivering through the proposed JVC but these will not be realised if the overall performance is short of expectations and targets. As a result the financial monitoring and evaluation arrangements will be a critical mechanism for the Council's mitigation of any additional financial risk in the proposed model of delivery.

## **6. Scope For Service Provision**

- 6.1. Education services are currently provided from three core sources of funding: Council-funded services which ensure the Council meets its statutory duties; DSG Central-Block funded services which the Council is responsible for providing/or commission and which are currently provided in-house; and services which are Council-funded discretionary services, sometimes supported by additional income from grants and/or trading with schools.
- 6.2. Therefore as well as considering HOW to best deliver services to schools and education in the future, the Council also has to consider WHAT to deliver and given the three funding sources, there are effectively three options. Appendix D sets out the functions that are in-scope, including information about their current sources of funding and implications of each of the models described here.

### **Model 1: Statutory Services Only**

- 6.3. This means that the Council would withdraw from delivering anything for which it did not have a clear statutory duty. It would not attempt to sell any services to schools. In addition it would only



deliver DSG-funded services where there was a statutory requirement to do so. The Council would cease to deliver services which are funded through the Central Block of the DSG and would instead commission those from a third party provider.

MODEL 1: STATUTORY SERVICES ONLY	
<b>Services Involved:</b>	<ul style="list-style-type: none"> <li>- SEN / Educational Psychology / Attendance / Home Ed / Children Missing Education / Alternative Education / School Exclusions / Admissions / Pupil Place Planning /</li> </ul>
<b>Funding Source:</b>	<ul style="list-style-type: none"> <li>- Statutory service funding comes from Council core budget</li> <li>- Some additional funding from DSG</li> </ul>
<b>Delivered to</b>	<ul style="list-style-type: none"> <li>- Statutory services to all schools in Sutton regardless of status – no cost to schools at point of accessing</li> <li>- Statutory services to all pupils who are resident and who meet the relevant access/threshold criteria (e.g. SEN) – no cost to schools</li> </ul>
<b>Cost Structure</b>	<ul style="list-style-type: none"> <li>- Statutory costs met by Council core budget</li> </ul>
<b>Outcome Focus</b>	<ul style="list-style-type: none"> <li>- Statutory duties for local authorities including</li> <li>- Oversight on Home Education</li> <li>- Ensuring due process followed for excluded pupils</li> <li>- Monitoring and tracking pupils missing education</li> <li>- Commissioning education for children unable to attend school due to illness, exclusion or other cause</li> <li>- Ensuring school attendance</li> <li>- Determination of admissions arrangements for community schools and co-ordinating admissions to schools</li> <li>- Oversight of Fair Access arrangements</li> <li>- Statutory assessment of Special Educational Needs (Co-ordination of procedures / Write and maintain Statements/EHCP's/ Statutory Transition plans/Statutory service for parental advice and information</li> </ul>
BENEFITS	
- Would align with DfE policy about removing LA role in school improvement	- Would allow less scope for economies of scale in delivery of education services
- Aligns well with most of government policy detail and intention	- Would leave Council needing to commission and client DSG Central Block funded schools from third party which may attract additional costs to Council-led delivery of those DSG services (either in-house or from spin-out)
- Would reduce risk to Council	
RISKS	



<p>savings</p> <ul style="list-style-type: none"> <li>- Would remove any Council liability for any change in services funded by DSG in future</li> <li>- Allows Council to be clear in determining how it supports schools and education</li> <li>- Could be cheaper overall to commission DSG services from third party provider but would depend on outcome of procurement exercise</li> </ul>	<ul style="list-style-type: none"> <li>- Commissioning DSG Central Block services from third party would leave Council with responsibility for quality, impact and outcomes but with less direct influence over service delivery outside of standard contract monitoring arrangements</li> <li>- Will reduce management capacity</li> <li>- Might result in additional need for statutory services if there is less link between statutory and support service work such as work in attendance to reduce prosecutions</li> <li>- Might impact on school engagement in Council's strategic priorities</li> <li>- Removes scope to secure additional income and so means cost savings would largely need to be delivered through reducing staff capacity</li> </ul>
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### Model 2: Statutory Services and DSG Central Block Funded Services

- 6.4. Under this option the Council would restrict its activities to commissioning or delivering those which were necessary to fulfil its statutory duties and those which are funded by the Central Block of the Dedicated Schools Grant. It would not deliver any services which were not statutory or DSG funded and therefore the Council would not offer any traded services to schools or other customers.

MODEL 2: STATUTORY SERVICES AND DSG CENTRAL BLOCK SERVICES	
<b>Services Involved:</b>	<p>Statutory Services: SEN / Educational Psychology / Attendance / Home Ed / Children Missing Education / Alternative Education / School Exclusions / Admissions / Pupil Place Planning</p> <p>DSG Services: Speech and Language / ASD / Hearing Impairment / Visual Impairment / Virtual School / Early Years Advisory / Traveller Education / English as Additional Language Support</p>
<b>Funding Source:</b>	<ul style="list-style-type: none"> <li>- Statutory service funding comes from Council core budget</li> <li>- DSG Central Block funding to range of services to support schools and education</li> </ul>
<b>Delivered to</b>	<ul style="list-style-type: none"> <li>- Statutory services to all schools in Sutton regardless of status – no cost to schools at point of accessing</li> <li>- Statutory services to all pupils who are resident and who meet the relevant access/threshold criteria (e.g. SEN) – no</li> </ul>



	<p>cost to schools</p> <ul style="list-style-type: none"> <li>- DSG Funded Services delivered to LA Maintained/Academies as per service specifications at present</li> </ul>
<b>Cost Structure</b>	<ul style="list-style-type: none"> <li>- Statutory costs met by Council core budget</li> <li>- DSG service costs met by DSG Central Block</li> </ul>
<b>Outcome Focus</b>	<ul style="list-style-type: none"> <li>- Statutory duties for local authorities including</li> <li>- Oversight on Home Education</li> <li>- Ensuring due process followed for excluded pupils</li> <li>- Monitoring and tracking pupils missing education</li> <li>- Oversight of Fair Access arrangements</li> <li>- Statutory assessment of Special Educational Needs (Co-ordination of procedures / Write and maintain Statements/EHCP's/ Statutory Transition plans/Statutory service for parental advice and information</li> </ul>
<b>BENEFITS</b>	
<b>RISKS</b>	
<ul style="list-style-type: none"> <li>- Greater volume of service provision would increase scope for cost efficiencies than just delivering statutory services</li> <li>- Funding for some of support services will reduce need for subsequent statutory spend (eg spend on inclusion support services will impact on number of pupils needing to be statutorily assessed for additional needs)</li> <li>- Avoids additional procurement costs that would accrue if only statutory service model</li> <li>- Aligns well with most of government policy detail and intention</li> <li>- Would reduce risk to Council savings</li> <li>- Continues to deliver services on schools' collective behalf, i.e. responds positively to Schools' Forum expectations</li> </ul>	<ul style="list-style-type: none"> <li>- School Forum may make decisions to discontinue funding to current services and this would need to be mitigated by building in agreements on phasing funding reductions to allow time to reduce capacity or discontinue a service in line with any Forum decision</li> <li>- Removes scope to secure additional income and so means cost savings would largely need to be delivered through reducing staff capacity</li> <li>- Would allow less scope for economies of scale in delivery of education services</li> <li>- Will reduce management capacity</li> <li>- Might result in additional need for statutory services if there is less link between statutory and support service work such as work in attendance to reduce prosecutions</li> <li>- Might impact on school engagement in Council's strategic priorities</li> </ul>



### Model 3: Statutory Services, DSG Services and Discretionary/Traded Services

- 6.5. This model is similar to what the Council currently offers to schools but with one critical difference. Currently the Council funds the discretionary services and targets them at those schools and/or pupils who may be most in need. In the future, the Council would only fund those services that are needed to meet the Council's statutory duties. Any discretionary service would either be traded to schools so that the capacity available was no greater than the traded income received or the service concerned would be reduced/discontinued.

<b>MODEL 3: STATUTORY, DSG CENTRAL BLOCK AND DISCRETIONARY / TRADED SERVICES</b>	
<b>Services Involved:</b>	<p>Statutory Services: SEN / Educational Psychology / Attendance / Home Ed / Children Missing Education / School Exclusions / Admissions / Pupil Place Planning /</p> <p>DSG Services: Speech and Language / ASD / Hearing Impairment / Visual Impairment / Virtual School / Early Years Advisory / Traveller Education / English as Additional Language Support / Schools Causing Concern</p> <p>Discretionary/Traded Services: some Early Years / some Educational Psychology, Education Business Partnership, School Improvement</p>
<b>Funding Source:</b>	<ul style="list-style-type: none"> <li>- Statutory service funding comes from Council core budget</li> <li>- DSG Central Block funding to range of services to support schools and education</li> <li>- Discretionary Service funding from trading with schools and other authorities, parental fees and grants</li> </ul>
<b>Delivered to</b>	<ul style="list-style-type: none"> <li>- Statutory services to all schools in Sutton regardless of status – no cost to schools at point of accessing</li> <li>- Statutory services to all pupils who are resident and who meet the relevant access/threshold criteria (e.g. SEN) – no cost to schools</li> <li>- DSG Funded Services delivered to LA Maintained/Academies as per service specifications at present</li> <li>- Discretionary / Traded Services – delivered to any maintained school and/or academy who decides to purchase the service</li> </ul>
<b>Cost Structure</b>	<ul style="list-style-type: none"> <li>- Statutory costs met by Council core budget</li> <li>- DSG service costs met by DSG Central Block</li> <li>- Discretionary services provided at 'cost' to schools who</li> </ul>



<b>Outcome Focus</b>	<p>are partners in the JVC</p> <ul style="list-style-type: none"> <li>- Discretionary services provided at 'cost plus' to schools who are not partners in the JVC</li> </ul>
<b>Outcome Focus</b>	<ul style="list-style-type: none"> <li>- Statutory duties for local authorities including</li> <li>- Oversight on Home Education</li> <li>- Ensuring due process followed for excluded pupils</li> <li>- Monitoring and tracking pupils missing education</li> <li>- Oversight of Fair Access arrangements</li> <li>- Statutory assessment of Special Educational Needs (Co-ordination of procedures / Write and maintain Statements/EHCP's/ Statutory Transition plans/Statutory service for parental advice and information</li> </ul>
<b>BENEFITS</b>	<b>RISKS</b>
<ul style="list-style-type: none"> <li>- Increased scope for economies of scale in delivery of education services by spreading overheads across a wider base, improving value for money</li> <li>- Increased scope for management capacity provision through aligning school and LA Management capacity</li> <li>- Increases scope to limit need for additional statutory service costs through effectively targeted support services</li> <li>- Closer relationship with schools to increase school engagement in Council's strategic priorities</li> <li>- Adds scope for income generation as additional measure to deliver cost savings alongside reducing staff capacity</li> <li>- Seeks to capitalise on Sutton's position as one of highest achieving education authorities in England</li> <li>- Maximises retention of employment within Sutton</li> <li>- Able to respond flexibly to commercial opportunities</li> <li>- Professional development</li> </ul>	<ul style="list-style-type: none"> <li>- A flexible approach to service offer would be needed to avoid risk of not aligning with national policy direction and local priorities of schools in response to that</li> <li>- Increased risk to Council savings requirement if projected income levels are not achieved over time</li> <li>- School Forum may make decisions to discontinue funding to current DSG services and this would need to be mitigated by building in agreements on phasing funding reductions to allow time to reduce capacity or discontinue a service in line with any Forum decision</li> <li>- Will be seeking to move to trading arrangement from low base</li> <li>- Likely to be increased competition from other LA's / provider</li> </ul>



<p>opportunities for Council and school staff involved in delivering services to new customers</p> <ul style="list-style-type: none"> <li>- Range of strategic benefits as set out in Business Case at Appendix B</li> </ul>	
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## 7. Models of Delivery

7.1. Since 2015-16 the Children Families and Education Committee has considered a number of reports on the scope and options for an alternative model of delivering Council services to schools and education. On 25 February 2016, the CFE Committee decided to pursue the option of a spin out for services to a Joint Venture company. This report therefore focuses on that preferred option from February 2016 and compares it to the other remaining option which is in-house delivery or commissioning of whatever services are to be retained. However for reference, a summary of the other models of delivery which have been considered previously and the reasons for rejecting those models is set out in Appendix A.

### *Option A: In-house delivery*

7.2. If the Council only provides statutory services or only provides statutory and DSG-funded services (as set out in Model 1 and Model 2 (paragraphs 6.3 to 6.6 above) there would be limited practical advantages to forming a new organisation to deliver only those DSG-funded and/or statutory services. There would be direct financial costs, as well as indirect costs in officer time, to set up a company and there would be little discernible additional value. Most of the strategic benefits arise from the opportunity to align resources between the Local Authority and schools and from the scope to trade services based on using the combined school improvement capacity between the LA and Sutton's good and outstanding schools. In addition as the company would be limited to one financial source (the Council if we deliver statutory only) or two financial sources (the Council and DSG if we deliver the services as per Model 2 at paragraph 6.5 and 6.6) it would have little to no scope to respond flexibly to any future reductions to either or both of these funding streams.

7.3. On that basis therefore, if the Council decided to deliver only statutory services or only statutory and DSG funded services, the recommended approach would be to continue to deliver those services in-house, with periodic soft market testing of the scope to shift to commission from a third party provider, especially if there are significant future reductions in the Council's statutory duties or in the Schools Forum's allocation of funding within the DSG.

### *Option B: JVC with schools*

7.4. If the Council delivers the combination of statutory, DSG-funded and Traded Services that are set out in Model 3 in paragraphs 6.7 to 6.8 above, then the proposed model of delivery would be through a Joint Venture Company with schools. The Business Plan, attached at Appendix C, forecasts that the proportion of funding from trading will increase over time compared to funding from central sources (LBS, DSG). It would still be possible to deliver the combined statutory,



DSG-funded and Traded Services through in-house delivery however. Therefore the table below at paragraph 7.5 considers the conditions for successful trading and compares the relative risks and benefits in delivering those Model 3 services through in-house provision or through a JVC with schools.



Comparison of In-House Delivery of Traded Services and JVC with Schools Model of Delivering Traded Services

<b>Conditions for success</b>	<b>Delivery vehicle: Option A In-house</b>	<b>Delivery vehicle: Option B JVC with schools</b>
Commercial expertise at senior executive level	Harder to recruit people with strong entrepreneurial ethos to a local authority	New organisation represents an exciting opportunity for the right individuals to shape the organisation in a commercially-focused way
Ability to respond quickly to market signals	Extended decision-making chain slows implementation of change, leading to a) delays in ceasing delivery of loss-making services and/or b) missing of opportunities for winning profitable business	New organisation can develop swifter decision-making arrangements
Ability to flex resourcing to meet market demands	The service has some experience of operating with flexible resourcing – for example the brokerage of school peer to peer support and the use of contract educational psychologists.	The JVC would continue to be able to flex resourcing to meet demands. There is no particular difference between the two options.
Close relationships established, maintained and strengthened with key customers	<p><u>Council</u> There would be no change to the existing, traditional line management reporting arrangements.</p> <p><u>Schools</u> There is an established pattern of trading services with schools, who increasingly understand that the authority will seek to trade discretionary services rather than funding them centrally. Relationships would continue to be maintained through existing processes (e.g. regular meetings with primary headteachers), but there would be no particular impetus or stimulation to strengthen relationships</p>	<p><u>Council</u> The Council would continue to be heavily involved in the JVC, both as owner and through contract management relationships.</p> <p><u>Schools</u> See para 5.5 above. By involving schools as part-owners of the business we would strengthen the relationship with them as customers, and would be better able to call on their support and advice in designing services for school customers.</p>
A commercial culture	While some local authorities increasingly have adopted a more commercial outlook (e.g. by establishing in-house trading arms) the Sutton approach differs to a degree by focusing instead on spinning-out potential commercial operations. Retaining traded education services in-house would thus run counter to the general thrust of Council policy and would not	Fundamental to the JVC model
Able to	In seeking to sell services to new	A JVC combines the best aspects



Conditions for success	Delivery vehicle: Option A In-house	Delivery vehicle: Option B JVC with schools
access new markets	customers (in particular schools/academies in other authority areas) the authority would potentially find that the attitudes towards local authorities developed from previous experience would act as a barrier to LBS entering the market	of local authority and commercial organisations from the perspective of potential new customers: reliable, knowledgeable and ethical on the one hand, customer-focused and energetic on the other.

7.5. Based on the above analysis, there are significantly more opportunities and benefits in setting up and using a JVC with Schools if the Council offers services which are a combination of statutory, DSG-funded and Traded Services.

*Governance*

7.6. The Strategy & Resources Committee has established as a sub-committee the Sutton Shareholdings Board to act as a shareholder board for Opportunity Sutton Ltd and Encompass. It is proposed that the Strategy & Resources Committee would be requested to approve that the Sutton Shareholdings Board also acts as a shareholder board for the proposed JVC with schools.

**8. Budget decisions**

8.1. Whichever option regarding range of services the Committee adopts (section 6 above), and whichever model of service delivery the Committee adopts (section 7 above), the Council has agreed budget reductions in education services, as set out in paragraph 3.6 above.

8.2. In addition the Schools Forum at its meeting on May 16 decided, following consultation with schools, to withdraw the central funding allocated to the Primary Learning Support Service. This equates to £427,000.

8.3. A package of measures to implement these decisions has been developed as set out in the table at paragraph 8.5 below and the Committee is requested to authorise the initiation of consultation with affected staff where there might be a need to change staffing structures to achieve the saving. Under Model 3 the intention is to seek to maximise the extent to which the savings can be delivered through additional income-generation, but this is not expected to eliminate the need for staffing reductions.

8.4. A number of the savings required have already been implemented, for example through agreeing some applications for voluntary redundancy under the Council's scheme.



## 8.5. Package of budget reductions to meet full-year budget savings targets.

<b>Function</b>	<b>Reduction (full year saving) £'000</b>	<b>Potential impact on staffing levels?</b>
Admissions & Place Planning	41	No
Music	138	Yes
Education Business Partnership	43	Yes
Attendance	161	Yes
Educational Psychology	83	Yes
Continuing Professional Development for school staff	23	Yes
PSHE advice	43	Yes
Early Years advice	47	Yes
Education at home	55	Yes
School improvement	285	Yes
Overheads reduction (in event of JVC formation)*	243	Yes
Management restructure	122	Yes
JVC efficiency improvement	121	Yes
<b>TOTAL</b>	<b>1,406</b>	
Primary Learning Support Service	427 (recycled within DSG, ie does not contribute to £1,406k target)	Yes

Note: overheads reduction item reflects net savings in the cost of back-office support and other overheads which are expected to be available in the event of the JVC being established. This assumes that following the establishment of the JVC there could be reductions in the cost of providing support services across the Council in addition to already planned savings in those support services. This needs to be further tested and confirmed.

## 9. Viability of proposed JVC

- 9.1. A draft business plan for the proposed company has been developed – see Appendix C – and the key points within the plan are summarised here.
- 9.2. The company's proposed objectives are aligned with the strategic aims set out in para 4.2 above. The financial forecasts have been prepared on a prudent basis and the company is predicted to make a loss of around £320,000 in its first year of trading, reflecting the costs of setting up and implementation periods for staffing changes to enable it to adjust to reduced income levels resulting from the budget decisions of the Council as its key customer.
- 9.3. It is forecast to make a profit of around £80,000 in year 2 and for this to almost double in year 3. Overall its income is predicted to fall over its first three years of operation, from £6.5m in year 1 to £6.0m in year 3. Over this period and beyond there is an expectation of significant changes to the funding of education services, and indeed this uncertainty is part of the rationale for establishing the company, reflecting that setting up a commercial delivery vehicle that can respond swiftly to both opportunities and threats is an appropriate way for the Council to seek to manage the uncertainty over this period.
- 9.4. In order to finance its operations the company is forecast to require a loan from the Council of £500,000. By the end of the third year of operation it is forecast that half of this loan would have been able to have been repaid.

## 10. Impacts and Implications

### Financial

- 10.1 This report sets out proposals intended to achieve agreed annual savings of £1.406m from the Council's budget for the services in scope over financial years 2016/17 (£946k) and 2017/18 (a further £460k). The proposals address two questions: what range of services should be provided (section 6 of the report), and what should be the delivery vehicle for that range of services (section 7)?
- 10.2 In respect of the range of services to be provided, adopting a narrower range of services (as in Model 1 – statutory services only – or Model 2 – statutory services and central block DSG services) reduces the range of options available to meet the savings targets, since neither of these Models allow the possibility of achieving savings through generating additional income. Model 2 would introduce additional costs (procurement and contract management) because the Council would still need to commission services from a third party on the School Forum's behalf if it were not providing them itself.
- 10.3 By seeking, in Model 3, to expand trading and generate surplus income to replace its own funding the Council would avoid or at least defer redundancy costs, but this benefit would be offset by increased exposure to the uncertainties that commercial operation brings.
- 10.4 In relation to the question of which delivery vehicle is to be used the options presented are an in-house operation (Option A) or delivery via a trading company (Option B). Whichever option is chosen there are significant uncertainties about future government policy changes, the appetite



of schools to buy services previously funded by the Council or from central DSG and the delivery of savings through a management restructure.

- 10.5 On the assumptions set out in the Business Plan the proposed company is financially viable, with company profit and loss forecasts showing a deficit in year 1 (September 2016 to August 2017) of £322k, before moving into profit in year 2 (£83k) and year 3 (£158k). The Company option would enable the Council to meet the agreed cost reductions set out in para 10.1 through a combination of cost reductions and additional income generation by selling services to schools and academies. However, there are a number of identified financial risks which may result in additional costs or reduced income compared to the business plan assumptions. In particular, latest information suggests that annual employer pension contributions may be £106k higher than originally assumed and if confirmed this additional cost will need to be met from additional income or reduced costs elsewhere.
- 10.6 The Business Plan assumes that the Company will make annual savings of £243k (about 17% of the total savings requirement) from reductions in the cost of support functions currently provided by the council including Finance, Internal Audit, Human Resources, Property, Procurement, Accommodation and Corporate Management. The exact service specification and cost of these functions to the company will be determined before company launch. There is an implicit assumption that any reduction in payments to the Council for the provision of support services will be matched by reductions in the cost of providing those services, but there is a risk that this will not be possible resulting in higher costs for the Council and a lower net Council saving.
- 10.7 The business plan forecasts that the company would require an interest-bearing loan to finance working capital requirements of £500k, with repayments of £100k at the end of year 1 and a further £150k at the end of year 3. The intention is that the Council would provide this loan, covering its interest and administrative costs. On the business plan assumptions the company would be generating surpluses from year 2 which could be used to service and eventually repay the loan. If the company under-achieves against the business plan projections then there is a risk of a partial or full default on the loan.
- 10.8 It is assumed that any redundancy costs required to implement the proposals set out in the report, including any that occur after the company is established, will be met by the Council, funded from the redundancy reserve.

#### Legal - Formation of Company

- 10.9 The Council has power to establish the proposed company under Section 1 of the Localism Act 2011.
- 10.10 Maintained schools have power to participate in companies to provide services or facilities for schools or to exercise relevant local authority education functions under section 11 of the Education Act 2002. The Company must comply with the School Companies Regulations 2002.



10.11 There will be a number of issues to be decided in relation to the company (further details below) including

- Its objects/purpose
- Its constitution/articles
- Its board of directors
- Which decisions are "reserved matters" for the owners of the company to make.

*Council functions to be transferred to the Company*

10.12 The Council has the power to arrange for many of its statutory education functions to be carried out by a company or that company's employees under the Deregulation and Contracting Out Act 1994 and Orders made under that Act. The Contracting Out (Local Education Authority Functions) (England) Order 2002 (as amended) lists local authority education functions which are capable of being contracted out to an external organisation. These include for instance school admissions functions, monitoring of elective home education and functions in relation to the scheme of finance for schools, and the religious education syllabus and SACRE.

10.13 For functions which the Council does not have power to contract out, the Council would commission advice and other services from the Company but key decisions would need to be made by Council officers or committee. This would for instance include school place planning where decisions are normally made by committee, and decisions in relation to school attendance prosecutions, home to school travel assistance and Education Health and Care Plans which would need to be made by officers or SEN Panel. It is expected that a further Order will be made under the 1994 Act in due course to cover amendments and new legislation since the 2002 Order was made and the decisions delegated to the company could be reviewed at this time.

10.14 The decision on which activities can be contracted out to the Company (and which need to be retained in the Council) will affect the shape of the Services to be contracted out, the detail of the contracts to be awarded to the Company and the size and nature of the "retained" staff/client side arrangements in the Council to monitor the contracts.

*Award of contract(s) without competitive procurement*

10.15 The intention is for the Council and schools with a shareholding in the company to enter into a contract/contracts with the proposed company for services to be provided without a competitive procurement. The company would need therefore to comply with the conditions set out in Regulation 12 of the Public Contracts Regulations and case law (more widely known as the 'Teckal' rules):

- The Council must exercise, jointly with the other contracting authorities being any Council maintained schools or Academy Trusts operating in the Borough, a control over the Company which is similar to that which they exercise over their own departments. This is proposed to be achieved with the Council, Council maintained schools or Academy Trusts operating in the Borough holding the shares of the company and governance



arrangements which will include appointing the majority of directors to the board of the Company, reservation of some matters for decision by the Council as majority shareholder and management of the contract between the Council and the Company.

- At least 80% of the activities of the company must be for its 'parent' organisations, i.e. the Council, and the participating Sutton schools and Sutton academies, so that sales of services to other (non-owning) customers would have to be kept to 20% or less (still a considerable amount of additional volume of activity). The Company's governance arrangements will prevent the breach of this limit without agreement from its owners.
- The private capital participation test precludes private companies or individuals from owning shares in the company. At present it is proposed that only the Council, maintained schools and academy trusts should be able to be shareholders in the company.

The arrangements for the company will need to ensure that the Teckal test is complied with. In terms of control, this will mean careful consideration of how the board of the company is constituted and also which decisions are reserved to the owners of the company (and are therefore not able to be decided by the board)

*Information about Type of company proposed and shareholdings*

10.16 Legal advice has been taken from the South London Legal Partnership and from (externally procured) specialist lawyers, Bevan Brittan LLP on all aspects of this project. Detailed advice on the type of vehicle appropriate for this project has been considered and the recommendation is that either a company limited by shares or a company limited by guarantee is a workable model. On balance a share company is recommended. This is a known model and is the approach adopted by other councils in setting up similar arrangements. It is proposed that the Council holds the majority of shares and participating schools hold the remainder of the shares.

Staffing

10.17 With respect to the transfer of staff to the company, the Council will need to ensure that it complies with the requirements of the Transfer of Undertakings (Protection of Employment) Regulations (as amended). Staff would transfer on their existing terms and conditions of employment. The company may need to consider whether it is necessary to restructure the staff and/or reduce staffing levels for delivery of the Services.

Property

10.18 Alternative premises are under consideration for housing some of the teams in scope, in order to improve value for money of office accommodation. It is expected that in the first year of operation the company will seek to consolidate staff from their current three locations into one.

Integrated Impact Assessment

10.19 An initial IIA has been produced and is attached as appendix E.



**11 Appendices and Background Documents**

<b>Appendix Letter</b>	<b>Title</b>
A	Models previously considered
B	Strategic business case
C	Draft business plan
D	Services in scope
E	Initial IIA

<b>Background Documents</b>

<b>Audit Trail</b>		
Version	Final	Date: 1 June 2016
<b>Consultation with other officers</b>		
<b>Officer</b>	<b>Comments Sought</b>	<b>Comments checked by</b>
Finance	Yes	Phil Butlin
Legal	Yes	Sarah Willis
HR	Yes	Helen Gibbs
Property	No	



## APPENDIX A: MODELS PREVIOUSLY CONSIDERED

1. The report to Committee in February 2016 on the Education Services Spin-out reviewed a number of options for alternative delivery models for education services. Elements of that report are reproduced here.

### Delivery vehicle – selection criteria

2. In recommending the type of delivery vehicle that might provide services to Sutton schools and the Council the following criteria were used to assess options.

*Criterion 1: Will the vehicle help to strengthen relationships between the Council and Sutton schools/academies?*

*Criterion 2: Will the vehicle provide a sustainable and reliable basis for schools to access the services they need and which they have previously largely accessed from the Council?*

*Criterion 3: Will the Council and schools be able to manage contractual relationships with the vehicle without having to develop a significant client-side resource?*

*Criterion 4: Is the vehicle capable of being implemented in a legally compliant manner by September 2016?*

### Options Considered

3. Six options were considered and assessed against the criteria set out above.

4. The options for delivery vehicles were as follows.

#### Procurement of a private sector delivery partner

- a. This option would require a significant client-side resource to ensure that the partner delivered against the contractual requirements, and therefore fails against criterion 3. It is probably weak against criterion 1 (although this has not been tested with schools) and fails against criterion 4, with advice from procurement experts indicating that April 2017 would be a realistic timescale for implementation.

#### Transfer services to an existing local education provider

- b. As set out in para 4.1 above this option fails against criterion 4. Furthermore it is far from certain that other schools would feel confident in purchasing services from another local provider without investing in a degree of contract management resource, thus making it weak against criteria 1 and 3.

#### Shared service with another local authority

- c. Achieving for Children, the shared service between Richmond and Kingston which encompasses a broader range of services (notably children's social care), have previously indicated that they would not be interested in incorporating Sutton education service functions into their company. Sutton and Merton are already involved in some sharing of education functions on a small scale, but Merton have indicated that they do not expect to be dramatically altering the nature of how they deliver support to schools and thus are not likely to be a suitable partner. Croydon have already spun-out some of their services into a trading company and



have decided to position themselves as a competitor. Looking further afield beyond these authorities it is not considered feasible to identify a suitable partner and negotiate the detail of a shared service arrangement by September, and this option therefore fails against criterion 4.

Employee-led mutual

- d. For an employee-led mutual to succeed requires leadership from within the service to drive the implementation and subsequent operation of the new organisation. As set out in para 4.2 above there is no evidence of leaders stepping forward to drive this project. This option, though considered strong against criteria 1 and 4, would therefore fail against criterion 2. In addition client-side resource to ensure that the organisation delivered against the contractual requirements would make it weak against criterion 3.

Local authority trading company (100% owned by the Council)

- e. This option is strong against criteria 2, 3 and 4, but probably would not deliver strongly against criterion 1, since from a school's point of view it would probably simply replace an existing relationship with the Council for a new relationship with the Council's trading company.

Local authority trading company (jointly owned by the Council, Sutton school governing bodies, Sutton academy trusts)

- f. This option is strong against all criteria. Specifically it is expected to promote a strong, mutually beneficial relationship between the Council and those schools and academies who choose to participate in it. It is hoped that most, if not all, governing bodies and academy trusts will see the benefit of participating in the company, increasing their influence over the nature and price of services offered to them compared to the current arrangements, and giving them an opportunity to benefit more directly from successful trading. Sutton schools' performance against national indicators stands comparison with the best in the country. By involving schools in the ownership of the company we would be better able to access the expert resources in schools to develop attractive and marketable offers to schools outside Sutton, improving the company's sustainability and also enhancing career development opportunities for school employees. The balance of funding as between the Council and schools will shift over time, with an increasing proportion of the company's income coming from schools. In that context it makes sense for schools, expected to be major customers of the company, to have a major stake in its success.

Summary of options against criteria

5. The table overleaf summarises this analysis, allocating scores of 0 for failure against a criterion, 2 for clear success, and 1 for partial success or unknown.



Criterion Option  	Private sector partner	Existing local education provider	Shared service	Employee-led mutual	Trading company LBS owned	Trading company Jointly owned
1: Strengthen relationship with schools	1	1	1	1	1	2
2: Provide sustainable, reliable service delivery for schools	2	2	2	0	2	2
3: Significant client-side resource not required	0	0	1	0	2	2
4: Capable of implementation by September 2016	0	0	0	2	2	2
<b>Total score</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>3</b>	<b>7</b>	<b>8</b>

#### Conclusion

6. The Committee agreed that the jointly-owned trading company was the preferred option.

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