



## Report to Policy Committee

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**Report of:** Andrew Jones

**Report to:** Education, Children & Families Policy Committee

**Date of Decision:** 13 December 2022

**Subject:** Future of School Improvement and the Learn Sheffield Commission

Has an Equality Impact Assessment (EIA) been undertaken?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
If YES, what EIA reference number has it been given? (1318)				
Has appropriate consultation taken place?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Has a Climate Impact Assessment (CIA) been undertaken?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Does the report contain confidential or exempt information?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below: -				

### Purpose of Report:

The purpose of this paper is to provide the committee with a summary of the Learn Sheffield commissioning arrangements and outline potential recommendations for next steps following the current commission end date.

**Recommendations:**

It is recommended that the Education, Children and Families Policy Committee:

1. Note the work currently undertaken by Learn Sheffield, the changes in Government guidance and the decision taken by Schools Forum regarding funding for school improvement;
2. Endorse further work being undertaken to develop option 3, noting the risk areas and mitigations needed if the commission ceases or is significantly changed;
3. Note the circumstances that would require SCC to resign as the Supervising Authority of the school company; and
4. Agree to seek agreement from School Forum to de-delegate funds from school budgets to provide a service co-created with school leaders (such agreement to come into effect should option 3 ultimately be agreed by the Committee).

**Background Papers:**

School forum's agreement to de-delegate £268,000 until 31 August 2023  
[Reforming how Local Authorities School Functions are funded \(DfE 2021\)](#)  
[Schools Causing Concern Guidance \(DfE 2022\)](#)

**Lead Officer to complete: -**

1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: Kayleigh Inman and Anna Beeby
		Legal: Louise Bate and Marcia McFarlane
		Equalities & Consultation: Bashir Khan
		Climate: <i>Jessica Rick</i>
	<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	<b>SLB member who approved submission:</b>	<i>Andrew Jones</i>
3	<b>Committee Chair consulted:</b>	<i>Cllr Rooney/Cllr Dale</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Committee by the SLB member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	<b>Lead Officer Name:</b> <i>Kim Wilson</i>	<b>Job Title:</b> <i>Assistant Director of School Effectiveness</i>
	<b>Date: 6 December 2022</b>	

# 1 PROPOSAL

## Background

- 1.1 Learn Sheffield is a school company established in accordance with the Education Act 2002, the School Company Regulations 2002 and the Companies Act 2006. The company is limited by guarantee and has 2 cohorts of membership – Sheffield City Council (SCC) holds 20% of the voting rights and participating schools (including academies and colleges) hold 80%.
- 1.2 The company was established following Cabinet approval on 22nd July 2015 and has subsequently been commissioned to manage and deliver school improvement services across Sheffield. Learn Sheffield provides support and challenge to schools and colleges. Their goal is to ensure Sheffield children receive the best education in the country, so that our young people's achievement and readiness enables them to be active citizens of Sheffield.
- 1.3 Learn Sheffield is currently commissioned by SCC to deliver the statutory duties relating to school improvement. Following cabinet approval in July 2021 a further contract was entered into. This contract runs for a period of 2 years from 1st September 2021 until 31 August 2023.
- 1.4 The statutory duties relating to school improvement include;
- Understand the performance of maintained schools in their area, using data as a starting point to identify any maintained school that is underperforming, while working with them to explore ways to support progress
  - brokering school improvement provision for maintained schools,
  - intervening in maintained schools as appropriate
  - encouraging good and outstanding maintained schools to take responsibility for their own improvement; support other maintained schools; and enable other maintained schools to access the support they need to improve.
  - making provision to carry out statutory assessment duties for key stage 2
  - advising on the appointment of headteachers in maintained schools
  - limited duties in relation to school governors

## Financial position

- 1.5 Learn Sheffield has 2 main sources of income – funds received via the SCC contract and a subscription offer that has been available to schools in the city since April 2018. Currently approximately 90% of all schools in the city subscribe to the organisation.
- 1.6 Until recently SCC utilised a School improvement Monitoring and Brokering Grant to support investment into the Learn Sheffield commission. Since 2017, the Grant has been provided to support councils to fulfil their core improvement activities, with the amount received by each council

proportionate to the number of maintained schools in their area. These core improvement activities are set out in Part 4 of the Education and Inspections Act 2006 (the 2006 Act) and on page 47 of the Schools Causing Concern guidance.

- 1.7 In 2021/2022 Sheffield received a grant of £268k which was transferred to Learn Sheffield, supplemented by an additional Dedicated Schools Grant (DSG) allocation to deliver school improvement responsibility.
- 1.8 In October 2021, the Education and Skills Funding Agency (ESFA) launched a consultation on the future of the grant beyond March 2022. This proposed that in future these functions be funded from maintained school budgets and that the grant be reduced by 50% from March 2022 and full removal from March 2023.
- 1.9 The ESFA have proceeded with the plans outlined in the consultation. The 50% reduction of the grant is now in place. The grant ends fully in March 2023.
- 1.10 In February 2022, following consultation with Learn Sheffield and maintained schools, a paper was presented to School Forum which recommended a restructure to the Learn Sheffield commission.
- 1.11 In February 2022 School Forum agreed to continue to de-delegate funding to maintain the commission to August 2023 after which time Learn Sheffield will cease being responsible for fulfilling the council's core school improvement activities unless SCC negotiate a new contract using an alternative source of funding outside of school finances.
- 1.12 From September 2023 Learn Sheffield intend to continue to deliver services to schools and other organisations and be funded by a fully traded model.
- 1.13 The total value of the Learn Sheffield commission for a full year is broken down as follows:

<b>Amount</b>	<b>Purpose</b>
£137,500*	Main commission for school improvement
£85,000	'Service in kind' that provides data to Learn Sheffield
£30,000	'Service in kind' to Learn Sheffield that supports crisis communication
£56,000	To support provision of a finance post at Learn Sheffield
£40,000	To support the strategic Leadership at Learn Sheffield
£35,000	'Service in Kind' to Learn Sheffield as a contribution to rent at Albion House
<b>383,500</b>	<b>Total within the main commission</b>

- 1.14 Schools Forum agreed to de-delegation of £268,000 of the above values until 31<sup>st</sup> August 2023 when their expectation is that Learn Sheffield develop a fully traded model. This was agreed at School Forum in February 2022. If SCC chose to enter any further contract with Learn Sheffield and wish to utilise school finances School Forum would be required to approve the de-delegation of funding. If this was not approved, then SCC would need to find an alternative source of funding outside of school finances.

### **Options**

- 1.15 To determine how SCC will fulfil their core school improvement activities from September 2023 the following options are available:
- 1.16 **Option 1** – Offer a new contract to Learn Sheffield at the existing contract value. This would require SCC to either seek approval from School Forum for investment or find alternative funding. School Forum have already agreed that de-delegation of this amount should end on the 31<sup>st</sup> August 2023 and it is therefore unlikely that they would overturn that decision. No alternative funding is available.
- 1.17 **Option 2** – Offer a new contract to Learn Sheffield at a reduced contract value to deliver a reduced service to include just the statutory minimum. This would require SCC to either seek approval from School Forum for investment or find alternative funding. School Forum have already agreed that de-delegation should end on the 31<sup>st</sup> August 2023 and it is therefore unlikely that they would overturn that decision. No alternative funding is available.
- 1.18 **Option 3** – Provide no further investment in Learn Sheffield. The Learn Sheffield contract would be allowed to come to its natural end, and SCC would fulfil the core school improvement activities, currently provided by Learn Sheffield, directly to schools. This is the recommended option.
- 1.19 It is proposed that the funds for SCC to implement this option would be sourced by;
- saving on services in kind currently provided to Learn Sheffield
  - de-delegating an agreed amount from maintained schools' budget shares.
- 1.20 This approach is in line with the latest DfE guidance in Schools Causing Concern and "Reforming how Local Authorities School Functions are funded" (DfE 2021).
- 1.21 The additional cost that SCC will require through schools' budgets would need the approval of School Forum, although the DfE are clear that Local Authorities must remain adequately funded for these core functions and where agreement cannot be reached with a School Forum the Secretary of State has the power to intervene.

1.22 SCC would work with School Forum to agree an amount based on a costed service designed following consultation with school leaders. This would support the drive towards a school-led improvement system by putting more decisions about improvement provision to schools in the hands of school leaders via the School Forum.

1.23 SCC would seek agreement with School Forum at the earliest opportunity.

### **Supervising Authority**

1.24 Learn Sheffield is a School Company with SCC as the Supervising Authority. The status of the company would continue at the end of the contract.

1.25 A School Company is set up by one or more maintained Local Authority schools, exercising their statutory powers under Section 11-13 of the Education Act 2002. A school company can undertake 3 types of activity:

- purchasing goods and services for schools in the company
- providing services or facilities to other schools either directly or facilitating that provision by a third party
- exercising functions which a LA can contract out

1.26 The School Companies Regulations 2002 (“Regulations”) provide that each school company must have a Supervising Authority to ensure that it is run on a sound financial footing. This is intended to provide a protective framework for companies to operate within, but the Supervising Authority will not intervene in the day-to-day running of the company. Regulations stipulate that a Local Authority must be the supervising authority (which includes monitoring and management of finances of that company).

1.27 The functions of the Supervising Authority include:

- Monitoring the management and finances of the school company, including scrutiny of audited annual company accounts
- Considering requests from school companies to borrow
- Notifying the Secretary of State of company membership, name or registered number and any changes to these details within 28 days
- Directing governing bodies to withdraw from a school company in certain circumstances

1.28 The regulations do not stipulate a requirement for SCC to be a director or a member of the school company, its responsibility sits only as a supervising authority (under the Education Act).

1.29 Should all the governing boards of schools maintained by the Supervising Authority cease to be members of the company, the supervising authority must resign from its role by serving 56 days’ notice on the company.

## **Teckal Exemption**

- 1.29 Teckal exemption is a well-established principle of EU procurement law. The open advertising and tendering rules for public contracts do not apply where a public body obtains services from "in-house" sources. The European Court of Justice held that a public body could bypass the EU procurement rules and directly enter a contract with a service provider so long as:
- The public body controls the service provider in question as if it were that public body's own department; and
  - The service provider in question carries out the essential part of its activities with the contracting authority which controls that entity.
- 1.30 Linked to the School Company status SCC can purchase services or facilities directly from Learn Sheffield without having to undertake a competitive tendering exercise.
- 1.31 In relation to Learn Sheffield, this is not necessarily control by SCC alone. The requirement is as joint controllers (with the other members) but being the only legal entity holding as much as 20% voting rights, SCC has sufficient 'control' to satisfy the Teckal test for the Procurement regulations. In terms of the company membership, both maintained schools and academies are contracting authorities. Together the schools and SCC as members of Learn Sheffield exercise the requisite control.
- 1.32 SCC entered a contract with Learn Sheffield under Teckal exceptions based on SCC being the supervising authority and exercising the control. Any changes to SCC role in Learn Sheffield for the duration of the contract could mean that Teckal Exemption is no longer valid and mean that the contract does not meet procurement regulations. In response to this any changes to SCC in this School Company must take place after the current contract has ended.
- 1.33 If SCC chose to cease to be a member of Learn Sheffield any further commissions for Learn Sheffield would not be a direct award and would instead need to be managed within usual procurement processes.

## **2 HOW DOES THIS DECISION CONTRIBUTE**

- 2.1 The Sheffield school improvement strategy outlined the vision that the school system can provide the platform for Sheffield children to receive the best possible education. It recognises that all schools need to improve continuously. The purpose of this proposal is to enable SCC to support and challenge schools more effectively to achieve that aim.

## **3 HAS THERE BEEN ANY CONSULTATION?**

- 3.1 There has been consultation with Learn Sheffield and School Forum

## 4 RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

### 4.1 Equality Implications

- 4.1.1 There will be a better coordination and integrated school improvement services with other services provided by the Council which will help in improving Schools.

Improved schools will be better equipped to support better outcomes of a diverse range of pupils, which will support improved longer terms outcomes.

### 4.2 Financial and Commercial Implications

- 4.2.1 Options 1 and 2 would require SCC to secure additional funding which is not available. If Option 3 is agreed the learn Sheffield contract would end and SCC would fulfil the core school improvement activities. As described in section 3 this would be funded by:

- saving on services in kind currently provided to Learn Sheffield (£115)
- de-delegating an amount agreed by school forum from maintained schools' budget shares

- 4.2.2 The table below outlines the financial implications of the 3 options.

<b>Option</b>	<b>Total Finance required</b>	<b>Additional cost to SCC</b>
Option 1 (maintain existing contract value)	383,500	268,000 + 115 in kind
Option 2 reduce contract value	To be agreed	Agreed amount + 115 in kind
Option 3	To be agreed and funded by de-delegation from school budgets	115 in kind

### 4.3 Legal Implications

- 4.3.1 The relevant education functions which must be delivered to schools by the local authority are set out within the main body of the report at paragraph 1.4.



- 4.3.2 The relevant functions which must be delivered by the local authority in its capacity as a Supervising Authority are set out within the main body of the report at paragraphs 1.24 – 1.28.
- 4.3.3 New Procurement Rules are expected to come in force by March 2023 coinciding with the ending of the current contract with Learn Sheffield. The continuation of Teckal principles are being debated in parliament, so new rules may limit the extent to which this procurement exemption remains available for option 1 and 2.
- 4.3.4 Option 3 will require the Council to use provisions in the current contract to facilitate smooth transfer of services. There will also have to be careful due diligence checks to ensure the council complies with all legal and financial obligations that result from the council withdrawing from the company and ending its commercial arrangements with Learn Sheffield.
- 4.3.5 There will have to be staff consultation and discussions to properly understand the extent to which employment rights may be affected if the Council starts to deliver services to the remaining maintained schools in the city and pension issues that are considered at the end of a contract will have to be addressed. This will require considerable input from the council's HR Services.

#### 4.4 Climate Implications

No significant climate impacts identified

#### 4.5 Other Implications

In considering the options for the future of this work, the following risks need to be considered:

##### **Service Continuity**

- 4.6 If Learn Sheffield was decommissioned, planning and mitigation of risk would need to be carried out against the current delivery areas. Does the LA have either the internal capacity or capabilities to carry out these functions, or deem them to be no longer needed?

##### **Access to School Improvement Expertise**

- 4.7 Learn Sheffield provide access to a number of education professionals that would no longer be contracted and may be unavailable to SCC as Learn Sheffield begins to work in other Local Authority areas.
- 4.8 As Learn Sheffield builds a traded model with Sheffield Schools collaborative joined up approaches and messages to schools may become disjointed and confused
- 4.9 There is the potential for duplication and wasted resources.

## **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 The Council must make suitable arrangements to delivery statutory services to maintained schools following the end of the grant funding period, and the options are detailed in paragraphs 1.15 – 1.23 above.

## **6 REASONS FOR RECOMENDATIONS**

- 6.1 Developing Option 3 will allow SCC to move towards delivering services directly to its maintained schools. This would enable SCC to:
- Make more effective use of a significantly reduced resource
  - Know its schools better
  - Allocate limited resources more appropriately
  - Build stronger relationships with school leaders and governors
  - Ensure support, challenge and intervention is better matched to need and provided in a more timely way
  - Better coordinate and integrate school improvement services with other services provided by the council such as inclusion and SEND
  - Have more confidence they are fulfilling their core school improvement activities