

Future delivery of the Education and Skills service – briefing for staff

Introduction

The current contract between the London Borough of Barnet and Cambridge Education began in April 2016 and is due to end on 31 March 2023. Due to the impact of Covid19, discussions are now taking place about ending the contract on 31 August 2020.

The council is considering 2 options for the future of the Education and Skills service if the current contract does end. Under both options, the service will be protected and all staff will transfer under TUPE on their current terms and conditions.

The purpose of this briefing note is:

- To share information on the issues and challenges
- To explain the options under consideration
- To set out the timeline and next steps
- To invite suggestions and comments

Background and Context

In April 2016 Barnet entered into a new seven-year strategic partnership with Mott MacDonald, trading as Cambridge Education, to provide all of the council's education services. The partnership was established in consultation with Barnet schools following a detailed options appraisal and procurement process. The aim of establishing the partnership was to:

- Maintain Barnet's excellent education offer
- Maintain an excellent relationship between the council and schools
- Achieve the budget savings target for the service up to 2020.

The contract is due to expire on 31st March 2023 with an option to extend for any period up to a maximum of three years, potentially extending the contract up to the end of March 2026.

The performance against all three of the stated objectives for the partnership has been strong and the benefits that were expected from the partnership have been realised. Educational progress and achievement have improved consistently year on year. 96.8% of Barnet schools are good or outstanding and Barnet is now in the top 10% for almost all measures and the top 5% for many of the measures. The £1.885m budget savings target for the service up to 2020 has been achieved and the excellent relationship with schools has been at least maintained.

Service delivery and impact of COVID-19

Mott MacDonald, an employee-owned company, operate under the name of Cambridge Education Ltd for their education services. Their core business is management, engineering and development consultancy.

The unprecedented nature of the COVID-19 pandemic has had significant impacts on the contract delivery model and Mott MacDonald notified a Force Majeure event under the contract in April, noting the potential effect of the event (covid19) on the performance of the obligations under the contract with the council. Under this Force Majeure event the council is providing temporary financial support to mitigate against these impacts, in accordance with Cabinet Office guidance.

As a result of the complexities and consequences of the COVID-19 crisis there would need to be substantial revisions to the way in which Mott MacDonald delivered the Education and Skills contract.

The council and Mott MacDonald have now entered into negotiations regarding the future of the contract, with a view to agreeing a controlled exit by mutual consent.

This means that the council needs to consider urgently the best way of delivering the Education and Skills service in the future in order to protect the council, its relationship with schools and services for children and young people.

Timescale

A report was submitted to the council's Policy and Resources Committee on 17th June 2020, setting out the current situation and giving authority to the Executive Director for Children and Young People to make a decision on the future arrangements for the current contract and, if this decision involves terminating the current contract earlier, considering what options are appropriate for future delivery of the services. This report was confidential due to the negotiations between the council and Mott MacDonald being ongoing.

Schools are being consulted on these proposed options, in case a decision is made to terminate the contract between the council and Mott MacDonald. The timescale is limited to ensure that any future decisions fit into the school year. Consultation is open between 18th June and 3rd July. The responses to the survey will be considered by the Executive Director for Children and Young People when making any future decision on delivery of the Education and Skills services.

We do appreciate that this is a short timescale in which to consult and decide on any future delivery model but we know that schools are all too aware of the many, rapid and significant changes that have had to be made as a result of COVID-19.

The initial options appraisal

In response to the request by Cambridge Education to terminate the contract with the council, council officers considered 4 options in an initial options appraisal.

1. Bring the service back in house
2. Transfer all services into a Local Authority Controlled Company
3. Ask Cambridge Education/Mott MacDonald to continue to deliver the service
4. Re-procure the service through a competitive tender

This initial options analysis was included in the confidential report that went to Policy and Resources Committee on the 17th June, at which the recommendation was agreed that only options 1 and 2 should be taken forward for consultation and further analysis in a full business case.

The council will choose Option 1 or Option 2, in the light of responses to consultation, if it is decided to terminate the existing contract. If it decided not to terminate the existing contract, because agreement cannot be reached on the terms of termination, the council may still choose option 3.

Option 4 - re-procure the service through a competitive tender is not being taken forward because:

- The procurement process would be time consuming and would lead to the existing contract having to continue for some time.
- There would be a significant cost to undertaking a procurement.
- Risk that no providers bid for the contract as there is no market currently.
- Risk that staff leave

The two options being taken forward for consultation with schools and further analysis

The two options which are therefore being taken forward for consultation and further analysis in a full business case are option 1 and option 2:

Option 1: Bring the service back in house

Option 2: Transfer all services into a Local Authority Controlled Company (LACC)

Appendix 1 provides outline descriptions and the advantages and disadvantages of each model.

Catering

Under both options it is proposed that the ISS contract will continue and that the contract will be novated to the council, which means the current contract under which ISS provides a catering service to schools will change from being a contract between Mott MacDonald and ISS to a contract between the council and ISS. Under both options, the Education and Skills service may be asked to manage the contract on the council's behalf.

Next steps

- Briefings for headteachers - 19th June
- Briefing for Parent Carer Forum next week
- Opportunities for 1 to 1 meetings and/or team discussions (19th June to 3rd July)
- Final date for staff comments and for schools' survey – 3rd July

Provided negotiations have concluded and there is an agreement between the council and Mott MacDonald on arrangements to terminate the contract, a decision will be taken by the council on whether to go for option 1 or option 2 on 6th July. This would then be followed by:

- The start of TUPE consultation - 6th July – with meetings for all staff, followed by 1 to 1 meetings for individual staff.
- End of TUPE consultation – 20th July
- Appeals – 22nd to 27th July
- Letters to staff confirming transfer arrangements 30th July
- Services transfer and staff transfer under TUPE 1st September

Questions and comments

Staff may ask questions or submit comments about this briefing note to their line managers or Assistant Director, or questions or comments may be sent to eands.support@barnet.gov.uk by 4pm 3rd July.

Ian Harrison
Education and Skills Director

19th June 2020

Initial analysis of options by the council

Option 1 - Bring the service back in-house

This would involve a TUPE transfer of all of the existing staff into the council. Many of the staff remain the same that were in the original TUPE to Cambridge Education so the majority of staff are likely to be retained, however with any TUPE there is a risk that some staff may leave. As with any staff joining a local authority, staff would be auto enrolled onto the Local Government Pension Scheme, which would impact the financial cost of the service. Based on current staffing this is estimated to be £640k per annum.

Governance

The council would become responsible for appointing and managing staff. The council would have strategic oversight of services and would continue to consult with schools on service provision and strategic direction.

The partnership structure would be similar to the current arrangements, with the partnership boards for key education strategies and education strategies going from partnership boards to the Children and Young People's Partnership Board.

With this option the catering contract with ISS would transfer to the Council.

This option would also save on the Cambridge Education management overheads for future years less the cost of any functions that will still need to be provided, such as HR and payroll, insurance, pension administration and audit costs. The net saving from this is estimated at £300k.

Potential advantages	Potential disadvantages
Relatively quick to implement	Additional costs as staff recruited by Mott Macdonald after the contract transferred, as well as new recruits in the future, would be auto enrolled onto LGPS.
Saving on the management costs, less the cost of any functions that will still need to be provided, such as HR and payroll, insurance, pension administration and audit costs.	Would increase time requirements from senior staff in the council to deal with education related issues and decisions
Would remove the need for contract management, other than for the ISS contract.	Risk that traded income would reduce as schools may be less likely to buy from the council resulting in a reduction in services
Staff likely to transfer back in house so risk of staff leaving is low	Potentially less involvement from schools in governance arrangements compared to LACC option.
Greater control of finances and so potential to deliver further savings	Potentially less flexibility to develop traded services and thus generate additional income.
Opportunity for greater integration with children's social care and other council services.	A less autonomous organisation may lead to some staff choosing to leave.
Recruiting new staff may be made easier, if LGPS is part of the remuneration package.	Financial risk sits with the council

Focus would be on Barnet and Barnet schools	
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Option 2 - Transfer the service into a Local Authority Controlled Company

This model would involve the council setting up a Local Authority Controlled Company (LACC) and transferring the Education and Skills services to the company.

A Local Authority Controlled Company would be a company wholly owned by the council, but with substantial autonomy to manage and deliver services. It would be a company dedicated to the delivery of education services to schools, settings and local communities. Any profits would be re-invested in education services or paid to the council for investment in local services. There would be a Board of Directors, which would include headteacher representation. As with other options, the existing staff and senior management of the Education and Skills service would be expected to remain in post.

Legal Form

The LACC would be a separate legal entity but would be wholly owned by the local authority. The legal form would be a company limited by shares – any profit generated would be reinvested in services or distributed back to the local authority. The company would be structured as a ‘Teckal’ company in order to be able to award or novate a contract to the company without undertaking a competitive procurement process.

The sub-contract with ISS to provide catering services

Under this option, the catering contract with ISS would be novated to the council, rather than transferred to the LACC. However, the LACC would be commissioned to manage the ISS contract on behalf of the council.

Governance

The LACC would have a Board of Directors, which would set the direction for the company and oversee all matters relating to budgets, staffing and the operation of services. The Articles of Association would set out requirements for LA officers and/or members to be elected to the board, as well as Head Teacher representatives.

The rest of the governance structure would be similar to the current arrangements with boards for key education strategies and education strategies going from partnership boards to the Children and Young People’s Partnership Board.

Contracting arrangements

The current contract with Mott MacDonald would novate to the new LACC. This would mean that all of the current contractual requirements, such as around Key Performance Indicators, would remain as they are currently.

The technical legal steps to incorporate a company are relatively straight forward and can be done quickly.

Financial implications

This option would save on the Mott MacDonald management overheads. These costs could be saved, less the cost of any functions that will still need to be provided, such as HR and payroll, insurance, pension administration, company administration, legal advice and audit costs. The net saving on this is estimated to be £250k.

It would also mean that there would be no requirement for existing staff who did not TUPE transfer to CE from the council to be on LGPS so they could transfer to a pension scheme

that is broadly similar to the Motts scheme and any new staff could join the same scheme. This is not a saving but means that there should be no increase in pension costs, which there would be with the in-house option.

Potential advantages	Potential disadvantages
Enables the development of a specialist education focused organisation solely focused on delivering best education outcomes for children and young people.	Would require a bigger project, with more time and resourcing, to implement than bringing in-house.
Builds on the existing partnership between the council and schools with increased ownership from schools who could be represented on the Board of Directors	Requires investment to develop the model - legal, tax, pensions advice
Offers leaders and managers greater autonomy and flexibility to develop education focussed policies, processes and delivery, where they are not subject to statutory functions	Less control from the council than if the service were in-house. That autonomy brings many of the benefits but is also a risk.
Allows for opportunity to be innovative and for schools to be directly involved in the development and strategic direction of the company.	Reliance on Teckal exemption would limit overall ability to grow traded income beyond 20% but there is an option to establish a subsidiary company
Being a separate company allows the service area to continue to be structured outside of the council's framework of decision making for non statutory functions, resulting in more flexibility for the operating model, subject to existing governance arrangements.	Ultimate financial risk still sits with the council
Potentially less expensive than insourcing because there is no requirement for existing staff who did not TUPE transfer to CE from the council to be on LGPS so they could transfer to a pension scheme that is broadly similar to the Mott MacDonald scheme and new staff could join the same scheme	Continuing potential challenge in recruiting new staff, if LGPS is not part of the remuneration package, especially for more senior posts.
Savings on the Mott MacDonald management costs less the cost of any functions that will still need to be provided, such as HR and payroll, insurance, pension administration, company administration, legal advice and audit costs.	Continuing potential challenge in recruiting new staff, as the company is not subject to the Modification Order, meaning staff lose continuity of service when they leave to join another LA.
Continued freedom to sell services and generate new income, subject to 20% external trading restriction; and potential to bid for grant funding opportunities only open to external bodies	
Any profit would be distributed back to the local authority or reinvested in education services.	
Focus would be on Barnet and Barnet schools	