

## MUNICIPAL YEAR 2016/2017 REPORT NO. 217

### MEETING TITLE AND DATE:

Cabinet 15 March 2017

### REPORT OF:

Chief Education Officer

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<b>Agenda - Part: 1</b>	<b>Item: 7</b>
<b>Subject:</b> Update report: Education Services: a new model of service delivery	
<b>Wards:</b> All	

### 1. EXECUTIVE SUMMARY

- 1.1 Education Services has a long history of success in supporting improvement in schools and settings including developing a range of well-regarded and popular Traded Services/Service Level Agreements (SLA).
- 1.2 We have developed a brand – Ensen – with a website and marketing plan to ensure we promote the services we offer and maximise our opportunities to raise income.
- 1.3 In August 2016 Cabinet members gave their approval for the Chief Education officer to investigate alternative models of future service delivery that would enable the council to work with all schools, whatever their status, and:
  - continue to meet its statutory responsibilities;
  - provide the appropriate support to and with schools and settings;
  - place services in a strong position to offer support to other local authorities (LAs);
  - maintain strong and effective relationships with the Enfield learning community;
  - ensure Education Services contribute to delivering the council's savings agreed in the Medium Term Financial Plan (MTFP).
- 1.4 It was agreed that a follow up report to Cabinet would be produced setting out the options for the formal establishment of a trading company with a distinct legal entity based on the most advantageous model and structure. This would also include a business and financial plan for the company.
- 1.5 An analysis of the ongoing financial situation, changes to government education and funding policy and increasing pressure on school budgets is demonstrating that the establishment of a separate company would currently present too great a financial risk to the Council.
- 1.6 This report therefore proposes that the development of the company as a separate legal entity is put on hold until there is greater clarity as a result of the new funding arrangements for Local Authorities and schools but that we should continue to develop Ensen as the recognised and trusted trading brand.

## **2. RECOMMENDATIONS**

### **This reports recommends that**

- 2.1 the development of Ensen as a separate legal trading company is put on hold until there is greater clarity of the impact of the new funding arrangements for Local Authorities and Schools. The government is currently consulting on a new funding formula for schools. It is intended that the new formula for schools will be in place by April 2018/19 ;
- 2.2 teams within Education Services already trading within the Education Department portfolio of Children's Services continue to do so, under the title of Ensen, offering full cost recovery, effective traded services to schools and settings, remaining under the direction of the AD Education / Chief Education Officer;
- 2.3 Education Services continues to use the name Ensen as the umbrella term to combine all the trading elements from across the council offered to schools and settings, in order to develop a consistent marketing strategy, to continue to provide excellent services which maximise existing income from Enfield schools and to expand the opportunities for income generation outside the borough.

## **3. BACKGROUND**

- 3.1 In August 2016 Cabinet approved the report of the Chief Education Officer (CEO) which sought to establish Ensen, during 2016/17, as a virtual trading company with a pooled single budget across the services. It also agreed to an assessment of the future viability of Ensen as a separate trading entity. The outcome of which assessment, including an analysis of the most suitable form of trading model, was to be included in a future report to implement phase 2.
- 3.2 Since this first report, however, there have been major changes to council and school funding as a result of government policy. The full impact of all of these changes is not yet completely clear but they will have a major impact on schools' ability to purchase services. These include:
  - 3.2.1 Cessation of the Education Support Grant (ESG) from September 2017 will mean a £3million budget gap for 2017/18. This cut will impact on services currently provided to maintained schools only. A small element of the ESG (£870,000) for certain statutory duties for all children (including those in academies and free schools) will be transferred to the DSG in 2017/18. The Council is currently considering how to bridge the funding gap and is proposing a range of further savings to Education Services in addition to those already identified in the MTFP;

3.2.2 Current pressures on the DSG have resulted in the LA working with Schools Forum to consider options for meeting the projected budget gap for 2017/18. In order to close the gap, further cuts have been agreed to central services funded from the DSG. These amount to 1.8m in total for 2017/18. These services are now setting up new SLAs or considering ceasing provision.

3.2.3 Schools are experiencing reductions to their budgets and an increasing number are projecting deficit budgets over the current or coming years. The most recent projected figures are as follows:

<b>No. of schools with actual or projected deficit</b>				
Sector	31 Mar 16	31 Mar 17	31 Mar 18	31 Mar 19
Primary	1	1	3	8
Secondary	5	5	6	7
Special		1	3	3
<b>Total</b>	<b>6</b>	<b>7</b>	<b>12</b>	<b>18</b>

3.2.4 Schools are currently identifying their buy backs for 2017/18 and the need to manage with fewer resources. There are early indications that the level of buy back will be reduced and schools have already given notice of their intention not to renew some contracts. For example, although schools have indicated that they value the clerking service provided by Governor Support Service, 12 schools have advised they will be transferring a service provided and subsidised by another local authority;

3.2.5 The implementation of the government's National Funding Formula (NFF) has been delayed but it is anticipated NFF will be implemented from 2018/19. Current modelling indicates that Enfield will gain under NFF by £4.7 million. However:

3.2.5.1 Any gain would not be evenly distributed across all schools and academies and current Government assessments indicate around half of Enfield schools will receive reduced funding following implementation.

3.2.5.2 There is likely to be a bigger impact on primary schools due to a 32% reduction in the lump sum and the reduction in numbers of pupils eligible for free schools meals due to Welfare Benefit Reforms.

3.2.5.3 The majority of the increase in funding will be seen by secondary and all through schools

3.3 In spite of the increasing pressure on funding over recent years Education Services have prioritised the development of strong and effective relationships with schools and settings so that the Enfield Learning Community is focussed on raising achievement for all children and young people. The impact of this approach is illustrated by Ofsted inspection judgements, 97% of Enfield schools

are judged to be Good or Outstanding, which is above the national and London figures.

- 3.4 The strength of this relationship has been evidenced by the development of effective traded services over a number of years, provided and brokered by the council, that consistently achieve a high level of buy back from schools. In addition to this schools have demonstrated their support for Enfield Education Service by agreeing to the ongoing funding of Central services from the DSG. An example of this is that Primary heads have commissioned school advisor support from School, Standards and Support Service and all phases have agreed to continue the funding for Behaviour Support. Evidence of the impact of this support is regularly recognised in Ofsted reports. Schools are indicating that they intend to buy back wherever possible as the services are highly valued.
- 3.5 It was anticipated that the proposed new model of service delivery would have the potential to develop additional income streams through wider trading beyond the Borough of Enfield and through applying for funding not generally available to the Council. Although continuing as LA services will limit the potential to apply for external grant programmes it is still intended that Ensen will market its services outside the borough to seek additional income.
- 3.6 As part of the investigations into the viability of the proposed trading company legal and financial advice was sought. The formation of the company would require the TUPE of staff into the new organisation, once it began trading independently. Due to the many uncertainties with regard to future funding and income from all sources, government, council and schools, it has become apparent that the level of risk to staff in terms of pension liabilities and possible redundancy costs is currently too high to proceed. In addition the business model would not be sustainable with this level of liability.
- 3.7 It is proposed, therefore, that the Ensen branding is used to operate as the trading arm of all services which are offered to schools and settings but that these services remain as part of the LA. This will mean Education Services will be able to:
- continue to meet its statutory responsibilities,
  - provide the appropriate support to and with schools and settings,
  - trade with other LAs,
  - maintain strong and effective relationships with the Enfield learning community,
  - contribute to delivering the council's savings agreed in the MTFP.
- 3.8 A number of additional services which are part of Education Services and trade with schools and setting are not currently part of Ensen. It is proposed that they would become part of Ensen as soon as possible, as long as they could demonstrate their financial viability.
- 3.9 In addition it is proposed that other Enfield services which currently trade with schools and settings as "Enfield Trading Services", but which are outside of Education Services, develop a formal link with Ensen and are marketed under

the same banner. Their inclusion would be subject to full market testing and be dependent on their strategic fit and financial viability.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

##### **4.1 Form a separate legal entity**

The option to form a separate legal entity operating outside of the LA was the subject of the initial DAR. However, work and advice undertaken as part of investigating this option strongly indicates that it is unlikely this would currently be a viable option and presents too big a financial risk to the LA.

##### **4.2 Cease trading altogether**

Education Traded Services have formed a long standing part of our relationship with schools; they are highly regarded and demonstrate a high level of buy back. Schools are indicating that they wish them to continue. Services already operate on a full cost recovery basis and going forward the pricing strategy will ensure that they continue to do so. Traded Services have provided an important source of early information about our schools and settings which has helped us both provide quality assured support to those who need it and equips us with the information to broker support which will be part of our new role in the future.

#### **5. REASONS FOR RECOMMENDATIONS**

- 5.1 Continuing to use Ensen as a trading brand ensures that all schools and settings, whether they are academies/free or maintained schools, can see continuity in the level and type of services offered and comparative value for money which should encourage them to continue to commit to them. It means existing expertise and knowledge can be maintained and give customers confidence in the services offered.
- 5.2 Government Policy suggests that the role of the LA will continue to develop from a provider to a broker of services. Maintaining the Ensen brand will mean the Council will be in control of the type and quality of the services offered and can use this knowledge to ensure they are offering the services schools want as well as aligning them closely to the needs of schools and settings. Thus enabling the Council to fulfil its new monitoring and brokerage role.
- 5.3 Currently a number of the services trade outside the borough, both nationally and internationally, in which brings additional income into the borough. For example the School Standards and Support Service were recently successful in a bid for government funding to provide training and best practice for schools to support pupils with English as an Additional Language (EAL) who are newly arrived in schools or settings across England and in Denmark. Maintaining Ensen as a trading arm of Education Services will allow us to maximise the potential for additional income generation.
- 5.4 Establishing Ensen as a separate trading company is not recommend at present as the level of uncertainty in terms of future LA and school funding is too high. Therefore the financial risk to the authority and staff is currently too great. However, the option for all or parts of the service to form individual or

joint enterprises in the future will be kept under review and may well be reconsidered in the future

## **6. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

### **6.1 Financial Implications**

There are no specific financial implications in respect of this proposal and the current financial arrangements for these services will continue. This includes achieving the additional income targets for traded services over the 3 year period 17/18 to 19/20.

### **6.2 Legal Implications**

- 6.2.1 A local authority may, in certain circumstances, make a profit when trading with other public bodies by using the powers contained in the Local Authorities (good and Services) Act 1970. This is a useful power but it is limited by the fact that it can only be used to trade with public bodies classified as such by that act. The list has not been materially updated since 2003. Accordingly, it will cover other local authorities and maintained schools but not academies or other bodies not so classified. Accordingly, the Council cannot rely on this power to trade at a profit with (for example) academies, and the bodies listed under this Act should be checked before the Council seeks to rely on it in order to trade at a profit.
- 6.2.2 The Education Act 1996 does contain a number of additional powers to charge for services. If the Council intends to rely on this Act, it should consider in more detail the specific the services it is not possible to work out whether this act allows for the activities envisaged by these proposals. However, it should be noted that this Act requires that any charges are made only “at cost”.
- 6.2.3 Outside of these provisions, the most common powers to charge for the provision of services are s.93 Local Government Act 2003 (“LGA 2003”) and s.3 Localism Act 2011 (“LA 2011”). Where the authority is proposing to provide services for a charge, s.93 permits this where: the authority is entitled (but not obliged) to provide the relevant service; is not otherwise prohibited from charging for it; and does not have any other power, other than that set out at s.93 to charge. However, the authority must ensure that its income from charging does not exceed its costs. s.3 LA 2011 is very similar, and provides that the authority: must not be under a statutory obligation to provide the service; the person must agree to it being provided; and (ignoring the s.3 provisions and those set out at s.93 LGA 2003) there is no other power to charge for providing the services. If the council wishes to trade using this power then, similarly, it must ensure that its income from charging does not exceed its costs. If these

criteria are met, then these provisions give the council the power to charge, providing that a surplus / profit is not made.

6.2.4 When assessing costs - for charging purposes - guidance requires authorities to ensure that: "taking one financial year with another, the income from charges .... does not exceed the cost of provision". The guidance also refers to CIPFA Best value accounting code of practice for the methodology of how best to establish base cost for the service. Financial colleagues should be consulted about how they work out this base cost and ensure that any charging falls within the relevant statutory provisions.

6.2.5 Of course, the Council will have greater discretion to set charges, and make a surplus, should it in the future decide to establish a trading company.

## **7. KEY RISKS**

7.1 The key risks identified with not accepting the recommendations in this report are as follow:

7.1.1 The current lack of clarity regarding the future funding for LAs and schools means that decisions about establishing a trading company will not be based on sound or evidenced financial predictions;

7.1.2 It is imperative that all traded services with schools and settings are and continue to be based on a full cost recovery model, to reduce the risk to the LA. This needs to be achieved before a trading company is established;

7.1.3 There are a wide range and number of traded services/buy backs which operate with schools and settings across the Council. A consistent approach is required to all these services to both charging policies and quality assurance before setting up any standalone trading company.

7.1.4 it limits the opportunities for services to seek additional income from outside the LA. The Ensen website, along with direct marketing both inside and outside of the borough, will ensure the Ensen brand is recognised for the quality it provides.

7.2 A SWOT analysis was also carried out as part of the analysis of risk and is attached at Appendix 1.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

Ensen will deliver on Fairness for All by continuing to offer schools and settings the support and challenge they need to deliver high quality education, improving standards and narrowing education gaps for all children and young people across the Borough.

### **8.2 Growth and Sustainability**

Ensen aims to offer good level of support for schools, ensuring that they are able to cater for the changing needs and growth of the population of Enfield. Through the services offered by Ensen schools will contribute to the growth and sustainability of communities, with good schools attracting more families and businesses to all areas of Enfield.

### **8.3 Strong Communities**

Schools are hubs of the community and so by ensuring the quality of education in schools, services offered within Ensen will be contributing to creating stronger community hubs within Enfield, reaching across all areas and demographics.

## **9. EQUALITIES IMPACT IMPLICATIONS**

The recommendations of this DAR will not impact the current delivery of Education Services and so no Equalities Impact Assessment has been undertaken. Education Services continue to be committed to ensuring equal opportunities for all children and young people across Enfield.

## **10. HR IMPLICATIONS**

As detailed in this report, the branding of existing service under the title of Ensen presents no immediate implications for staff currently working within the services proposed to be considered as part of the traded offer. The staff remain Council employees on their current terms and conditions of service.

Should this situation change in the future and a further proposal be brought forward to form a separate entity, as originally envisaged, TUPE will apply and the appropriate consultation will need to take place with affected staff and Trade Unions.

## **11. PUBLIC HEALTH IMPLICATIONS**

Public Health promotes best outcomes for all children and young people in Enfield and reduces inequalities. The service will continue to ensure that it considers the impacts on Public Health priorities in the local area and improves the wellbeing of children and young people. As this report does not propose



any changes to current service delivery there are no specific public health implications.

### **Background Papers**

None

## Appendix 1

<b>SWOT Analysis - Ensen Model of a separate legal entity trading company</b>	
<b>Strengths</b> History of well-known and trusted services Staff TUPEd over would be known to schools and have good relationships Staff have an in-depth knowledge of schools and can therefore broker services more effectively	<b>Weaknesses</b> Lack of certainty about school finances and ability to purchase services The department has limited experience in business management Need to “buy in” additional services to run the business e.g. accountancy, legal advice etc.
<b>Opportunities</b> Wider range of opportunities to apply for grant funding Greater flexibility and agility in dealing with business processes such as recruitment and finances Potentially wider opportunities to trade outside of the borough	<b>Threats</b> External providers In terms of business planning pensions and redundancy liabilities place too high a financial risk on the company meaning it is not viable Cuts to school funding are reducing their ability to purchase services Currently most SLAs are purchased on a 1 year basis, with a few extending to 3 years, therefore there is limited ability to forward plan.

<b>SWOT Analysis - Ensen Model as an internal trading brand</b>	
<b>Strengths</b> History of well-known and trusted services Staff are known to schools and have good relationships Staff have an in-depth knowledge of schools and can therefore broker services more effectively Strong internal leadership and support structure within Children’s Services Department	<b>Weaknesses</b> Although the department has traded with schools for a long while it has limited experience in marketing services Internal charging processes are not transparent and out of the control of the manager
<b>Opportunities</b> Can apply for some grant programmes Ability to tailor services more closely to market needs Make more effective links between services across the council Will give internal services more time to test the market and realise the full impact of funding changes	<b>Threats</b> Cuts to school funding are reducing their ability to purchase services External providers are able to be more agile and have less restrictions e.g. subsidising services to gain market share Internal charges could make the services more expensive and therefore less competitive