

Children, Education, Libraries and Safeguarding Committee

12th January 2015

Title	Education and Skills – Future Delivery of Services
Report of	Schools, Skills and Learning Lead Commissioner
Wards	All
Status	Public
Enclosures	Appendix One: Final Outline Business Case (including Appendix A – Financial Modelling Tables) Appendix Two: Consultation Report Appendix Three: Equalities Impact Assessments
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Summary

At its meeting on 15th September 2014, the Children, Education, Libraries and Safeguarding Committee considered a draft outline business case, which set out proposals for developing a new way of delivering the Council’s Education and Skills service in order 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 draft outline business case set out a detailed options appraisal of six possible future models for the delivery of these services. The Committee gave approval to proceed to consultation on four of these options.

Since that meeting, there has been a programme of consultation and engagement with key stakeholders, including:

- Schools
- The market

- Employees and trades unions
- The public and service users

The outcomes of that consultation, along with the result of further work that has been carried out to confirm the commercial and financial viability of the four options that remain under consideration, are set out in the attached final outline business case and summarised in this report.

The outline business case concludes that the option for the future delivery of the Education and Skills service that is most likely to meet the project's overall objectives is a joint venture. It is considered that this option provides more certainty in meeting the Medium Term Financial Strategy targets, as well as being best placed to meet the strategic objectives of improving the service and maintaining an excellent education partnership in Barnet. It is proposed that the option of involving schools in the ownership of the joint venture should remain open at this point. The selection of a third party partner will require a competitive procurement exercise, which will be conducted in accordance with EU procurement regulations using the Competitive Dialogue approach. The Children, Education, Libraries and Safeguarding Committee is now requested to agree to proceed with the development of a full business case, including initiating the procurement phase, with a view to establishing a joint venture company. A further report setting out the full business case for implementation will be put before members of the Children, Education, Libraries and Safeguarding Committee in July 2015.

Recommendations

- 1. That the Children, Education, Libraries and Safeguarding Committee note the content of the report and the outline business case.**
- 2. That the Children, Education, Libraries and Safeguarding Committee agree the development of a full business case on the establishment of a joint venture company with a third party for the future delivery of the Education and Skills service.**
- 3. That the Children, Education, Libraries and Safeguarding Committee authorise the commencement of the procurement exercise to identify a third party partner to inform the development of the full business case.**
- 4. That the Children, Education, Libraries and Safeguarding Committee note that the outcome of the procurement exercise and a full business case for final approval will be considered by the Children, Education, Libraries and Safeguarding Committee in July 2015.**

1. WHY THIS REPORT IS NEEDED

Strategic Context and the Case for Change

- 1.1 On 15th September 2014, the Children, Education, Libraries and Safeguarding Committee considered an outline business case, which set out proposals for developing a new way of delivering the Council's Education and Skills service in order to:

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

1.2 The evolving educational landscape, together with the financial constraints facing local authority services, create three compelling key drivers for reviewing the way education services are delivered:

- i. A **performance** driver to maintain Barnet's excellent education offer, contributing to the quality of life in the Borough. This driver recognises that, in recent years, Barnet schools have been among the best in the country. However, maintaining this performance is challenging and some recent Ofsted inspections have been disappointing – a potential early warning sign that we need to review and evolve to adapt our systems and services to better reflect the new educational environment in which our partnership with schools is operating. It also recognises that the vast majority of school improvement resource and expertise is now controlled and managed by schools themselves and that the effective involvement of schools is essential to delivering better educational outcomes for Barnet as a whole.
- ii. A **strategic direction** driver to maintain Barnet's excellent relationship with schools. This driver recognises the increasingly diverse range of school governance arrangements that are emerging, including academies and free schools, and the need to ensure that future service provision is of a high standard and that services are responsive to the needs of all schools. It also recognises that these changes in school leadership place schools in a strong position to play a much more central role in shaping and driving future service provision.
- iii. A **financial driver** to meet the Council's savings target, whilst maximising the opportunity to provide sustainable services into the future. This driver recognises that funding going to schools has been well protected, despite recent reforms. However, the ability of the local authority to fund services to meet its remaining statutory duties is less secure, being impacted by both the reduction in local government funding overall, and by a reduction in government grant as individual schools convert to academy status.

1.3 The draft outline business case, considered by the Children, Education, Libraries and Safeguarding Committee at its meeting on 15th September 2014, set out the results of preliminary work that had been carried out to assess the best way of delivering Education and Skills services given the three key drivers above. The draft outline business case also set out the results of initial consultation and engagement with schools that had been undertaken to seek early views from headteachers and governors about the opportunities for working in closer partnership to deliver services for schools.

- 1.4 As a result of the preliminary review, the Children, Education, Libraries and Safeguarding Committee agreed that four options should be the subject of detailed consultation and further analysis, the results of which are set out in the attached final outline business case and summarised in the remainder of this report.

Developing Future Delivery Options

- 1.5 The shift in responsibility and financial resources for managing and leading school improvement to schools is resulting in schools increasingly becoming drivers and designers of the services they need to support them. Developing a model of delivery based on the partnership with schools provides an opportunity to provide services that are responsive to the needs of schools and that are sustainable over time by allowing schools to commission and potentially co-deliver the services they need.
- 1.6 The final outline business case considers four options for the alternative delivery of the full range of services currently provided by the Council's Education and Skills Delivery Unit. The decision to include the full range of services in the options appraisal was reached after considering:
- i. The strategic context within which the local authority and schools are working to improve educational outcomes
 - ii. The need to provide a unified, integrated approach to service delivery for schools and others
 - iii. The ability to define a single brand for education services, with clear points of contact for schools and parents
 - iv. The start-up and/or procurement costs, as well as ongoing client-side management costs of moving to a new delivery model.
- 1.7 The following services are in scope:
- Strategic and financial management of the service
 - School improvement
 - Special educational needs (SEN)
 - Admissions and sufficiency of school places
 - School Attendance
 - Post 16 learning
 - Traded services within Education and Skills:
 - Catering service
 - Governor clerking service
 - School improvement traded service (Barnet Partnership for School Improvement)
 - Newly Qualified Teachers support
 - Educational psychology (part-traded)
 - Education Welfare Service (part-traded)
- 1.8 Any new model would deliver both statutory services for the Council as well as trading services to schools and educational establishments. Where the options involve the creation of a separate entity, for the Council's statutory

functions to be contracted out to that separate entity, the statutory duties or powers in question need to be either:

- i. included in the regulations made under the Deregulation and Contracting Out Act 1994; or
- ii. otherwise eligible to be contracted out as a matter of statutory interpretation of the legislation giving rise to the statutory function.

1.9 Some of the duties and powers cannot be contracted out, for example the duty around place planning and the power to prosecute for non-school attendance. However, this does not prevent the Council from contracting out delivery of services associated with these duties and powers, but the ultimate accountability and decision making would remain with the Council.

1.10 Within all of the options under consideration, the statutory post of Director of Children's Services will remain with the Council. The Director of Children's Services:

- i. has professional responsibility for the leadership, strategy and effectiveness of local authority children's services;
- ii. is responsible for the performance of local authority functions relating to education and social care of children and young people; and
- iii. is responsible for ensuring that effective systems are in place for discharging local authority functions, including where a local authority has commissioned any services from another provider rather than delivering them itself.

1.11 At its meeting on 15th September 2014, the Children, Education, Libraries and Safeguarding Committee agreed that the outsourcing and Local Authority Trading Company options should not be given further consideration. The final outline business case sets out full details of each of the four options that remain under consideration, including the potential benefits and risks associated with them. The options are:

In house – where the Council continues to provide the services through the Education and Skills Delivery Unit

Schools-led social enterprise – where a separate legal entity, jointly owned by the Council and Schools, would be established to provide the services.

Joint venture with schools having an ownership role (three-way joint venture) – where a separate legal entity, jointly owned by the Council, schools and a third party provider, would be established to provide the services.

Joint venture with schools having a commissioning role (two-way joint venture) – where a separate legal entity, jointly owned by the Council and a third party provider, would be established to provide the services.

Consultation and engagement

- 1.12 The report to the Children, Education, Libraries and Safeguarding Committee in September 2014 set out details of the consultation and engagement activity that had informed the development of the draft outline business case. The report also outlined the proposed consultation and engagement approach in respect of four key stakeholder groups: schools; the market; employees and trades unions; and residents and service users. Details of that approach and the key outcomes from consultation and engagement are set out below. The Council commissioned OPM, a market research organisation, to analysis the consultation results. Their summary report, setting out the findings from the survey, is appended to this report. Their full report is available at <http://engage.barnet.gov.uk/>.

Schools

- 1.13 As the main customer of the services under consideration, the views of schools are critical to the successful implementation of the selected model. Building on the consultation and engagement with headteachers and chairs of governors that took place up to the development of the draft outline business case, there has been a further programme of briefing and information provision throughout the autumn term, to enable headteachers and chairs of governors to reach an informed view on each of the options under consideration. This included presentations from two social enterprises that involve schools in their ownership. The approach has been steered through a representative Headteacher Reference Group.
- 1.14 The consultation sought feedback on:
- The services to be included in the delivery model
 - The evaluation criteria
 - The level of support for each of the models under consideration
 - The level of willingness to play an active role
 - The order of preference for the four models
- 1.15 In total, 98 responses were received, representing between 71 and 84 schools (14 respondents did not identify their school).
- 1.16 A summary of results and themes are shown below, with further detail in the final outline business case and Appendix Two to this report.
- 25% of respondents strongly agreed and 53% tended to agree with the education support services that have been selected to be included in the delivery model.
 - There were a number of comments about the appropriateness of some services being included, including SEN services and admissions. Concern appears to be around knowledge, accountability and the schools losing control.
 - All of the criteria were ranked as “very important” or “important” by over 50% of respondents, with the criteria for a strong partnership, building

trust, preserving and improving service delivery and customising services seen as most important.

- The majority of respondents are willing to consider or support all of the delivery options. However, no one option receives a majority in terms of active support. Support for the in-house, social enterprise and two-way joint venture models was very similar at 30%, 31% and 31% respectively. The two-way joint venture model had the lowest level of opposition, with 28% of respondents not supporting or strongly opposed to it. When asked to state a preference, the two-way joint venture (32%) is the first preference of slightly more respondents than the other models. In summary, the schools survey does not provide a clear finding about the favoured model.
- Overall, there was sufficient interest from schools to play an active role in any of the models, however there was a higher level of support for a strategic commissioning role as opposed to an ownership role.

The market

1.17 Following consideration of the draft outline business case, external support was commissioning to provide an independent assessment of the broad market, including the not for profit sector. iMPOWER conducted a soft market testing on behalf of the Council.

1.18 Six organisations participated in the soft market testing, by providing written responses to a questionnaire and attending a follow-up meeting with representatives from iMPOWER and the Council. These organisations represented a broad spectrum of providers, including not for profit, employee-owned and specialist education providers. Further details of the outcomes of the soft market testing exercise are included in the final outline business case, but the key points were:

- The market is generally positive about the opportunity, and the landscape provides some variety and choice for the Council to investigate further the options for the proposed structure. Alongside the traditional approach of one contract and one provider, primary contractor-subcontractor, specialist partnering and separate tendering were all put forward as suggestions from the market.
- 20-30% savings in the non-DSG budget through efficiency and growth are seen as achievable by the market. This would equate to approximately £2.4m - £3.6m per annum.
- The terms of any up-front investment required in a new vehicle would need to be explored further during competitive dialogue. Given the nature of the services and functions in scope, it is likely that proposals would include as a minimum the establishment of necessary commercial capacity and under-writing of the savings profile.
- Providers are generally more in favour of a Joint Venture, with schools having a governance but not ownership role, rather than a Joint Venture, with schools in an ownership role. However, providers would not rule the latter out and a number suggested it may be more appropriate to keep the option open during competitive dialogue.
- Pensions' liability was a clear concern for providers.

- Providers unanimously cited competitive dialogue as their preferred procurement route.
- A contract length of five or seven years, with extension options was considered by participants to be the minimum term required to invest substantially in the new venture, achieve the levels of efficiency required and secure a return on their investment.
- Options to expand the service cluster, either at the outset or after contract start were attractive to providers (as expected).

1.19 The overall conclusions from the soft market testing exercise are that there is a positive interest from the market in these services and that there are sufficient potential participants in the market to ensure a competitive procurement exercise, in the event that the Council pursues one of the joint venture options.

Employees and trades unions

1.20 It is recognised that all four of the options under consideration constitute a significant change that will have an impact on employees. There have been a number of briefing meetings with employees as the outline business case has developed. During November 2014, a further series of meetings was held to allow employees to explore the implications of the four remaining options and also to suggest potential opportunities for improvement.

1.21 The meetings were reasonably well attended by office-based staff, with fewer attendees from school-based staff within the catering service. Those that did attend engaged positively in discussion about the four options and also made some constructive suggestions for growing services and reducing costs, for example advice and training on the drafting of Education, Health and Care Plans and making better use of administration resources. These suggestions have been taken into account in the financial modelling of options, as outlined elsewhere in this report. There was a general recognition of the importance of the views of schools from attendees.

1.22 The main areas of concern that were raised by employees were:

- Any potential impact on terms and conditions of service, notably pay and pensions
- Any potential impact of changes to the TUPE regulations on the above
- The ability to maintain buy-back levels from schools
- Potential conflicts of interest or priorities of different partners
- The lack of flexibility and innovation in current arrangements

1.23 Additional meetings have also taken place with the recognised trades union representatives. Whilst representatives have been keen to support the retention of services in-house, they have also engaged positively in discussions about other models to ensure that issues that may affect their members' interests have been given proper consideration.

The public and service users

- 1.24 A public survey was available on www.engage.barnet.gov.uk for an eight week period from 7th October 2014 to 1st December 2014. The survey was publicised through the Council website, social media and information sent to parents through school communication channels. Overall, 123 responses were received by the closing date, which is consistent with response rates on similar consultations.
- 1.25 In addition to the survey, three focus groups were conducted with: parents of children with Special Educational Needs; parent governors; and parents generally.
- 1.26 The summary report at Appendix Two sets out the results from the consultation exercise. The highlight results and themes are set out below:
- High level of support for the overall vision and aims
 - Majority of respondents agreed with the services selected, with the highest level of support to SEN services and school improvement services.
 - There were comments on the rationale for particular services being included, particularly those for vulnerable pupils and the need to maintain service levels and quality of provision. The focus groups all raised an element of concern about the SEN and education welfare services being included, focusing on the need to ensure quality of service delivery and the risk of having a “business” person provide the services.
 - Results in respect of the evaluation criteria were broadly similar to the schools survey.
 - In survey, clear preference for the in-house model, with the two-way joint venture being the least favoured option.
 - Amongst the focus groups, there was a split in preferences. The Governors group preferred the in-house model, a small majority of the Parents’ group preferred the two-way joint venture model and the SEN group was divided between those who thought the in-house model was best and those who thought it was a model which already had problems.
 - There was a high level of concern about a third party being involved in service delivery. Issues were raised around business models being used in education, the potential quality of the services, and a lack of trust, accountability or responsibility.

Additional engagement activity

- 1.27 In addition to the detailed engagement and consultation activity that has been carried out with the four key target stakeholder groups, meetings have also been held with the Voluntary Sector Forum and the Youth Board, primarily to ensure that they are informed about the proposals, but also to alert them to the public survey as a means of submitting their views.

- 1.28 Members of the Youth Board acknowledged that there are budget constraints and that educational support services need to change. However the feeling that schools are pillars of the local community was strong and that any outside organisations delivering vital services must have a grasp of the local issues and that these must be evidenced during the procurement process.

Response to consultation comments

- 1.29 Responses to the key themes from consultation activity are set out in section 5 of this report.

Financial and commercial assessment

- 1.30 The report to Children, Education, Libraries and Safeguarding Committee in September 2014 identified the basic cost saving and income generating methods that are available to each model and provided a high level assessment of each model's ability to achieve the budget savings target set by the Council. The report also identified that independent external support had been commissioned to provide further analysis of the potential financial benefits from each model. The outcomes of that work are set out in detail in the final outline business case and summarised below.
- 1.31 In broad terms there are four methods of achieving budget savings targets:
- Improving efficiency, i.e. delivering the same outputs at lower cost
 - Increasing income by selling services to more customers
 - Increasing income by selling new services
 - Reducing service levels
- 1.32 Financial modelling has been carried out on the basis that the preference is to achieve budget targets through efficiency and income growth in order to maintain a high quality service offer to schools, with service reductions providing the balancing figure to make up any shortfall.
- 1.33 It should be recognised that, at this stage in the evaluation process, the financial and commercial assessment can only be an educated estimate, based on a series of assumptions about the services and the market. Certainty under any of the models will only come through the implementation process.
- 1.34 For the two joint venture models, the level of confidence in the potential financial benefits would increase through the procurement process, with complete certainty over the delivery of savings coming at the point when a contract is signed and the delivery risk is, in effect, passed to the third party partner.
- 1.35 For the in-house and social enterprise models, the delivery risk would remain with the Council and, potentially, schools. Whilst confidence in the potential financial benefits would increase through the process of

developing a detailed business plan, the subsequent delivery of those benefits cannot be guaranteed.

- 1.36 As a result of the financial and commercial modelling, along with the findings from the soft market testing, the following conclusions have been reached in respect of each of the models.

In-house model

- 1.37 Since the draft outline business case was considered by Committee in September 2014, an enhanced in-house model has been developed, assuming an investment from the Council equivalent to the cost of implementing a joint venture option, i.e. approximately £1.3m.
- 1.38 This investment would be used to bring in commercial and marketing expertise. Some of this investment could also be used to protect existing staffing and service levels to some extent whilst growth takes place. The introduction of commercial and marketing expertise would enable some growth and provide a more commercial impetus and rigour to the process of achieving efficiency savings.
- 1.39 It is less likely that the in-house model would grow income significantly by selling statutory/non-traded services to other local education authorities, as there is little evidence generally of councils buying services from other councils, other than under shared services arrangements or, in some instances, districts buying back-office services from counties.
- 1.40 It is anticipated that this model would have to rely to a greater degree on service reductions to meet the target. Modelling suggests this may be in the order of £700k. This is significantly less than would be anticipated without investment, i.e. with the unchanged in-house model that was considered in the draft outline business case.
- 1.41 Under this model, all surplus income arising from growth would come back to the Council.

Social enterprise model





- 1.42 This model would require investment from the Council and from schools to bring in commercial and marketing expertise. Some of this investment could also be used to protect existing staffing and service levels to some extent whilst growth takes place. The introduction of commercial and marketing expertise would enable some growth and provide a commercial impetus and rigour to the process of achieving efficiency savings. However, the absence of a broader commercial structure and established presence in other local authority areas would mean that growth would be slower and less extensive than under the joint venture models.
- 1.43 It is possible that a social enterprise could grow some income by selling statutory/non-traded services to other local education authorities, as it would be perceived as being separate from Barnet Council. However, its

ability to do this may be hampered by its lack of track record in providing these services to other bodies.

- 1.44 It is anticipated that this model would have to rely to some degree on service reductions to meet the target. Modelling suggests this may be in the order of £300k.
- 1.45 Under this model, it is likely that any surplus income arising from growth would be shared between the parties to the enterprise, i.e. the Council and schools. The detailed arrangements for this would be agreed as part of the process for establishing the enterprise.

Joint venture models

- 1.46 These models would bring investment from a third party, as well as access to an existing commercial and marketing structure. It is likely that investment would protect existing staffing and service levels in the short to medium term, whilst the business grows. Access to a broader commercial structure would enable faster growth than with the in-house and social enterprise models. It is also assumed that a commercial impetus would add rigour to the process of achieving efficiency savings. If the third party has an established presence in other local authority areas, that would also contribute to growth being achieved more quickly than under the other models.
- 1.47 It is more likely that a joint venture would have the resources and commercial expertise to invest in statutory/non-traded services and sell them to other local education authorities. A joint venture may be more attractive, as it would be perceived as being separate from Barnet Council and a third party is more likely to have a track record in providing a range of services to other local authorities.
- 1.48 It is considered less likely that there would be a need for service reductions under these models.
- 1.49 Under a joint venture model, it is assumed that any surplus income arising from growth would be shared between the parties to the joint venture. The detailed arrangements for this would be agreed as part of the procurement process.
- 1.50 The following table provides a high level summary of the outcomes of the financial and commercial assessment work, the detail of which is set out in the final outline business case.

Lever	Applied to	In-House	Social enterprise	Three-way joint venture	Two-way joint venture
Efficiency savings	Gross Exp	✓✓	✓✓	✓✓✓	✓✓✓
Increased income through growth (in Borough)	Income	✓✓	✓✓	✓✓✓	✓✓✓
Increased income through growth (out of Borough)	Income	✓	✓✓	✓✓✓	✓✓✓
Additional services	Net Budget	✓✓	✓✓✓	✓✓✓	✓✓✓
Service Reductions	Net Budget	✓✓✓	✓✓	✓	✓
Overall assessment		✓✓	✓✓	✓✓✓	✓✓✓
KEY to the level of savings likely to come from each lever: ✓✓✓ - high ✓✓ - medium ✓ - low					
ABILITY TO ACHIEVE MTFS TARGETS <u>WITHOUT</u> A NEGATIVE IMPACT ON SERVICE LEVELS/QUALITY		LOW 	MED 	HIGH 	HIGH 
ESTIMATE OF ANNUAL FINANCIAL BENEFIT AFTER 5 YEARS		£1.5M	£1.6M*	£2.5M*	£2.6M*

* Any surplus income, once MTFS targets have been delivered, would be the subject of a gain-share agreement between the parties to the venture.

1.51 In broad terms, it can be concluded that all four models are capable of achieving the budget savings target set by the Council. However, the in-house and social enterprise models are expected to have to rely on some service reductions to achieve this, as they would not be in a position to grow the business as quickly as a joint venture, or to provide sufficient investment to protect existing service levels in the short to medium term. The loss of capacity arising from these reductions is also likely to hamper the ability to develop services and grow the business. The in-house and social enterprise models also carry a higher degree of delivery risk, as savings cannot be guaranteed through contractual arrangements, as is the case with the joint venture models.

Evaluation of the options

- 1.52 The report to the Children, Education, Libraries and Safeguarding Committee in September 2014 outlined the scored assessment process that had been applied to evaluate the six models that were considered in the draft outline business case. That process involved consideration of 20 individual criteria, within four weighted categories. Based on the outcomes of initial consultation, the evaluation criteria have subsequently been rationalised and the assessment process simplified to recognise that the assessment process is a collective professional view based on experience and a balance of probabilities.
- 1.53 As identified in paragraph 1.1 above, the high level objectives of the delivery model are to:
- i. maintain Barnet's excellent education offer;
 - ii. maintain an excellent relationship between the Council and schools; and
 - iii. achieve the budget savings target for the service up to 2020.
- 1.54 The models under consideration have been evaluated against a common set of criteria, based on these high level objectives and the following table provides a rating for each option's overall likelihood of meeting each of the criteria. Those criteria that were rated as most important in the schools and public surveys are identified in bold.

	In-house	Social Enterprise	2-way JV	3-way JV
Helps to maintain a strong partnership between the Council and Barnet schools	✓✓	✓✓✓	✓✓	✓✓✓
Enables schools to take a stronger leadership role in the education system	✓✓	✓✓✓	✓✓	✓✓✓
Is able to attract new investment/funding and access commercial expertise to preserve and grow services	✓✓	✓✓	✓✓✓	✓✓✓
Has the freedom to be creative and the flexibility to develop new services quickly during times of change	✓	✓✓	✓✓✓	✓✓✓
Is able to engage with and build trust with all key stakeholders, including parents and the public	✓✓✓	✓✓✓	✓✓	✓✓
Preserves or improves service delivery in key service areas	✓	✓✓	✓✓✓	✓✓✓

	In-house	Social Enterprise	2-way JV	3-way JV
Is able to customise services to meet the needs of different types of school	✓✓	✓✓✓	✓✓✓	✓✓✓
Is able to achieve budget savings without reducing current service levels	✓	✓✓	✓✓✓	✓✓✓

Key:

✓	Low
✓✓	Medium
✓✓✓	High

1.55 The key assumptions that underpin this assessment are:

- Models that include schools in an ownership role are better placed to strengthen existing partnerships and enable stronger leadership from schools
- Models that include a third party provider deliver a greater opportunity for investment and expertise from outside the current system
- Models that attain greater commercial expertise from the outset are better able to grow services more quickly, thereby avoiding service reductions
- Models that are fully owned by the public sector are more likely to engender trust from parents and the public, as they are less likely to have different strategic drivers from the Council, for example the need to make a return on investment for shareholders.

Conclusion and recommendation

1.56 Based on this assessment, it is concluded that:

- The in-house option is less likely to meet the objectives set out above, as the need to make service reductions in order to meet budget targets is likely to hamper its capacity to meet the objective of maintaining Barnet's excellent education offer.
- The social enterprise option may meet the objectives. However, there is not sufficient interest amongst schools to rely on schools to invest their funds, alongside the Council, in establishing the required commercial and marketing expertise. There is more financial risk involved than the joint venture models and that risk would be retained by the Council and schools.
- The two-way joint venture option is likely to meet the objectives set out above by providing the investment and expertise that is necessary to maintain and grow high quality support services to schools, whilst delivering the requirements of the Council's Medium Term Financial Strategy.

- iv. The three-way joint venture option is most likely to meet the objectives set out above by providing the investment and expertise that is necessary to maintain and grow high quality support services to schools, whilst delivering the requirements of the Council's Medium Term Financial Strategy. Whilst the involvement of schools as owners would be expected to strengthen relationships with schools, the outcome of the school survey suggests that schools tend not to see this as necessary.

1.89 At this stage, there is no clear indication from schools that there is a strong appetite to enter into an ownership model, although there is an indication that schools would be willing to consider such a model. Therefore, the recommendation is to proceed with developing a full business case to establish a joint venture with a third party and, during this process, to establish the most appropriate way that schools can be actively involved in commissioning and shaping services, either in an ownership or in a commissioning capacity.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The Council's commissioning approach requires consideration of the best model for delivering services to meet its priorities and outcomes. It is recommended that the Council should proceed with developing a full business case to establish a joint venture model for the future delivery of Education and Skills services. The most appropriate engagement of schools in the joint venture will be developed during the Competitive Dialogue process. The specific concerns from the public survey regarding the involvement of a third party, for example in relation to accountability and service quality, will be addressed as far as possible through the procurement process and by involving headteachers in that process.
- 2.2 This conclusion is based on the detailed evaluation of the four possible models set out above and taking into account the outcomes of consultation, including:
 - i. The school survey shows no clear preference for any of the models, although there is a marginal preference for the two-way joint venture
 - ii. Amongst those that responded to the public survey, there is a clear preference for the in-house option and a high level of concern about the potential involvement of a third party in the delivery of these services
 - iii. The preference of focus groups of parents was split between the in-house option and the two-way joint venture
 - iv. The in-house option, whilst carrying a degree of public support, is considered to be less likely to meet the overall objectives
 - v. The social enterprise option also carries a degree of risk in meeting the objectives and it did not receive the very high level of support from schools that would be required to mitigate that risk
 - vi. The two-way joint venture provides a good overall fit in terms of meeting the objectives and attracted a reasonable level of support from schools

- vii. The three-way joint venture provides the best overall fit in terms of meeting the objectives, but attracted less support from schools than the other models

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Six options were evaluated as part of the draft outline business case. As a result of that initial evaluation, the outsourcing and Local Authority Trading Company options were not taken forward for consultation. In addition to the original six options that were evaluated, one further option, a shared service, was identified, but not considered in any detail. The Council has a track record of using services shared with other organisations, where appropriate, but in this case informal discussions with neighbouring councils indicated that there was little appetite to participate in the development of a shared service at the current time. The preferred model does not preclude the possibility of future joint working with other councils.

4. POST DECISION IMPLEMENTATION

- 4.1 The selection of a third party provider will require a competitive procurement exercise, which will be conducted in accordance with EU procurement regulations using the Competitive Dialogue approach. It is anticipated that a decision on the selection of a preferred bidder will be sought from the Children, Education, Libraries and Safeguarding Committee, probably in July 2015, based on a full business case. At the same time, the Policy and Resources Committee will be asked to consider the final model and make a recommendation to full Council on the contracting out of functions and setting up of a separate entity. The final decision on setting up a separate entity and contracting out functions rests with full Council.
- 4.2 As part of the process of developing a full business case, due consideration will be given to addressing the concerns raised during the consultation process, as set out in section 5 of this report. This, together with feedback on the evaluation criteria will also inform the development of criteria for evaluating bids.
- 4.3 The overall project approach is set out in the outline business case. The key milestones are:

Key dates / milestones	Date
CELS Committee – approval of outline business case	12 th Jan 2015
Commence process to establish new model	13 th Jan 2015
Issue OJEU notice	Jan 2015
Bidders Day	Feb 2015
PQQ evaluation and moderation	Feb 2015

Key dates / milestones	Date
Dialogue	March – June 2015
P&R Committee – report	20 th July 2015 (TBC)
CELS Committee – approval of full business case	28 th July 2015 (TBC)
Commence formal TUPE consultation	29 th July 2015
Evaluation and moderation	August 2015
Preferred bidder selected	August 2015
Mobilisation	October 2015

5. IMPLICATIONS OF DECISION

Corporate Priorities and Performance

5.1 Barnet is a place of growth. The quality of the education offer is at the heart of Barnet's continuing success as a place where people want to live, work and study. It plays a crucial part in making Barnet a popular and desirable place with many families attracted to the area by the good reputation of Barnet's schools. Excellent educational outcomes and ensuring children and young people are equipped to meet the needs of employers are key to deliver the Council's strategic objectives set out in its Corporate Plan 2013-16 to:

- Promote responsible growth, development and success across the Borough
- Support families and individuals that need it – promoting independence, learning and well-being
- Improve the satisfaction of residents and businesses with the London Borough of Barnet as a place

5.2 Developing a new approach to delivering education and skills services in partnership with schools, will enable the Council and schools to continue to support these priorities through jointly harnessing efforts and resources at a time of financial constraint and when the educational landscape is leading to a more diverse range of providers. Developing a delivery model that enables the services to be responsive to the needs of this increasingly diverse range of providers offers the opportunity to maintain and improve support services to schools so that Barnet's excellent educational offer can be maintained and improved.

Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.3 These services are currently provided at a total annual gross cost of £18.8m. This is funded by £2.9m from the Dedicated Schools Grant, which

is ring-fenced, and generation of income of £9.2m. This leaves a net budget of £6.8m.

- 5.4 Within the savings target set by the Policy and Resources Committee, the Education and Skills service is required to deliver savings of £850k between 2016/17 and 2019/20, in addition to savings of £695k that were agreed as part of the Medium Term Financial Strategy for 2015/16 in February 2014.
- 5.5 The cost of carrying out the options appraisal and developing proposals to this point is approximately £300k, which has been funded from the Transformation Reserve. Conducting a Competitive Dialogue and managing the transition to a new delivery vehicle is anticipated to take a minimum of nine months, to October 2015, and cost approximately £1.3m, the detail of which is set out in the final outline business case. Subject to approval, these costs will be met from the Transformation Reserve. The project team and specialist advisors required to carry out this work will be procured independently of the existing Customer and Support Group arrangements, to mitigate any potential conflict of interest.
- 5.6 Financial modelling has been carried out on the basis of a prudent, but realistic, assessment of achievable expectations with regard to potential growth and service efficiency. The model has been subjected to rigorous testing by the Council's independent commercial advisors and by the in-house finance team. The modelling indicates that all models are capable of delivering the required budget targets. However, it is anticipated that the in-house and social enterprise models are significantly more likely to require service reductions in order to achieve this. The joint venture options, whereby delivery risk is transferred to a third party, provide a much higher degree of certainty that budget targets can be met through income growth and service efficiencies. Financial modelling can only provide an indication of the likely outcomes. The assumptions on which it is based would need to be tested thoroughly through the procurement process.
- 5.7 The implications of staff transferring to a separate organisation will require careful consideration. The application of TUPE regulations and the London Living Wage in particular will be matters for discussion during Competitive Dialogue. It will be necessary for the Council to reach a view on its position in respect of these issues at the earliest opportunity.

Legal and Constitutional References

- 5.8 The Responsibility for Functions section of the Council's Constitution sets out how decisions of the Council can be made. If this proposal proceeds, there are a number of significant decisions to be made, which sit across Council committees and full Council.
- 5.9 Paragraph 1.6 of the Responsibility for Functions section confirms that decisions on policy matters and new proposals relating to significant

partnerships with external agencies and local authority companies are reserved to the full Council.

5.10 Annex A to the Responsibility for Functions section confirms the terms of reference for Council committees. Policy and Resources Committee has responsibility to determine the overall strategic direction of the Council, specifically in relation to internal transformation programmes, strategic partnerships and corporate procurement. The Children, Education, Libraries and Safeguarding Committee has responsibility for education functions, including discussion of transformation schemes within the Council's policy framework.

5.11 To ensure that this project is considered by the correct decision making bodies, the following reports will be presented:

September 2014	CELS	Consideration and agreement of draft outline business case and agreement to consultation on preferred options
December 2014	P&R	Agreement to continued consideration of alternative delivery model for education services Agreement of budget for project implementation
January 2015	CELS	Consideration of consultation responses and decision on preferred option and commencement of procurement, as required
July 2015	CELS	Decision on selection of bidder, as required
July 2015	P&R	Consideration of alternative delivery model and recommendation to full Council on contracting out of functions and setting up alternative delivery model, as required
July 2015	Full Council	Decision on whether to set up alternative delivery model and contracting out of functions

5.12 The Education and Skills service provides a combination of statutory and discretionary services, some of which are traded to schools. Many of the statutory services can be contracted out by virtue of regulations made under the Deregulation and Contracting Out Act 1994, although there are some exceptions and the Council will have to consider the most appropriate way for relevant services to be delivered as part of the overall business case.

5.13 The Education Act 2002 allows maintained schools to form or invest in companies to provide services for schools and exercise relevant local authority functions. In order to do so, the relevant local authority must give consent and there are restrictions on schools with suspended budgets following statutory intervention.

5.14 When making decisions around service delivery, the Council must consider its public law duties. This includes its public sector equality duties and consultation requirements as well as specific duties in relation to education services and services to children and families.

5.15 Due to the potential change to the provision of education services, detailed consultation has been carried out with schools, service users and the

general public, as well as current employees. Results from this consultation must be considered when deciding on the most appropriate way forward.

- 5.16 The Council must comply with the Public Contract Regulations 2006 when proposing to enter into contractual arrangements for certain services. Detailed legal support is being provided to ensure that the Council meets its public procurement obligations.

Risk Management

- 5.17 Project risks have been identified in the final outline business case, along with mitigation measures. These will be managed through the project governance arrangements, in accordance with the Council's project management standards.
- 5.18 The project itself is designed to mitigate against the risk of a decline in the performance of the educational system as a whole that could arise from making service reductions to meet Medium Term Financial Strategy targets.
- 5.19 The key risks associated with the delivery of the project relate to:
- i. The ability to meet the timescale for achieving budget savings, given the level of change required. This will require on-going monitoring.
 - ii. The ability to implement a new delivery model within the required operational timescales. Significant effort has been put into early, detailed planning of the procurement process and ensuring that the necessary resources are in place to support this. However, the procurement timescale is very ambitious and the need to meet this timescale will need to be balanced against the need to ensure the effective engagement with schools in the process and its outcomes.
- 5.20 The risks associated with the recommended model are:
- i. Ensuring an effective level of engagement with schools that secures support for the joint venture and willingness to buy-back the services it provides. This will be managed by ensuring the on-going involvement of schools in the procurement process and on-going development activity.
 - ii. The potential impact on competition of the market's perception of the Council's existing partnership arrangements. Measures have been put in place to minimise the involvement of personnel that are employed through existing partnership arrangements and to ensure that any involvement is restricted to data provision and technical support only.
 - iii. Ensuring that the Council secures the best possible outcome from the Competitive Dialogue process and that the resulting contract delivers what is expected and required. It will be necessary to ensure that appropriate legal, commercial, financial and HR advisors are secured at the earliest opportunity.

- iv. The ability to attract a suitable partner that is willing to provide an appropriate level of investment in growing the services. Other councils are known to be considering this option and putting this opportunity to the market early will make it more attractive to potential partners.
- 5.21 An initial assessment of Health and Safety Risks associated with the proposals has been carried out. This has identified that there are no additional Health and Safety risks beyond those normally associated with the delivery of these services and which are managed through established Health and Safety policies and procedures. In the event of a third party or separate organisation being established, there will need to be due consideration of Health and Safety matters in the commissioning process.

Equalities and Diversity

- 5.22 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies **to have due regard** to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
 - advance equality of opportunity between people from different groups
 - foster good relations between people from different groups
- 5.23 The broad purpose of this duty is to integrate considerations of equality into day to day business and to keep them under review in decision making, the design of policies and the delivery of services.
- 5.24 An Equality Impact Assessment has been carried out and is attached as Appendix Three. This covers potential impacts on residents and service users and on employees. The initial impact assessment for residents and service users identifies a minimal positive impact overall. The initial impact assessment for employees identifies a bigger impact on women than men. This is due to the fact that women make up 93% of the affected workforce.
- 5.25 It is recognised that the establishment of an alternative delivery model constitutes a significant change that will have an impact on employees and, in accordance with the Council's Managing Organisational Change Policy, it is essential that this change is managed in a way that reduces the disruptive effects of change. This will include ensuring that:
- the employees concerned will be treated in a fair and equitable way
 - advance notice of the impending change is given to the employees concerned as soon as possible
 - change will be brought about following consultation
 - the need for compulsory redundancy will be minimised but balanced against the Authority's need to retain employees with the skills and experience necessary to best meet future service requirements
 - redeployment opportunities will be maximised

- 5.26 Consultation will take place with the recognised trade unions and affected employees, as the proposals are developed further.
- 5.27 The Equality Impact Assessment will be kept under review and consultation responses will be incorporated into it to identify any potential adverse impacts and mitigating measures.

Consultation and Engagement

- 5.28 The outcomes of the consultation and engagement activity that has taken place are set out in the body of the report. Consultation has identified a number of key themes. These are set out below, along with initial responses. Further consideration will be given to points raised through consultation in developing the full business case.

Theme	Response
Model – there were mixed views about the preferred model, with schools and public respondents raising concern about the time commitment and financial risk to schools involved in the ownership models and some respondents requesting further information.	Whilst all models could provide the level of savings required, each carries different levels of risk and a different balance of service reductions and income growth. Bringing in a third party provider enables a provider with commercial expertise to support rapid development of the service, whilst the Council retains a key ownership role in the running of any new company. Whilst the option of school ownership can be kept open in the Competitive Dialogue stage, a number of respondents understand that a school role as commissioner can give them a sufficient role in the strategic direction of the proposed new company.
Services included – there were comments by schools and residents about the inclusion of some services, although residents supported SEN and school improvement services being included more than schools. Staff and trade unions also raised concern about conflict of interests between different partners.	The services to be included in the model include both statutory functions of the local authority and traded services. Provision of a unified and integrated approach for the delivery of education services is considered to be important for maintaining a quality education support function. Quality assurance and the need for specialist provision will be key aspects for discussion during the competitive dialogue process for all of the services concerned.
Third party expertise – there were some comments about the lack of expertise of any third party provider and the need for quality assurance.	The evaluation criteria will be designed to ensure that the right partner is chosen and the option of a joint venture delivery model ensures the Council continues to have a role in delivery of services. However, the Council will also need to ensure that its contract monitoring process is robust and the lead responsibility for quality assurance will sit with the statutory Director of Children’s Services.
Length of contract – there were comments from schools and the market about the length of contract, with the market expressing a desire for a longer contract term to enable certainty in return for investment and the schools commenting on the level	If schools are in a commissioning role, it is anticipated that they will be able to buy services on an annual basis and will not be tied into the entirety of the contract, although discounts may be offered for longer contractual arrangements. It will therefore be imperative for the owners of the company to meet the needs of their school

Theme	Response
of commitment.	customers to ensure continued purchase of services, as well as exploring new markets. Based on legal and commercial advice, the contract term is recommended to be seven years, with options to extend up to a further three years.
Conflict of interest/priority of different parties – employees raised concerns about conflict of interest between different parties. Residents also raised concern about the profit motives of a third party provider.	Potential conflicts of interest will be an important aspect to consider during the procurement process to ensure that any conflict of interest can be managed appropriately. Whilst a third party provider may be a profit making company, it may also be a not for profit organisation. It is important to ensure that the procurement process focuses on quality of provision and value for money, rather than the status of the provider. Profit making companies have been successfully involved in the delivering of statutory functions and public services for some time and can provide a level of expertise to ensure that resources are focused on service delivery.

6. BACKGROUND PAPERS

- 6.1 OPM'S report providing detailed analysis of the consultation results.
<http://engage.barnet.gov.uk/>
- 6.2 Council, 16th December 2014 – agreed that the Children, Education, Libraries and Safeguarding Committee should complete the detailed consideration of alternative delivery options, including agreeing to the commencement of procurement where relevant.
<http://barnet.moderngov.co.uk/documents/s19543/Business%20Planning%20201516-1920.pdf>
- 6.3 Children, Education, Libraries and Safeguarding Committee, 15th September 2014 – approved further consultation and engagement on four options for the future delivery of the Education and Skills service.
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=697&MId=7925&Ver=4>
- 6.4 Policy and Resources Committee, 10th June 2014 (Decision Item 6) – noted the updated Medium Term Financial Strategy up to 2020 and the Priorities and Spending Review report. The Committee agreed the Education and Skills project approach to consultation.
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=7856&Ver=4>
- 6.5 Cabinet, 25th February 2014 (Decision Item 7) – approved the Medium Term Financial Strategy.
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=120&MId=7518&Ver=4>