

Decision Maker: Executive

Date: For Pre-Decision Scrutiny by the Education Policy Development and Scrutiny Committee on 2 July 2014

For Pre-Decision Scrutiny by the Executive & Resources Policy Development and Scrutiny Committee on 10 July 2014

For Decision by Executive on 16 July 2014.

Decision Type: Non-Urgent Executive Key

Title: Update on the Process for Market Testing Education Services

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Chief Officer: Terry Parkin, Executive Director, Education and Care Services

Ward: All Wards

1. Reason for report

- 1.1 To consider expanding the scope of the market testing of Education Services to encompass additional Education Services which were not included in the original report in October 2013. This will include Special Educational Needs provision, Adult Education provision and strategic management functions relating to sufficiency, access and quality of education provision in Bromley.

2. **RECOMMENDATION(S)**

2.1 **Subject to the views of Education and Executive & Resources Policy and Development Scrutiny Committees, the Executive is asked to agree:**

- i) That the scope of the market testing of Education Services is expanded to include: strategic management functions; the residual functions of the Behaviour Service; the Special Educational Needs Service (including the Specialist Support & Disability Service); and Bromley Adult Education – paragraphs 3.11 to 3.31;
- ii) That the option to explore management arrangements with relevant schools for the Hearing Impairment Units is rejected and that the Hearing Impairment Units will be included within the SEN Inclusion Support service as part of the overall market testing process – paragraphs 3.36 to 3.42;

- iii) That the market testing tendering process commences as per the timetable in paragraph 3.61 and that a Competitive Dialogue approach is used - paragraphs 3.59 to 3.61.**
- iv) Note that a further report detailing the outcome of the market testing and recommendations be reported to a future meeting of the Council's Executive, and that this report describes how quality of service and support for children be monitored and enforced.**

Corporate Policy

1. Policy Status: Existing Policy: Commissioning Programme; Academy Agenda.
 2. BBB Priority: Children and Young People Excellent Council:
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Financial

1. Cost of proposal: Estimated Cost:
£46,951,220 Controllable Budget (**excluding** DSG/RSG recharges, income and grants)
£1,796,090 Controllable Budget (**including** DSG/RSG recharges, income and grants)
 2. Ongoing costs: Recurring Cost:
 3. Budget head/performance centre: Education Services (121, 136, 122, 132, 118)
 4. Total current budget for this head:
£50,201,330 Budget (**excluding** DSG/RSG recharges, income and grants)
£632,280 Budget (**including** DSG/RSG recharges, income and grants)
 5. Source of funding: Dedicated Schools Grant / Revenue Support Grant
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Staff

1. Number of staff (current and additional): 248 FTE (estimated)
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Applicable:
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Parents and children in receipt of Education Services in Bromley
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

Background

- 3.1 In October 2013, Executive approved the recommendation to commence market testing for relevant Education Services (following pre-decision scrutiny from the respective Policy & Development Scrutiny Committees of the Education Portfolio and Executive). Market testing would take the form of a tendering process for a single 'bundle' of services resulting, if demonstrating value for money and subject to Member decision, in a contract for services for a minimum of five years with appropriate extension options.
- 3.2 In conducting a market testing exercise, no assumption is made as to the outcome. The market testing exercise will result in recommendations to be considered by Members. The recommendation(s) may be that all, some or none of the Education Service functions included in this report are to be delivered by a third party via a contract for services or similar arrangement. Members may, or may not, agree to the recommendations arising from the market testing process. In market testing for a single 'bundle' of services, there will still be flexibility, if appropriate, to remove services from the 'bundle'. It is not intended to imply the outcome of a market testing process in the text of this report; and no such inference should be made. Appropriate engagement with staff and stakeholders will continue to take place as part of the market testing process and in the implementation of the agreed outcomes of the process.
- 3.3 The recommendation to commence market testing was developed as part of the commissioning review of Education Services, which took place in Spring/Summer 2013 under the governance of the Commissioning Board.
- 3.4 The Education Services that formed part of the single 'bundle' of services to be market tested were:
- Admissions;
 - Education Welfare;
 - Behaviour Services – certain elements only;
 - Workforce Development & Governor Services;
 - School Standards;
 - Early Years;
 - Special Educational Needs (SEN) Inclusion Support.
- 3.5 A number of Education Services were not included in the scope of the commissioning review. These were as follows and for the reasons given, applicable at the time of the commissioning review:
- **Behaviour Services** – aspects of this provision, such as the Pupil Referral Unit (PRU) and respite provision were subject to a separate review. Arrangements are now in place for the Pupil Referral Unit to convert to academy status, sponsored by Bromley College of Further & Higher Education, in August 2014, which will include the delivery of respite provision. Management responsibilities in ensuring the Local Authority meets its statutory obligations for excluded pupils remain with the Local Authority;

- **Bromley Adult Education** – this was subject to a separate review. The distinct provider market for Adult Education, together with specific and separate funding arrangements, means it does not necessarily align effectively with other Education Services as part of a single ‘bundle’ of services - although it could form part of the market testing process as a separate ‘lot’;
- **Bromley Nursery Provision** – subject to a separate review. Nursery provision has a distinct market place and would not benefit from inclusion within a larger market testing exercise;
- **Finance & Human Resources (Education)** – having previously been closely aligned to the Education Services department, these services were integrated more closely to the corporate Finance and Human Resources division, which are subject to a separate process of considering future alternative delivery models;
- **Special Educational Needs (including Specialist Support & Disability Service, which incorporates pre-school provision delivered at The Phoenix Centre)** – at the time of the review the National Pathfinder status of Bromley, in which new models of delivery were being developed in response to the Government’s SEN & Disability Green Paper, meant that it was considered inappropriate for inclusion in the commissioning review process. It was expected that these services would be subject to a separate review in due course and, if the market testing of education services resulted in a contract for services with an external provider, that an option to ‘bolt on’ SEN services to an existing contract would be made available if possible.
- **Special Educational Needs Transport** – this service is subject to its own review and alignment with Adult Transport Services.

- 3.6 The recommendations considered and approved by Executive in October 2013 also included agreement in principle for the retention of appropriate in-house ‘client’ capacity in the delivery of Education Services should the market testing result in the outsourcing of services. The structure and function of any retained capacity was not specified. The report indicated that the main purposes of retained capacity were: to ensure that the Borough could act as an ‘intelligent client’ in relation to commissioned services; to provide strategic leadership in acting as the community champion for parents and children, holding schools to account in ensuring a supply of high quality school and early years places; to maintain effective relationships with Bromley schools; and to provide effective leadership and management of the services retained by the Council.
- 3.7 It was indicated that the retained functions may include **strategic pupil place planning, capital management and leadership in school improvement / early years**. It was also indicated that any retained capacity would be minimal and would reflect a reduction against the current equivalent structure.
- 3.8 The paper stated that the method of tendering was to be defined; however it indicated at that time that a Restricted Tender process would be the preferred approach.
- 3.9 The specifications for each service would be at the *de minimis* statutory limit, as informed by ongoing service reviews. Wherever possible, specifications would be outcome focused.
- 3.10 Subsequent to the Member decision to commence market testing, information on the proposal and the next steps has been communicated to staff and relevant stakeholders; the process of developing specifications for the services in the scope of the market testing is in progress; and

planning is underway for the commencement of a tendering process with an indicative start date of September 2014.

Expanding The Scope of the Market Testing of Education Services

- 3.11 As the planning and preparation for market testing has commenced, senior managers in Education, Care & Health Services have given further consideration to the initial proposals and are now recommending **expanding the scope** to include additional elements of Education Services.
- 3.12 Specifically, it is proposed to expand the scope of the market testing of Education Services to include: **strategic management functions**; the residual functions of the **Behaviour Service** following the conversion of the PRU; the **Special Educational Needs** service, including the **Specialist Support & Disability Service (which includes pre-school provision at The Phoenix)**; and **Bromley Adult Education** (as a separate lot). This would mean that Bromley would be market testing Education Services almost in its entirety as part of a single process.
- 3.13 The remaining elements (Bromley Nursery provision, Education Finance & HR, SEN Transport) of Education Services are not included in the proposed expansion of the scope of market testing for the reasons given in paragraph 3.5.
- 3.14 Overall, senior managers consider that the delivery of Education Services would be more effective and efficient if they are aligned together from the outset. It is assumed that, in line with the Council's Corporate Operating Principle of identifying who is best placed to deliver services, that further market testing of the remaining Education functions would be conducted in due course. Conducting separate market testing exercises at different times for different elements of Education Services may lead to the Local Authority having to manage multiple delivery models and multiple delivery partners and could mean a greater risk of fragmentation of service delivery. Local Authority strategic oversight would be more efficient and effective if focused on a single delivery model and strategic partner, should market testing result in the outsourcing of services.

Strategic Management Functions

- 3.15 A number of statutory requirements are placed on local authorities. These can best be tracked back to the influential white paper "Every Child Matters" launched in 2003. The Children Act 2004 enshrined in law the basic principles that local authorities have responsibility for securing high quality outcomes for children in five areas: staying safe; being healthy; enjoying and achieving; economic wellbeing; and making a positive contribution. Although the coalition brought about many significant changes to the education landscape, it did not repeal the 2004 Act. Ofsted's view is that these remain duties on top tier councils regardless of where children and young people are educated. We must then ensure we retain sufficient strategic capacity to know our schools and academies well, and to be able to intervene should outcomes in any one of these five outcome areas be at risk. The relationship with the recently announced "school commissioner", employed on a regional basis by the DfE to oversee academies and free schools, remains unclear but government has neither legislated nor laid down a Parliamentary Order that releases LAs from the 'Every Child Matters' responsibilities for academies and free schools.
- 3.16 In giving further consideration to the approach to market testing, it is felt that the strategic management functions of Education Services could be delivered effectively as part of the single 'bundle' of services to be market tested rather than separated from the delivery element:
- The functions of strategic pupil place planning, capital management and quality (school improvement and early years) are considered to be most effective when there are close

links with the operational delivery of admissions, behaviour support, school improvement and early years. Data, information and soft information derived by the services from engagement with schools and parents can be shared more easily as part of single organisational solution as opposed to a structure where the strategic management functions are separated from operational delivery potentially within different organisations.

- Senior management posts within Education Services currently include both strategic management functions and operational management functions within the same post. Should the service be outsourced, an external body delivering Education Services on our behalf would still require senior management resource to manage operational delivery and, to an extent, to provide strategic leadership. In this scenario, retaining senior management functions within the Council is therefore likely to lead to duplication of management resource and increased overall cost.
- In an outsourced model, the Council would still act as an 'intelligent client' and provide strategic leadership with a minimal retained structure. Indicative functions of such a structure are:
 - Commissioning: negotiating the outputs, outcomes and finance of an external contract on an ongoing basis. The requirements of the service will be subject to change as a result of the conversion of maintained schools to academy status (in the short term), service pressures that may arise (e.g. increased volume SEN) and policy changes;
 - Contract management and monitoring: day to day management of the contract, contract monitoring and reviewing performance. It is possible that the commissioning and contract management functions could be combined into one post;
 - Fulfilling the role of statutory Director of Children's Services which cannot be DSG funded;
 - Strategic leadership and policy development: an external contract with strategic management functions would be responsible for providing strategic leadership and proposals for policy development. However, this would need to be overseen and endorsed by a senior manager of the Council to ensure that policy development and implementation meets the strategic aims of the Council and is subject to appropriate Member scrutiny.

Should the market testing not result in outsourcing the service, it is proposed that the separation of delivery and client functions would still be the preferred model.

Behaviour Service

- 3.17 The restructure of the Behaviour Service, currently in progress and if agreed, will lead to the cessation of the Early Intervention Service (Primary) and Behaviour Support (Secondary Outreach) cost centres with several of their functions expected to be carried out by the Pupil Referral Unit operating as a sponsored academy in partnership with Bromley College.
- 3.18 The Home & Hospital service is already included within the current market testing proposal. It makes sense to include the minimal remaining Behaviour Service functions, namely strategic management and administrative support functions, together with the commissioning budget for the purchase of alternative provision places, within the market testing of Education Services.

Special Educational Needs

- 3.19 The Special Educational Needs (SEN) service consists of one cost centre covering staffing and three cost centres covering funding for third party payments or supplies & services for special educational needs provision.
- 3.20 The SEN service was initially excluded as part of the original market testing proposal due to concern about its National Pathfinder status piloting new approaches to SEN delivery. However, it was expected that the SEN service would be subject to a commissioning review in due course and that any contract for the outsourced delivery of Education Services (subject to the outcome of market testing) would include the option, if possible, to vary the contract to include the SEN service.
- 3.21 For those reasons, it is now recognised that it would be more efficient to include the SEN service within the market testing of Education Services process taking place now. This will remove the need to undertake a second commissioning and market testing process for the SEN service at some future date, duplicating the cost and resource requirement of the current process.
- 3.22 It is also recognised that continuing in-house delivery of the SEN service would mean that the Council would need to retain a management and administration infrastructure for Education Services, which would run in parallel (and duplicate the cost of) any management structure put in place as part of an outsourced solution for Education Services. Including SEN services in the market testing bundle would reduce or remove this duplication.
- 3.23 The current 'bundle' of Education Services to be market tested includes the SEN Inclusion Support service. Managers have argued that the interdependency of the SEN service and the SEN Inclusion Support service means that it would be desirable for the close links that exist between both services to be maintained. Including SEN services in the market testing process helps to ensure that those links remain; and it allows for potential efficiencies in sharing a management structure across both services.
- 3.24 Core functions of the SEN team include:
- the strategic management and development of SEN provision in the borough (developing the 'local offer'), including the development of matrix funding arrangements for in-borough maintained schools and special schools;
 - the statutory assessment of children and young people, deciding on the provision to be provided in meeting a child's needs through a Statement of SEN (to be replaced by Education, Care & Health Plans);
 - providing advice, support and guidance to their families;
 - reviews of SEN Statements and support plans;
 - brokering appropriate specialist support or settings to meet the identified needs of the child (e.g. placements);
 - managing appeals to the assessment process;

- finance and management information – maintaining a database of all pupils who fall within the statutory assessment process and processing all invoice and payments for agreed support.

3.25 It may not be appropriate for all the functions of the service to be included within the bundle of services to be market tested. £18.37M of the overall controllable budget of £19.48M for this service (or 94% of the overall budget of the service) is for the funding of SEN placements in Bromley maintained schools, out of borough maintained schools, independent school settings and in further education settings. These placements and support arrangements, especially out of borough independent provision, are currently brokered, following the assessment and identification of need, by staff within the SEN service. The central brokerage team within Education, Care & Health Services are currently responsible for the brokerage of all placements for social care, residential and nursing settings with the exception of SEN placements. It is proposed that the relevant elements of the brokerage and finance support functions of the SEN service are not included within the market testing of Education Services and that these functions (and staff) are transferred, where appropriate, to the ECHS Brokerage team.

3.26 This would ensure that all brokerage functions are placed within a dedicated team, working to common practice and processes, and would allow retained management control and scrutiny of controllable elements (i.e. not matrix funded) of the SEN budget for the commissioning of placements.

Specialist Support & Disability Service

3.27 The Specialist Support & Disability service is part of the overall SEN offer in the Borough, along with the SEN service and the SEN Inclusion Support service, and works closely with Children's Social Care. It forms a key part of our early intervention strategy.

3.28 With an overall controllable budget of £2.63M (all DSG), it has six cost centres:

- Specialist Support & Disability Panel – the entire budget of £353k is for the commissioning of specialist placements and support, as decided through a panel review;
- Complex Needs Team – the majority of the £253k controllable budget is employee costs, primarily senior management and business support functions plus advisory teachers and a family support worker;
- Phoenix Pre-School – a controllable budget of £1.39M, the majority of which is employee costs (£1.18M). The employee budget includes senior management and business support functions but the majority is related to service delivery based at the Phoenix Centre (teachers, teaching assistants, midday supervisors, portage workers). £143k of the budget relates to rent costs for the Phoenix Centre.
- The Early Support Programme - this is a relatively small budget (£78k) which funds mainly employee costs for family support, parent participation and parent representative officers.
- The Outreach and Inclusion Service – a controllable budget of £226k, all of which relate to employee costs (management, business support and teachers).
- Pre-School Support – a controllable budget of £328k, of which £225k funds specialist support in pre-school settings passed directly to providers. The remainder are employee costs (management, business support and inclusion support / core support workers).

- 3.29 There are 93 posts (50.6 FTE) within the service. 19 (20%) of these posts relate to management and business support functions (11.28 FTE, or 22% of the total FTE). This accounts for 24% of the employee budget.
- 3.30 The rationale for including the Specialist Support & Disability Service is the same as that for the Special Educational Needs service. It has close service links (it forms part of the overall Local Offer for SEN) to both the SEN service and the SEN Inclusion Support service and it is desirable to maintain those links rather than treating it as a separate entity. Excluding it from the market testing process now may mean that cost and resource will need to be applied in reviewing and potentially market testing the service later. Potential management efficiencies through a market solution for the SEN service as a whole would not be able to be realised and may lead to duplication of cost as the LA would need to continue with a managerial and business support infrastructure.

Bromley Adult Education

- 3.31 Members have, for some time, been exploring options for the future delivery of Bromley Adult Education Services and previous reports (ED13119) have established market testing as the preferred route. Therefore it is proposed to include Bromley Adult Education within the market testing process for Education Services. Combining these two elements into a single process removes the time and cost in undertaking two separate processes. It is proposed to include Bromley Adult Education as a separate 'lot' – this means that potential providers could choose to submit proposals for delivery of both lots (the Education Services 'bundle' and Bromley Adult Education) or they could choose to submit a proposal against one 'lot' only. This ensures that potential providers of Adult Education who may not be in a position to consider submitting a proposal for the overall 'bundle' of Education Services are not excluded from the process.

Alternative Options

- 3.32 Although the recommended approach is to expand the scope of the market testing of Education services so that alternative methods of delivery are tested as part of a single process, there are other potential options for specific elements of Education services that are being explored.
- 3.33 Within Behaviour Services, the Home & Hospital cost centre was included within the original agreed proposal for the market testing of Education services. However, in addition to home and hospital tuition for children who cannot attend school because of health needs, this cost centre also includes the Nightingale provision (based at the Blenheim Children & Family Centre) which provides full time education for children who cannot attend mainstream school due to medical needs, primarily 'emotional', as well as discrete full time education for young mothers or mothers to be. This provision potentially aligns more readily with alternative education provision provided by a Pupil Referral Unit. Indeed, this provision was previously considered to be a satellite element of the Bromley Pupil Referral Unit but was not included within the delegation of budget for the Pupil Referral Unit that took place in April 2013.
- 3.34 The Pupil Referral Unit provision is expected to be provided by the Bromley Alternative Provision Academy (BAPA) from August 2014. An alternative approach for the Nightingale provision may be to seek to commission this service directly from BAPA to form part of the overall Pupil Referral Unit provision in the Borough. Officers will explore this option further with BAPA as part of the overall PRU discussions.
- 3.35 If all, or any part, of the proposed expansion of the market testing of Education Service is not supported by Members, then the current market testing process will continue as planned on the basis of the range of services already agreed as being in scope. Should this be the case, further and separate market testing processes may need to be undertaken, in line with Council

policy, at some point in the future for any remaining Education services not agreed for inclusion at this time.

Hearing Impairment Units

- 3.36 The paper approved by Executive in October 2013 on the market testing of Education Services included a recommendation to commence discussions with relevant schools on potential management arrangements for the Hearing Impairment Units, the rationale for this being that all other specialist SEN Units in the borough are managed through a contract for services with schools. There are two Hearing Impairment Units at primary and secondary level.
- 3.37 The Primary Hearing Impairment Unit is based at Griffins, which is situated between Darrick Wood Infant School (academy) and Darrick Wood Junior school. The Unit is co-located in Griffins with the Sensory Support Service.
- 3.38 The Secondary Hearing Impairment Unit is based in dedicated classrooms at Darrick Wood Secondary School (academy).
- 3.39 Discussions have taken place with the Darrick Wood Infants and Juniors on the Primary Hearing Impairment Unit. Both schools expressed an interest in the potential of management arrangement but with a number of caveats. As well as the practical arrangements regarding leasing arrangements, service charges and the effective sharing of space within Griffins, they both expressed concern about the potential issues that may arise if the management of the Unit was placed with one of the schools and the impact this may have on the school not included in the management arrangement.
- 3.40 Darrick Wood Secondary School has not indicated any interest in the potential of a management arrangement for the Secondary Unit and has not entered into any detailed discussion on the matter.
- 3.41 Service managers have also expressed concern about entering into separate management arrangements between the Primary Unit, the Secondary Unit and the Sensory Support Service itself. They have pointed out this would remove the ability to manage resource across these service elements flexibly (e.g. a temporary staff shortage in one Unit will not be able to be supported by the other Unit as is currently the case). They expressed concern about the potential dilution of the specialist service if the resources were placed under the management of a school. Similar concerns have been raised in feedback from parents. Furthermore, entering into separate management arrangements for these three elements of the service will lead to multiple management structures and duplication of cost. The services also queried the practicality of sharing space within Griffins for these services if operating under separate management arrangements.
- 3.42 For these reasons, it is not considered feasible to enter into separate management arrangements with the relevant schools for the Hearing Impairment Units as the arrangements to do so are problematic with no clear benefits. It is recommended that the Hearing Impairment Unit provision is included as part of the overall SEN Inclusion Support service included within the Education Services to be market tested as a single bundle of services. The paper approved by Executive stated that this would be the alternative approach if separate management arrangements were not feasible.

Sold Service Delivery

- 3.43 The paper approved by Executive in October 2013 on the market testing of Education Services included a recommendation that sold service delivery for the services in the scope of the report be sustained so that they can form part of the market testing process.

- 3.44 Inclusion of sold service delivery within the market testing process would mean that, should Education Services be outsourced, the Council would also contract for the delivery of sold services at either nil cost or on the basis of the Council retaining all income generated through sold services. This element of the contract would only be in place in the short term (e.g. one year) to ensure the applicability of TUPE for staff currently engaged in the delivery of sold services following which the contract would be varied. The Council would cease the commissioning of sold services and the provider would take over this work directly.
- 3.45 Such an arrangement could be advantageous to a provider as they would inherit an existing infrastructure and contract base operating at full cost recovery that could allow them to develop and expand sold service delivery. The Council could benefit as it could withdraw from the delivery of sold services without incurring redundancy costs whilst also potentially benefitting from improved prices for the delivery of the core elements of the service.
- 3.46 Currently, this is a relatively minor element of the market testing process as sold service delivery is only relevant to Education Welfare, Workforce Development, Governor Services and Free School Meals.

Soft Market Testing and Other LA Models

- 3.47 Soft market testing of the education market took place as part of the commissioning review process of Education Services. Research was undertaken into the market place and a number of providers were invited to participate in detailed discussions on the possibility of a market testing solution for Bromley Education Services. The outcome of these discussions was detailed in full in the paper submitted for decision to Executive.
- As part of those discussions, providers confirmed that their preference would be for an overall package of services as opposed to individual tenders for each service or a tender made up lots. They pointed out the potential of increased cost to both the provider and the LA in managing multiple bidding processes. They also highlighted the potential difficulties in services being delivered by multiple providers due to the co-dependency of many aspects of the services together with data sharing issues and increased contract management costs.
 - All providers expressed interest and confirmed that they had the capacity to deliver all aspects of education delivery in the scope of the review at that time. However, they also expressed interest in the services that were not included, particularly Human Resources Education, Finance Education and Special Educational Needs.
 - All providers had a track record in delivering all or most of these services on behalf of local authorities and all of them had recently participated in tendering for Education Services in other Local Authorities.
- 3.48 As part of the soft market testing, research was undertaken into commissioning approaches and market involvement in the delivery of Education Services in other Local Authorities. This established that other Local Authorities have market tested and awarded external contracts of delivery for some (e.g. Devon, Surrey) or all (e.g. Slough) of the services in the scope of this report.

Communications

- 3.49 Following the initial decision by Members to market test Education Services, briefings have taken place for staff, union representatives and stakeholders including schools, governors and early years providers. Service teams have been working with the Commissioning team in the

development of specifications for the services in question. In addition, the Commissioning Team is working closely with service teams in other engagement activities. This includes meetings with stakeholder representative groups and, where appropriate, communication with parents and carers, including arranging briefing sessions.

3.50 In expanding the scope of the market testing, subject to Member decision, we will continue to engage with all staff and relevant stakeholders as appropriate throughout the process.

Services and Specifications

3.51 A summary of each service in the Education Services 'bundle', outlining the key elements of the specification, follows. The summary is not intended to be comprehensive.

3.52 Admissions

The key elements of the specification are:

- Administering the Admissions process in line with the Schools Admissions Code, the School Admissions Appeals Code and the Pan-London Co-Ordinated Admissions framework;
- Providing advice and assistance to parents;
- To publish admissions arrangements in relation to maintained schools;
- Administering the Transport Grant;
- Free School Meal Eligibility Checking (non-statutory).

The Admissions service is almost entirely statutory.

However, Free School Meal Eligibility checking in bulk on behalf of schools is not statutory. The cost of the service is funded through agreed delegation of funds to the Local Authority from maintained schools; and as a sold service to Academies. No savings can be made by ceasing this element of delivery. Furthermore, only the Local Authority has access to the relevant database to do this – the alternative is that individual parents would apply to the LA for eligibility checking to which we are obliged to respond. Bulk checking via the schools is more efficient. Therefore this element of the service is included within the service specification.

3.53 Behaviour Service

The restructure of the Behaviour Service currently under way will mean that the service is entirely statutory. The key elements of the specification are:

- Duty for the LA to provide full time education from the sixth day of exclusion for permanently excluded pupils, with adherence to the Fair Access Protocol;
- Duty to make arrangements for the provision of suitable education for each child of school age who, for reasons of illness, exclusion or otherwise, would not receive it.

3.54 Education Welfare

The key elements of the specification are:

- Processing licence applications for children to take part in performance;
- Investigating non-attendance and deciding whether to proceed with an Education Supervision Order or a prosecution, and carrying this out;
- Issuing School Attendance Orders and the supporting investigation that underpins this process;
- The identification of children missing education.
- Initial assessment and monitoring (monitoring currently conducted by the Behaviour Service) of Elective Home Education arrangements;

These elements are statutory and there is no further opportunity for efficiencies.

The service also delivers non-statutory preventative provision in two ways:

- As a sold service to academies. The income for this service exceeds full cost recovery and will not deliver savings if ceased. The intention is to continue delivery and transfer sold service delivery as part of the market testing process, if possible.
- As a targeted service to maintained schools. This is a discretionary service and work is in progress to restructure the service to ensure that it focuses on the statutory and sold service functions only.

3.55 School Standards

This service has already undergone significant restructure and is operating at the *de minimis* statutory limit. The statutory obligations of the Local Authority may reduce further as more schools convert to academies.

The key elements of the specification are:

- Statutory duty to prevent failure in schools (regardless of status);
- To monitor and report on the performance of all schools, identifying symptoms of failure early and to be able to intervene with the school/governing body to secure early improvement;
- To provide or broker school improvement support for maintained schools causing concern;
- To provide or broker school improvement support for maintained schools eligible for intervention; or to recommend and implement intervention as appropriate under the powers available to a local authority for schools eligible for intervention;
- To make provision for moderating teacher assessments at maintained schools;
- To provide support and advice to maintained schools on KS1 assessment;
- To convene and maintain SACRE.

3.56 **Governor Services / Workforce Development**

The Governor Services element has already undergone restructure and is operating at the *de minimis* statutory limit.

Workforce Development is non-statutory but supports the LA duty for the sufficiency and quality of schools. It is a sold service activity operating at full cost recovery.

The key elements of the specification are:

- To provide training and information for school governors of maintained schools (on a sold service basis for academies);
- To monitor and report on the arrangements and effectiveness of maintained school governance arrangements, ensuring LA governors are in place;
- To provide a range of workforce development activities on a sold service basis (at no cost to the LA).

3.57 **Early Years**

The Early Years service delivers statutory requirements only. The service is currently undergoing restructure to adjust its offer to reflect recent reductions in the statutory obligations of the LA.

The key elements of the specification are:

- Secure sufficient childcare for working parents and to secure prescribed early years provision free of charge;
- To assess childcare provision in the local area in order to ensure it is meeting the sufficiency duty;
- Provide information, advice and assistance to parents and to provide information, advice and support to childcare providers below a Good Ofsted rating and to prospective providers;
- Support providers in ensuring early years foundation profile assessments are accurate and consistent.

3.58 **Special Educational Needs: The Special Educational Needs Service / The Specialist Support & Disability Service / The Inclusion Support Service**

Special Educational Needs provision is underpinned by statutory requirements, which are in the process of being updated in response to the Draft SEN Code of Practice, part of the new requirements of the Children & Families Bill expected to be enacted in 2014.

Broadly speaking the statutory duties are:

- Identifying and assessing SEN (0-25);
- Making and reviewing ECH Care Plans (currently statements);

- Keeping arrangement for SEN under review (reviewing the Local Offer);
- Provide information and advice to families;
- Ensure a dispute resolution service;
- To ensure young people with SEN secure appropriate learning in the FE sector;
- Publishing information on the LA's SEN policies and the arrangements and activities in carrying them out (the Local Offer);
- Give regard to the views, wishes and feelings of young people and parents in carrying out SEN functions and support parents /young people to contributing to assessment, planning and review of ECH plans;
- Must work together with health and social care services.

Many aspects of the SEN services included, and proposed to be included, within the scope of market testing form part of the Local Offer. The LA must involve children and young people with SEN in developing and reviewing the local offer; must co-operate with local partners in the developing and reviewing the offer; must demonstrate, through consultation with children, young people, parents and local partners, how proposed reorganisations of SEN provision are likely to lead to improvements in the quality and range of SEN provision.

There are no current proposals for service reconfiguration. Any proposed changes will need to undergo a process of review, consultation and stakeholder engagement before implementation. It is unlikely that any significant proposals can be put forward and resolved in the time available prior to the proposed commencement of market testing.

However, the requirement to review the Local Offer to ensure that it meets current and emerging needs of SEN children and young people while demonstrating value for money will form part of the specification for the delivery of the SEN service. As a result, should the market testing result in service delivery through a contracted partner, then the service will still be expected to be reviewed and reconfigured as appropriate to meet the changing needs of children and young people in an effective and efficient way.

The status of the Phoenix Centre will need to be resolved as part of the market testing process. The lease (annual cost £142k) is up for renewal. If the lease was renewed this would be for a further 21 years. It has been indicated that break options would be available but the details are not known at this time. Rental and service charge costs may increase although it has been indicated that capital contributions towards the extension of the Phoenix (completed in 2007) may mitigate additional rent charges pertaining to that extension.

Exploration of the options for the Phoenix Centre are under way, including consideration of the Hawes Down Centre as a potential alternative delivery location. This will be subject to a separate report to Executive.

Timetable For Procurement

3.59 If the proposal to expand the scope of the market testing of Education Services is agreed, then the specification for the overall tender becomes more complex. As a result, a Competitive Dialogue procurement process will be preferable to a Restricted procurement process.

3.60 A Competitive Dialogue procurement process allows bidders to submit more than one proposed solution to the delivery of the services and allows those proposals to be refined further through dialogue with the Local Authority.

3.61 On the assumption of an increase in scope of the market testing of Education Services and the use of a Competitive Dialogue procurement, an indicative timeline for Competitive Dialogue is as follows:

ACTION	ANTICIPATED DATE
<ul style="list-style-type: none"> • Consideration by Education PDS of proposal to expand the scope of market testing. Decision by Portfolio Holder. • Consideration by E&R PDS of proposal to expand the scope of market testing. • Decision by Executive on proposal to expand the scope of market testing. 	Education PDS - 2 July 2014 E&R PDS – 10 July 2014 Executive – 16 July 2014
Publication of OJEU Notice for Expressions of Interest	September 2014
Deadline for receiving completed PQQ's	October 2014
Issue of 'Invitation to Participate in Competitive Dialogue' (IPCD) and 'Invitation to Submit Outline Solutions' (ISOS)	November 2014
Issue of Invitation to Submit Detailed Proposals (ISDP)	February 2015
Competitive Dialogue Meetings	February to April 2015
Issue 'Invitation to Submit Final Tenders' (ISFT)	May 2015
Establish Preferred Bidder and Completion of Due Diligence	August 2015
Education PDS Scrutiny / Executive Decision on Recommendations	September 2015
Contract Commencement (subject to Member decision)	January 2016

4. POLICY IMPLICATIONS

4.1 The market testing proposals are in line with the Council's Corporate Operating Principles and target operating model of a commissioning-led authority establishing who is best placed to deliver services. The proposals are in line with the Education Covenant and the Academy Agenda.

5. FINANCIAL IMPLICATIONS

5.1 Table 1 summarises the supporting financial and personnel information for the services already in the scope of the agreed market testing together with the additional services proposed to be included in expanding the scope of the project.

5.2 All information is based on the 2014/15 Budget Book and 2014/15 Employee Budget Management (EBM) Database.

- 5.3 The table shows the actual costs of each service, with recharges to the Dedicated Schools Grant (DSG) and budgeted income removed. It also shows the actual cost of the service with budgeted income taken into account.
- 5.4 The total controllable funding for the Education Services proposed to be in scope of the market testing process is £46,951,220. 88% (£41.12M) of this is recharged to DSG, the remaining 12% (£5.83M) is RSG (of which over half relates to Bromley Adult Education).
- 5.5 The funding total is adjusted to take into account current income targets, together with other external sources of funding such as grants (totalling £162k DSG and £3.9M RSG). This adjusts the controllable funding to £42,888,240.
- 5.6 The majority of this total (£32.53M) is related to third party payments, principally funding for Special Educational Needs placements / matrix funding together with Free Early Years funding to nurseries and similar settings. This element of the budget will not necessarily form part of the contract price of a contract for services (subject to the outcome of the market testing process), but the funds may be administered through an external contract arrangement.
- 5.7 Discounting the cost of Third Party Payments, the funding envelope for Education Services is:
- DSG: £8,484,320
 - RSG: £1,877,380
 - Total: £10,361,700
- 5.8 Of this total, £1.18M of DSG funds is related to external payments for **commissioned** Supplies and Services (e.g. Professional Fees, Educational Equipment, Speech & Language Contracts). In addition, £2.1M are recharges in to the service of which £1.56M relates to the recharging of social care costs to education for young people with SEN.
- 5.9 Non-controllable costs (corporate recharges), not included above, apportioned to the Education Services in the scope of this report total £3,250,110, of which £1.35M is related to DSG and £1.9M relates to RSG. £1.09M of the RSG non-controllable costs are related to Bromley Adult Education.
- 5.10 Consideration may need to be given as to the impact of non-controllable costs in the event of an outsourced solution (subject to decision by Members). Non-controllable costs will still be incurred by the Council but they may, in part or in whole, no longer be able to be recharged to DSG or Bromley Adult Education grant income; the charges will need to be dispersed across other cost centres. However, the price for an outsourced service would still incur non-controllable costs funded through a contract. Therefore there is a risk of double-funding until a corporate solution is applied to reduce non-controllable costs (accommodation, support services, computers) to reflect the outcome of a commissioning approach to services.

Table1: 2014/15 Budget Information by Service for Education Services (excluding recharges to DSG)

Service	Funding			Personnel
	Budget	DSG	RSG	
Admissions	Controllable Sub-Total	286,080	237,670	14 Posts 12.4 FTE
	Income	-10,000	0	
	Controllable Total	276,080	237,670	
Education Welfare	Controllable Sub-Total	0	368,870	10 posts 9.5 FTE
	Income	0	-133,430	
	Controllable Total	0	235,440	

Service	Funding			Personnel
	Budget	DSG	RSG	
Behaviour Services	Controllable Sub-Total	1,365,810	0	24 posts 20.21 FTE
	Income	-152,000 SEN recharge	0	
	Controllable Total	1,095,080	0	
Early Years	Controllable Sub-Total	15,516,920 Of which £15,44M relates to FEE payments	465,130	16 posts 14.36 FTE
	Income	0	0	
	Controllable Total	15,516,920	465,130	
School Standards	Controllable Sub-Total	497,000	146,290	10 posts 8.5 FTE
	Income	0	-12,110 EFA Grant	
	Controllable Total	497,000	134,180	
Workforce Development & Governor Services	Controllable Sub-Total	44,400	116,140	3 posts 3 FTE
	Income	0	-50,240	
	Controllable Total	44,400	65,900	
SEN Inclusion Support	Controllable Sub-Total	1,994,760	535,930	63 posts 47.09 FTE
	Income	0	-66,260	
	Controllable Total	1,994,760	469,670	
Specialist Support & Disability	Controllable Sub-Total	2,630,190	0	93 posts 50.6 FTE
	Income	0	0	
	Controllable Total	2,630,190	0	
Special Educational Needs	Controllable Sub-Total	18,779,820 Of which £16.4M relates to Third Party Payments and £1.56M relates to Social Care recharges	702,920	16 posts 13.81 FTE
	Income	0	0	
	Controllable Total	18,779,820	702,920	
Bromley Adult Education	Controllable Sub-Total	0	3,037,100	59 posts 66.26 FTE
	Income	0	-3,638,940	
	Controllable Total	0	-601,840	
Other	Controllable Sub-Total	5,000	221,190	4 posts 4 FTE
	Income	0	0	
	Controllable Total	5,000	221,190	
All Services	Controllable Sub-Total	41,119,980	5,831,240	311 posts 248 FTE
	Controllable Sub-Total Overall		46,951,220	
	Income Sold Services	-10,000	-1,794,410	
	Income Recharges Out	-152,000	0	
	Income Grants	0	-2,106,570	
	Controllable Total including Income	40,957,980	1,930,260	
	Overall Controllable Total including Income		42,888,240	

Service	Funding		Personnel
	Budget	DSG	
	Non-Controllable Total	1,350,330	1,899,780
	Non-Controllable Overall Total	3,250,110	

6. LEGAL IMPLICATIONS

- 6.1 These are Part B Services for the purposes of Schedule 1 to the Public Contract Regulations 2006 (as amended). For Part B services there is a lighter regulatory regime under the 2006 regulations mainly covering non-discriminatory simplification and publishing award notices. Regards must also be had to government guidance to ensure the appropriate level of advertising needed to demonstrate a transparent process, The Council also has to have regard to its general fiduciary duty to local tax payers to secure value for money and comply with internal procurement and financial regulations in the process followed.
- 6.2 These are currently Part B Services for the purpose of Schedule 1 to the Public Contract Regulations 2006 (as amended). The 2014 EU Procurement Directives were approved by the European Parliament on 15 January 2014 and by the EU Council on 11 February 2014. These Directives were published in the Official Journal of the EU on 28 March 2014 and came into force on 17 April 2014. EU member states have 2 years to implement them in national legislation.
- 6.3 One of the main reforms in the new Directives is the removal of the distinction between Part A ("priority") and Part B ("non-priority") Services. This means that the services currently listed in the Part B Services category will be subject to the full procurement regime under the new Directives. There will, however, remain a list of social, health, cultural and assimilated services which will be subject to a lighter touch regime under what has been described as a new simplified procedure. This new simplified regime will have a higher threshold of €750,000 and the only obligations, apart from general EU principles, which apply are the rules in relation to transparency and publicity. As the market testing of Education Services is expected to commence prior to the new directives being implemented in national legislation, they will be treated as Part B services. In practice, due to the size and scope of the market testing process, the Council will follow the principles of the full procurement regime.
- 6.4 The proposals are intended to maintain service standards for customers and it is not expected there will be any detriment to service users with protected characteristics. However the Council will review its equality obligations throughout the various stages of the process.

7. PERSONNEL IMPLICATIONS

- 7.1 If Members agree the recommendation to expand the market testing of services, staff and their representatives will be engaged as early as practical at each stage of the process going forward, subject of course to any commercially sensitive information. There will also be engagement with service users and representatives who might be affected by the proposals. In advance of consideration of the proposal by Executive to expand the scope of the market testing, all Education staff will have been informed of the proposal by letter (copied to Trade Union and Departmental Representatives) and briefing sessions will have been arranged or will have taken place for managers and heads of service (who will then brief their teams) and Trade Union / Departmental Representatives.
- 7.2 Any staffing implications, such as redundancies or the TUPE related transfer of staff, arising from the recommendations in this report will need to be carefully planned for and managed in accordance with Council policies and procedures and with due regard for the existing

framework of employment law. The tendering process will consider whether or not the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) would apply and the consequential legal and financial implications arising from this. Given the scale and number of staff involved, additional HR support will also be considered to minimise the impact on affected staff.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	Commissioning Team Programme Budget (DRR13/043) Future Role of the LA in Education Services (ED13032) Commissioning Review of Education Services (ED13085)