

**Decision Maker:** Executive

**Date:** 26th November 2014

**Decision Type:** Non-Urgent Executive Key

**Title:** **FUTURE DELIVERY OF STATUTORY AND DISCRETIONARY SERVICES TO SCHOOLS**

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**Chief Officer:** Doug Patterson, Chief Executive  
Peter Turner Director of Finance,  
Charles Obazuaye Director of Human Resources

**Ward:** N/A

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1. Reason for report

- 1.1 As part of the 2014/15 Budget process all areas of expenditure have been scrutinised by officers with a view to delivering services in a more efficient and effective way, particularly given the significant funding gap identified in the four year financial forecast. This has included looking at the option of outsourcing services where appropriate.
- 1.2 This report looks at the central support teams in HR, Finance and Audit that provide statutory and discretionary services to schools and the future of these services going forward. It also considers the impact on our payroll service.

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2. **RECOMMENDATIONS**

2.1 **The Executive is asked to**

- a) **Agree the transfer of services and endorse the transfer of the Schools Finance Team, statutory and discretionary, to Liberata as outlined in this report.**
- b) **Agree the transfer of services and endorse the transfer of the HR Schools Team, statutory and discretionary, to Liberata as outlined in this report.**
- c) **Support the approach that the transfer of the Schools Finance Team takes place on the 1<sup>st</sup> January 2015.**

- d) Support the approach that the transfer of the HR Schools Team takes place on 1<sup>st</sup> January 2015.**
- e) Agree to outsource the services to Liberata for the reasons set out in this report, which will result in additional costs of £102k in a full year. This is on the basis that the income generated from discretionary sold services to schools is not sustainable in the medium to longer term.**
- f) Note that there will be further cost pressures of £79k p.a. for payroll costs, if the Council ceases providing discretionary services to schools in the future.**

### Corporate Policy

1. Policy Status: N/A.
  2. BBB Priority: N/A.
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### Financial

1. Cost of proposal: Estimated cost - £102k p.a. plus potentially further £79k
  2. Ongoing costs: Recurring cost. - £102k p.a.
  3. Budget head/performance centre: HR, Finance, Audit and Payroll
  4. Total current budget for this head: £ - See Appendix 1
  5. Source of funding: 2014/15 Budget
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### Staff

1. Number of staff (current and additional): 12.68ftes
  2. If from existing staff resources, number of staff hours:
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### Legal

1. Legal Requirement: No statutory requirement or Government guidance.
  2. Call-in: Call-in is applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

- 3.1 The Council continues to face a period of unprecedented reductions in public funding, and over the next few years will need to identify savings in the region of £60 million to balance the revenue budget. As part of meeting the Council's future years "budget gap" it is essential that officers consider alternative service delivery models which will maintain the quality of our services.
- 3.2 In the last year, various reports have been reported to Committee on the future of discretionary sold services to schools. This report focuses just on HR, Finance and Internal Audit, which currently undertake the Council's statutory responsibilities in these areas as well as providing discretionary sold services to schools, and the future of these services going forward.
- 3.3 The financial pressures facing local authorities in recent years and moving forward, means that discretionary services to schools have come under a lot more scrutiny. In the last few years many local authorities, including Bromley, have set up Trading Accounts for all discretionary sold services to schools, to ensure that wherever possible they operate on full cost recovery basis with clarity around what services are being provided, to how many schools, and the fees being charged.
- 3.4 Whilst local authorities typically are not allowed to make a profit on charged-for services they can generate a contribution towards overheads that can offset some costs for the council. This income allows councils to spread the cost of central overheads more widely, and so reduce the net burden on the General Fund. There are some exceptions for example where services are delivered under the Local Authorities (Goods and Services ) Act 1970 then the amount charged for services is a matter for agreement between the parties and Local Authorities can through a company structure use the general power of competence in the Localism Act 2011 to trade for profit..
- 3.5 Following a re-structure effective from 1<sup>st</sup> September 2014, a dedicated Schools team has been established within the HR Division saving £10k p.a. on the cost of delivering statutory services reflecting the increase in the number of Academy schools. There are now 7.68 ftes (10 staff and 1 vacancy) that work in this team made up of 1.81 ftes covering our statutory responsibilities to schools and 5.87 ftes delivering sold services to schools and academies. If all schools convert to academies and Bromley decides to withdraw from the provision of sold services, this team would no longer be required.
- 3.6 The statutory responsibilities carried out by HR include legal and contractual transactional processes related to the recruitment, employment and termination of staff, pensions administration (all maintained schools) and advice to manage the Council's financial and employment risks in complex casework including dismissal and discrimination cases as well as dealing with TUPE requirements in Academy conversions.
- 3.7 There are 5 members of staff (4.7ftes) in the Schools Finance team, of which 3 spend the majority of their time out in schools carrying out the sold service functions, such as dealing with financial advice and support, officer training, budget planning, budget monitoring etc. The other 2 staff are more office based and deal more with the strategic function side of the service.
- 3.8 The statutory functions carried out within the Schools Finance team, will include the calculation of schools budget shares, year-end procedures, academy recoupment and matrix payments. Some functions remain for all schools regardless if they are maintained or academy. Other duties go when a school converts, such as producing the scheme for financing schools, payment of school budget shares and support to schools in deficit .

- 3.9 Internal Audit work on sold services (0.3 fte) is undertaken by all staff within the audit team, with the team allocating a % of their time to the work they undertake on sold services, generating a surplus of £7k p.a. excluding overheads. Due to current staff shortages within the team and the need to focus on “core” work with limited resources, the Head of Audit was going to give notice to our schools that they could no longer provide this service. However, in discussion with officers it became clear that given the synergies with Schools Finance including staff with internal audit experience, this work could be undertaken by that team, with some additional resource as needed, but will generate additional income over existing budgets. Therefore, this work has now been absorbed within the Schools Finance team.
- 3.10 Historically, local councils have always been the sole provider of discretionary services to schools in their borough, but the changing educational landscape in England is seeing its greatest period of change in a generation, which is having a profound effect on the relationship between schools and local authorities.
- 3.11 The increasing separation of education and local government has created space for alternative providers to sell services to schools in direct competition with local authorities. As a direct result of greater choice in the market, some councils have started to see falling demand from local schools, resulting in a fall in revenue and, ultimately, an increase in the net cost of these services to the council, all at a time of unrelenting financial pressures.
- 3.12 Some local authorities are looking to expand their sold services because it can bring in more revenue, which in turn can increase contributions towards overheads. But it also means that local authorities will enter into more direct competition with each other and external providers than they have faced previously, and competition is potentially a big threat to sold services in the future. Yet despite the fact that there is an increasingly competitive market, buy back rates for our sold services have remained high so far.
- 3.13 With the risk around potential falling income as the market in sold services expands and the need for the Council to focus on its “core” services given the limited resources available, it is now timely to review these services and consider the options going forward.

#### **4. Options**

##### Option 1 – No longer provide Discretionary Sold Services to Schools

- 4.1 One option is that the Council gives six months’ notice to schools that we will no longer be undertaking this function, so effectively from September 2015 all HR, Finance, Payroll and Audit sold services will no longer be provided by the Council. This will allow schools sufficient time to liaise with other providers to pick up this work on their behalf.
- 4.2 From Appendix 1 the impact of ceasing sold services to schools will result in a bottom line cost to the Council of £142k and £79k made up as follows:-

	Expenditure £'000	Income £'000	Total £'000
<b><u>Traded Services</u></b>			
HR	-188	260	72
Finance	-257	320	63
Audit	-16	23	7
	<u>-461</u>	<u>603</u>	<u>142</u>
<b><u>Impact on Payroll</u></b>			
Schools	-206	285	79
	<u>-206</u>	<u>285</u>	<u>79</u>
<b>TOTAL</b>			<b>221</b>

- 4.3 The cost of £142k is due to the fact that whilst there will be a saving on our staffing and running costs the income generated by the teams at the moment exceeds this and is used to contribute towards central overheads such as payroll, IT, HR, finance, senior management costs, admin buildings. It is unlikely in the short term that savings in central costs will be realised, although longer term this should be possible.
- 4.4 Bromley currently provides a payroll service for all departments including schools. The cost of this service comprises of contract costs (Liberata), the resource link payroll system (maintenance & support costs) and LBB administration / contract supervision. Schools are charged for their payroll. The estimated cost of the schools service is £266k and charges to schools are £285k, so Bromley currently achieves a small surplus on this activity (£19k). If all schools convert to Academies, and / or Bromley chooses to withdraw from providing the service to schools, only the variable element of the contract cost (£206k) would be saved in the short term. The remaining costs would have been re-apportioned across other services. Withdrawing the service would result in a cost of £79k, comprising of £60k fixed costs and £19k loss of income. These costs could not be saved in the short term – see Appendix 1
- 4.5 This option also presents a problem for the Council around the need to continue to meet our statutory responsibilities to schools.
- 4.6 Once /if all schools become academies then the HR statutory work will cease and about 30% of the Finance statutory work.
- 4.7 If the Council chooses to no longer provide discretionary sold services then the redundancy costs arising from this will be approximately £144k. Once/if all schools convert to academies there will also be redundancy costs of £51k when the statutory work reduces.

#### Option 2 – Continue to provide services In-house

- 4.8 The second option is to continue to run these services ourselves, which as can be seen from Appendix 1, enables us to continue to cover some of our central support costs. As can be seen from the Trading Accounts, the impact on our revenue budget is nil. On the one hand, these services can generate an income through charging, allowing the local authority to support local schools at net zero cost to the council, and in some cases they can even generate a surplus that can be used to fund other services

- 4.9 However, the Council is moving towards being a Commissioning organisation and as such provision of any services directly, particularly discretionary services, is not supported by our Core Operating Principles (COP). However it must be remembered that the Council owes an overall fiduciary duty to its council tax payers as a whole and if following policy leads to a financial detriment, then unless there are other material factors to be taken into account, such a decision is more likely than not to be unlawful.
- 4.10 There are longer term risks in providing sold services to schools as it is far from certain that the income generated through charging will be maintained. Historically, local authorities were the sole providers of services to schools in their local area. Recent changes have undermined that monopoly position, and now local authorities have to compete with other providers, including other local authorities, to provide services to schools in their area and beyond. As the market develops then individual local authorities are unlikely to benefit from the economies of scale available to competitor organisations.
- 4.11 Schools have indicated that they are happy with the quality of HR, Audit & Finance services, but as the market matures it is becoming more difficult to compete with other private sector providers given the cost of the overheads that have to be borne by the in-house services operating on full cost recovery basis. Officers believe there is a real risk of income falling over the next few years as schools leave the Council and seek to purchase integrated HR, payroll and pension services with lower cost margins.
- 4.12 Whilst the Council could explore the option of expanding its sold services, particularly as some of our local boroughs will no longer provide these services in the future, it is unlikely we will be able to compete with the increasing number of providers in the market. Existing and new joint ventures are also looking to increase their market share, and some multi-academy trusts are looking to create their own services to sell to schools. All of these providers will look to win business that is currently delivered by local authorities. If services are provided directly then any risk associated with speculative expansion will be borne by the council tax payers of the Borough and any failure or losses of directly traded services may have a detrimental impact on the provision of other services.

#### Option 3 – Set Up Wholly Owned Company

- 4.13 In recent years a number of local authorities have set up wholly owned companies to allow them to sell services to a wider range of bodies, and therefore to potentially generate more income. Whilst this is an option, officers would not recommend this. The points made above on lack of economy of scale would still be material. Also whilst a limited liability structure would theoretically give protection this is unlikely to be the case in practice as the Council will still have to underwrite any losses, or directly fund. In addition there will be set up costs and running costs as a venture set up to grow market share, would require considerable expertise and officers time to administer within an increasingly competitive market.

#### Option 4 – Outsource Services to Liberata

- 4.14 Outsourcing this service to an external provider through a full tender exercise is an option but would take between 12 and 18 months to complete. Also Liberata currently run our payroll and pensions service, and given the synergies between HR, Finance and a number of other services Liberata run on our behalf, then it is unlikely that a procured option would be able to match the benefits that a transfer of services would achieve. The procurement process which led to the appointment of Liberata enabled certain additional services to be included within the contract without the need for competition and the proposed services to be transferred are within that range.

- 4.15 Over the last year officers have had detailed discussions with Liberata about the possibility of transferring HR and Finance across to them, so that they undertake discretionary sold services to schools, and most of the statutory services, on our behalf.
- 4.16 The HR Schools team works closely in partnership with Liberata to ensure seamless HR, Payroll and Pensions services to schools on behalf of the Council using a shared database. Going forward and listening to feedback from schools, it is clear that schools would prefer to source all these services from one provider. To have HR with one (different) provider and Payroll & Pensions with Liberata would not make business sense and is unlikely to be as efficient or cost effective.
- 4.17 Liberata are keen to get into the business of selling back office type services to schools, so are willing to undertake this service on our behalf, even though the Council could in the future decide to no longer undertake these services.
- 4.18 As TUPE would apply transferring the services to Liberata will save the Council in redundancy costs, and over time make savings on the contract price when/if the statutory work we undertake falls out. Officers have agreed with Liberata the mechanism for doing this.
- 4.19 The proposal from Liberata is that they will take over running of the statutory services to schools and the discretionary sold services to schools, which will include them retaining all income generated by the teams, but they will give the Council £40k p.a. as guaranteed rent income until the end of the contract period, regardless of what happens in the market around sold services.
- 4.20 This option will still have cost implications for the Council of £102k p.a. due to fact that the savings that would be realised from staff and running costs will not offset the loss of income of £142k although this will be partly offset by the guaranteed income of £40k p.a. There will also be savings on redundancy costs.
- 4.21 In addition to the costs in para 4.20 above, there will be further costs of £79k relating to payroll if the Council decides to no longer provide this sold services to schools. It is inevitable that as schools convert to Academies and look to the market, our ability to recover some of our fixed costs will reduce.
- 4.22 In considering Option 4, this will only be worth pursuing on the basis that the continuation of the service by the Council and associated income is not sustainable in the medium term with the on-going conversion of schools to Academies and alternative delivery models being developed in the market place. It is also not consistent with the Council's Core Operating principles including the aim of becoming a commissioning organisation This proposal also provides some mitigation against future loss of income and redundancy costs.

### **Client Unit**

- 4.23 The Client role for the management of these services will be undertaken by staff in our core finance and HR teams, given the specialist nature of the statutory work transferring.

## **5. POLICY IMPLICATIONS**

- 5.1 Partnership working is key to achieving the Building a Better Bromley 2020 vision and ensuring that service continues to be provided as efficiently and effectively as possible, in light of the financial position facing the council over the next few years.



## 6. FINANCIAL CONSIDERATIONS

- 6.1 As set out in the body of this report, Option 1 would have revenue implications of £221k p.a. as well as one-off redundancy costs of £144k and a further £51k redundancy costs if/when the statutory work the Council currently undertakes on behalf of schools no longer needs to be provided.
- 6.2 Option 2 will have no immediate cost implications for the Council but carries risk around future income and may therefore result in redundancy costs in the longer term.
- 6.3 Option 3 is not recommended as the Council would still have to underwrite costs around income loss and redundancies.
- 6.4 For the reasons set out in section 4 above, officers believe that transferring the services to Liberata (Option 4) is the best way forward, as this will avoid future redundancy costs, will give job security to our staff, is in line with COP and provides the Council with guaranteed income of £40k p.a. which in the longer term reduces the risk around income loss as the market expands.
- 6.5 The table below provides a breakdown of the financial implications of Option 4 which is that Liberata undertake the statutory and discretionary services to schools as outlined in the body of this report:-

<b>OPTION 4</b>	<b>Full Yr £'000</b>
<b><u>Payment to Liberata</u></b>	
HR Statutory	44
Finance Statutory	103
	<b>147</b>
Less LBB budget available	-147
	<b>0</b>
<b><u>Cost to LBB - Option 4</u></b>	
Discretionary services - saving in staff & running costs	-461
Discretionary services - loss of income	603
Income from Liberata - Fixed	-40
	<b>102</b>

- 6.6 As you can see from the table above, Option 4 will result in additional cost pressures of £102k p.a. In addition to this, if the Council decides it no longer wants to provide any of these sold services to schools there will be further costs of £79k relating to payroll.
- 6.7 As you can see from the table in para 6.5 above once /if all schools convert to academies, savings will be realised of £44K for statutory HR work which will no longer need to be provided and around £40k of statutory finance work. If/once all schools convert to academies, the remaining statutory finance work could then be transferred back to the Council or another contractor (if the finance service has been outsourced). This will be done through a variation to the contract.

- 6.8 It is important to remember that the financial prospects for the council, in the on-going austerity period, results in a smaller council with local resources needing to focus on “**core**” areas of business.
- 6.9 Whilst there is unlikely to be any savings in central support costs in the short term, even if it is not possible, it becomes increasingly more likely as more services/functions make changes.
- 6.10 As you can see from the table above the impact of the proposal by Liberata will result in additional budget pressures. However, any future risks around income will have been mitigated, the Council will not be providing discretionary services (directly) to schools or have to fund redundancy costs of up to £195k, officers can focus on “core” areas of our business and Liberata have given us an agreed income of £40k p.a. This is important because as outlined in the body of the report, the income we collect for sold services to schools is unlikely to be sustainable in the longer term.
- 6.11 In this respect it is also important to be aware of the risks as far as HR is concerned it is more likely to be the near future (2015/16) when income begins to fall as more schools become academies and make different more cost effective arrangements. Some of the larger Multi Academy Trusts for example provide the HR (and payroll) services in house themselves. Therefore this is more likely than not (even with the team’s best efforts at generating more income) to result in HR not meeting the income target which has the potential to impact on the contribution to fixed cost and result in a redundancy risk.

## **7. PERSONNEL CONSIDERATIONS**

- 7.1 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 will apply to these proposals. Currently there are 15 people employed within the combined teams who will TUPE across to Liberata if members agree to the proposals outlined in this report.
- 7.2 All 15 members of the team have been consulted on about the proposals in this report in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), and consultation on the detail of the transfer will continue on an ongoing basis in the event of a decision to transfer the staff to Liberata. Staff were asked to feedback any comments or concerns that they had regarding these proposals which are included in Appendix 2.
- 7.3 The TUPE Regulations 2006 will preserve/protect the terms and conditions of these 15 transferring to Liberata. This means that their contracts of employment will remain the same at the point of transfer including continuity of service except for those measures identified by Liberata as part of the TUPE consultation process.

## **8. LEGAL CONSIDERATIONS**

- 8.1 The procurement process which led to the appointment of Liberata enabled certain additional services to be included within the contract without the need for competition and the services to be transferred are within that range both generally and as permitted by the Public Contracts Regulations 2006.
- 8.2 An application by Liberata UK Ltd for an admission agreement under the Local Government Pension Scheme Regulations to enable staff who transfer under TUPE arrangements to participate in the Council’s Pension Scheme has previously been agreed.

- 8.3 The Social Value Act 2012 requires local authorities when developing their procurement options to consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area. The proposal of transfer to Liberata maintains a valued discretionary local service, potentially protects jobs and transfers risk around maintaining or expanding the service whilst protecting the Council's overall financial position and on this basis the recommended option aligns with the principles in section 1 of that Act.
- 8.4 The services are provided to schools rather than individuals and taking this together with the fact that the aim of the recommended option is to maintain or possibly to expand services and choice to schools and on this basis it is considered unlikely there will be detriment to any service users with protected characteristics. This will be kept under close review throughout whatever process is agreed.

<b>Non-Applicable Sections:</b>	
Background Documents: (Access via Contact Officer)	Files held in Finance and Human Resources