



## COUNCIL - 7TH AUGUST 2012

**SUBJECT: SOUTH EAST WALES EDUCATION ACHIEVEMENT SERVICE (EAS)  
FORMERLY KNOWN AS THE INTEGRATED ACHIEVEMENT SERVICE  
(IAS)**

**REPORT BY: CORPORATE DIRECTOR - EDUCATION, LIFELONG LEARNING &  
LEISURE**

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### 1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to provide an update to Cabinet Members on the development and implementation of the South East Wales Education Achievement Service (EAS), formerly known as the Integrated Achievement Service (IAS).

### 2. SUMMARY

- 2.1 The current system for delivering education services across Wales has had some success, and generally standards across schools have continued to improve. However, the education system as a whole is underperforming.
- 2.2 The Programme for International Student Assessment (PISA) suggests that Wales' position has worsened between 2006 and 2009 and children in Wales are falling further behind their counterparts in the United Kingdom and other comparator countries in literacy, numeracy and science.
- 2.3 The South East Wales region, which encompasses Blaenau Gwent, Caerphilly, Monmouthshire, Newport and Torfaen councils has a significant performance challenge. This was highlighted by the secondary school banding information published by the Welsh Government's Standards Unit in December 2011, which revealed that the region has the highest proportion of schools in the lower bands compared with other regions across Wales.
- 2.4 Nationally and locally progress has not been fast enough or far enough, and the accepted view is that the current systems are unlikely to significantly change that position. A transformation is necessary and the partners in the South East Wales region have been developing proposals that will enable them to work together as part of one integrated service to support and challenge its schools effectively, enhance front line services and make the most of the available resources.
- 2.5 Many schools are performing below expectation at KS2 and KS4 and low rates of attainment in literacy and numeracy. Under achievement by learners in receipt of free school meals has been identified, as has under achievement by boys. There is concern for low level attendance and relatively high level exclusions, with a culture of dependency by many schools and inconsistent challenge from LAs, hence the need to develop a collaborative approach between the five Local Authorities in forming the South East Wales Education Achievement Service (EAS).

- 2.6 Collaboration between the five authorities will bring resilience to the service, amalgamate procedures and policies and share initiatives and benefits throughout South East Wales.
- 2.7 The five Local Authorities cabinet and council have approved the outline and detailed business cases, including a financial model and budget.
- 2.8 The five Local Authorities have a shared commitment to ensure that by 2015 the creation of the Education Achievement Service will, at a minimum, result in:
- No school in Band 5 \*
  - All current Band 4 schools moved up out of band \*
  - Level 2 maths raised to at least current Level 2 English/Welsh

On leaving primary school:-

- Every child a reader\*\*
- Every child numerate\*\*
- All schools - The gap halved between FSM and non FSM performance

*\* Unless subject to LA use of powers*

*\*\* Literate/numerate within 2 years of age level*

### **3. LINKS TO STRATEGY**

- 3.1 This report links directly to the Council's Education for Life Strategy.

### **4. THE REPORT UPDATE**

- 4.1 The five Local Authorities have previously agreed their commitment to the EAS and acknowledge the benefits and shared risk of the collaboration.
- 4.2 The company will be wholly owned and completely controlled by the five Local Authorities, it will not be a profit making company, and will be a separate legal entity. The company will be established for the five authorities, to allow them to collaborate in the most effective manner and in-line with recommendations from by Welsh Government. There will be no lead authority within the company and each authority will be represented equally.
- 4.3 Detailed legal papers have been prepared by the five authorities working together with a high level of consensus. The legal documents have been produced in order to detail and agree the way in which the company will operate and commission the services during the collaboration. The three documents produced are;
- a) The Articles of Association
  - b) The Collaboration Agreement
  - c) The Commissioning Agreement
- 4.4 The Articles of Association is a public document held at Companies House and contains the basic management and administrative structure of the company. Identified within this document is the requirement for a Board of the company, on which an elected member will sit; this cannot be the Cabinet Member for Education. This document is complete and will be used to register the company at Companies House. In order to ensure equality, a 12 month rotating chair with accompanying secretarial provision shall follow the order as detailed within the Articles of Association.
- 4.5 The Collaboration Agreement details the arrangements between all parties and puts in place the controls of the company. Throughout the agreement there is an underlying principle of

commitment and equality from the five Local Authorities, which aligns the company with the collaborative approach of the service. This document includes the Joint Executive Group (JEG), on which the Cabinet Member for Education and Director of Education will sit. The JEG will commission services from the EAS for the Local Authorities for each academic year.

- 4.6 The Commissioning Agreement sets out the service that will be delivered by the EAS to each Local Authority. The document highlights the core services provided to all authorities and also the bespoke services which will be available, if required. The basis by which payment will be made is included as is the complaints and confidentiality procedures of the EAS.
- 4.7 The collaboration and commissioning agreements are substantially complete with a few minor exceptions relating to specific VAT and insurances information.
- 4.8 The Collaborative Agreement requires unanimous approval of the five Local Authorities for the following reserved matters:-
1. Varying in any respect the Articles of Association or the rights attaching to any of the members of the Company.
  2. Permitting the registration of any person as a member of the Company.
  3. Issuing any loan capital in the Company or entering into any commitment with any person with respect to the issue of any loan capital.
  4. Making any borrowing other than from the Company's members for an initial loan for working capital purposes or from its bankers in the ordinary and usual course of business.
  5. Passing any resolution for its winding up or presenting any petition for its administration other than in accordance with this Agreement unless it has become insolvent.
  6. Altering the name of the Company or its registered office.
  7. Opening a new bank account.
  8. Changing the nature of the Company's Business or commencing any new Business by the Company which is not ancillary or incidental to the Business.
  9. Forming any Subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).
  10. Amalgamating or merging with any other company or business undertaking.
  11. Making any acquisition or disposal by the Company of any material asset(s).
  12. Creating or granting any encumbrance over the whole or any part of the Business, undertaking or assets of the Company or over any membership in the Company or agreeing to do so other than liens arising in the ordinary course of business or any charge arising by the operation or purported operation of title retention Clauses and in the ordinary course of business.
  13. Making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading) or giving any guarantee (other than in the normal course of trading) or indemnity.
  14. Factoring or assigning any of the book debts of the Company.

15. Making or permitting to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its audited and management accounts except as may be required to ensure compliance with any generally accepted accounting principles in the United Kingdom.
16. Establishing any profit-sharing, bonus or other incentive scheme of any nature for directors or employees.
17. Establishing or amending any pension scheme or granting any pension rights to any director, officer, employee, former director, officer or employee, or any member of any such person's family.
18. Appointing or the dismissing the Head of EAS
19. Instituting, settling or compromising any material legal proceedings (other than debt recovery proceedings in the ordinary course of business) instituted or threatened against the Company or submitting to arbitration or alternative dispute resolution any dispute involving the Company other than provisioned for in this Agreement.

Details of the EAS company governance structure is attached at Appendix 1.

- 4.9 It should be noted that each Local Authority will still be subject to scrutiny by the Welsh Audit Office. Each Local Authority will retain their statutory responsibility for the provision of the service being provided by the EAS. The Welsh Audit Office has stated through correspondence with Welsh Government that they will continue to audit each Local Authority to ensure adherence of responsibility and that the EAS will not be audited in isolation from the five Local Authorities.
- 4.10 Core services will be delivered by a level of support to each Local Authority by the EAS. Bespoke services will also be delivered by the EAS for specific needs of a Local Authority. Also, additional services will be made available to the five authorities, although the EAS must provide evidence of the resource used to undertake the commission, so as not to remove attention from elsewhere within the company.
- 4.11 Scrutiny of the EAS will continue as at present in each council, and the Chairs of those arrangements across the five authorities will work together to coordinate their activity throughout the year as far as possible. Opportunities for joint scrutiny are being investigated and within 12 months of the commencement of the EAS elements that would be suited to joint scrutiny will be implemented.
- 4.12 The EAS will utilise existing council accommodation in Ystrad Mynach and Newport to which plans are being finalised with IT provisions incorporated. In addition to these premises EAS staff will have access to 'touch-down' facilities and will operate in an agile manner. An EAS profile will be present in each of the five Local Authorities.
- 4.13 A support services tender has been awarded to Torfaen CBC for a duration covering 1 September 2012 to 31 March 2014. The award covers payroll, ICT, audit, legal services, and procurement.
- 4.14 Members are advised that in a letter dated 16<sup>th</sup> May 2012, the Auditor General has confirmed that there still remains a conflict between Welsh Audit Office's (WAO) expectations of Authority's to comply with the Local Government's (LG) measure 2009 and Welsh Government's (WG) collaboration agenda as part of the Compact arrangements. To ensure that the Authority satisfies the requirements of the LG measure, there is a need to ensure that Members give consideration to further options that were not assessed in the Outline Business Case (OBC) as presented to Cabinet then Council in November 2011.

4.15 There are three options that require consideration:-

**4.15.1 Do nothing (status quo option)**

The 'do nothing' option was not assessed in the original OBC as it was not perceived as a viable option given WG's stance on collaboration. The Authority's current arrangements in respect of advisory services include an agreement with the Education Support and Inspections Service (ESIS) to provide services under a Joint Committee arrangement; and the use of employees from the Authority's in-house advisory team.

As ESIS will no longer exist as at 1st September 2012 due to a new collaboration of the remaining former Mid Glamorgan Authorities, the Vale of Glamorgan and Cardiff City Council there is actually no option available to retain the status quo. This new joint arrangement will provide a different type of service to ESIS.

**4.15.2 In House Option**

An option could be considered to provide all the services currently delivered by ESIS 'in-house'. This would lead to an increase in the cost of the service, as the Authority would not be able to provide the depth and breadth of specialist support that is currently and will continue to be delivered on a collaborative traded basis. The joint arrangement offers economies of scale and spreads risk. In addition, the 'in-house' option would very likely prevent the Authority from accessing about £6m (as set out below) of grant funding that will need to be consortia based.

**4.15.3 Mixed Economy Option**

An option to retain some services 'in-house' and purchase some services on a collaborative basis (to ensure the total service provided is cost effective) has not been pursued, as timescales have prevented this option being investigated in any depth. There is still also a substantial risk that a partial collaborative approach would not be able to satisfy the conditions of grant funding for School Effectiveness Grant (£2.1m), Welsh in Education Grant (£0.4m), Pupil Deprivation Grant (£2.5m) and the 14-19 Annual Network Development Plan Grant of £1m. This could lead to a loss of grant funding of £6m. (The benefits and disbenefits of a mixed approach to service delivery i.e. part in house and part collaborative are listed in Appendix 1).

4.16 Members are required to consider the above options and are reminded that a grant of £1m has been made available from WG for consortia working, which will cover most of the costs of developing and setting up a new service. In-house provision does not attract any of this grant funding.

## **5. FINANCIAL IMPLICATIONS**

5.1 Currently there is a small funding gap of circa £84,000 in respect of the Authority's contribution. This saving will need to be identified.

5.2 Caerphilly CBC is the largest contributor within the Consortium responsible for 34.75% of the total contributions.

5.3 With regard to severances, these will be funded by the Consortium Implementation fund from the EAS. Any additional costs in excess of this will be funded from the employing authority. Final costs pertaining to this will become clearer nearer to the commencement of the EAS. It is not anticipated that this liability will be more than £100k.

5.4 Negotiations are ongoing with other local authorities with regard to the withdrawal from ESIS and the issues relating to the building used by them. These costs are likely to be in the order of £300k. A provision has been made in the Accounts for 2011/12.

5.5 The contributions to the EAS for year three and beyond cannot be determined at this point. It is considered that it will be based on the level of services received by each Council. Charges

therefore for year three and beyond could be beneficial or adverse but Members need to be made aware of the potential risks as they could be significant.

- 5.6 Given that all budgets currently earmarked for funding areas of work transferring to the EAS are moving with the work, it should be noted that any additional work required of EAS will have to be funded from other budgets. Therefore comprehensive quality assurance processes will need to be established in order to ensure that the EAS delivers in accordance with its requirements thereby ensuring the Council achieves good value for money for its contributions.
- 5.7 Each of the five authorities have previously approved the principle of including a withdrawal fee within the Outline Business Case and the Detailed Business Case documents. The exit arrangements were approved by Council in November 2011, at this time the exit fee to be paid post launch of the EAS was in the sum of £250,000.
- 5.8 The exit arrangements for a Council wishing to withdraw from the EAS contained in the Collaboration Agreements have been updated. The withdrawing Local Authority will now have to pay the sum of £250,000, or the full costs associated with the withdrawal of the Local authority, whichever sum is greater. It is anticipated therefore that should the Council wish to withdraw from the EAS the actual exit fee will significantly exceed the sum of £250,000. For the avoidance of doubt it should be noted that the liability is uncapped.
- 5.9 An indication of the maximum, uncapped cost of withdrawal cannot be provided, although it must be noted that an Authority must give 24 months notice, notice cannot be submitted during the first 24 months of the EAS operating. It should be noted that the notification period of 24 months will allow for exit arrangements to be made, which could reduce the impact and therefore the cost.
- 5.10 It has been agreed amongst the five Local Authorities that as a principle the financial gains and losses will be proportionately allocated as per the contributions made by the five Local Authorities.

## **6. PERSONNEL UPDATE**

- 6.1 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to the creation of the EAS and the formal TUPE consultation process is currently being undertaken. Employees transferring to the EAS will retain their existing Local Authority terms and conditions of employment.
- 6.2 Local and regional trade union representative meetings have taken place and will continue.
- 6.3 Applications have been submitted for admitted body status of the Local Government Pension Scheme (LGPS) and separately the Teachers Pension Scheme (TPS) which will allow transferring employees to continue to be members of these pension schemes post-transfer.
- 6.4 An application will be made for the EAS to be included as part of the Modification Order, although this cannot be undertaken until the EAS has started operating.
- 6.5 Employees transferring to the EAS have been kept updated throughout the process via the Education Directors.

## **7. EQUALITIES IMPLICATIONS**

- 7.1 An Equalities Impact Assessment has been undertaken and was approved at the same time as the Outline Business Case for the EAS, formerly known as the IAS.

## **8. CONSULTATIONS**

- 8.1 Leaders of the Councils have been briefed and attended Project Board meetings. Chief Executives have been party to regular progress meetings as part of the project development governance. Education Directors have been meeting weekly as a collaborative group.
- 8.2 The report reflects the views of the Consultees.

## **9. RECOMMENDATIONS**

The Council is asked to approve the following recommendations:-

- 9.1 To reaffirm the Council's commitment to the establishment of the South East Wales Education Achievement Service (EAS) and to authorise officers to progress the collaborative arrangement.
- 9.2 To note and approve the terms of the reserved matters as scheduled in the Collaboration Agreement set out in paragraph 4.8 of the report.
- 9.3 To approve changes to the Exit Arrangements set out in paragraphs 5.8 and 5.9 of this report.

## **10. REASONS FOR THE RECOMMENDATIONS**

- 10.1 To obtain the approval of Council to progress to the establishment of South East Wales Education Achievement Service.

## **11. STATUTORY POWERS**

Local Government Acts 1972 and 2000  
Children's Act 2004  
Standards and Framework Act 1998

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Appendices:  
Appendix 1

Background Papers:  
Cabinet Reports dated 1st November 2011 and 17th April 2012  
Education for Life Scrutiny Committee Report 28th February 2012