



CABINET – 29TH JUNE 2016

SUBJECT: GOVERNANCE ARRANGEMENTS SOUTH EAST WALES EDUCATION ACHIEVEMENT SERVICE (EAS)

REPORT BY: CHIEF EDUCATION OFFICER

1. PURPOSE OF REPORT

- 1.1 To seek approval to formally agree the Supplemental Agreement to the Collaboration and Members Agreement (CAMA) for the Education Achievement Service (EAS) April 2016.

2. SUMMARY

- 2.1 A series of proposed changes to the original agreement have been outlined in the updated agreement. These include :
- Governance arrangements that ensure the LAs and the EAS are complying with requirements of the National Model for Regional Working.
 - The way in which grants can be dealt with by the EAS – the first change being that all grants will now be channelled through the Directors group in first instance. There is a detailed process that explains how this will work in practice. The EAS will report on this regularly to both the directors/heads of education and the Executive Members for Education in each of the LAs.
 - The EAS' ability to provide services to customers other than the South East Wales Consortium (SEWC) LAs for a fee and subject to scrutiny and approval from the Joint Executive Group (JEG). The EAS may proceed with such a commission without prior JEG consent when:
 - the contract is valued at up to £50k but carries no risk/will have no impact on agreed delivery outcomes
 - the contract is valued up to £15k and may/will have an impact on agreed delivery outcomes
 - the EAS has taken appropriate advice on any VAT liabilities that entering into such a contract may give rise to and these are factored into the detail of the contract.
 - The EAS has taken appropriate legal advice in drawing up the contract.
 - The EAS will inform the next JEG meeting of all new contracts that exceed £10,000 over a financial year.
 - In the event the EAS core service costs more than predicted, in line with prior JEG approval, each LA will pay its proportional share on this overspend. However, the EAS in negotiation with the LAs will repay this "loan" over an agreed period through reducing the core service charge each LA pays for an agreed period.

3. LINKS TO STRATEGY

- 3.1 Service Improvement Plan
EAS Business Plan
Well-being of Future Generations Act 2015

4. THE REPORT

- 4.1 The South East Wales Education Achievement Service was established as a limited company in July 2012. Its prime function is to raise standards in education across the region. Newport, Torfaen, Caerphilly, Blaenau Gwent and Monmouthshire Councils have commissioned the EAS to act as the preferred partner to deliver a school improvement service across the consortium.
- 4.2 In March 2013, the Minister for Education and Skills introduced of a statutory 'National Model for Regional School Improvement'. The requirements of this resulted in a number of changes to the governance arrangements between the EAS and the five LAs in SEWC. As a result, additional external legal advice has been sought and this paper outlines the major changes being proposed to the original agreement made between the LAs that will require approval from each Council.

5. PROPOSED CHANGES TO THE COLLABORATION AND MEMBERS AGREEMENT

Governance

- 5.1 While the EAS continues as a company the composition of its Company Board has been refreshed in line with the National Model and is now constituted by:

- a Senior Cabinet Member from each LA cabinet (one who has a brief other than education). These are voting members of the Company Board.

The following are invitees to Boards meetings and may advise the Board but do not have voting rights and are not directors of the Company:

- a lead Chief Executive and Lead Director of Education.
- four expert external advisers appointed by the EAS and SEWC LAs jointly following an open public application and appointment process.

- 5.2 An Audit Committee has been formed, made up of two non-executive members from each of the five local authorities from the SEWC region. The Audit Committee function in an advisory capacity to the EAS Company Board and meet quarterly. The terms of reference of this committee cover the following aspects; financial reporting, internal controls and external / internal auditors, risk management, compliance with law and regulation, technology, conflict of interest and reporting on value for money.
- 5.3 The JEG is made up from each of the Executive Members for Education in each of the LAs. It provides oversight and feedback for EAS operations and can make recommendations to the EAD MD and Board, although these are not binding.

Additionally the JEG receives and reviews:

- Reports on the performance of schools across the region
- Updates on policy developments and specific projects undertaken for Welsh Government
- Funding issues including use of grants and their impact
- JEG considers proposals from the EAS to provide services beyond the five LAs including the nature and scope of this work, its possible impact on all services provided to SEWC LAs and any financial benefits and risks arising from these additional commissions particularly as the SEWC LAs may be liable for any loss.

Grants

- 5.4 It is proposed that the way grants can be dealt with by the EAS is changed. The EAS often receives offers of grants from government, the majority of which are expected. However, there are also frequent offers of additional grant that arrive after the business plan has been agreed with the LAs or is otherwise “unexpected”. The conditions of these grants can be such that a rapid decision is required to ensure the grant is required, will not inhibit delivery of core services and adds value to what the EAS can offer.

To seek approval, it is proposed for all grant offers that the EAS will email the Directors of Education and the members of the Education Finance group outlining the grant offer, the value it offers in terms of improved outcomes and indicating how core service commitment will be maintained.

In the unlikely event LAs do not provide instructions after 10 working days of notification, only then will the decision whether to accept the grant or not will lie with the EAS. If there is dispute between the directors / heads of education on whether the grant should be accepted or not this will be considered and determined by the JEG in the next available meeting.

The EAS will report on the impact of grants in line with the Business Plan reporting procedures to both the directors / heads of education and the Executive Members for Education in each of the LAs.

This provision allows grant offers to be processed quickly and thoroughly and still ensures oversight and control of risk via the Directors and JEG.

EAS – Contracts other than from SEWC

- 5.5 It is proposed to enable the EAS the ability to provide services to other customers other than the SEWC LAs for a fee and subject to scrutiny and approval from JEG.

The EAS may only proceed with such a commission without prior JEG consent when:

- The contract is valued at up to £50k but carries no risk/ will have no impact on agreed delivery outcomes
- The contract is valued up to £15k and may/ will have an impact on agreed delivery outcomes.
- The EAS has taken appropriate advice on any VAT liabilities that entering into such a contract may give rise to and these are factored into the detail of the contract.
- The EAS has taken appropriate legal advice in drawing up the contract in line with the EAS Procurement Policy
- The EAS will inform the next JEG meeting of all new contracts entered into since the last meeting.
- Any contract will have no impact on agreed delivery outcomes up to £50,000 or up to £15,000 if the activity will have an impact on agreed delivery outcomes.

This provision will allow the EAS to income generate. In addition to developing services that may be of value to the SEWC LAs as part of their future core service provision, this income generation may also support the funding model for the EAS.

However, notwithstanding the requirement to seek approval from JEG as outlined above this expansion of the company’s remit does carry some additional risk. Should the EAS deliver a service that results in a loss or a claim, the SEWC LAs would be ultimately responsible to meet these losses. Given the enhanced governance and reporting requirements outlined earlier in this report, it is suggested this risk is manageable.

Risks

5.6 There are a number of risks associated with the proposed changes:

- Failure to ensure the governance arrangements are compliant with Welsh Government requirements could expose each of the SEWC LAs to risk of challenge directly from WG and from Estyn during the next round of LA (and Consortia) inspections.
- Consultees believe the updated governance arrangements (which are in place in effect but need to be ratified) have strengthened the EAS' ability to deliver better services to learners and LAs – this could be threatened if they are not formally adopted.
- New Clause 8.9.4 of the CAMA (relating to grants and how they will be dealt with) brings in a new arrangement that each LA should be satisfied reflects their own constitutional arrangements.
- New Clause 11A of the CAMA (relating to the EAS potential accepting contracts from non SEWC LAs or others) may carry the risk of the EAS not providing all of the core services and/or being the subject of a claim which the SEWC LAs would be ultimately responsible for.
- The EAS will need to ensure they have taken appropriate expert advice on all tax liabilities that may arise from their provision of services to other parties (other than SEWC LAs) who may wish to commission their work. Any additional costs associated with this type of work must be factored in to the value of the contract in the first instance, so no liability for tax is borne by the SEWC LAs.
- New Schedule 2 (outlining what happens in the event of an unexpected overspend for core services) means that LAs could face additional costs in a given year but be “repaid” these through reduced contributions over subsequent years.

Given the strengthened governance arrangements and the control measures already in place, it is considered these risks are manageable.

There are no direct human resource implications arising from these proposals, however, the EAS is required to seek expert professional advice on tax liabilities that may arise from providing services to other organisations and to procure appropriate legal advice as required. The cost of this advice and any level of required enhanced professional indemnities associated with these additional contracts must be built in to the contract value.

5.7 Monitoring and Evaluation

5.7.1 The EAS continues to work closely with each of the LAs directly and via a series of joint working groups with participants from each LA looking at finance, school improvement, additional learning needs and safeguarding. These groups report directly to Directors of Education and termly to JEG.

5.7.2 JEG, the Banker Authority, the Audit Committee and the Company Board work closely with managing director of the EAS to ensure effective communication, understanding of the financial context of the business and to manage risk in a way that maximizes benefit to children and staff across the region while minimizing LAs' exposure to unexpected costs.

5.7.3 Welsh Government both directly and via Estyn and the Wales Audit Office also scrutinise the EAS work and systems regularly.

6. EQUALITIES IMPLICATIONS

6.1 These governance arrangements have no equalities implications.

7. FINANCIAL IMPLICATIONS

7.1 Proposed changes to funding

It is proposed to change the EAS ability to charge more for core services than was predicted in line with prior JEG / Directors approval.

In the event the EAS core service costs more than predicted, each LA will pay its proportional share on this overspend. However, the EAS, in negotiation with the LAs, will repay this "loan" over an agreed period through reducing the core service charge each LA pays for time.

While this ability is being sought, it is in recognition of the unexpected operational events that can arise that mean budgets in one year can be stretched or exceeded rather than allowing the EAS to have less rigorous financial and strategic planning systems in place.

8. PERSONNEL IMPLICATIONS

8.1 None arising from this report.

9. CONSULTATIONS

9.1 All comments have been reflected in the report.

10. RECOMMENDATIONS

10.1 That Cabinet approve the adoption of the Supplemental Agreement to the Collaboration and Members Agreement (CAMA) for the Education Achievement Service (EAS) April 2016 as explained in this report.

11. REASONS FOR THE RECOMMENDATIONS

11.1 To update the current arrangements to reflect the new statutory model and agreed changes to working practices.

11.2 To strengthen the ability of the EAS to deliver better services to learners and the local authority.

12. STATUTORY POWER

12.1 Local Government Act 1972
School Standards and Framework Act 1998.

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The EAS Company Board and Officers
Executive Members of Education across the SEWC LAs
The Lead Chief Executive, Paul Matthews
Directors of Education and their finance officers
The Banker Local Authority (Torfaen)
Blake Morgan Solicitors

Background Papers:

Cabinet - 29th October 2014

Council - 26th January 2016

Appendices:

Appendix 1 – EAS Supplemental Agreement

Appendix 2 – S E Wales EAS Collaboration and Members Agreement (CAMA)