

Report for: Cabinet
14 November 2017

Item number: 10

Title: Haringey Education Partnership

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Ward(s) affected: All

**Report for Key/
Non Key Decision:** Key

1. Describe the issue under consideration

- 1.1. The rapid improvement in schools and learning since the Outstanding for All report was published in 2013 has been a powerful success story in Haringey. Close partnership working between schools, the Council and unions has underpinned this success and now needs to be reinforced to build an exceptional system with the best outcomes for all of our children and young people. National policy, which aims to reduce the role of local authorities in school improvement and push schools to convert to multi-academy trusts, along with reductions in funding for Council run school improvement services, threatens to undermine this and leave our schools more isolated and fragmented. In response, the Council has been working in partnership with schools across the Borough over the past 18 months to develop detailed proposals for a not for profit 'schools company', known as the Haringey Education Partnership (HEP), to drive school improvement from 1st September 2018. Cabinet decision is required to confirm the Council's support for establishing HEP; committing to commission ongoing statutory and strategic school improvement functions through HEP; to accept the one-off cost of transition and to provide technical and financial assistance to support the set-up of the new organisation.

2. Key milestones going forward would include:

- a) November 2017 – Cabinet decision on recommendations regarding HEP
- b) January 2018 – HEP established as a legal entity and develops in transitional form
- c) February 2018 – schools' commitment for two years is secured
- d) September 2018 – HEP fully operational in time for the new academic year.

3. Potential Issues

3.1. The most important risks to the Council are:

- a) Poorer outcomes for Haringey's children and young people as set out in Priority 1 / Best Start in Life if HEP is not able to maintain or improve standards in Haringey's schools
- b) Financial loss to the Council through sunk costs if, for any reason, HEP were to fail
- c) Reputational risk if, for any reason, HEP was not successful or the relationship between the Council and HEP were to break down.

3.2. As a result, Cabinet will want to be assured that HEP would both deliver high quality school improvement services and be financially sustainable. The service offer has been developed in partnership with headteachers and governors across all phases and types of schools, building on the strengths of the current service, and has been tested against the offer in similar school improvement companies in other high performing boroughs. Detailed financial modelling has been undertaken to ensure the service offer is thoroughly costed and is affordable based on the income from member schools and the Council.

3.3. It is also important to balance the risks against the opportunity which HEP represents and the greater risk of doing nothing as the status quo is not financially sustainable.

4. Cabinet Member Introduction

4.1. Every child and young person deserves the best start in life and the best opportunities to reach their full potential. Access to a great education is vital to that goal and I am immensely proud that in Haringey over 90% of early years settings and 99% of our schools are now rated Good or Outstanding by Ofsted.

4.2. Education in Haringey is a real success, but we know there is still more to do. We want all our young people, wherever they live in the borough and whatever their background, to do as well as they can. And we must work to close attainment gaps where they persist. We want to build on the success of Outstanding for All, and deliver on the recommendations set out in the STEM Commission.

4.3. Haringey Education Partnership (HEP) will support these next steps, and will help to build a truly exceptional school system. These proposals exemplify and formalise the partnership working that has been at the heart of our success so far. Headteachers, governors and the Council have worked together for over 18 months to design this model. The ownership and direction provided by our schools throughout this process means HEP will meet the needs and requirements of our schools, creating a sustainable school-to-school system of school improvement.

4.4. In the context of Government-imposed policy which seeks drastically to reduce the role of Councils in school improvement, and changes to the national schools funding formula, HEP will enable us to maintain Haringey's

family of schools and the collaborative relationships between them that have driven our schools system to its current position of strength.

- 4.5. We have high ambitions for our children and young people and we now have a real opportunity to develop world class education in Haringey. Haringey Education Partnership will be a key part of making this possible.

5. Recommendations

- 5.1. Cabinet is asked to agree the following recommendations:

- a) that future school improvement in Haringey should take place through a schools led school improvement company (known as Haringey Education Partnership) in collaboration with the Council
- b) the Council, along with schools buying in as members, should establish Haringey Education Partnership in early 2018 as a not for profit schools company limited by guarantee
- c) that the Council enter into a three-year contract with Haringey Education Partnership to deliver the Council's ongoing statutory and strategic school improvement functions from September 2018
- d) to provide technical and financial assistance to support the set-up of Haringey Education Partnership
- e) to maintain the current school improvement service offer until August 2018 and bear the cost of any redundancies
- f) that the Council would encourage maintained and voluntary schools to be members of Haringey Education Partnership and challenge any schools that do not buy in as to how they are accessing appropriate challenge and support
- g) to delegate to the Director of Children's Services, after consultation with the Assistant Director of Corporate Governance, to finalise and enter into an agreement with Haringey Education Partnership and take any other necessary action to give effect to the recommendations set out in this report.

6. Reasons for decision

- 6.1. There are three key reasons for establishing Haringey Education Partnership:

- a) Moving to exceptional in Haringey: Haringey Education Partnership will facilitate a schools led school improvement model to develop. This will build on the existing strengths of schools in Haringey to develop an exceptional school system with a higher proportion of outstanding schools and continue to tackle the remaining attainment gaps within and across schools in the borough
- b) National policy: the Department of Education has set out its intention to reduce the role of local authorities in providing school improvement services and driving schools towards joining multi-academy trusts. Establishing Haringey Education Partnership will maintain the partnership working between our schools and the Council, while building a schools led model of improvement

- c) Schools funding: the loss of funding to the Council through the Education Services Grant and potentially the Dedicated Schools Grant means the current service is financially unsustainable. Haringey Education Partnership will allow school improvement services to continue, and the Council to commission its ongoing statutory and strategic functions, at no ongoing cost the General Fund.

7. Alternative options considered

7.1. Three other options have been considered:

- a) Do nothing / maintain existing services: the Council could choose to maintain the current school improvement model, committing to maintain existing resources and ways of working. To date, the current model has served us well and maintained a strong partnership between the local authority and schools. However, given the reduction in funding to the local authority, this would require the Council to use the General Fund to meet the costs of school improvement. Maintaining the current model would also be counter to the direction of policy that schools will be empowered to take the lead in the system for continuing to drive up standards. And, as local authorities step back from running schools and school improvement, the ability to lead the system would be greatly diminished.
- b) Reduce or withdraw from school improvement: alternatively, the Council could choose to reduce the financial burden by providing a lower cost school improvement service or, as some local authorities have, withdraw from providing all but the minimum statutory functions. The former would not prevent the fragmentation of the school system in Haringey and would still require the Council to meet significant costs, while not delivering a school-led model. Withdrawing would reduce the costs to the Council but fundamentally weaken the ability of the local authority to influence and support schools in the borough in line with our vision for Priority 1: Best Start in Life. It would leave schools without support or challenge unless they joined a MAT (as is happening in Bromley, for example, where all schools are being encouraged to join a MAT). The local authority would also have such a limited relationship and knowledge of its schools that it would struggle to exercise its powers of intervention effectively.
- c) Trade or commission an external provider of school improvement: the Council could aim to trade school improvement services more broadly than it does currently. This would empower schools to make choices over how they use their resources for school improvement. However, purchasing services would become more transactional and choice would sit with individual schools rather than building a collaborative school led system. The Council could not trade services which are funded by schools via the DSG and would therefore either be small scale or merely substitute for DSG income. Similarly, commissioning an external provider of school improvement services would allow for transactional relationships but would not foster school collaboration and there would be no guarantee of universal coverage, leading to fragmentation.

- 7.2. A large majority of our schools (represented by their Headteachers and Chairs of Governors) have proposed progressing the future of school improvement via the HEP model. This conclusion was reached following extensive consultation and discussion on how best to develop the best possible school improvement service for the future.

8. Background information

- 8.1. We can rightly be proud of the quality of education in Haringey. Improvement has been rapid and sustained across all of our schools over the past four years since the Outstanding for All report was published in 2013. Parents are currently able to choose from good or outstanding provision in over 90% of early years settings and 99% of schools (including all our nursery, secondary and special schools). In 2016, Haringey bucked the national trend with a large increase in GCSE results; pupil progress was in the top 10 local authorities nationally; and our looked after children achieved the best GCSE results in the country. Provisional results in 2017 again show strong attainment and progress for Haringey's learners, though we are still waiting for final data and national comparators to be made available.
- 8.2. This represents a real success story for the borough and we can say confidently we now have a solidly good school system right through from early years to post-16. Our progress also received national recognition when Haringey won the LGC award for children's services in 2016. Yet our ambition is to push further and develop a truly exceptional system for all of our children and young people. We want to continue to increase the proportion of outstanding schools in Haringey; we want our children to be performing not just above national averages but well above London averages and in at least the top quartile. And every child must mean every child: despite our recent achievements, we know unequal outcomes (including on wider measures such as exclusions) remain within and across our schools.
- 8.3. Having exceptional schools for all our children and young people is the most effective means not only of closing the attainment gap but providing the best possible opportunities for our children and young people. Irrespective of each young person's circumstances, through their education we want them to be able to enter good, sustainable employment and achieve their full potential.
- 8.4. The need for change:
Working in close partnership with our early years settings, schools and Further Education settings, Haringey's school improvement services have been critical to our current achievements in the Borough. School Improvement Advisers and the early years quality team are linked to every school in the borough to work with schools leaders to set high standards, track progress and assess risk across the system as well as driving strategic priorities including the STEM commission recommendations, improving black and minority ethnic (BME) achievement and reading at Key Stage 2. This is supported by detailed data analysis, which is among the best

nationally, alongside excellent governor support services, CPD and delivery of statutory functions.

- 8.5. Whilst we need to retain and build on these strengths, the status quo cannot continue. There are three reasons change is now required:

8.6. *National policy*

The Department for Education (DfE) set out its vision in the 2016 White Paper 'Educational Excellence Everywhere'¹ based on the idea that "good schools will lead school improvement across the country, spreading the interventions and approaches which really work, taking charge of their own improvement and collaborating with others in a genuinely school-led system." Whilst DfE has rowed back on its stated ambition for all schools to join a multi-academy trust (MAT), there remains a strong drive to push maintained and voluntary schools towards academisation. DfE also wants to develop a comprehensive national network of teaching schools and national, local and specialist leaders in education (known as NLEs, LLEs and SLEs) as the engine for school improvement.

- 8.7. In this model, despite retaining a number of statutory functions, the role of local authorities would be much more limited as over time they are required to "step back from running schools and school improvement". Despite recognising that some local authorities have been effective in promoting high standards in schools, the DfE has said that it will review local authorities' responsibilities with a view to limiting this to just three areas: ensuring every child has a school place; ensuring the needs of vulnerable pupils are met; and acting as champions for parents and families. There is currently no timeline for this, leaving local authorities like Haringey which retain a strong relationship with schools, in a position of uncertainty.

8.8. *Schools funding*

Following the direction of national policy, school funding is also changing significantly. Funding is being diverted from local authorities to teaching schools, MATs and developing NLEs, LLEs and SLEs. The Education and Skills Funding Agency (ESFA) has already removed the Education Services Grant (ESG) from local authorities as of September 2017, which has led to a funding reduction in Haringey from £2.784m in 2016/17 to £1,345k (including transitional funding) in 2017/18 and £550k in 2018/19 and beyond. This represents a loss of £795k for school improvement specifically, which has had to be mitigated through the General Fund.

- 8.9. Simultaneously, the government is removing the option for local authorities to top-slice the Dedicated Schools Grant (DSG) to fund school improvement initiatives through the National Funding Formula (NFF). The potential loss of 'de-delegated' budgets from schools in 2018/19 would put at risk a further £612k used by the Council for school improvement, bringing the total potential loss of schools improvement resource to the Council from 2018/19

¹ Department for Education: Educational Excellence Everywhere (2016)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508447/Educational_Excellence_Everywhere.pdf

to £1.407m. Without mitigating action, this would place an unsustainable pressure on the General Fund.

- 8.10. Whilst some funding for school improvement could potentially be protected in future DSG allocations under the new NFF (up to £484k which is centrally retained) and a new School Improvement Monitoring and Brokering Grant (worth £136k in Haringey in 2017/18 and still to be confirmed by DfE in future years) is being introduced, this would not nearly replace the funding lost by the Council and leave a net pressure of £1.277m.
- 8.11. Haringey schools, as elsewhere, are already facing severe financial constraints even before the introduction of the NFF. In 2016/17, 66% of Haringey's schools ran an in-year deficit and a significant minority have already requested emergency loans and licensed deficits from the Council. As a result, every pound is under pressure with less money available for school improvement.
- 8.12. *Moving to exceptional in Haringey*
In line with the vision set out in the Corporate Plan, our ambition is not to use reduced resources as a reason to manage decline. Instead we want to use the opportunity to build on our current successes to develop a truly exceptional school system and give our children and young people the best start in life.
- 8.13. The national picture provides both challenge and opportunity so we will need to take control of the future of school improvement and design a model that works for Haringey. We know from international evidence² that sustainably outstanding systems are driven by schools, so it is right that our schools are empowered to lead together, with support from the local authority. However, there is a real danger of the Haringey school system fragmenting, with the local authority no longer able to provide universal, high quality school improvement services and our schools being left isolated. Forcing our schools to join MATs (where they are not already a member of one) or purchase services school by school on a transactional basis, as envisioned by national policy makers, risks undermining the key feature of successful school improvement in Haringey.
- 8.14. Close partnership working between our schools and with the local authority and unions, recognising what each can offer, has been a cornerstone of the improvement journey in Haringey and is our biggest asset going forward. Moreover, strong relationships between the Council and schools sit at the heart of delivering Priority 1 in the Corporate Plan: enabling every child and young person to have the best start in life, with high quality education. Excellent outcomes in early years, schools and post-16 provision make up the first three objectives in Priority 1. More widely, maintaining strong relationships with schools is also fundamental to delivering the Council's wider objectives for children and young people in terms of being healthier and happier, providing early help and safeguarding.

² Hargreaves, D: A self-improving school system in international context (2012)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325905/a-self-improving-system-in-international-context.pdf

- 8.15. The future model of school improvement in Haringey:
Officers and members have worked closely with our schools over the last 18 months to develop options for the future of school improvement services. As set out in paragraph 7.1 above, three options have been considered and discounted.
- 8.16. Instead, working in partnership with headteachers and governors across the borough through the School Improvement Steering Group, we have developed a fourth and optimal option that the future of school improvement in Haringey should be developed through a schools led school improvement company.
- 8.17. A 'schools company' is broadly defined under the Schools Companies Regulations 2002 as a company set up to provide, facilitate or purchase services for schools and exercise relevant local authority functions. Schools companies are owned, governed and led by a group of schools in partnership with the local authority, with full membership open to schools that are located in a particular geographical area and a wider associated membership open to other schools and agencies with an interest.
- 8.18. The main benefit for a group of schools owning and leading such a company is that it allows the local schools as the principal beneficiaries and customers to directly shape the services and agendas that the company delivers. Joint ownership of the company would also help consolidate closer collaborative working between schools, particularly if (as in Haringey) the group reflects a diverse range of maintained schools, voluntary aided schools and academies. And, at a time when all school budgets are under severe pressure, financial modelling demonstrates that schools would be able to access school improvement services at significantly lower cost.
- 8.19. For the Council specifically, this model has the potential to:
- a) Ensure a deep partnership continues with the vast majority of schools in the borough across early years, primary, secondary, special and post-16 settings
 - b) Deliver excellent school improvement services across the borough at no ongoing cost to the General Fund
 - c) Provide a simple solution for commissioning statutory and strategic functions in relation to schools.
- 8.20. More broadly, continuing to work with schools to create an exceptional school system is key to realising the ambitious outcomes for Haringey's children and young people set out in Priority 1: Best Start in Life in the Corporate Plan.
- 8.21. Several boroughs have already established, or are in the process of developing, their own school led partnerships (see Appendix 1 for examples across seven other local authorities). There is no single blueprint and we are working with headteachers and governors to 'co-design' a school company fit for purpose in Haringey – currently known as the Haringey Education Partnership (HEP).

8.22. Haringey Education Partnership:

Building on the work of the School Improvement Steering Group (SISG) over the past 18 months, the Strategic Planning and Partnership Board (SPPB) was established in April 2017 to develop detailed proposals for HEP on behalf of the Council and schools across the Borough. The Board is chaired by the Lead Member for Children's Services (LMCS) and includes the Assistant Director for Schools and Learning, along with nine headteachers and governors elected to represent each phase and type of school. SISG continues to operate, chaired by Fran Hargrove, headteacher at St Mary's Church of England Primary School, in parallel in order to continue to consult widely with other headteachers and governors on decisions relating to HEP and to inform decision-making at SPPB.

8.23. A huge amount of progress has been made on setting out the vision for HEP and designing, testing and validating the offer. This culminated in a draft brochure for HEP being agreed by SPPB and presented to Heads at the annual headteacher conference in July, where the feedback was highly positive.

8.24. The decisions taken by SPPB are set out below:

8.25. *Legal and governance*

As a schools company, HEP would be owned by the local authority and schools buying in to the membership offer.

8.26. HEP would be set up as a company limited by guarantee. This is because:

- a) It is relatively straightforward to set up, limits the risk to individual members and has a low burden of administration
- b) There is a well-founded precedent in other local areas
- c) Companies limited by guarantee attract a lighter burden of regulation than companies limited by shares and have an extremely flexible model of membership and governance that can be easily tailored to local requirements

8.27. The company would by default be a school company. This is because the regulations on school companies automatically apply to any company which includes maintained schools in its membership.

8.28. Once constituted, schools would become members of HEP with a high degree of control and oversight over the organisation. Schools would have the right to vote for non-executive directors and on a range of decisions that are of significance.

8.29. In the event of the company becoming insolvent members would be liable for only a nominal contribution (normally set at £10) to the winding up of the company.

8.30. Governance would take place through a board of directors, comprising both executive and non-executive directors:

- a) Non-executive directors are normally unpaid posts. They would collectively be responsible for: setting the strategic direction of the company; holding the management of the company to account; providing a creative contribution to the board by providing objective criticism; and ensuring that the company is financially sound
 - b) Executive directors have the same legal responsibilities in the provision of good governance and strategic leadership of the company as non-executive directors. However, executive directors are paid posts and would be delegated the management responsibility for the organisation.
- 8.31. It would be the responsibility of the non-executive directors to appoint a Managing Director to be an executive director on the Board and to oversee the effective management of the company on a day-to-day basis. It is also likely HEP will want to appoint an independent chair of the Board.
- 8.32. Whilst the Council would retain at least one officer on the Board, it would not have a controlling interest in HEP. In line with taking a schools led approach, elected representatives from schools (both headteachers and chairs of governors) would collectively make up the majority of the non-executive directors on the Board.
- 8.33. *Scope, offer and cost to schools*
Membership of HEP would be open to all schools in Haringey across each phase (early years, primary, secondary, post-16) and type (maintained, academies, voluntary aided / controlled, special schools and FE colleges).
- 8.34. Reflecting the collective ownership and responsibility, the new organisation must provide more than a purely transactional service offer. Schools would be buying into a core membership offer which is tied to an agreed way of working and ensures an open and accountable environment with no school left behind. Over and above this, there would also be a traded element so schools can tailor the specific support they want to receive, either from other schools in the borough or from the best nationally. A draft of the detailed membership offer and traded elements are set out in Appendix 2.
- 8.35. *Finance*
The membership offer for HEP has been designed to be as lean and cost effective as possible, leaving schools to choose to commission additional bespoke services as required.
- 8.36. The financial viability of HEP is set out in more detail in Appendix 3. The key variable is securing the buy-in of the large majority of schools across phases and types. This will only be sustained if HEP is properly resourced and manages to deliver consistently high quality results.
- 8.37. Having worked extremely closely with our headteachers and governors to test their level of commitment, we are confident that HEP would achieve the initially required level of buy-in to be financially sustainable over the medium term. We expect schools to buy-in initially for two years to provide sufficient stability for HEP to develop with a secure income. Over time HEP would also expect to grow, potentially beyond Haringey, and find additional sources of income including through the traded offer.
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- 8.38. On the assumption this is achieved, the current core offer can be delivered within a pricing framework to schools based on:
- a) £19 per pupil for nursery, special and primary schools, with a £12,500 cap. This works out approximately as follows:
 - i) 1FE primary with nursery - £4,978
 - ii) 2FE primary with nursery - £8,474
 - iii) 3FE primary with nursery - likely to reach the cap of £12,500 depending on numbers
 - b) £12,500 per secondary school without a sixth form
 - c) £15,000 per secondary school with a sixth form
 - d) £7,500 for FE Colleges.
- 8.39. Although this pricing framework is higher than in some other school improvement companies, it is nonetheless significantly lower than the amount currently paid to the Council by schools to deliver school improvement services. It also represents a fully costed and sustainable model in contrast to some other local authorities which have substantially subsidised the initial cost to schools of buying in.
- 8.40. Currently, this does not include a working budget for NLCs, but does include payment to the Chairs for co-ordinating the work. Should each NLC elect to hold a working budget of £10,000 in addition, this could either continue to be top sliced through the centrally retained element of the DSG or the per pupil price would rise to approximately £24 with the caps remaining the same in order for HEP to maintain the same operating margin.
- 8.41. Additional services would continue to be delivered at additional cost through the traded offer. However, this also creates an opportunity for schools in the borough to trade their services for a fee and therefore to develop an income. Teaching Schools would be well placed to do this, but this option would be encouraged and supported for all schools.
- 8.42. The current modelling also assumes an income stream from the local authority to commission statutory and strategic functions. This will be met through the new School Improvement Monitoring and Brokering Grant, which is expected to be worth £136k in Haringey in 2017/18, with allocations for future years to be announced by ESFA. In addition, traded services including CPD, additional school improvement and governor support services (which produce a modest income that is reinvested in the schools and learning budget) would transfer from the local authority to HEP.
- 8.43. Operating margins are tight on this modelling and proposals for the Council to provide further technical and financial assistance to support the set-up of HEP are set out below.
- 8.44. *Staffing*
The staffing model for HEP has been established on the basis of having a small team of approximately 10 directly employed staff (as set out below) to carry out functions that support the core offer. This capacity would retain a core understanding of the system and win the trust of schools by co-

ordinating a high quality core offer. On top of this, HEP would be looking to commission a further number of days from the best possible improvement professionals to enhance the offer to schools.

- 8.45. The initial expectation is that the following roles would be required in the core model. While some assumptions have been made in the finance modelling to cover the core membership offer, there are still significant variables (such as the number of schools buying in and the scale of demand for traded elements on top of the core offer) which would determine the exact capacity requirements:
- a) Managing Director: who would lead the organisation, oversee the quality assurance and health check of all schools and get involved if needed with schools in difficulty, oversee termly categorisation, and lead and support the brokering of access to high quality support from others.
 - b) Data Manager (part-time): who would lead the analysis of school data and provide inputs to HT briefings, and limited advice to schools and governors around data issues.
 - c) Lead Improvement Partner(s): who would oversee the annual health check process and lead conversations with schools in difficulty, lead the categorisation process and participate at NLC level in support for the Peer Review process. They would be heavily involved in the brokering and commissioning of support and they would also oversee and support the ITT and NQT Accreditation.
 - d) Contracted Improvement Partners: who would undertake the annual health checks, validation of the School Evaluation Form (SEF) and School Development Plan (SDP), safeguarding checks and website compliance. They would provide inputs into brokering conversations, briefings and RAG ratings. The core model assumes a pot of over 70 days to be used on a flexible basis to procure the services of external consultants to carry out these activities, though this would need to be flexible based on demand.
 - e) Administrator: would support schools in undertaking annual website and safeguarding compliance checks. Would also be heavily involved in the brokering and commissioning of support and in facilitating and organising subject network meetings and moderation. Significant amount of their time would be supporting the ITT and NQT accredited body function.
 - f) Finance Manager (part-time): who would be responsible for the financial health of the partnership. They would produce financial reports and conduct related accounts administration. The Finance Manager would also advise the Managing Director and the board.
 - g) Statutory Lead Officer: would undertake the range of statutory functions that the Local Authority commissioned the partnership to undertake on its behalf such as Statutory moderation, SATs process checks, SACRE plus maintaining professional links and providing relevant briefings for its schools.

8.46. As above, governor support services (two full time staff and clerks on rolling fixed term contracts) would also transfer 'as is' from the Council to HEP by September 2018. HEP would also expect to purchase capacity from the current Early Years quality team to work with nursery and primary schools.

8.47. In addition, whilst there is no legal requirement to have a company secretary, there would still be a need to discharge statutory duties such as filing accounts and annual returns at Companies House, keeping the statutory books up to date, filing resolutions and forms at Companies House such as when a director resigns, is appointed or moves home. This could be an appointee or bought in.

8.48. HEP will be fully operational by September 2018 and this will have implications for staff currently delivering school improvement services in the Council. Any staff transfers will follow advice on TUPE regulations and follow all Council HR policies and procedures.

8.49. Key decisions and considerations for Cabinet:

8.49.1. Agree that future school improvement in Haringey should take place through a schools led school improvement company (known as Haringey Education Partnership) in collaboration with the Council

a) What is being requested?

- i) The Council is being asked to change the way it delivers its statutory and strategic functions for school improvement and that these would in future be delivered through a 'schools company'
- ii) To continue working with SPPB to design the offer and structure of HEP up until the organisation is established with its own governance and Managing Director in place
- iii) To continue working with schools to promote HEP and maximise buy-in.

b) Key considerations

- i) Establishing a school led school improvement company entails an important shift from in-house service provision. Whilst this will require contracting out services, this would be on a non-competitive basis to a company for which the Council would be the supervising authority and be represented on the Board
- ii) There are risks with setting up a new company – as set out below. However, we believe these are limited and can be significantly mitigated. The status quo is also no longer viable
- iii) HEP is being co-designed with schools and the Council does not have ultimate control of decision-making
- iv) LMCS and the Assistant Director for Schools and Learning are members of SPPB and vote on all matters on behalf of the Council. However, it is worth noting that schools (collectively) represent the majority of votes at SPPB.

8.49.2. Agree the Council, along with schools buying in as members, should establish Haringey Education Partnership in early 2018 as a not for profit schools company limited by guarantee

a) What is being requested?

- i) To set up a legally separate entity called Haringey Education Partnership as a 'school company', which would be not for profit and limited by guarantee
- ii) As set out in the 2002 School Companies Regulations, the Council is required to act as the 'supervising authority' to ensure the school company is run on a sound footing and to enable maintained schools to become members. This does not, however, entail any financial liability for the Council, a specific role in running the day to day organisation or responsibility for managing HEP's accounts
- iii) The Council would be a member of the new company and play a full role in the governance of the organisation in line with its Articles of Association. Whilst the Council would be the supervising authority and the Council would retain at least one officer on the Board, it would not have a controlling interest in HEP and the Board is likely to be chaired by an independent appointee
- iv) The setup would take place in advance of September 2018 in order for the company to be fully staffed and operational by that point. It is expected this would take place in January 2018 in order to receive funding from member schools and the LA from April 2018.

b) Key considerations

- i) Following the arguments set out in Appendix 4, SPPB is proposing that a company limited by guarantee is the right vehicle for HEP. Alternatives to becoming constituted as a company have been discounted, including setting up as a limited liability partnership or a cooperative or community benefit society. Similarly, alternatives to being limited by guarantee have been discounted, including being limited by shares (preferable for redistributing profits) or becoming a community interest company
- ii) Also covered in Appendix 4, SPPB has decided that HEP should not pursue cooperative status and, at present, there is no advantage to seeking charitable status (though this does not preclude doing so in future)
- iii) It is currently proposed the non-executive board would closely match the membership structure of SPPB. This would entail the Council continuing to be represented on the board of HEP through the Director of Children's Services or Assistant Director for Schools and Learning alongside headteachers and governors elected to represent the sector.

8.49.3. That the Council enter into a three-year contract with Haringey Education Partnership to deliver the Council's ongoing statutory and strategic school improvement functions from September 2018

a) What is being requested?

- i) For the local authority to take a decision to commit to a clearly defined set of functions being provided by HEP. These are set out in Appendix 5 and include responsibilities relating to curriculum and assessment, religious education, governor support, inspection and intervention, CPD and providing safeguarding advice amongst others
- ii) The annual cost of providing these services through HEP has would be met by the Council through the new School Improvement Monitoring and Brokering Grant (worth £136k in Haringey in 2017/18 with future allocations to be announced by ESFA)
- iii) Traded services including governor support services, CPD and school improvement would transfer from the Council to HEP as these are integral to school improvement
- iv) Schools will be required to commit to membership of HEP for two years initially. The Council is asked to contract with HEP for three years to provide stability for the organisation at the point of renegotiating membership with schools
- v) Funding for school improvement which is currently received by the Council through the centrally retained element of the schools block in the DSG would also need to be passported to HEP in future minus any remaining costs with the Council. This is currently worth £484k per annum, £150k of which is used to fund networked learning community activity.

b) Key considerations

- i) The Council has already lost £795k for school improvement as part of the ESG. The pressure on the schools and learning budget has had to be mitigated through the General Fund in the short term but needs a long term financially sustainable solution
- ii) There is no ongoing cost to the General Fund from commissioning services through HEP as the new School Improvement Grant would cover the cost of the statutory and strategic functions carried out by HEP
- iii) Based on the current DSG profile, two principal elements would be passported across from the Council to HEP: £484k centrally retained / central services and £612k de-delegated element. Schools forum would need to decide if this remains the right allocation of funding (including differences between academies and maintained / voluntary schools) in the budget for the new financial year (2018/19) and how it fits with the membership fee for schools outlined above
- iv) There would be an impact on three areas of traded services: governor support, CPD and school improvement, each of which would transfer to HEP. This would have only a marginal impact on the Council's budget (and make no difference to current DSG arrangements). Governor support currently receives £130k from the DSG and £10k for servicing schools forum, on top of which the service generates an income of approximately £70k. School improvement and CPD generate income of approximately £30k. The income generated is used to subsidise school improvement, so this would not have a material impact on the Council budget and would remove the risk of additional costs if traded income was to reduce.

- v) In order to be exempt from legal restrictions on procurement and competitive tendering, the company would need to have equal representation of members, no external private investment and cannot trade in excess of 20% externally (ie not with members). None of these are expected to be a problem and therefore the Council and schools are free to commission services through HEP on a non-competitive basis.

Table 1 – summary of school improvement funding relating to HEP

Funding source	Proposed future arrangement	Comments
£795k – ESG	Partly covered by transitional funding to September 2017, then lost entirely	Shortfall has had to be mitigated from the General Fund and is not financially sustainable
£484k – DSG centrally retained (ie top sliced from all schools)	£484k retained in central schools services block in DSG (subject to Schools Forum agreement)	This funding would be passported in its entirety from the Council to HEP. Schools forum would need to decide how this is used against the membership fees for schools. This funding would also continue to be used to support Networked Learning Communities and other school to school support
£612k – DSG de-delegated (i.e. top sliced from maintained schools) for support to underperforming ethnic minorities	£612k retained (subject to Schools Forum agreement)	In principle this would be passported in full from the Council to HEP. However, schools forum would need to decide on the level of funding that continues to be de-delegated and how this counts against HEP membership costs over and above the centrally retained
£130k – DSG governor services £10k – DSG servicing schools forum	£140k retained (subject to schools forum agreement)	This funding, along with the governor service and servicing of schools forum, would be passported in full from the Council to HEP. This would include the traded income generated by governor support (as below)
£136k – new School Improvement Monitoring	£136k retained (future allocations from 2018/19)	This funding is received directly by the Council. It

and Brokering Grant	still to be announced by ESFA)	would be paid to HEP to cover the delivery of the Council's ongoing statutory and strategic functions
£9k – DSG school improvement from the High Needs Block	£9k retained (subject to schools forum agreement)	In principle this would be passported in full from the Council to HEP. However, schools forum would need to decide on the level of funding that continues to be de-delegated and how this counts against HEP membership costs
Traded services income generated by: additional school improvement and CPD	Continues with HEP	Current income generation on traded services in these specific areas (ie not areas such as HR, Education Welfare etc which would remain with the Council) would transition to HEP and form part of the traded element

8.49.4. Agree to provide initial technical and financial assistance to support the set-up of Haringey Education Partnership

a) What is being requested?

- i) To provide financial support to HEP through one-off funding to provide £150k working finance and £200k for business development and innovation
- ii) To provide the financial support through one-off capital funding for the initial development of HEP, including the recruitment to the Managing Director post, salaries and capacity prior to April 18, and legal, HR and financial advice to establish the company. This is expected to cost up to £250k
- iii) Allow HEP to use Council accommodation and IT for staff and provide access to a suitable venue for delivering CPD and briefings

b) Key considerations

- i) The financial modelling for HEP has been undertaken on a lean model to reduce the cost to schools. However, this means that operating margins are thin and, to build financial resilience, HEP would almost certainly require upfront support and access to working capital while the business develops and strengthens. HEP has been designed and costed to deliver a financially sustainable service
- ii) We know that other local authorities are providing extensive financial support and income streams to their schools company. For example, Camden local authority is providing support worth £1.722m to the Camden Schools Led Partnership (CSLP) by the end of 2017/18,

covering set up costs, hosting arrangements and facilitating staffing arrangements such as secondments

- iii) Regulations on restricting state aid to companies have been considered in relation to the support requested above. Other local authorities have provided significant financial support to the develop their school improvement companies. Having taken legal advice, state aid rules are not considered to be a barrier to these proposals
- iv) The understanding in putting this paper together is that it is preferable to use the capital budget rather than revenue, so this would not worsen the Council's revenue position.

Table 2 – Summary of support for HEP from the local authority

Support	Amount requested	Comments
Working finance (loan to be repayed)	<u>£150k</u>	The operating margins are thin and for HEP to have realistic financial resilience it would need to have access to additional funding as it grows and gets stronger in the early years. There is no other obvious source for this.
Development costs <ul style="list-style-type: none"> 1. Recruitment 2. Capacity pre-September 2018 3. Accommodation, website, legal, HR, website, office supplies 	<u>£250k</u> £40k £105k £105k	1. Recruitment costs 2. 5 months of MD cost (£55k) + £50k to buy additional capacity 3. Estimate based on 3x full year of 'fixed costs' in financial modelling
Business development <ul style="list-style-type: none"> 1. Developing core offer and traded element 2. Enhanced innovation fund for schools to bid for 	<u>£200k</u> £150k £50k	HEP would need to refine the core offer and develop a highly effective traded element with initial investment in capacity to do so. An innovation fund for schools would support evolution of NLCs and secondary school improvement focus

8.49.5. Agree to maintain the current school improvement service offer until August 2018 and bear the cost of any redundancies

a) What is being requested?

- i) To keep current staff and services in place for the remainder of the 2017/18 academic year before HEP is fully operational in September 2018 in order to maintain service continuity and support handover to HEP
- ii) To bear the cost of keeping current staff in post from April to August 2018, estimated at £250k. This represents a saving against

maintaining services for the remaining seven months of the financial year which would have to be found from the General Fund

- iii) To bear the cost of any redundancies for current members of staff through capital funding. The cost of this cannot be known before the staffing structure in HEP is finalised along with legal advice on TUPE requirements and potential staffing arrangements between HEP and the Council.

b) Key considerations

- i) HEP would not be operational before September 2018 and the Council would need to continue to deliver its statutory and strategic functions up until that point
- ii) It may be possible to come to an arrangement with Schools Forum to maintain funding for current services for five months as part of the transition to HEP, but this would have to be negotiated and cannot be assumed
- iii) Modelling suggests the maximum redundancies could cost the Council is £275k, but this figure is for risk planning purposes only and is not in any way to predetermine the staffing arrangements with HEP in future.

8.49.6. Agree that the Council would encourage maintained and voluntary schools to be members of Haringey Education Partnership and challenge any schools that do not buy in as to how they are accessing appropriate challenge and support

a) What is being requested?

- i) For the Council to actively promote membership of HEP to all schools in the borough (including academies)
- ii) For the Council to challenge maintained and voluntary schools to provide evidence that they are able to access an equivalent level of challenge and support if they do not seek to take up membership of HEP.

b) Key considerations

- i) It is a central argument for establishing HEP that the Council and schools wish to maintain partnership working and not allow the school system to fragment
- ii) Whilst the Council has no powers to direct maintained or voluntary schools to become members of HEP, the Council does retain responsibility for ensuring schools have adequate support and challenge and to intervene where there are concerns over standards.

8.49.7. To delegate to the Director of Children's Services, after consultation with the Assistant Director of Corporate Governance, to finalise and enter into an agreement with Haringey Education Partnership and take any other necessary action to give effect to the recommendations set out in this report.

8.50. Summary of risks for the Council

There are a number of risks to the Council that Cabinet would wish to consider in making decisions on the recommendations in this paper. We believe these are limited or can be significantly mitigated.

- 8.51. It is also important to balance the risks against the opportunity which HEP represents to develop the next stage of school improvement in Haringey and the risk of doing nothing when we know the status quo is not sustainable.

Table 3 – Risk and mitigation

Risk	Mitigation
Transition to HEP and government changes result in poorer outcomes for Haringey's children and young people as set out in Priority 1: Best Start in Life	<p>HEP fits with the international evidence that sustainably exceptional systems empower schools to lead improvement and work collaboratively. It also fits with the direction of policy with teaching schools and other system leaders to play a more prominent role and access new funding streams</p> <p>The Council's statutory powers of intervention are not changed and HEP maintains the relationship / knowledge of schools to enable the Council to exercise these powers effectively</p> <p>Maintaining a partnership with schools is necessary to continue achieving Priority 1 outcomes which are educational outcomes and more widely in relation to health, early help and safeguarding</p> <p>The Council would maintain existing personnel and school improvement services to cover the 2017/2018 academic year before HEP is fully operational</p> <p>The Council would have representation on the Board of HEP and would be able to contribute to challenging and holding the Managing Director to account for performance</p>
Schools do not continue to buy into HEP services in sufficient numbers to maintain a financially viable services	<p>Schools will make a choice as to whether or not to buy in again every two years, which will be determined by the quality of the service provided and school to school support</p> <p>The service offer has been tested with schools to ensure the core membership offer meets the needs of each phase and type of school</p> <p>The service offer is financially sustainable so the price is unlikely to increase significantly in year 3, unlike some other comparator boroughs where initial</p>

Risk	Mitigation
	<p>prices have been artificially lowered through large Council subsidies</p> <p>HEP will also be able to build an increasing revenue through the traded services over time to develop a more robust income and operating margin.</p>
<p>Additional costs are borne by the Council in the transition to HEP</p>	<p>No decisions have yet been taken on recruitment, so the precise cost of redundancies is not yet known. Cost projections have been modelled on a least favourable case scenario</p> <p>We will present the case to Schools Forum to continue current funding arrangements up to September 2018 to support the cost of maintaining the current school improvement service for the 2017/18 academic year before transitioning to HEP. Schools forum could decline this, leaving a potential funding pressure for the Council. We are working to develop full budget proposals to take to Schools Forum in December for budget setting. If this is not agreed, the Council could decide to reduce the offer available between April 2018 and August 2018</p> <p>There is a potential funding gap for the Council when HEP is fully operational in September 2018 as overheads (charged corporately to the Schools and Learning budget) would no longer be available to the Council. This will need to be clarified in the budget setting for the Central Schools Services Block with Schools Forum</p> <p>If changes to DSG funding for HEP are agreed at Schools Forum there could potentially be a knock on impact for other Council services supported through Schools Block. However, (i) there is no direct relationship between school improvement funding and other areas and (ii) there is no request for increasing funding for school improvement due to HEP, therefore there should not be a squeeze on other areas of funding.</p>
<p>Additional costs are borne by the Council if HEP is not financially sustainable</p>	<p>There is no ongoing request for funds through the General Fund. The contribution to HEP from the Council would require the passporting of the new School Improvement Monitoring and Brokering Grant and any DSG funds designated for school standards and governor support through to HEP</p> <p>Whilst, on current modelling, operating margins for</p>

Risk	Mitigation
	<p>HEP are tight on the core membership offer alone, this does not include any traded income or assume that set up costs would be supported by the Council. Both of these would make HEP more financially sustainable, along with developing a wider income as a core part of business development</p> <p>School buy-in will be the key variable for the financial sustainability of the organisation. Schools have not at this stage confirmed they will buy-in. However, we have worked extensively with schools to secure ownership and buy-in to the model and confidence is high that we will meet the targets which have been modelled</p> <p>As HEP would be a company limited by guarantee, the Council and each member school would face only a nominal cost (likely to be £10) if HEP were to become insolvent</p> <p>There is a risk, if HEP were for any reason to be in financial distress, the Council might choose to provide further support. This has been mitigated through developing a financially sustainable model for HEP.</p>
<p>Inability to collaborate effectively leads to a breakdown of relationship between LA and / or schools and HEP</p>	<p>The Council and schools make up the Board of HEP and would therefore be able to challenge and hold the Managing Director to account jointly for both collaborating effectively and delivering the highest standards</p> <p>The Council would have a legally binding contract with HEP setting out the outcomes required for delivering the statutory and strategic services provided</p> <p>If the Council decided HEP was not delivering wider benefits across Haringey or adequately supporting partnership working between the Council and schools, the Council would be free to explore different options at the end of the contract.</p>
<p>Failure of HEP leads to reputational damage for the Council</p>	<p>Failure of HEP or a drop in standards would have a negative impact on the Council's reputation for excellence with residents, DfE and more widely</p> <p>However, maintaining the status quo is not possible and HEP represents the best opportunity not only to maintain standards but to push further to deliver an</p>

Risk	Mitigation
	<p>exceptional school system</p> <p>It is therefore in all the stakeholders' interests to work collaboratively to ensure success.</p>
<p>Long term failure of HEP to be financially viable or to achieve improved outcomes leaves</p>	<p>Should HEP fail due to lack of buy in, it is unlikely the Council would want to bring a service back in-house. A more viable solution would be to support schools to commission their support and challenge from an alternative provider of school improvement services.</p>
<p>Staffing of HEP is not affordable or sufficiently high quality to carry the confidence of the LA and schools</p>	<p>No decisions have yet been taken on staffing in HEP or tested with existing Council staff who might be affected. Options (including alternatives such as secondments) can only be addressed when the HEP staffing structure is finalised and appointed to</p> <p>TUPE implications are still being worked through, but could potentially risk (i) unsustainable costs to HEP and / or (ii) undermine a key benefit to schools in being involved in appointing staff in HEP</p>

8.52. Timeline:

Key milestones include:

- a) November 2017 – Cabinet decision on recommendations regarding HEP
- b) January 2018 – HEP established as a legal entity and develops in transitional form
- c) February 2018 – schools' commitment for two years is secured
- d) September 2018 – HEP fully operational

8.53. A timeline for key activities is attached in Appendix 6.

9. Contribution to strategic outcomes

- 9.1. The creation of a Haringey Strategic Partnership would contribute towards Priority 1 of the Corporate Plan by ensuring that all schools retain challenge and support from outside of the school to further raise and develop standards and the delivery of education in our schools.

10. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

11. Finance comments

11.1. Current approach

The Council has to date funded school improvement services from a combination of ESG and the delegated element of DSG but is facing both a

withdrawal of ESG from September 2017 and the loss of DSG resulting from changes to the National Funding Formula from April 2018.

11.2. Offsetting these losses will be new money coming in through the School Improvement Monitoring and Brokering grant from DfE. However, this will be insufficient to mitigate the pressures on the General Fund, making the current position unsustainable.

11.3. Future position

The creation of HEP would mean providing £1.381m of resources from the Council and schools to HEP made up of:

Table 4 – Future Position

Spending block	£	Comments
DSG Central School Services Block for School Standards	£484k	To be agreed with Schools Forum against HEP membership costs
DSG Central School Services Block for Governor Support	£130k	To be agreed with Schools Forum
DSG Central School Services Block for Servicing of Schools Forum	£10k	To be agreed with Schools Forum
De-delegated for support for underperforming ethnic minority groups in schools	£612k	To be agreed with Schools Forum against HEP membership costs
School Improvement Monitoring and Brokering grant	£136k	New funding direct to the Council to go to HEP in full
School Improvement from DSG High Needs Block	£9k	To be agreed with Schools Forum

11.4. The Council would also lose traded service income from governor services, CPD and school improvement. This currently generates a surplus of approximately £100k, though this is variable, which is reinvested in the schools and learning budget.

11.5. However, the new position with HEP would mean there was no call on the General Fund and therefore the cost pressures and the risk of losing de-delegated funding from the DSG would disappear.

11.6. There is also no material liability to the Council if HEP is unsuccessful as a trading model hence there is no direct financial risk to the Council.

Table 5 – Transition cost / savings of HEP over the next 3 Years

Date	Description		2018-19	2019-20	2020-21
		£'000	£'000	£'000	£'000

	One off payment from the Council				
Apr-18	A. Working Capital Loan		150		
Apr-18	B. Development costs				
	1. Recruitment	40			
	2. Capacity pre-September 2018	105			
	3. Accommodation, website, legal, HR, website, office supplies	105			
Apr-18	C. Business development		250		
	1. Developing core offer and traded element	150			
	2. Enhanced innovation fund for schools to bid for	50			
Aug-18	D. Potential Redundancy Costs – Capital Cost		200		
			275		
			875		
Apr-Aug 2018	Risks of Revenue Costs 5 months of School Improvement Costs - Risk to the Council - Could fall on General Fund unless Schools Forum to agree continuation of funding for this period		250		
Sep-18	Recurring - Annual passport of grant received to HEP School Improvement Monitoring and Brokering Grant		Currently £136k (ESFA to announce future allocations)	Currently £136k (ESFA to announce future allocations)	Currently £136k (ESFA to announce future allocations)

11.7. There are also one-off capital costs of £875k which it is believed could be funded wholly or in part through the Schools Capital Fund to meet the Council's savings priority.

11.8. These costs include:

- a) The provision of working capital finance loan (£150k) offered at a commercial rate of interest, which would be repayable over three years, starting no later than year 3 of trading (2020/21). The terms of repayment will be reviewed dependent on HEP's financial position.
- b) Support for business development/innovation (£200k)
- c) Financial support for the recruitment of the managing director post, salaries and capacity prior to April 2018, and legal, HR and financial advice to establish the company (up to a maximum of £250k)
- d) The cost of redundancies (up to a maximum of £275k).

11.9. Against these costs would be a 7 month saving related to staff costs for School Improvement and Governors' Services in 2018/19 – as the transition to HEP would be in September 2018 with the start of the new academic year thus reducing pressure on the General Fund and ongoing full year savings for both School Improvement and Governors Services thereafter as both services would cease at the Council.

11.10. Financial sustainability of Haringey Education Partnership

Current financial modelling for HEP suggests the organisation is self-financing and sustainable. HEP is expected to generate an annual trading margin of £115k based on the expected income from the Council, school membership and known traded income. The first year of trading is not expected to generate a surplus given set up costs and business development requirements. The modelling is subject to change and includes a number of key assumptions which will need to be revisited .

Table 6 – Trading (operating) position

Year	Traded profit / loss	Cumulative position
Year 1 (includes set up and development)	£0k	£0k
Year 2	£115k	£115k
Year 3	£115k	£230k
Year 4	£115k	£345k
Year 5	£115k	£460k

12. Procurement Comments

12.1. Regulation 12 of the Public Contracts Regulations 2015 permits the Council to award contracts without going through procurement to a company which the Council jointly controls with other contracting authorities as long as the following conditions are fulfilled:

- a) the contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments
- b) more than 80% of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal persons controlled by the same contracting authorities
- c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

12.2. By definition under the Public Contracts Regulations 2015, schools are contracting authorities and if they jointly with the Council sets up a company that meets the requirement of paragraph 12.1 (a)-(c) above, the Council may subject to the provisions of the Council's Contract Standing Order, award a contract to such company without going through a procurement exercise.

12.3. The report proposes that the Council provides technical and financial assistance to support the setting up of HEP. This raises the issue of whether European Union regulations restricting state aid would prevent the proposed financial assistance being given by the Council to HEP. These Regulations are enforced exclusively by the European Commission.

12.4. "State aid" is assistance:-

- a) which is granted by the state or through state resources. The "State" includes local government in the UK. The "assistance" can take many forms, including grants, loans or tax breaks and use of a state asset for free or at less than market price.
- b) which gives an advantage to one or more undertakings over others, An "undertaking" is any organisation engaged in economic activity i.e putting goods and services on a market
- c) which distorts or threatens to distort competition. The European Commission is required to carry out at least some analysis of the situation of the relevant market and the position of the aid recipient and its competitors to show that aid had an impact on competition. It must show that the aid would have a real rather than a wholly theoretical effect on the market. Further the Commission must show that the aid recipient had obtained an appreciable advantage over its competitors.
- d) which affects trade between Member States. The Commission has stated it considers certain activities to be "local activities" i.e activities which could be considered not to affect intra- community trade. These activities, where carried out by small enterprises, include "health and social work", "other community social and personal service activities" and "social services". The products or services provided by the recipient

of the assistance must be tradable between the Member States. It seems the assistance must be likely to or capable of affecting intra-community trade.

All four of these tests must be met for assistance to be “State aid”.

- 12.5. Tests (a) and (b) above appear to be met in respect of the proposed financial assistance to HEP. It is questionable whether tests (c) and (d) above would be met. Test (c) raises the issue of what if any competitors HEP would have, whether providing the proposed one-off capital funding would have a real effect on the market of the providers of school improvement services, and whether the funding can be said to give HEP an appreciable advantage over its competitors. Given the funding is one-off and relatively modest in amount, test (c) may not be met. As regards test (d), on the face of it it would seem unlikely that any organisation in the EU outside the United Kingdom would be prejudiced by the Council providing HEP with the proposed financial assistance, given it seems unlikely that any such organisation would ever be interested in seeking to contract with the Council or with school governing bodies in Haringey to deliver school improvement services on their behalf.
- 12.6. The European Commission’s primary focus is on assistance which distorts competition and trade between Member States. It is hard to see in what circumstances the Commission would be concerned with the proposed financial assistance, given it would appear to have no impact at all on competition and trade between Member States. Therefore the risk that the Commission would consider whether the proposed financial assistance was state aid would seem a low one. If the Commission did determine the proposed financial assistance was state aid, HEP would have to repay it to the Council with interest.
- 12.7. If the Council was to provide HEP with the proposed financial assistance in a way that a rational private investor motivated by return and not policy objectives would, by for example providing the assistance by way of loans on commercial interest rates, then such assistance would not be state aid. HEP would not be considered as obtaining an advantage from the State as it would be getting funding on the same terms that it could have obtained on the market.
- 12.8. State aid can be granted legally in a variety of circumstances. For example, the De Minimis Regulation allows up to 200,000 Euros over 3 rolling years to be given to an undertaking for a wide range of purposes. The Commission’s approval is not required, nor is it necessary to notify the Commission. Further, assistance can be granted under the General Block Exemption Regulation. That allows, inter alia, aid to be provided to small and medium-sized enterprises in the form of investment aid, operating aid and their access to finance. The Commission must be notified within 20 working days of giving the aid.

13. Legal Comments

- 13.1. For the reasons stated in the report, the most advantageous legal structure by which HEP could be constituted would be for it to be a company limited by guarantee, particularly bearing in mind that HEP is not being set up to make a profit to be distributed to its members. In addition to the company's memorandum and articles of association, consideration should be given to producing a collaboration agreement to be entered into by all members of the company (i.e. by the Council and all school governing bodies that join HEP) which would capture the details of the composition of the board of directors and other operational issues, such as the expected duties that fall to members of the company.
- 13.2. If constituted as a company, then HEP will be a "school company" as defined by section 11 of the Education Act 2002. Section 11 gives the governing bodies of local authority maintained schools the power to form, or to participate in forming companies, to:
- a) provide services or facilities for any schools,
 - b) exercise relevant local authority functions, being the education functions of any local authority that are or may become exercisable by the company in accordance with an authorisation given or direction made by virtue of any enactment, or
 - c) make, or facilitate the making of, arrangements under which facilities or services are provided for any schools by other persons.
- 13.3. Section 11 further gives these governing bodies the power to invest in such companies, with a view to securing or facilitating the activities in (a), (b) or (c) above. It also gives these governing bodies the power to form, or to participate in forming, companies to purchase services or facilities for the participating schools.
- 13.4. Section 12 of the Education Act 2002 requires a governing body wishing to exercise any of these powers to first obtain the consent of its maintaining local authority. The school must also have a delegated budget. In addition, the School Companies Regulations 2002 (as amended) must also be complied with.
- 13.5. The Regulations allow the proprietors or governing bodies of academy schools, in addition to the governing bodies of local authority maintained schools, and English local authorities, to be members of a school company. They set out various provisions which must be contained in the company's constitution (i.e. in its memorandum and articles of association), and which therefore will need to be contained in HEP's memorandum and articles of association. These include:
- a) restrictions on the company entering into contracts in which a director of the company has an interest
 - b) procedures to be followed in meetings of the directors if a director has an interest in a matter to be discussed
 - c) a requirement that at least 40% of the directors at any one time are non-executive directors,

- d) the setting up of a remuneration committee made up solely of non-executive directors whose role is to recommend to the board of directors the terms of service and remuneration of the executive directors
- e) procedures to be followed for deciding the remuneration and benefits of directors
- f) a requirement that any surplus or profits of the company may only be applied to further the objects of the company and/or to be distributed among the members according to proportions or procedures set out in the constitution
- g) the company not being allowed to borrow funds without the permission of its supervising authority.

13.6. The Regulations also require every school company to designate a local authority as its “supervising authority”. The company must serve written notice of designation on the supervising authority within 28 days of the Regulations applying to it. In HEP’s case the supervising authority would initially be the Council, because initially all the governing bodies of local authority maintained schools who were members of HEP would be governing bodies of Council maintained schools. If , as the report envisages, HEP was to grow beyond Haringey , then it is possible that another local authority would become the supervising authority. For example, this would occur if the governing body of a school maintained by another local authority became a member of HEP, and that other local authority did not become a member of HEP. In other circumstances where the governing body of a school maintained by another local authority became a member of HEP, then in the absence of the local authorities agreeing who should be the supervising authority, this would be decided by the Secretary of State.

13.7. Where a local authority becomes the supervising authority for a school company it must under the Regulations inform the Secretary of State in writing , within 28 days of becoming the supervising authority, of the members of the company, the company’s name and registered number, and the fact it is the company’s supervising authority. It must also inform the Secretary of State , in writing within 28 days, of any changes to the company’s membership, name and registered number, and if it ceases to maintain any schools whose governing bodies are members of the company.

13.8. The duties of the supervising authority under the Regulations are to monitor the management and finances of the company. It must also notify the members of the company, as well as any local authorities which maintain schools whose governing bodies are members of the company, if it considers that the company is poorly managed or there is a risk of the company becoming insolvent. The Regulations give the supervising authority the power to direct :-

- a) the company to give it such information about the company’s constitution, finances, management and contracts as it requests;
- b) the company to take specified steps to comply with the Regulations;
- c) the governing body of a local authority maintained school, who is a member of the company, to resign as a member of the company or to reduce its involvement in the management of the company

- 13.9. The Regulations do not prevent a local authority being both the supervising authority of the company and having representatives on the company's board of directors. However on the face of it, a Council officer who was an executive director of the company, and who therefore was responsible for the day-to-day management of the company, would have a conflict of interest if s/he was also responsible for carrying out the Council's responsibility as supervising authority to monitor the company's management and finances. Therefore it would be advisable to ensure that Council officers on the board of directors were non-executive directors only.
- 13.10. Leading Counsel has advised that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") would not apply to "the transfer of administrative functions between public administrative authorities". Accordingly those Council employees who are assigned to the carrying out of those functions would not transfer to HEP's employment from September 2018. The Council would no longer require employees to carry out these functions so, unless the Council was able to redeploy those employees, they would have to be dismissed by way of redundancy in September 2018.
- 13.11. Leading Counsel has also advised that TUPE would apply to transfer from the Council of any other functions set out in this report which are economic, not administrative, in nature. Accordingly those Council employees who are assigned to the carrying out of these other functions would transfer to HEP's employment from September 2018, unless they objected to transferring. If they objected to transferring, then normally they would be treated as resigning with effect from the date of the transfer.
- 13.12. Further advice is being sought to clarify the distinction between administrative and economic functions in relation to the services which will be delivered by Haringey Education Partnership.
- 13.13. In September 2000 the Council entered into an agreement with the trade unions on their involvement in outsourcing. Under that agreement whenever a decision is taken to outsource or to consider the option to outsource the Council shall immediately establish appropriate consultation machinery with the trade unions and carry out regular staff briefings, Accordingly under this agreement , if the Cabinet agrees this report's recommendations, such consultation machinery would need establishing. Although the agreement is not incorporated into the contracts of Council employees, if it has been followed in practice since 2000, the trade unions could argue that they have a legitimate expectation that it will be followed in this case, and take action to enforce the agreement through judicial review proceedings if the Council does not abide by the agreement.
- 13.14. Regulation 13 of TUPE requires the Council, long enough before the transfer of these other functions to enable it to consult the relevant trade unions (UNISON, GMB and UNITE) , to inform them , amongst other matters, about the fact the transfer will take place, its proposed date, the reasons for the transfer, and the legal, economic and social implications of the transfer for any affected Council employees. If the Council envisaged

taking measures in relation to an affected employee , in connection with the transfer, it would need to consult with the trade unions with a view to seeking their agreement to the intended measures. This duty to consult would arise in connection with any Council employees who would not be transferring to HEP, but concerning whom as a result of the transfer the Council envisaged taking measures ,such as a staffing restructure .

13.15. With the exception of pension rights, under TUPE the terms and conditions of employment of the Council employees transferring to HEP would transfer with them. The Council would also be required, by the Best Value Authorities Staff Transfers (Pensions) Direction 2007, to secure pension protection for the transferring employees in its contract with HEP. In this case , pension protection would most likely be secured by ensuring the employees had continued access to the Local Government Pension Scheme by HEP becoming an admitted body under that Scheme.

13.16. Following transfer, HEP would be able to change the terms and conditions of employment of the Council employees that had transferred to it by terminating their existing contracts and offering them new contracts. However it is likely that such terminations would be automatically unfair dismissals, being dismissals where the sole or main reason for the dismissal was the TUPE transfer.

14. Equalities comments

14.1. Haringey Education Partnership would maintain the same focus on closing the gaps in attainment and progress between key groups, including: gender, ethnicity, special educational needs and disadvantaged (as identified for free school meals). Detailed data analysis would be used to track progress within and across schools, comparing against the differences found across the borough and nationally.

14.2. It is anticipated that Haringey Education Partnership would fall under the public sector equality duty as it delivers public functions. The organisation would therefore need to adopt equalities policies, which may be based on existing policies used by Haringey Council.

14.3. Once the staffing structure in Haringey Education Partnership is known, it would be necessary to complete an equality impact assessment ahead of any potential restructure and consider equality concerns as part of the process.

15. Use of Appendices

Appendix 1 – Summary of schools companies in other local authorities

Appendix 2 – (Draft) Membership offer for Haringey Education Partnership

Appendix 3 – Financial modelling for Haringey Education Partnership

Appendix 4 – Summary of advice on legal structure and governance for HEP

Appendix 5 – Statutory and strategic functions of the local authority in relation to school improvement

Appendix 6 – Summary timeline for Haringey Education Partnership

Appendix 7 – Initial screening tool for equalities impact assessment

16. Local Government (Access to Information) Act 1985

16.1. The following documents have been used in developing this report:

- a) Department for Education: Educational Excellence Everywhere (2016)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508447/Educational_Excellence_Everywhere.pdf
- b) Hargreaves, D: A self-improving school system in international context (2012)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325905/a-self-improving-system-in-international-context.pdf

Appendix 1 – Summary of schools companies in other local authorities

A number of new delivery models for school improvement services are beginning to emerge. These models range from establishing area-wide school collaboration partnerships, to spinning out previously 'in-house' local authority services to form newly established enterprises or school owned companies. Seven examples from across the country are set out below; more detail is available on each of these.

Local Authority	Emerging Model
Camden: The Camden Schools Led Partnership (CSLP)	<ul style="list-style-type: none"> ➤ Currently an unincorporated association that is led by schools, set up to promote standards and collaboration. <p>Single trading arrangement has been reached with CSLP members to purchase school improvement services from the Council's Traded Schools Service and two Teaching School Alliances</p> <ul style="list-style-type: none"> ➤ Is set to become a Schools Company limited by guarantee without charitable status, that will in the future directly trade school improvement services with schools and the local authority
Tower Hamlets: THE Partnership	<ul style="list-style-type: none"> ➤ THE Partnership will become established as a Schools Company limited by guarantee with charitable status. <p>It is to be tasked with both promoting standards and collaboration in Tower Hamlets, as well as trading school improvement services</p>
Liverpool City: School Improvement Liverpool and the Liverpool Learning Partnership	<ul style="list-style-type: none"> ➤ School Improvement Liverpool has been established as a Local Authority Trading Company, trading school improvement services to schools and also commissioned to deliver some of Liverpool City Council's statutory responsibilities ➤ The Liverpool Learning Partnership is established as a not for profit company limited by guarantee with charitable status. It is tasked with promoting educational excellence and collaboration among learner settings (including schools and FE) in the city – members get special offers from School Improvement Liverpool
Kingston and Richmond: Achieving for Children and SPARK	<ul style="list-style-type: none"> ➤ Achieving for Children has been established as a not-for-profit social enterprise, owned by Kingston and Richmond local authorities. <p>It is commissioned to deliver Children's Services for Kingston and Richmond (including safeguarding and early help), and also trades school improvement services and consultancy to schools and other local authority areas</p> <ul style="list-style-type: none"> ➤ SPARK is a cross-borough collaboration network whose membership is open to state-funded schools in Kingston and Richmond, tasked with promoting standards and collaboration – members get special offers from Achieving for Children

Lincolnshire: Lincolnshire Learning Partnership	<p>➤ The Lincolnshire Learning Partnership (LLP) is an unincorporated association led by schools set up to promote standards and collaboration between schools.</p> <p>The county council has commissioned peer review training organisations as well as Teaching School Alliances to work through the LLP structures</p>
Hertfordshire: Herts for Learning	<p>➤ Herts for Learning has been established as a Schools Company, that is not-for-profit and limited by shares without charitable status – 80% shares owned by schools, 20% retained by the county council.</p> <p>It trades school improvement services to schools, and also commissioned to deliver some of Hertfordshire County Council's responsibilities</p>
Croydon: Octavo partnership	<p>➤ The Octavo Partnership has been established as a mutual trading company, 40% owned by Croydon Council, 40% owned by the Croydon Headteachers Association and 20% owned by staff.</p> <p>It trades school improvement services to schools, and is also commissioned to deliver some of Croydon Council's statutory responsibilities</p>

Appendix 2 – (Draft) Membership offer for Haringey Education Partnership

Membership of the organisation is membership of a system that commits to working together to improve all of its 'parts' and to ensuring that all children achieve the very best outcomes.

Members would receive the offer outlined below for a membership fee. The offer has been designed to provide schools, colleges and the wider education system with the information and support to know both its strengths and areas for development.

The partnership work and system leadership undertaken by the NLCs is integral to the self-improving system and so membership of an NLC requires full membership of the organisation.

Members would also be signing up to some key principles including a willingness to share data and an openness to peer challenge and support.

1. External Challenge and Support

1.1 Improvement Partners

Improvement Partners would be made up of a small central staff and a handful of high quality contractors or heads (either within or out of borough). The intention is for this group to be interviewed by heads to ensure the best possible skills and experience covering each phase and type of school.

Aims	Offer	Delivery mechanisms
Ensure schools have an accurate understanding of the strengths and weaknesses of their data.	Analysis of school data , comparisons with local and national data- annual report. (Primary including nursery, Special, Secondary and Post 16)	Data Manager
Ensure SEFs are clear, accurate evaluations of the school.	Annual data school profiles (bespoke as requested)	MD/Improvement partners (IP) - data analysis
Ensure SDPs are fit for purpose.	Annual Health Check visit from Improvement Partner (IP) to provide challenge in relation to school data comparing; to local and national, all, groups etc. (Termly visits for 'schools causing concern' or schools in the OFSTED window – 4th year after inspection)	Improvement Partners (specific to Nursery, Primary, Secondary, Post 16 and Special Schools)
Ensure schools are meeting their statutory responsibilities in terms of safeguarding etc.	Annual Validation of SEF – challenge to school's own judgements using data, plus information received from any peer challenge reports (desk top)	
	Support and validation of School Development Plan priorities (Desk top)	
	Annual Website compliance checks (Desk top)	
	Annual Safeguarding compliance check (half day visit)	

	<p>Termly RAG rating of school against an agreed set of risk factors</p> <p>Discounted membership of support organisations e.g. The Key, Safeguarding-Pro</p> <p>Access to briefings and meeting as required to keep up to date on specific national agendas</p>	
<p>Ensure the system has mechanisms in place to know itself and to be able to provide system challenge and support as required</p> <p>All HTs and schools are kept up to date with local and national education updates and agendas</p>		<p>MD and Improvement partners with LA service leads MD to broker</p> <p>Organisation to coordinate</p>

1.2 NLC and Peer to Peer Challenge

Aims	Offer	Delivery mechanisms
<p>School to school challenge is robust and carried out within an agreed framework</p> <p>Outcomes of review are shared within an agreed framework to ensure the system knows its strengths and areas for development</p>	<p>Membership of an NLC and access to joint working on local priorities</p> <p>Membership of a school peer challenge group at a reduced cost (e.g. SPP)</p> <p>Support for new HTs - via a 'buddy system' alongside tailored workshops</p> <p>Access to subject leader networks - led by schools within NLCs</p> <p>Additionally Secondary, Post 16, Nursery and Special schools networks across the partnership</p> <p>Access to joint moderation opportunities – NLC or cluster led with specific groups for Secondary, Post 16 and Special Schools</p>	<p>NLCs</p> <p>Schools Partnership Program (EDT) / Challenge Partners</p>
<p>Provide a QA function across the system for school to school support quality</p>		
<p>Ensure that schools are working together to develop accurate assessment judgements in the core subjects</p>		

Ensure there is an agreed system should a school wish to access school to school improvement support	Access to a brokerage function for school to school support as required- within an agreed protocol and payment structure	MD and Improvement Partners to co-ordinate, broker and sign post from TSAs and NLCs
Local approaches to curriculum opportunities and foci e.g. STEM are shared and strengthen practice in the system		
To ensure the system can respond to schools who need school improvement support due to unforeseen circumstances	Access to an application for contingency funds if school should find itself requiring intense school improvement support	Member schools apply to the Board if they meet a pre-set set of criteria for accessing any contingency

2. CPD

Aims	Offer	Delivery Mechanisms
Ensure schools in the organisation have access to high quality CPD and to research and development opportunities.	Access to high quality CPD - delivered by members of the partnership at best value cost, including quality assured National Programmes. CPD would cover all school phases. Secondary, Post 16, Primary, EYFS and Special Schools	The organisation would compile and market the offer delivered via - Teaching schools, NLCs, SLEs, NLEs
Support for schools in strategic decisions for example around federations or MATs	Access to a system to trade school's own CPD - with other schools in the partnership	MD to keep abreast of current National and Local agendas and advise school accordingly

3. Data

Aims	Offer	Delivery Mechanisms
To provide bespoke school data profiles, comparing schools with local and national data sets	Annual school profiles – Primary, Special and Secondary as required	Data manager
Enable the system to identify emerging strengths or weaknesses within it so that it can react and respond quickly	Access to data reports which support leaders to be able to quickly make comparisons between schools, NLC, national data sets Access to expert advice in regards to data Access to discounted bespoke training with regards to data analysis 1 data workshop for leaders of all phases including sessions for governors Access to an open and transparent RAG rating system which enables the system to make an early identification of issues arising and to know where its strengths are Target setting advice and challenge	MD and Improvement Partners do the data analysis and the risk assessment

4. HT Half Termly Updates

Aims	Offer	Delivery Mechanisms
HT half termly briefings to keep HT up to speed with: <ul style="list-style-type: none"> Ofsted updates DfE developments Statutory duties CPD opportunities Budget and finance updates Curriculum updates Safeguarding updates Legal updates and HR 	Half termly Primary, Special, Secondary and Post 16 briefings	MD to keep abreast of current National and Local agendas and advise school accordingly Service leads from the LA service areas contribute to briefings

<ul style="list-style-type: none"> • Governance updates • Health and safety 		
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5. Governor Support

Aims	Offer	Delivery Mechanisms
Ensure all member schools have high quality effective Governing bodies	Access to Governor support section of website - Chairs of Governors provided with timely information and updates via e forum Access for governors to a discounted quality CPD programme and annual conference	Governor services
Establish a pool of Governors who can support in 'schools causing concern' (interim) and who can mentor new governors	Access to a high quality pool of governors Access to a discounted quality clerking services Support to complete self evaluation	

6. ITT and NQT Recruitment and Induction

Aims	Offer	Delivery Mechanisms
To ensure that Haringey is able to recruit, train and retain high quality NQTs	Access to an NQT pool - Primary and Secondary. Exploration into Special and Post 16 service	Improvement Partners
Recruit high quality NQTs to the local partnership	Access to high quality discounted NQT training programme	Administrative support staff
Make effective links with Teach First and other ITT institutions	Access to discounted rates for supply teachers from preferred provider	Teaching Schools

7. Hotline Phone Support

Aims	Offer	Delivery Mechanisms
Ensure that all HTs can receive timely advice and signposting if issues arise, including: <ul style="list-style-type: none"> - Buildings - HR - Ofsted, - Safeguarding - Exclusions - SEND - Legal - Leadership and management 	Phone support for signposting to relevant LA services and outside agencies as required.	Administrative Staff

8. Additional traded offer

Aims	Offer	Delivery Mechanisms
<p>Ensure schools have access to further support and /or training as requested for example:</p> <ul style="list-style-type: none"> - Understanding and analysing in depth data questions - Preparing for ofsted 	<p>Bespoke training sessions provided for senior leadership teams, staff teams or Governing bodies</p> <p>Additional face to face Improvement partner visits - focus identified by the school at point of booking</p>	<p>Improvement Partners</p> <p>Commissioned</p> <p>School to school brokered</p> <p>Teaching Schools</p>
<p>Ensure schools have access to quality school improvement advice and support, beyond that in the membership offer, if required</p>	<p>Focused school or specific focus reviews</p> <p>Secondary and Post 16 Subject focus reviews and support (brokered)</p> <p>HT appraisal support</p>	
<p>Ensure all schools have access to high quality CPD at all levels and to research and development opportunities.</p>	<p>HT conference</p> <p>Careers fair</p> <p>CPD offer to non-member schools at full price</p>	

Appendix 3 – Financial modelling for Haringey Education Partnership

Haringey Education Partnership has been designed and costed to deliver a financially sustainable business model in the short and long term. Financial modelling has been undertaken to ensure the cost of delivering the core membership offer is well understood and can be met through the income derived from its members (schools and the local authority). HEP is therefore expected to be fully self-financing without any ongoing subsidy from the Council and without any call on the General Fund.

The current financial modelling is summarised below.

1. Set up costs

As set out in Table 2 above in the report, HEP will require financial support at the outset as follows:

Support	Amount requested	Comments
Working finance	<u>£150k</u>	The operating margins are thin and for HEP to have realistic financial resilience it would need to have access to additional funding as it grows and gets stronger in the early years. There is no other obvious source for this.
Development costs 4. Recruitment 5. Capacity pre-September 2018 6. Accommodation, website, legal, HR, website, office supplies	<u>£250k</u> £40k £105k £105k	1. Recruitment costs 2. 5 months of MD cost (£55k) + £50k to buy additional capacity 3. Estimate based on 3x full year of 'fixed costs' in financial modelling
Business development 3. Developing core offer and traded element 4. Enhanced innovation fund for schools to bid for	<u>£200k</u> £150k £50k	HEP would need to refine the core offer and develop a highly effective traded element with initial investment in capacity to do so. An innovation fund for schools would support evolution of NLCs and secondary school improvement focus

2. Annual cost / revenue against the core membership offer:

The cost of delivering the core membership offer specifically for a full year is £620k in the first full year of trading. This is made up of:

- a) Staffing - £550k in the first year based on conservative modelling (and with pay increases of approximately £5k per year over the following two years)

- b) Fixed costs / overheads - £42k (including premises, IT, HR support and payroll, legal advice, hospitality, website hosting and support, travel and a small operating contingency)
- c) Business development – £28k (including marketing, an innovation fund for schools, funding for NLC chairs and a small fund for schools in need)

Annual revenue is anticipated to be £635k, providing an operating margin of £15k on the core membership offer alone. Revenues are based on the following assumptions:

- a) Local authority – c.£130k income to deliver ongoing statutory and strategic functions, funded through the new School Improvement Monitoring and Brokering Grant (with the full amount passported annually)
- b) School membership - £505k

Revenues could be higher or lower in reality. The two key variables for determining the revenue side are: (i) the proportion of schools buying into HEP as members, and (ii) the cost of membership.

Revenues are currently forecast on the basis of achieving:

- a) 90% of primary and nursery places
- b) 6 secondary schools (three with a sixth form and three without)
- c) 1 FE college

School membership of HEP has been priced as follows:

- a) £19 per pupil for nursery, special and primary schools, with a £12,500 cap. This works out approximately as:
 - i) 1FE primary with nursery - £4,978
 - ii) 2FE primary with nursery - £8,474
 - iii) 3FE primary with nursery - likely to reach the cap of £12,500 depending on numbers
- b) £12,500 per secondary school without a sixth form
- c) £15,000 per secondary school with a sixth form
- d) £7,500 for FE Colleges.

Whilst we are confident of achieving this level of buy-in based on feedback from headteachers and governors, it is important to understand the impact of higher or lower than anticipated buy-in.

- a) An increase / decrease of 5% for primary, nursery and special schools would impact on revenue up or down by £13k
- b) As above, each secondary school would amount to an increase / decrease of £12.5k or £15k with a sixth form

Increasing the per pupil price or the capped cost to schools is challenging, given the financial pressure schools are under. However, for each pound the per pupil cost of membership is increased would improve the revenue by approximately £15k.

3. Additional and future sources of revenue:

The traded service element has not been accounted for in the above analysis. If the following services move across from the Council to HEP, we can assume that approximately £100k net income would also be added to the company's revenue:

- a) Governor services – approximate net annual income of £70k
- b) CPD – approximate net annual income of £15k
- c) Additional school improvement services – approximate net annual income of £15k

This would provide a total operating margin of £115k when added to the core membership offer. As a not-for-profit company, any surplus would be reinvested in school improvement services through HEP.

In addition, once the school to school traded element is established, HEP will seek to generate a net income from organising and administering the market for service provision. This is most likely to take the form of a reasonable margin charged on top of the cost charged / earned directly by the school providing the service.

HEP will look to develop trade with schools outside of Haringey to further increase income. Governor support services already trade with schools in Enfield and are looking to sell their offer to more schools. Similarly, HEP will be able to market CPD, school improvement and school to school support. HEP will also offer core membership to schools beyond Haringey, increasing revenue both through the income received directly from membership and through increasing the traded element.

HEP will also look to access national and other sources of funding for member schools to be administered through the company. We are currently developing two bids to the DfE Strategic School Improvement Grant for c.£500k and there will be further opportunities as national policy looks to drive a school led model of school improvement.

Appendix 4 - Summary of advice on legal structure and governance for HEP

Question 1: Does Haringey need a separate legal entity?

One of the first key questions to address is whether the partnership needs its own separate legal entity (as distinct from individual schools or the local authority). Among the existing local school improvement partnerships there is quite a clear distinction between those which have opted to establish a legal vehicle in which the partnership is located (Herts for Learning, Newham, Brent, Harrow, Camden, North Tyneside, Croydon) and those which have opted for a collaborative arrangement which is not legally binding (Lincolnshire, Wigan, Oldham, Birmingham). The former tend to be partnerships which have some form of trading relationship between the partnership and schools, whereas the latter tend to focus more on promoting school to school collaboration.

There are four key reasons why Haringey may wish to establish a legal entity for its school improvement partnership:

- 1) It enables the new body to enter into contracts (either as a provider or a commissioner)
- 2) It enables the new body to employ staff in its own right
- 3) It can provide some longevity in terms of governance, when individuals move on
- 4) It may provide a locus for the continued engagement of democratically elected members in school improvement in the face of the further change in the local authority education remit.

Question 2: What type of legal entity is best suited to Haringey?

If the decision is taken to establish the partnership as a legal entity, then the form of this body needs to be determined. This is an issue on which there is, arguably, greater consensus than there might originally appear. Although the different local school improvement partnerships that have been established have different names (Trust, Collaborative etc.) the large majority which have some formal legal basis are a type of limited company. The main alternatives to a limited company that have been considered by other local areas are listed below, along with the main reasons why each is less suitable than a limited company:

- a) **A limited liability partnership** – an independent vehicle registered at Companies House established by those who wish to work in partnership for profit which benefits from tax transparency, i.e. returns are taxed in the hands of the partners not the vehicle. This offers no real benefit to a limited company unless schools wish to profit differentially from their engagement in the partnership.
- b) **A cooperative or community benefit society** (formerly known as an industrial and provident society) – a corporate vehicle registered with the Financial Conduct Authority which is established for a social purpose rather than a profit-making purpose and which complies with certain conditions or principles identifying it as a cooperative or for a community benefit. This vehicle is not typically used for school-led organisations and is therefore unfamiliar and not been used by others to date.
- c) **A trust corporation** – a corporate body established to act as a trustee of charitable assets. This is not relevant unless the partnership is planning to hold substantial assets on behalf of schools.
- d) **An academy trust** - a company limited by guarantee that has entered into “academy arrangements” with the Secretary of State for Education, the primary purpose of which is to operate a school or schools. This is not relevant unless the purpose of the

partnership is chiefly the *provision* rather than the *improvement* of schools. See Question 8 for more on this.

The key benefits of establishing the partnership as a limited company is that it is relatively quick and simple to set up, it limits the risk of individual members, the burden of administration is not great and there is a well-founded precedent in other local areas.

Question 3: What type of company might best meet Haringey's needs?

Whatever form of company is established it would, by default, be a School Company. This is because the regulations on school companies automatically apply to any company which includes maintained schools in its membership. The regulations which apply to school companies are not onerous. A school company simply refers to a company established by one or more maintained schools exercising their powers under Section 11 of the Education Act 2002 and the School Companies Regulations 2002. This power is given to maintained schools only in relation to specified activities, which include:

- a) to provide services or facilities for any schools;
- b) to exercise relevant local authority functions; and
- c) to make, or facilitate the making of, arrangements under which facilities or services are provided for any schools by other persons.

The regulations set out requirements for the constitution and operation of school companies. These include:

- a) who can be the members of the company – limited to educational providers;
- b) the composition of the board of directors – which must include appointments by the Council;
- c) funding and borrowing;
- d) circumstances where a school must withdraw – when a school is causing concern; and
- e) designation of a local authority as a supervising authority. Supervising authorities have certain duties to notify the Secretary of State about the school company and to monitor the management and finances of the company.

In deciding which form of company the Haringey partnership is to take, it must be flexible enough to accommodate the requirements of the Schools Companies Regulations. There are three main forms of limited company which should be considered, all of which are compatible with the requirements of the school company regulations. These are:

- 1) **A company limited by shares.** This is an 'ordinary' company registered and regulated by Companies House. Membership is determined according to shares which may have a small nominal value. The purpose of such a company is to carry on a trade or activity for profit for the benefit of the shareholders and profits must be distributed according to the shareholding.
- 2) **A company limited by guarantee.** This is also an 'ordinary' company registered and regulated by Companies House. However, it differs from a company limited by shares in that liability is limited to the extent of the guarantee provided by members (typically £10), rather than the nominal value of the share. Members have voting rights (just like shareholders) and typically profits are not distributed, hence it is a common vehicle for a charitable venture.
- 3) **A community interest company.** This is a form of company limited by shares or by guarantee, which is set up to fulfil a specific community purpose. It is suitable for social enterprises that do not have charitable status but wish to demonstrate their value and

commitment to the community. An 'asset lock' limits the distribution of profits which must be reinvested in the social enterprise.

The majority of school-led improvement partnerships which have established themselves as legal entities have become companies limited by guarantee. This is because companies limited by guarantee attract a lighter burden of regulation than companies limited by shares and have an extremely flexible model of membership and governance that can be easily tailored to local requirements. Only a very small number of improvement partnerships have chosen to become companies limited by shares. These tend to be those (eg Herts for Learning) in which a significant profit from trading activity is anticipated and the shares provide a means to redistribute this profit to member schools.

Although community interest companies may also look an attractive option they have not been used widely in the education sector, perhaps because the company would have to abide not only by the regulations set out by Companies House but also the standards set out by the Office of the Regulator of Community Interest Companies, creating an additional administrative burden.

Question 4: Should the company apply for charitable or cooperative status?

A second order decision, which comes after the decision about the basic legal form of the partnership, is whether there is an appetite to register the partnership as a charity or a cooperative. There is a frequent misunderstanding that charitable or cooperative status is an alternative to being a limited company. It is not. Charities and cooperatives are not legal entities in themselves. They represent a "status" awarded to a legal entity, such as a company or a community benefit society.

A charity is a specific type of voluntary organisation, established to fulfil a charitable purpose for the benefit of the community and subject to oversight by the Charity Commission. A charity must comply with charity law and whatever other regulation applies to the form of vehicle used (e.g. company law for companies). Charities cannot change their fundamental purpose without the consent of the Charity Commission. Whilst often described as "not for profit" underlining the fact that charities are not established to carry on a trade but to undertake a social function, charitable vehicles can generate financial surpluses over the year (and indeed should do so to ensure financial robustness from one year to the next). Such surpluses should however be reinvested back into the organisation and be used to further the aims of the organisation.

A cooperative is a business owned by its members which adheres to the Cooperative Principles established by the International Cooperative Alliance ("ICA"). These principles consist of: Voluntary and Open Membership; Democratic Member Control; Member Economic Participation; Autonomy and Independence; Education, Training and Information; Co-operation among Cooperatives; Concern for Community. Subject to those principles, a cooperative can take any legal form.

The main benefit in becoming either a charity or a cooperative is that it can send a powerful message about the type of organisation that you intend to be – your vision, your principles, and how you intend to work. Charitable status also means that the organisation would be exempt from corporation tax meaning that any profits generated can be ploughed back into education in Haringey.

Legal advice sought by other local authorities has suggested that there may be particular disadvantages in pursuing cooperative status. Specifically, setting up as a formal cooperative, may require Haringey's schools (who are members of the company) to also become cooperative schools, which might be impractical. This requirement probably outweighs any perceived advantage in becoming a cooperative.

The arguments for and against charitable status are more finely balanced. In general, the more separate 'registrations' an organisation has, the greater the potential regulatory burden. A company limited by guarantee must be registered with Companies House, and a school company must adhere to the School Company Regulations. Charitable status would impose a further set of requirements which would have to be both met and demonstrated. On the flip-side, charitable status may help to cement the partnership around a social vision, it may confer tax advantages and the rigour required by the charities commission to achieve charitable status can help organisations in refining their strategic vision. The decision to pursue charitable status could be taken at a later stage once the organisation is operational.

Question 5: Issues to consider concerning membership

In most cases where the partnership is constituted as a company the membership (or shareholders) would be individual schools in the local area or an umbrella body representing schools. Membership would confer a range of rights on the school (with member rights and responsibilities set out in the articles of association and membership rules). These could be:

- a) The right to vote for non-executive directors.
- b) The right to vote on a range of decisions that are of such significance they must be put to the whole membership body. These might include: the approval of the annual business plan; changes to the classes of membership; a significant change in strategic direction; and the remuneration of senior executive officers of the partnership (should it have any). In practice, the directors would recommend action or the approval of policy at an annual general meeting (AGM) and the membership would vote on it when they vote to approve the annual report. Specific one-off resolutions could be taken to the membership at an extraordinary general meeting (EGM).

Membership would also confer a range of responsibilities for the school. These would be:

- a) The oversight of directors.
- b) In the event of the company becoming insolvent members would be liable for a nominal contribution (normally set at £10) to the winding up of the company. In the event of any litigation or other financial claims on the company a member's liability would also be limited to the nominal sum.

Partnerships have taken different approaches in terms of how they construct their membership particularly around whether every school is given a single equal vote or whether voting is distributed differently across phases or size of school.

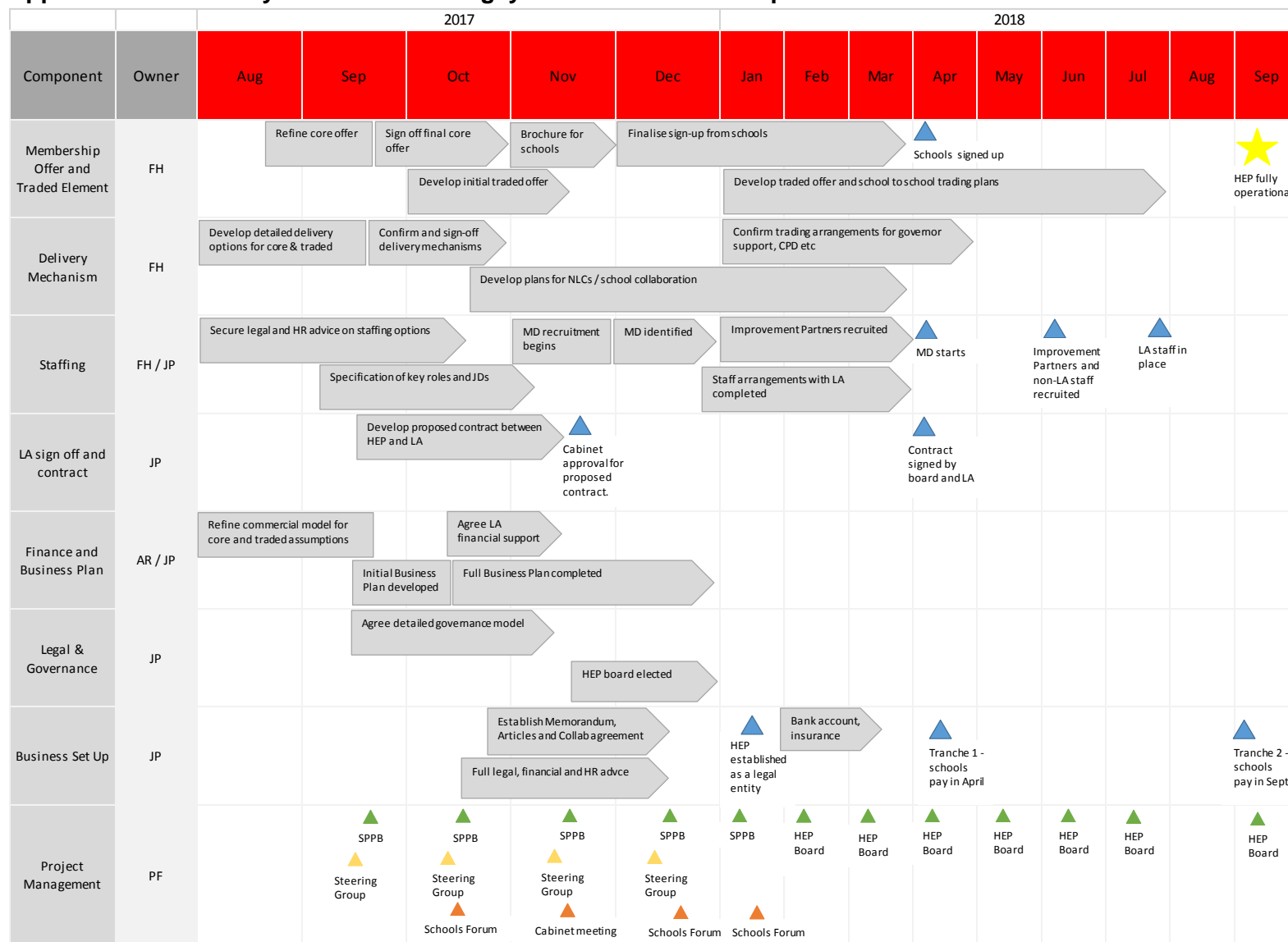
Appendix 5 – Statutory and strategic functions of the local authority in relation to school improvement

The Council has broad regulatory duties to secure school effectiveness across all phases in the Borough. The functions delivered through HEP will continue to discharge this duty. There are specific statutory and strategic functions outlined below which fall underneath the Council's duties and powers.

Statutory Function	Strategic Function
Audit of Foundation Stage Profile Assessments	Professional contact between the Local Authority and each of its schools.
Curriculum and Assessment The local authority, and governing bodies have a duty to exercise their functions with a view to securing that the curriculum provided is; <ul style="list-style-type: none"> a) broad and balanced b) comprises the National Curriculum, including implementing key stage test arrangements (SATs) c) includes provision for religious education and for pupils in secondary school, sex education In relation to key stage 1 assessment, the local authority must: <ul style="list-style-type: none"> a) make provision for moderating teacher assessments in respect of 25% of relevant schools b) collect teacher assessment information from relevant schools and quality assure it, and submit it to the DfE c) ensure schools have training and advice in all aspects of key stage 1 assessment and electronic systems to submit data d) monitor at least 10% of relevant schools, to ensure Yr 1 phonics screening check is being administered correctly. In relation to key stage 2 assessment, local authorities' must <ul style="list-style-type: none"> a) visit 10% of schools administering tests for monitoring purposes. b) make provision for moderating teacher writing assessments in respect of 25% of relevant schools. Statutory publication of local results	Attendance at Ofsted Inspections and feedback meetings
	Data Analysis and target setting
	Advice, guidance and support for individual school statutory and non-statutory performance targets
	Risk assessment of school performance in a range of areas (standards, finance, HR, admissions) in order to identify and intervene early if a school is causing concern
	Safeguarding support and advice
	Ensuring schools have access to high quality CPD
	Support for governing bodies in schools causing concern
	Support for corporate priorities such as STEM and careers.

<p>Religious Education The local authority must establish a body called a standing advisory council on religious education. (s390-391 Education Act 1996).</p> <p>The local authority must ensure that head teachers comply with their duties to secure due provision of religious education, and that all pupils take part in a daily act of collective worship. (ss 69-70 School Standards and Framework Act 1998)</p>	
<p>Governor support The local authority has a duty to;</p> <ul style="list-style-type: none"> a) Appoint parent governor representatives to local authority committees dealing with education (s499 Education Act 1996) b) Appoint local authority governors to all maintained school governing bodies (s19 School Standards and Framework Act 1998) c) Provide training and information for school governors (s22 Education Act 2002) 	
<p>Inspection/Intervention The local authority has a duty to:</p> <ul style="list-style-type: none"> a) Provide information, distribute report and to produce and distribute a post-inspection action plan for OFSTED inspections b) Produce an action plan if a school goes into special measures following an OFSTED inspection c) Comply with statutory requirements if the authority decides to use its powers to intervene (s64-66 of the Education and Inspections Act 2006) d) To comply with a direction of the Secretary of state to give a school a warning notice (s60A and 69B of the Education & Inspections Act 2006) e) Consult governors and submit as required applications for an interim executive board (IEB) in a school eligible <p>Manage RSC/ Ofsted meetings</p>	

Appendix 6 – Summary timeline for Haringey Education Partnership



Appendix 7 – Initial screening tool for equalities impact assessment

Equality Impact Assessment Screening Tool				
1	Lead officer contact details: James Page			
2	Date: 06/11/2017			
3	Summary of the proposal: Developing a not-for-profit 'schools company', known as the Haringey Education Partnership (HEP), to deliver statutory and strategic school improvement functions.			
	Response to Screening Questions	Yes	No	Please explain your answer.
a) Type of proposal				
4.	Is this a new proposal or a significant change to a policy or service, including commissioned service?	Yes		The service will be developed into a not-for-profit company. It will continue to deliver the same statutory and strategic school improvement functions as before. Although there will be minor changes to the way the service is delivered, there are no identified equality issues associated with the nature of HEP's service.
5.	Does the proposal remove, reduce or alter a service or policy?		No	
6.	Will there be a restructure or significant changes in staffing arrangements? Please see the restructure pages for guidance for restructure EqlAs .	Yes		A restructure EqlA will be undertaken to assess the impact on staffing arrangements under the HEP. The EqlA will be progressed as we develop the details of the changes to staffing arrangements. We do not have data on the protected characteristics of the employees impacted by this decision. However, we are aware, from our equality data of all staff, that it is likely women, BAME communities and people over 45, who will be impacted by this decision as they are disproportionately represented within the staff of

				<p>Haringey.</p> <p>The Council is improving its employee equality data processes to enable a robust analysis on the impact of the different protected groups. This will be done to ensure that the Director of Children's Services pays due regard to the Public Sector Equality Duty when making any further decisions.</p>
7.	If the service or policy is not changing, have there been any known equality issues or concerns with current provision. For example, cases of discrimination or failure to tackle inequalities in outcomes in the past?		No	The company will adopt Council policies regarding discrimination, harassment and victimisation in the workplace.
b) Known inequalities				
8.	Could the proposal disproportionately impact on any particular communities, disadvantaged or vulnerable residents?		No	The same set and scope of services will be delivered as the HEP will continue to deliver the ongoing statutory and strategic school improvement functions, including monitoring the educational outcomes based upon gender, SEND, ethnicity and pupils who receive free school meals. The proposal is likely to have minimal impact on groups that share the protected characteristics.
9.	<p>Is the service targeted towards particular disadvantaged or vulnerable residents?</p> <p><i>This can be a service specifically for a group, such as services for people with Learning Disabilities. It can also be a universal service but has specific measures to tackle inequalities, such as encouraging men to take up substance misuse services.</i></p>		No	<p>The service is universal but regularly monitors the educational performance of children and young people, including those with protected characteristics, including gender, race, disability and pupils who receive free school meals.</p> <p>The HEP will continue to monitor this progress and use the data on educational attainment to improve the performance of all children and young people in Haringey, particularly those most disadvantaged.</p>
10.	Are there any known inequalities? For	Yes		There is a lower educational attainment among

	example, particular groups are not currently accessing services that they need or are more likely to suffer inequalities in outcomes, such as health outcomes.			BAME pupils and particularly those in the east of the borough, who are impacted by socio-economic inequality. There is disparity for gender, disability and pupils who receive free school meals. The service will continue to monitor and tackle these inequalities.
11	If you have answered yes to at least one question in both sections a) and b), Please complete an EqlA.			<p>If a decision is taken not to proceed with a full EqlA, please document carefully your reasons here: A restructure EqlA has not been undertaken yet because it is not known the likely impact on current staff members. This EqlA will be done to inform the Director of Children's Services when making any further delegated decision.</p> <p>The HEP will continue to monitor the educational outcomes and inequalities for gender, ethnicity, disability and pupils who are entitled to Free School Meals, as required through exam results and the School Census.</p>