

For General Release – Part A

REPORT TO:	Cabinet 30 June 2014
AGENDA ITEM:	11
SUBJECT:	Proposals for the establishment of a Mutual Trading Company for School Support Services
LEAD OFFICER:	Paul Greenhalgh, Executive Director, Children, Families and Learning
CABINET MEMBER:	Councillor Alisa Flemming Cabinet Member for Children, Families & Learning
WARDS:	All
<p>CORPORATE PRIORITY/POLICY CONTEXT: This paper's recommendations directly contribute to the following Council corporate priority (Croydon Corporate Plan 2013-2015):</p> <ul style="list-style-type: none"> ♦ To continue to drive excellence across the borough's schools through achievement of a sustainable model for school improvement services 	

FINANCIAL IMPACT: These recommendations will enable savings to be made in 2015/16 with the new external trading entity established from 1st April 2015. Savings in the region of £1m are anticipated. It will also enable Croydon schools to continue to commission school support services from a single local provider which is their stated wish.

FORWARD PLAN KEY DECISION REFERENCE NO.: 1284

This is a Key Decision as defined in the Council's Constitution. The decision may be implemented from 1300 hours on the expiry of 5 working days after it is made, unless the decision is referred to the Scrutiny & Strategic Overview Committee by the requisite number of Councillors.

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below:

1. RECOMMENDATIONS

Cabinet is recommended to:-

- 1) Consider and approve the proposals in this report relating to the establishment of a mutual trading company for the purposes of delivering the school support services described in section 2 of this report;
- 2) Agree the establishment of the mutual trading company, which will result in

the transfer of related staff, assets and contracts from the Council into the mutual trading company;

- 3) Approve the legal form and governance model, described in sections 7 and 8 of this report, for the mutual trading company;
- 4) Agree that the mutual trading company shall be able to purchase services from the Council;
- 5) Agree the award of a contract to the mutual trading company to be established in accordance with the above recommendations for the delivery to the Council of the delegable statutory services described in section 12 of this report for a period of three years with options to extend for up to a further three years at a cost of £900k per annum subject to review in line with budgets available and service requirements;
- 6) Delegate authority to the Cabinet Member for Children, Families and Learning in consultation with the Executive Director of Children, Families and Learning, the Director of Finance and Assets and the Director of Legal and Democratic Services to do all things necessary for the purpose of giving effect to the above recommendations and to agree the final terms of/for the:
 - memorandum and Articles of Association and Members' Agreement;
 - set-up of the mutual trading company's shadow board and the appointment/secondment to key senior management roles (ie, shadow management team) prior to the launch of the mutual trading company on 1 April 2015;
 - transfer of related staff, assets and contracts to the mutual trading company;
 - contract for delivery of services by the mutual trading company to the Council;
 - contract for purchase of support services by the mutual trading company from the Council;
 - pensions agreement (as per section 16 of this report);
 - working capital loan agreement (as per section 16 of this report)
 - appointment of Council nominees to the Board of Directors of the mutual trading company (in consultation with the relevant Cabinet Member)

2. EXECUTIVE SUMMARY

School support services are currently provided to schools by the Council through a range of services that comprise:

- School Improvement Services
- Governor Support Services
- Education Welfare Services (EWS)
- Educational Psychology Services (EPS)
- CapitalSouth Education Business Partnership (CEBP)
- Literacy Centre
- HR services to schools
- Finance services to schools
- CrEdIT (IT services to schools)

This report proposes that these service functions would be transferred to the mutual trading company which would provide a vehicle for partnership and co-production with

schools and employees. It is proposed that a not-for-profit company is established as a company limited by guarantee owned in the following way: the Council (40%), the Croydon Head Teacher Association (CHTA) (40%) and employees (20%). From April 2015 the mutual trading company would deliver delegable statutory services for the Council and trade discretionary services to schools and other educational establishments. Statutory services in scope to be delivered by the mutual trading company include:

- School improvement monitoring and challenge
- Targeted support for schools causing concern
- Key stage 1 and key stage 2 assessment moderation
- Governing body training programme
- Quality assurance for newly qualified teachers
- Statutory functions in relation to the provision of Educational Psychological advice into the statutory assessment process for children with SEN
- Development of HR policies for schools and consultation via the TPA working party
- Healthy Schools initiative (funded by Public Health)

This report accompanies the business plan (appended to the part B report) for the proposed mutual trading company. The Council is empowered to establish the proposed company with powers to trade subject to and in accordance with the Local Government Act 2003 and the Localism Act 2011. Production and acceptance of a business case and business plan is a requirement of the guidance developed by central Government for the establishment of such companies. The business plan for the proposed mutual trading company (which together with this report incorporates the business case) is presented as an appendix to the part B report due to its commercial sensitivity.

3. BACKGROUND AND THE NEED FOR CHANGE

On 30 September 2013 Cabinet [minute reference A89/13] gave its approval in principle to the establishment of a new trading entity, in the form of a mutual trading company. This company would be responsible for the delivery of school improvement services, governor support services, education welfare services, educational psychology, Capital South Education Business Partnership (CEBP), the Literacy Centre, HR services to schools, and finance services to schools, and would become operational from April 2015. (Subsequently, the CrEdIT (IT services to schools) has been brought into scope due to the extensive trading history the service has with schools).

It was also agreed that the business plan and legal structure for the mutual trading company would be presented for the final approval of Cabinet in 2014.

The need to investigate the viability of establishing a mutual trading company stems from changes in national policy and local government financial constraints. The national emphasis is on schools to be given increasing autonomy with the expectation that schools take on more responsibility for their own improvement or to help one another to improve standards. This is evident in the number of academy schools now operating in Croydon and the welcome announcement that two of Croydon's four Teaching School Alliance bids

have been successfully granted in the borough. It is envisaged that the mutual trading company will create an appropriate vehicle to facilitate greater school to school support, drawing on the expertise from the teaching alliances and using a framework of external advisors. In addition the DfE has changed the regulations in relation to the Dedicated School Grant (DSG) so that more money goes directly to schools and councils have fewer grounds for retaining monies for 'central' services.

The financial climate in which local authorities will operate over the next few years presents great challenges on the ability of local authorities to be able to continue to deliver statutory and discretionary services in the same way. As the Council moves forward with more challenging budgets, there is a need to change the current service delivery model to continue to support school improvement and improved educational outcomes for children, and ensure continued affordability and sustainability through an approach which continues to build capacity.

Locally, the CHTA has been very supportive of the proposal to establish a mutual trading company and are particularly looking forward to the opportunity to work in closer partnership with school support services to directly shape and influence the services schools purchase. The CHTA are currently forming an incorporated company in order to participate in the mutual trading company.

4. IDENTIFICATION AND ANALYSIS OF DELIVERY OPTIONS

The previous Cabinet report (30 September 2013) identified 4 delivery options which recognised the Council's budget pressures and changing relationship with schools. These options were:

1. Change the current trading model for school support services to achieve full cost recovery
2. Deliver only statutory services
3. Commission from a third party
4. Establish a new trading entity

Cabinet agreed in principle that the option to establish a new trading entity most closely met the following objectives:

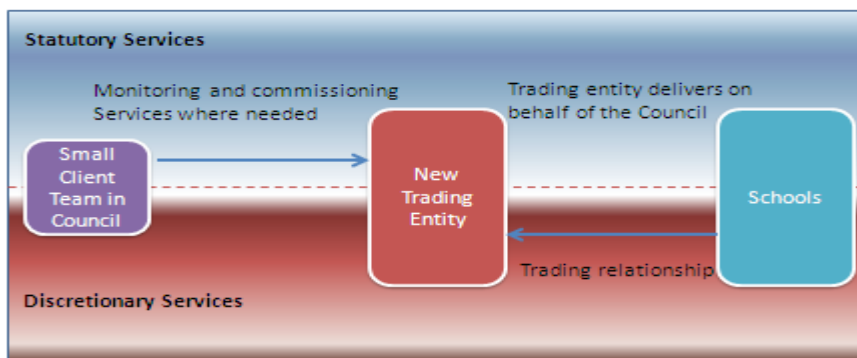
- ◆ Improvement of educational standards and outcomes for children and young people
- ◆ Sustainable service model for the next 5 years
- ◆ Reduction in financial risk for the Council
- ◆ Strengthened partnerships with schools and between schools
- ◆ Value for money from the Council's commissioning budget.
- ◆ Create the possibility of charitable trusts to be set up

The business plan appended to the part B report, details the operating model for the following school support service functions to be transferred to the mutual trading company:

- ◆ School Improvement Services

- ◆ Governor Support Services
- ◆ Education Welfare Service (EWS)
- ◆ Educational Psychology Service (EPS)
- ◆ CapitalSouth Education Business Partnership (the CEBP)
- ◆ Literacy Centre
- ◆ HR services for schools
- ◆ Finance services for schools
- ◆ CrEdIT (IT services for schools)

The mutual trading company would deliver both delegable statutory services for the Council as well as trading services to schools and educational establishments, with 79.6 FTEs in scope to transfer to the mutual trading company. It is proposed that a small team of 10.8 FTEs would be retained within the Council to provide commissioning and contract management roles and those non-delegable statutory duties that cannot be delivered by the mutual trading company. The Council will continue to be legally accountable for all statutory services even where their delivery has been contracted to the mutual trading company, and so the service contract between the Council and the mutual trading company would contain appropriate liability, indemnity and insurance.



For Council and other services which are commissioned by schools but not currently in scope for the mutual trading company, for example insurance services and payroll, it is proposed that the new company brokers these services on behalf of schools. This would mean all Council services sold to schools would be done through the mutual trading company and therefore would retain the schools' preference for a 'one-stop shop' approach to purchasing Council services. Over time, it may be appropriate to add further Council services to the mutual trading company and/or set up charitable trusts as subsidiaries of the mutual trading company for educational research or possibly bursaries for students.

5 DEVELOPMENTS ACROSS THE COUNTRY

The difficult financial climate and changing national policy, has led some other local authorities across the country to establish similar trading companies. The trend towards staff or community led organisations started with the Community Right to Challenge agenda in 2011. The following authorities have all established separate legal entities to provide school support services, with differing services in scope:

- London tri-boroughs (Hammersmith and Fulham, Kensington and Chelsea and Westminster).
- Birmingham City
- Sandwell Council
- Buckinghamshire County Council
- London Borough of Newham
- London Borough of Harrow
- Hertfordshire County Council
- Manchester Council
- London Borough of Kingston and Richmond

6 BENEFITS TO THE COUNCIL

The following financial and non-financial benefits will be realised through the establishment of a mutual trading company:

- ◆ Financial savings to the Council
- ◆ Reduced financial risk and liability if trading base diminishes
- ◆ Protection for discretionary school support services
- ◆ Strengthened relationship with schools in Croydon. This will improve the Council's ability to perform statutory responsibilities and demonstrate a monitoring, challenge, support and intervention role through Ofsted inspections
- ◆ Greater likelihood of educational improvements through a new delivery model for preventative services with greater involvement from schools.
- ◆ The Council will retain an ownership stake in the new organisation and therefore can continue to influence and shape the education agenda in the borough.
- ◆ The headteachers will have an ownership stake and therefore can influence and shape the service offer.
- ◆ Creation of a new local company with the ability to expand into new services over time and create additional local jobs.
- ◆ Other boroughs may purchase services from the mutual trading company thus strengthening the likelihood of increased trading.

7. LEGAL FORM FOR THE MUTUAL TRADING COMPANY

A mutual trading company is an organisation owned by, and run for the benefit of, current and future 'members'. 'Members' therefore in this context refers to the owners of the company. It is proposed that the mutual trading company is established as a Company Limited by Guarantee (CLG). Based on external legal advice, this is considered the most flexible and efficient legal form to support a not-for-profit trading organisation, where trading profits would be re-invested and used in the furtherance of the company's key

objectives. The mutual trading company would aim to help the Council achieve the following strategic aims:

- ◆ All schools to be good or outstanding in Croydon
- ◆ Improved attainment and progress outcomes for all children in Croydon
- ◆ Closure of the attainment gap for vulnerable groups
- ◆ Improvement of participation in education or training for young people post age 16
- ◆ Improvement of positive outcomes for pupils with special or additional educational needs, pupils with poor attendance and/or safeguarding needs
- ◆ Improvement in the identification of needs and effectiveness of early intervention

Such objectives will be achieved through direct school improvement, educational psychology and education welfare intervention and support as well as through the delivery of high quality support services such as HR, finance and ICT which will support the safe and efficient running of a school.

The company will be a separate legal entity with limited liability. Members of the company each contribute a fixed amount (£1) as a guarantee in the event of insolvency. Therefore in the event that the company is not successful each member's liability is limited to the amount of their contribution. The partnership with schools and staff having a stake in the company ensures that Croydon schools continue to have access to tailored services but also increases the likelihood of extending and increasing the traded income base.

8 GOVERNANCE STRUCTURE

The proposed governance structure for the mutual trading company advocates equal ownership between the Council and CHTA on behalf of schools, to promote shared accountability for the outcomes of all children and young people. Also embedded in this model is employee representation at both membership and board level in order to harness the ideas and energy of the workforce to the shared objectives of the company. To this end the ownership of the mutual trading company will be divided as follows:

- ◆ Council (40%)
- ◆ CHTA (40%)
- ◆ Employees (20%)

Each owner or 'member' will be given a corresponding percentage share of the vote for decisions taken by the 'members'. Therefore each of the Council, CHTA and employee group would have one vote each with a 40%/40%/20% weighting. It is proposed that certain key matters in relation to the mutual trading company will be taken out of the hands of the directors and reserved for the 'members' to decide upon. These key decisions will be outlined in the Membership Agreement and will be voted on by all three groups. It is proposed that there be two classes of membership decisions: for the 1st class of decisions, the Council, CHTA and employee group will need to vote unanimously to pass the decision.

1st class decisions are likely to include:

- Admittance of a new membership person/body
- Approval of annual budget and business plan if a projected loss is anticipated
- Any petition or resolution to wind up the company or any subsidiary
- Appoint or remove the chair of the company
- Agree any merger or acquisition of the company
- Alter the Articles, the Subsidiary Articles or any rights attached to the membership interests

For the 2nd class of decision, a 60% voting threshold will have to be achieved. The voting threshold of 60% has been recommended by the project board so to ensure flexibility and agility of decision making by the mutual trading company.

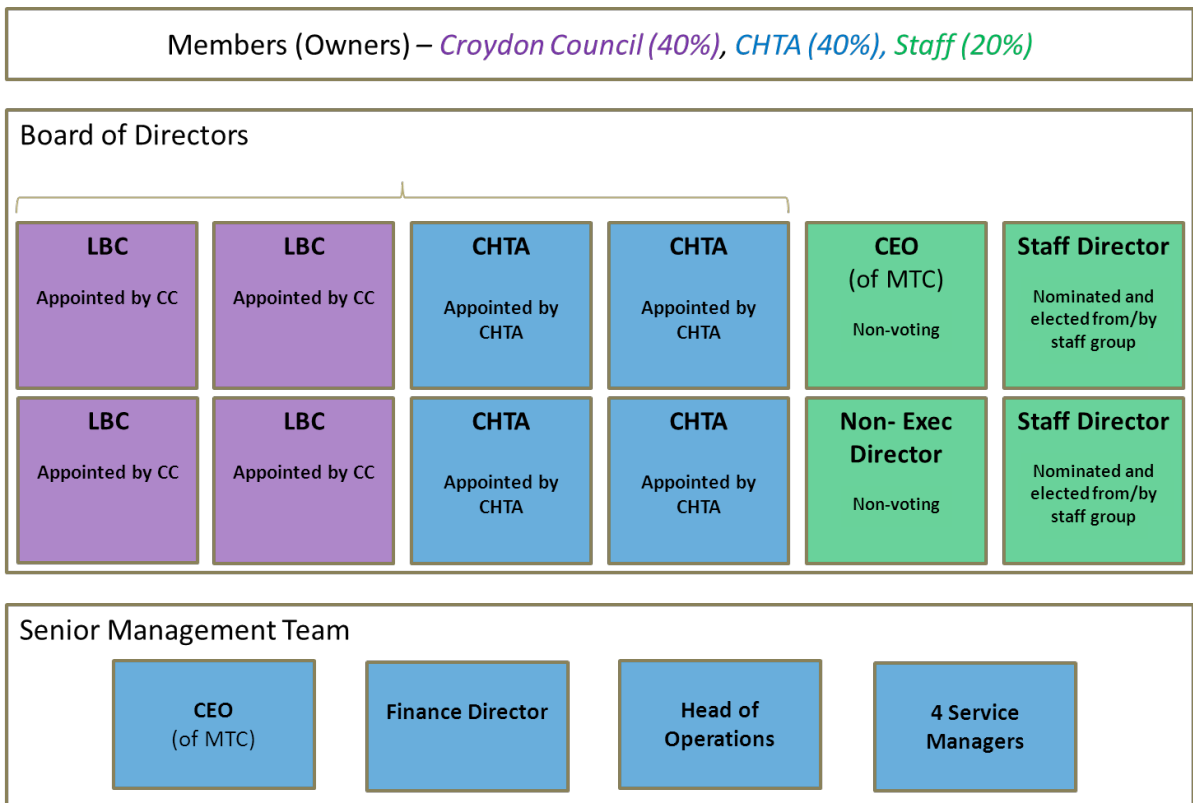
Employees will exercise their voting rights on a one person one vote basis. Their collective vote will account for the 20% weighting allocated to the employee membership group, regardless of the numbers of employees voting. However it is proposed that a 70% majority of votes cast by employees will be required to return the 20% weighted vote allocated to the employee group. Staff who transfer into the mutual trading company, or join the mutual trading company as new employees, will be automatically given access to the membership group unless they formally choose to opt out.

It is proposed that decisions reserved to the Council as 'member' and the Council's membership vote will be exercised by the Cabinet Member for Children, Families and Learning.

The CHTA will need to determine their own voting mechanism and will do so through the process of forming an incorporated company from June 2014.

In terms of voting rights for the Board of Directors, it is proposed that there would be one vote per director, with a simple majority vote (51%) required to pass decisions.

It is also envisaged that day-to-day control of the mutual trading company will be delegated to a senior management team through a scheme of delegation, as per the structure below.



The proposed make-up of the Board appointees reflects the membership model. It is proposed that the four Council appointed directors be either Council staff or independent appointments. As delivery of services by the mutual trading company is an operational matter it is not envisaged that any of the directors representing the Council will be elected Council Members. In addition, the Board may choose to appoint up to 3 additional non-executive directors to assist the Board with their decision making. Voting rights are reserved for company ‘members’ and the ‘member’ appointed directors. The Chief Executive Officer (CEO) will not have voting rights. Support and training will be made available to the newly appointed directors to ensure a shared understanding of their roles and responsibilities and to minimise any conflict of interest.

It is recommended that before the Board of Directors and CEO are appointed and in place, that the Council’s Deputy Chief Executive is registered as the “interim” director for the purpose of establishing the company with Companies House under the Companies Act, 2006. This will enable the mutual trading company to become established at an early stage and to enable the necessary full company registration process to proceed.

9 LEADERSHIP OF THE MUTUAL TRADING COMPANY

Relevant in scope staff will be considered for the chief executive for the mutual trading company. The chief executive will be supported by a senior management team comprising, a finance director (part-time), an operations manager and four service leads. It will be the role of this management team to ensure the effective operational running of the mutual trading company and to ensure the business plan is delivered. Monthly

reporting to the Board of Directors will be through the chief executive, with board meetings moving to quarterly after the first six months of trading.

It is envisaged that the Board of Directors and shadow management team will be in place (with designate status) by October 2014. The shadow management team will include the CEO, finance director, operations director and service delivery manager (HR). It is proposed that these appointments are secondments and staff are employed by the Council (whilst in shadow form) prior to the set-up of the mutual trading company with any additional costs that are greater than the current budget being charged to the mutual and funded from the working capital loan . These staff will therefore transfer to the MTC from their secondment post to their new permanent post in the MTC. This would allow the company to operate in shadow form for at least 6 months prior to launch. Whilst running in shadow form, the Board of Directors and senior management team will be mentored by external advisors and specialists to strengthen the skills needed.

10 RELATIONSHIP BETWEEN THE COUNCIL AND THE MUTUAL TRADING COMPANY

The establishment of a mutual trading company, in which the Council retains 40% ownership will enable real collaboration around service delivery in the future. Building a partnership between the Council, CHTA and employees, ensures customer views and feedback are central to the development of high quality services that improve the outcomes for children and young people in the area. Collaboration is seen as key in shaping the education support for excellent outcomes across Croydon. Collaboration between schools has already been responsible for a huge improvement in the standards of some schools, with the mutual creating a new vehicle for this collaboration to be developed further.

Contract management arrangements will be put in place to ensure that statutory services commissioned from the new trading entity meet the service specification and requirements outlined by the Council. It will be the role of the client side service manager to monitor the effectiveness of the services commissioned against the agreed performance indicators and outcomes. A detailed service specification and contract will be put in place and will be overseen by the Council's Project Board, chaired by the Executive Director for Children, Families and Learning.

11 IMPLICATIONS FOR STAFF AND THE WIDER COUNCIL

For services which transfer into the mutual trading company, then the Transfer of Undertakings (TUPE) Regulations will apply. In order to fulfil its TUPE obligations, the Council would normally require that the new employer has a broadly comparable pension scheme available for the transferring employees. On this basis the mutual trading company would seek Admitted Body status into the Local Government Pension Scheme and the Department for Education's Teacher's Pension Scheme.

Transferring 8 services into an external organisation may have an impact on other those Council services. This will require the Council to consider any impact and take appropriate action as needed.

It is recommended that the mutual trading company does not operate from Bernard Weatherill House. This will enable the organisation to develop a new identity, to allow the services in scope to co-locate and to negotiate lower operating costs.

12 PROCUREMENT

The delegable statutory services proposed to be delivered to the Council by the mutual trading company are:

- School improvement monitoring and challenge
- Targeted support for schools causing concern
- Key stage 1 and key stage 2 assessment moderation
- Governing body training programme
- Quality assurance for newly qualified teachers
- Statutory functions in relation to the formal Special Educational Needs process
- Development of HR policies for schools and consultation via the TPA working party
- Healthy Schools initiative (funded by Public Health)

The contract period will be three years from 1st April 2015 with options to extend annually for up to a further three years.

The annual contract value is £900k with a maximum contract value of £5.4m if all extension options are exercised.

The Public Contracts Regulations 2006 (as amended) applies to the award of specified categories of contracts by public authorities in England until the introduction of regulations implementing the new EU Public Sector Directive published in March 2014. The services proposed to be delivered to the Council by the Mutual are classified as part B services under the current Regulations and as such are exempt from the full application of the specified procedures which govern the award of contracts.

The indicative view of external legal advisors is that the mutual trading company will not itself be subject to the EU procurement directives due to the commercial character of the organisation, diverse funding streams and ownership model. The mutual trading company will access a range of support services to ensure it operates effectively. Work is currently underway to establish which Council procured contracts the mutual trading company will be able to access.

13 COMMUNICATION AND CONSULTATION

CHTA is a critical partner in the formation of a mutual trading company. CHTA members were invited to vote in principle on the establishment of the mutual trading company in

January 2014. The vote was overwhelmingly in favour for this proposal. Subsequently the CHTA Executive has been heavily involved in the development of the business plan which was signed off by the Executive on the 29th April 2014. Therefore the ongoing communication and engagement with schools as the main customer group affected by the proposed establishment of the mutual trading company can be evidenced.

The staff group who are in scope for transferring into the mutual trading company are an important stakeholder group. Regular all staff meetings, service specific workshops, 121 meetings with the Director of Learning and Inclusion, 'frequently asked questions' and drop in surgeries have all been organised to support staff through this proposal. The Project board along with managers of services in scope continue to identify information to be cascaded regularly to all staff affected. Trade unions have also been kept informed through the Teachers Professional Association meetings, which both support staff unions and teaching unions are invited.

If Cabinet agree to the establishment of the mutual trading company, staff that predominantly work in the identified service will TUPE transfer into the organisation on 1st April 2015. The formal TUPE consultation will therefore commence as soon as practicable.

14 PROPOSED IMPLEMENTATION ARRANGEMENTS

If the recommendation to establish a mutual trading company is supported, it will be necessary to appoint to the shadow Board and shadow management team by October 2014 (reference section 9). The shadow board will start setting the strategic direction for the new company, ensuring the business plan is fit for purpose and that the mutual trading company is fully operational by April 2015. The shadow management team will be tasked with setting up business and financial systems, finding suitable premises, ensuring the successful set up of the new business and undertaking consultation on of the mutual (as the transferee).

It is recommended that delegated authority is granted to the Cabinet Member of Children, Families and Learning in consultation with the Executive Director of Children, Families and Learning, the Director of Finance and Assets and Director of Legal and Democratic Services to take all necessary action to ensure the arrangements are implemented and agree the final terms of/for the:

- memorandum and Articles of Association and Members' Agreement;
- the set-up of the mutual trading company's shadow board and the appointment/secondment to key senior management roles (ie, shadow management team) prior to the launch of the mutual on 1 April 2015
- transfer of related staff, assets and contracts to the mutual trading company;
- contract for delivery of services by the mutual trading company to the Council;
- contract for purchase of support services by the mutual trading company from the Council;
- pensions agreement
- working capital loan agreement

- appointment of Council nominees on the board of directors (in consultation with the relevant Cabinet Member)

The Council's Project Board, chaired by the Executive Director for Children, Families and Learning will form the internal governance mechanism for the above listed documents to be finalised and adopted.

15 TIMELINE

Event	Date
Cabinet to take decision on proposal and award of services contract to the mutual trading company	30 th June 2014
CHTA to become incorporated company	June 2014
Legal establishment of mutual trading company	July 2014 – March 2015
Shadow board and shadow management team in place	September 2014
Transfer agreement	July 2014 – March 2015
Enabling infrastructure (contracts, premises, ICT, finance)	September 2014 – March 2015
Pensions Committee to ratify pensions position	September 2014
Formal TUPE consultation	ONGOING
TRANSFER	April 2015

16 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

16.1 CURRENT BUDGET AND ANTICIPATED SAVINGS

Table 1 below shows the current expenditure and income in relation to the services in scope and the saving of approximately £1m to the Council as a consequence of the establishment of the mutual trading company.

Table 1 - Net Cost / Saving for all Council services within the scope of this report			General Fund	Other Funded	General Fund	Other Funded
	2014/15		2015/16	2015/16	2016/17	2016/17
FTE	90.4		6.2	4.6	6.2	4.6
Total Service Cost	3,763		2,816	183	2,666	183
Savings Achieved from Proposal						

Difference between 2014-15 and future years' service costs			-947		-1,097	
Support Services Saving			-40		-40	
Total Saving Achievable from Proposal			-987		-1,137	

Savings in the region of £1m are anticipated through the creation of the mutual trading company. These are generated as a result of the transfer of staff to the mutual and a reduction in council operating costs. Whilst an in house model could be created to enable a level of savings to be generated through restructuring, current traded income levels and opportunities for growth could not be achieved. Therefore the current services available to schools could not be sustained.

It is recognised that the creation of the mutual will have an impact on support services and that there will be reductions as a result, for example by not recruiting to current vacant posts.

Once the mutual trading organisation commences operations in April 2015, the net remaining general fund budget in the Council will be £2.816m as per the above Table 1. This will be used to fund a small client side team to oversee school standards, commission from the mutual and perform any non-delegable statutory duties, as well as fund costs relating to existing premises. Year one set up costs have also been included.

The current 2014/15 budget for the eight services in scope are detailed in Table 2

	FTEs	Expenditure	Income	Net Expenditure
		£000	£000	£000
School Improvement	39.1	3,863	-1,021	2,842
Schools' Finance	3.0	161	-193	-32
Literacy Centre	4.1	205	-188	17
Schools' HR	5.2	507	-623	-116
CrEdIT	11.6	621	-633	-12
CEBP	7.0	326	-200	126
EWS	3.8	307	-72	235
EPS	12.1	879	-297	582
Business Support	4.5	122		122
	90.4	6,990	-3,227	3,763

16.2 FINANCIAL VIABILITY OF THE MUTUAL

A review of the traded income of these services and the achieved income to date is shown in table 3 overleaf

Table 3: Current model – Actual traded income			
	FY 2011-12	FY 2012-13	FY 2013-14
	£000	£000	£000
School Improvement	301	1,032	1,390
Schools' Finance	282	299	174
Literacy Centre	144	184	190
Schools' HR	711	713	744
CrEdIT	616	656	697
CEBP	185	219	205
EWS	0	54	62
EPS	76	174	214
Business Support	N/A	N/A	N/A
	2,315	3,311	3,676

School Improvement has grown its governor services after in-sourcing and improving the quality of this service. Educational Welfare Services and Educational Psychology Services have increased their traded offer over the last three years. Finance and HR show a variable income profile in an environment of increased academy chains where schools appoint in-house finance and HR expertise. Overall the quality of services offered and the long standing relationship between schools and the local authority has protected the LA's current market share. However, as schools become more price conscious and competitors become more aggressive, it is imperative that the mutual trading company is able to respond quickly and efficiently and can demonstrate increasing value for money. It is recognised that although the traded income achieved in 2013/14 was more than the budgeted income, this trend in growth is unlikely to continue with the current model of in house delivery, as it is felt saturation in the market has been reached. What will be different with the proposed model is that staff can work more closely with headteachers to identify and meet the needs of schools more quickly and responsively, while utilising a framework of external advisors to increase the pool of expertise and capacity.

Table 4, provides a summary of the market penetration of traded services with Croydon schools. This reveals a wide range of market penetration across the services with school improvement selling at least some aspect of their service to all schools in the borough (shown as 98% in the table below due to school conversions in- year) while the CapitalSouth Education Business Partnership and the Literacy Centre currently only offer to Secondary and Primary schools respectively. The mutual trading company will be able to capitalise on cross-selling other services offered within the mutual.

Table 4 – Current market penetration of traded services in Croydon schools.

Sales sector	Total in Croydon borough	School Improvement	HR	Finance	EWS	EPS	Capital South	Literacy	QEdIt
Special school	6	6	4	4	0	6	5	0	4
Primary LA Maintained	65	63	57	34	15	51	0	19	43
Nursery	6	6	5	2	0	3	0	0	5
Secondary LA Maintained	8	8	5	3	2	4	4	0	5
PRU	5	5	5	5	0	0	0	2	4
Primary Academy	19	18	13	4	4	11	0	8	11
Secondary Academy	14	14	5	2	3	5	6	0	6
College	3	3	0	0	0	0	0	0	0
Total accessed	126	123	94	54	24	80	15	29	78

16.3 FINANCIAL MODEL FOR THE MUTUAL TRADING COMPANY

As detailed in table 3, there is currently a level of traded income in the region of £3m. The viability of the mutual trading company is predicated on:

- Growing traded income by 2 - 5%, through selling additional services to current customers in Croydon, as well as growing the out of borough customer base.
- A commissioned service contract with the Council that represents market rate for statutory services whilst providing value-for-money to the Council
- A working capital loan offered by the Council to ensure sufficient cashflow and cover initial set up costs. The loan will be legally agreed between the two parties and repaid with interest.
- A pension contribution rate that is stabilised and advantageous because it is pooled with the wider Council

16.4 SUPPORT SERVICES

Given the recommendation to form a mutual trading organisation and a smaller client/commissioning team in-house to manage the Council's relation with it, there are potential implications for council-wide contracts. Due diligence has been undertaken by external legal advisors to identify any impact on existing Council contracts. There are no contractual financial penalties to the Council in the event that the mutual trading company chooses to not access Council wide contracts. Further work will commence during the transition phase, to agree whether any contracts will need to be novated, accessed or varied to allow the mutual to access the contract.

It is proposed that the mutual trading company will commission support from the Council's internal audit function, including the Council's contractual arrangements with its strategic internal audit partner (currently Mazars Public Sector Internal Audit Ltd). This together with any additional resources the mutual trading company may purchase will support both the Council's and the company's own requirements for a robust system of internal control and governance to be established and maintained.

Table 1 and table 2 do not include the overheads that are attributed to the services in scope for the mutual. It is recognised that the creation of the mutual will have an impact on support services and that there will be reductions as a result. At this stage it has been identified that there will be a reduction in finance support staff by 1 FTE (a vacant post will be deleted) and other support services are under review

16.5 FINANCIAL RISKS

If the mutual trading organisation were not to commence operations from April 2015, the Council would have to find an alternative delivery model or cease delivery of discretionary services in this area in order to achieve its savings targets. In addition, there is a real risk of non-viability of the services as a whole given the uncertainty around future current trading income and any subsequent budget reductions in this area.

16.6 PENSIONS

When setting up any organisation with staff originating from the Council, pensions can have a significant impact on its financial and commercial viability. There are also impacts upon the Local Government Pension Scheme (LGPS) as administered by Croydon Council.

Any new admitted body to the fund is not liable for pensions deficits arising from past and current triennial valuations up to the point of transfer, therefore all deficits would be retained by the Council.

It is proposed that the mutual trading company would be able to access the same pooled rate that the Council, as the major employer in the fund, as its relationship is so linked to the council and its services.

The mutual trading company would operate an open scheme which helps to keep the contribution rate lower than if it were a closed scheme as well as being an attractive benefit to attract future talent to the organisation.

The current published rates are 13.1% for 2014-15 rising by 1% each year thereafter until the next triennial valuation in 2016-17 which will create a new rate for 2017-18.

Any future pension strain costs related to staff who are in the new organisation will be borne by it. These points will be set out in a standard pensions admission agreement subject to the legal approval of the company representing the new organisation.

16.7 THE EFFECT OF THE DECISION

This proposal would achieve in the region of £1m in savings through the establishment of a mutual trading company. If the proposed organisation is not established, the services in scope for this proposal would need to be reviewed and the future of service delivery re-assessed.

16.8 STRATEGIC RISKS

Key strategic risks facing the Council and their likely impact are summarised below along with mitigating actions.

Ref	Risk	Likelihood	Impact	Mitigating Actions
1	Failure to become a profitable trading organisation	M	H	<ul style="list-style-type: none"> ◆ Business plan and financial model indicates that the business model is viable. ◆ High levels of support from schools and the CHTA will result in growing customer base ◆ Dedicated support from the Cabinet Office to assist with marketing and sales
2	Potential loss of staff who have key skills and experience	M	M	<ul style="list-style-type: none"> ◆ Ongoing staff engagement throughout the process ◆ Opportunities within the new organisation for staff ◆ Relevant training and development will be made available for staff ◆ Ability to use external advisers and school-based staff to support service delivery
3	Reputational damage if mutual trading company is not established or does not succeed	M	H	<ul style="list-style-type: none"> ◆ Robust business planning and financial modeling ◆ Extensive support from CHTA ◆ External advisers and Cabinet Office support ◆ Detailed communication plan including press releases.

(Approved by Lisa Taylor, Head of Finance and Deputy Section 151 Officer).

17. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

External legal advice has been obtained and confirms that the Council has the requisite ability to establish the mutual trading company for the purposes and in accordance with the proposals set out in this report.

(To be approved by Sonia Likhari on behalf of the Council Solicitor & Director of Democratic & Legal Services).

18. HUMAN RESOURCES IMPACT

It is expected that these recommendations will invoke the Transfer of Undertakings (Protection of Employment) 2006 Legislation, including its 2014 legislative amendments. This means that all staff that predominantly work in the identified services would be transferred to the mutual on their existing terms and conditions of service (with the exception of pension rights, which have to be broadly comparable as set out in the Government's "Fair Deal" policy). The expected transfer date for the affected staff will be 1st April 2015. The Council has an obligation to inform and consult under TUPE. Given the unique circumstances around ownership, there must be adequate differentiation between transferor (the Council) and transferee (the mutual). The mutual will be required to inform the Council of any measures it proposes taking in relation to the transfer.

However, where the activities of the new service (ie the mutual) are "fundamentally not the same", TUPE may not apply, as provided for by the 2014 amendments to the

Transfer of Undertakings (Protection of Employment) 2006 Legislation. The application of TUPE or otherwise would be determined between the service providers. Nevertheless, this would remain a change of service provision for which the Council is the client.

Informal consultation and engagement has already started with staff and trade unions; and formal consultation on TUPE will commence soon after a firm decision is made.

Ongoing work is being carried out to assess how other Council services/posts will be affected by the mutual.

The requirement for the Mutual Trading Company (the transferee) to be commercially viable in a competitive environment may influence the post-transfer structure and composition of its' workforce; if so this is likely to involve the transferee making redundancies. In this regard, the Council (the transferor) has limited scope to reconfigure the transferring services ahead of the transfer without significant potential risk and cost. Should the transferee (the Mutual) make redundancies, it will need to set out its proposals in writing in the form of a "measures" letter and it may also request to start redundancy consultation with the Trade Unions prior to transfer with the Council's formal agreement. The Council (transferor) is responsible for leading on consultation in relation to TUPE and the Mutual (transferee) in relation to any potential redundancies. ¹

(Approved by Deborah Calliste on behalf of the Director of Human Resources).

19. EQUALITIES IMPACT

Please refer to the full Equalities Analysis (appendix 1) for comprehensive analysis of identified equalities impact for both service users (schools) and staff.

In summary, as this proposal relates to a change in modus operandi rather than in the nature of what is actually delivered, there is neutral impact for both staff and service users with most protected characteristics with the possible exception of the following:

- ◆ Continuity of service offer (service users): This proposal ensures the continuity of a broad range of services, which may otherwise reduce or cease, and is therefore of benefit to service users.
- ◆ Accessibility (staff and service users): Service delivery currently takes place in a variety of premises across the borough, notably the Croydon CPD Centre (based in Leon House) and Literacy Centre (based at Purley Oaks Primary School). However, it is unlikely that these arrangements will continue in the long term. A range of delivery options (including venues) will be explored but are as yet unknown. Accessibility to the venue/s (transport links and building accessibility) and resources (including IT) by a range of service users and staff will need to be considered, particularly with regards to disabled, pregnant and nursing mothers

¹ The Council has shared an early version of this report with the recognised Trade Unions and teaching professional associations and comments/views sought ahead of the Cabinet Meeting 30th June

users/staff, as well as children who attend the Literacy Centre. The Equalities Analysis will be updated as options are explored, considered and used to inform decisions.

- ◆ Meeting needs (service users): The proposed service model will be demand-led and more agile than the current model and this should therefore result in a positive impact as the service will be able to respond more flexibly to meet the needs of a wide range of users.
- ◆ Affordability (service users): A robust review of the current and proposed pricing structure is being undertaken to ensure that the new service is cost-effective. Until this is completed it is not possible to determine the impact on specific service users. Any equalities impact will therefore be considered during the review and the Equalities Analysis updated accordingly.
- ◆ Employment terms and conditions (staff): At present it is not anticipated that staff terms and conditions will change, with transfer of staff (currently 79.6 FTEs) to the mutual trading company being made in accordance with TUPE regulations. If any changes to staff terms and conditions are required subsequent to transfer, consideration will need to be made with regards to current staff entitlements (including continuous service, pay progression, annual leave, LGPS membership, flexible working arrangements, season ticket loans and flexible benefits), any potential impact on any particular groups of staff and resulting changes made in accordance with TUPE regulations.

Once the business plan is approved and implementation commences, further equality impact (both positive and negative) may arise. The Equality Analysis will be therefore be updated throughout the business plan development and implementation.

20. ENVIRONMENTAL IMPACT

It is not anticipated that this proposal will have an environmental impact

21. CRIME AND DISORDER REDUCTION IMPACT

It is not anticipated that this proposal will have an impact on crime and disorder.

22. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

It is proposed that a mutual trading company is established from April 2015 to deliver delegable statutory services for the Council and trade discretionary services to schools and other educational establishments. The following financial and non-financial benefits will be realised through the establishment of a mutual trading company:

- ◆ Financial savings to the Council
- ◆ Reduced financial risk and liability if trading base diminishes
- ◆ Protection for discretionary school support services
- ◆ Strengthened relationship with schools in Croydon. This will improve the Council's ability to perform statutory responsibilities and demonstrate a monitoring, challenge, support and intervention role through Ofsted inspections
- ◆ Greater likelihood of educational improvements through a new delivery model for preventative services with greater involvement from schools.

- ◆ The Council will retain an ownership stake in the new organisation and therefore can continue to influence and shape the education agenda in the borough.
- ◆ Creation of a new local company with the ability to expand into new services over time and create additional local jobs.

23. OPTIONS CONSIDERED AND REJECTED

The previous Cabinet report (30 September 2013) identified 4 delivery options which recognised the Council's budget pressures and changing relationship with schools. These options were:

1. Change the current trading model for school support services to achieve full cost recovery
2. Deliver only statutory services
3. Commission from a third party
4. Establish a new trading entity

Cabinet agreed in principle that the option to establish a new trading entity most closely met the following objectives:

- ◆ Improvement of educational standards and outcomes for children and young people
- ◆ Sustainable service model for the next 5 years
- ◆ Reduction in financial risk for the Council
- ◆ Strengthened partnerships with schools
- ◆ Value for money from the Council's commissioning budget.

Therefore the remaining options were not progressed.

CONTACT OFFICER: Sylvia McNamara, Director of Learning and Inclusion and Sarah Risby, Strategic Programme Lead.

BACKGROUND PAPERS: Proposals for the establishment of a School Support Services Mutual Company [Minute reference A89/13]; Cabinet 30 September 2013.

SUPPORTING DOCUMENTS: Part A – attached appendix 1 – Equalities Analysis Part B report – Business Plan appendix (exempt from public disclosure) – both on this agenda