

**SURREY COUNTY COUNCIL****CABINET**

**DATE:** 16 JULY 2019

**REPORT OF:** MRS JULIE ILES– CABINET MEMBER FOR ALL-AGE LEARNING

**LEAD OFFICER:** DAVE HILL - EXECUTIVE DIRECTOR FOR CHILDREN, FAMILIES, LIFELONG LEARNING AND CULTURE

**SUBJECT:** PROPOSAL TO ENTER INTO A PARTNERSHIP WITH THE SCHOOLS ALLIANCE FOR EXCELLENCE (SAFE)

**SUMMARY OF ISSUE:**

This report seeks Cabinet approval for the council to be a partner in a new, not-for-profit company, which is to be called the Schools Alliance for Excellence (SAfE). This is a partnership – between schools, both maintained schools and academies, the Surrey Teaching Schools Network (STSN) and Surrey County Council – to continue to improve the quality of education in Surrey.

Following the end of the Babcock 4S contract, it is proposed that the council should commission SAfE to provide a number of services previously provided by that company. In the first instance, these services are those relating explicitly to school improvement but as SAfE establishes itself, it is anticipated this commission may be extended to other areas.

This report sets out the proposed outcomes for the three-year period of the initial commission (1 September 2019 to 31 August 2022). As indicated in Surrey County Council's Joint Strategic Needs Assessment (2019), most children in Surrey succeed without intervention from the council. Consequently, in line with Surrey's community vision for 2030, these commissioning intentions should have a particular focus on the progress and outcomes of the most vulnerable children and young people with the aim of increasing their educational engagement and achievements and in closing the gap in attainment levels. Independent schools can benefit from SAfE services but cannot be part of the partnership.

**RECOMMENDATIONS:**

It is recommended that Cabinet:

1. Approves the establishment of the new school-led partnership for improvement in Surrey known as the Schools Alliance for Excellence (SAfE).
2. Endorses the Council's participation as a member of SAfE with two officers of the Council to be appointed to the board of directors of the company.
3. Agrees to commission SAfE to lead and manage Surrey's school improvement strategy for an initial three years, from September 2019 to 2022.
4. Grants delegated authority to the Executive Director for Children Families Lifelong Learning and Culture, in consultation with the Cabinet Member for All-Age Learning, to agree, as appropriate, to SAfE being contracted for further council commissions over the next three years.
5. Agrees that the Council will act as the 'supervising authority' for SAfE.

## REASON FOR RECOMMENDATIONS:

Surrey County Council outsourced its school improvement services over 15 years ago. Through the contract, Babcock 4S was engaged to undertake all 11 council duties relating to school standards and the quality assurance of all maintained schools, 14 compliance checking duties and five relating to the curriculum (see **annex one** to this report for the list of these duties). This contract came to an end in March 2019, and these duties are currently being undertaken by council officers on a short-term basis. However, this is not consistent with the developing schools-led system and partnership approach underpinning our work with children and families.

Over recent years, Surrey schools have built a system of improvement using local practitioners and teaching schools. The recommendations in this report would extend the breadth and depth of that schools-led system so it can accelerate improvement in the outcomes for children and young people, particularly the most vulnerable, in Surrey schools.

## DETAILS

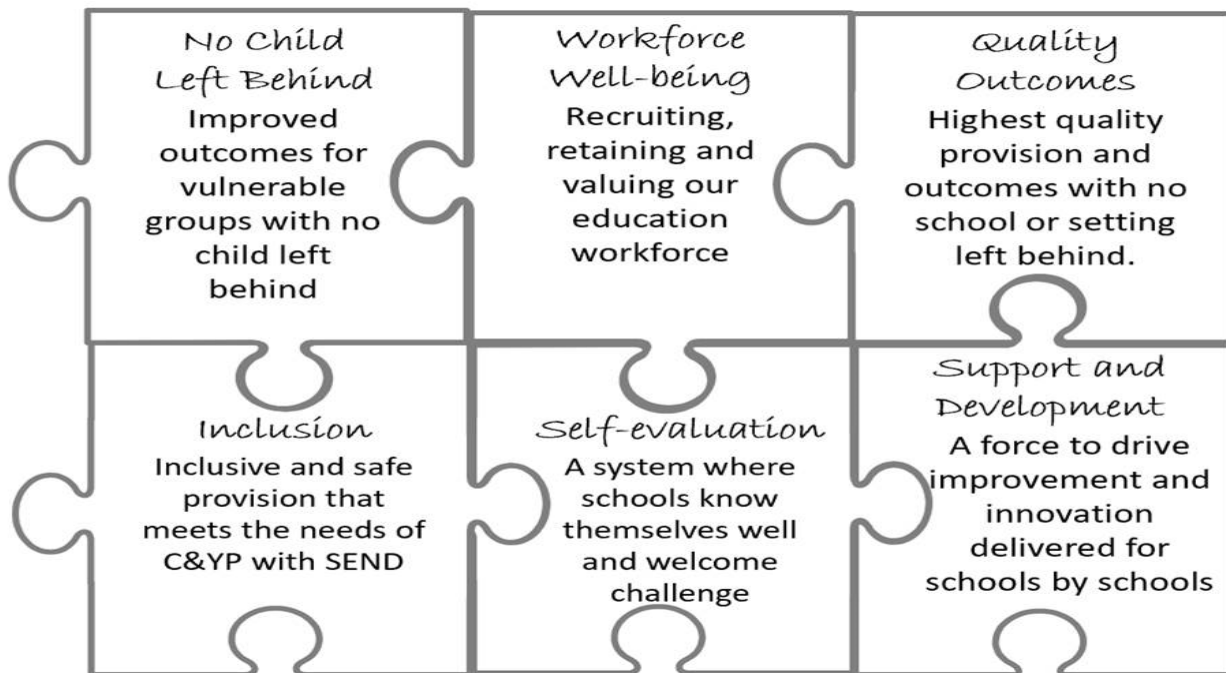
### The development of local area education partnerships

1. Over the last few years, local education partnerships have been established in different parts of the country. Sometimes led by local authorities, sometimes by schools, these area-based partnerships support schools and help to drive improvements for children and young people. At their best, they take responsibility for the quality of education in the local area and can act as an engine of improvement, brokering connections and initiatives across schools.
2. In April, 2019, with the agreement of schools in Surrey, the Surrey Teaching Schools Network (STSN) extended its focus on leadership services to coordinate a 'universal offer' to schools, which signposted a range of services and resources for professional development, school-to-school support, research and development and governance training. The local authority supported this initiative and with the end of the Babcock 4S contract, saw the opportunity for this partnership to develop further by taking on responsibility for the delivery of the council's core statutory duties for school improvement.
3. Consequently, the executive director set in train work with key partners to establish a formal education partnership that would take responsibility for this larger portfolio of school improvement services. Over the last few months, considerable work has been undertaken by schools, STSN, the Guildford diocese and council officers and this has led to the proposal to establish SAfE as a school company. The intention is that this partnership will be incorporated as a company limited by guarantee by 1 September 2019. The proposal is that Surrey County Council would become a partner in the company and take up two places on the board of directors.

### Links with Surrey's vision for 2030

4. The council has set out its vision for Surrey to be a uniquely special place where everyone has a great start in life, people live healthy and fulfilling lives, are enabled to achieve their full potential and contribute to the community, and no one is left behind. It has summarised its ambitions for people as:
  - children and young people are safe and feel safe and confident;
  - everyone benefits from education, skills and employment opportunities that help them succeed in life;

- everyone lives healthy, active and fulfilling lives, and makes good choices about their wellbeing;
  - everyone gets the health and social care support and information they need at the right time and place; and
  - communities are welcoming and supportive, especially of those most in need, and people feel able to contribute to community life.
5. If this vision is to translate into reality, it must be underpinned by a strong local education system serving all children and young people well. Working in partnership is key to achieving better outcomes for our young people as the council knows that it alone cannot realise the aspirations in the community vision for Surrey in 2030. Over the last few months officers have worked with schools and key partners to establish a vision and design for SAfE that will steer the changes needed to support the achievement of the community vision. The creation of SAfE reflects the effective partnership working that has taken place over recent months. Once established, SAfE will be led by schools but in partnership with the local authority and other key partners in the education community.
6. SAfE will be an inclusive education partnership where all children and young people, regardless of their background or ability, have the opportunities to flourish, enjoy learning and achieve the best possible outcomes through excellent education. The agreed aims of the partnership are to build:
- a truly excellent education system from early years to post-16;
  - a collaboration for improvement for all schools and education settings not just those experiencing difficulty; and
  - a safe, inclusive learning community enabling challenge, support, improvement, innovation and learning from one another.
7. It sees all Surrey children as the partnership's responsibility and has identified six goals (see below), all of which are crucial to the realisation of the community vision for 2030.



8. This report therefore recommends that SAfE is welcomed by the council, most particularly for the potential it offers for partnership working that will lead to an even stronger education system in Surrey. SAfE will become accountable for driving and ensuring school improvement in Surrey. This means it will:
- know all Surrey schools well;
  - establish robust monitoring, challenge and support;
  - broker and commission effective support for schools needing extra help at a particular time and for those causing concern;
  - identify, develop and extend good and effective practice;
  - signpost excellent professional development and training for school staff and governors;
  - work closely with the local authority and external bodies, such as the Department for Education (DfE), Ofsted and the Regional Schools Commissioner, as appropriate; and
  - help to accelerate a range of improvement and performance outcomes.
9. It intends to do this by establishing an ambitious, schools-led system of continuous improvement. It will draw on the collective resources of schools in Surrey, for example, the use of good practitioners in individual schools or of outstanding practice within schools. SAfE will use the rich resource offered by the STSN. It will use the expertise of system leaders in education such as various high-quality local leaders in Surrey's schools, national leaders of education (NLEs), specialist leaders of education (SLEs) and national leaders of governance (NLGs).

## Specification of commissioning outcomes: 2019-2022

10. This report recommends that the council should commission SAfE to provide a number of services previously provided by Babcock 4S. In the first instance, these services are those relating explicitly to school improvement but as SAfE establishes itself, it is likely this commission will be extended to other areas.
11. The commission should specify a set of outcomes and performance indicators for the three-year period of the commission, which support the council's vision for 2030. These will mark progress toward the goal that all Surrey's children will thrive emotionally, grow intellectually and reach their full potential. Surrey's education system – comprising early years settings, primary, secondary and special schools and sixth form and further education colleges – is already very successful except for some of the most vulnerable and disadvantaged pupils.
12. As most children in Surrey succeed without intervention from the council, there needs to be a focus on those not so well served by the system. This entails an overall focus on the progress and outcomes of potentially vulnerable children, including disadvantaged pupils, pupils with special educational needs and children who are looked after or were previously looked after, with the aim of increasing overall educational engagement and achievement as well as closing the gap in attainment levels.
13. Over the three-year life of the strategy, the proposed outcomes are to:
  - maintain Surrey pupils' top-quartile performance at the early years foundation stage (EYFS), key stage (KS) one, two and four;
  - increase the percentage of schools judged as good or outstanding, with the aspiration that no school will be placed in an Ofsted 'inadequate' category within the next 18 months;
  - increase the percentage of disadvantaged pupils achieving the expected standards at key stage 2 and at key stage 4;
  - increase the percentage of learners making good progress in writing and mathematics between the ages of 7 and 11;
  - increase the percentage of disadvantaged pupils making expected or better progress against the progress 8 measure at key stage 4;
  - reduce vulnerable pupils' rates of absence and exclusion from school; and
  - increase the percentage of disadvantaged learners who enter higher education by age 19.
14. The council also expects SAfE to undertake a number of activities and processes as set out in **annex 2** of this report. These include responsibility for the statutory duties and tasks set out in the DfE guidance, schools causing concern (November 2018).

## Contract monitoring

15. The council will ensure these outcomes and key performance indicators (KPIs) are delivered through efficient monitoring of the contract with SAfE, which will be expected to:
  - meet informally with the council officers, as commissioners, on a monthly basis to report progress and raise issues about the delivery of the commission;

- provide a formal report of the commission's progress on a termly basis, which will be discussed in detail with the council, as commissioner, and with the SAfE board; and
- provide the council with a comprehensive annual assessment of the performance of the education system in Surrey, highlighting strengths, priorities and key areas for development. This annual review will include a focus on the progress and attainment of potentially vulnerable groups.

### **Governance of SAfE**

- 16 SAfE would be a not for profit, schools-led company, focused on school improvement and owned by Surrey's schools in partnership with Surrey County Council. Schools and academy trusts within Surrey are eligible for full membership. As members of SAfE, Surrey schools would have with a high degree of control and oversight over the organisation. The level of control by Surrey schools will be achieved through reserved rights and other similar provisions set out in the articles and memorandum of association. Other schools and organisations wishing to use SAfE's services may have the option to become 'associate members' and access services through a service contract or a collaboration agreement (as the case may be) without necessarily being legal 'members' of the company.
- 17 It is intended that SAfE will be incorporated as a company limited by guarantee by 1 September 2019. This is a relatively straightforward model to set up, limits the risk to individual members; and has a low burden of administration. 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. A decision about whether to seek charitable status is likely to be made at some point during its first year of operation.
- 18 The directors of SAfE will collectively form a board, providing strategic leadership and holding the executive management to account. It is currently envisaged that there will be 10 directors of the company. These would come from local partners: the chairs of the four phase councils (early years; primary; secondary; special); a governor; the CEO of one of the dioceses operating in Surrey; the CEO of a local academy trust; a director of the Surrey Schools Teaching Network (STSN); and two local authority nominees.
- 19 The company would by default be a school company. This is because the regulations on school companies automatically apply to any company that includes maintained schools in its membership. The features of a school company are set out in detail from paragraphs 33 to 40 of this report.

### **Management of SAfE**

20. The company will need to be established so that it can employ its own staff and enter into a number of contracts.
21. The chief executive of SAfE will oversee the day-to-day operation of the partnership's services and management of its staff. They will also lead and manage STSN, which will support the coherence of the support for schools.
22. The company will secure its resources from:
  - income from schools;
  - traded services;



- a commission from Surrey CC for school improvement;
- other potential commissions; and
- grant funding and awards.

### **Supervisory authority**

23. All school companies need to have a supervising authority, which in most instances is their local authority (see section 12, Education Act 2002; regulations 26 and 27, School Companies Regulations 2002). The expectation is that duty will be undertaken in a manner that is as light touch as intended in the DfE guidance (DES, 2003). This report recommends that Surrey County Council takes on this role.
24. The functions of the supervising authority include:
- monitoring the management and finances of the school company, including scrutiny of audited annual company accounts;
  - considering requests from school companies to borrow;
  - notifying the secretary of state for education of company membership, name or registered number and any changes to these details within 28 days; and
  - directing governing bodies to withdraw from a school company in certain circumstances.

<b>CONSULTATION:</b>
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25. This report signals a change in the relationship with schools in Surrey. The design and establishment of SAfE has been a collaborative endeavour between schools, council officers and key partners, advised at key points by an external adviser with knowledge of local area partnerships in different parts of the country. Surrey schools are choosing to take greater responsibility for their collective performance. The principle underpinning the proposal for a local partnership is that it offers the best vehicle to promote improvement in our education system, with the focus on improving the achievements and life-chances of the most vulnerable children and young people.
26. The proposal to establish SAfE has been considered and keenly supported by Surrey's phase councils and the STSN board. There has also been positive engagement with governors and the dioceses who operate in Surrey. The Regional Schools Commissioner has also been informed about the proposal, at the termly meeting with SCC officers on 12 June 2019. The commissioner noted the proposal, which is consistent with the government's view that local authorities should consider commissioning their statutory functions relating to school effectiveness and improvement to education experts.

### **RISK MANAGEMENT AND IMPLICATIONS**

27. The key risks to the council are set out in part 2 of this report.
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<b>Finance and value for money implications:</b>
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- 28 Finance and value for money (VFM) implications are set out in part 2, as exempt information.

<b>Section 151 officer commentary:</b>
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29. The council is facing a very serious financial situation, whereby there are still substantial savings to be delivered to achieve a balanced budget in the current year and a sustainable budget plan for future years. Children, Families, Lifelong Learning and Culture is on a major transformation journey to improve services for children and families. This is a high priority service and is a key part of the improvement programme. The section 151 officer acknowledges that this initiative will allow greater control around overall spend.
30. The purpose of the report is to obtain cabinet approval for the establishment of a school company, a not for profit company, limited by guarantee for which the council is the supervising authority. The council will seek to discharge its statutory duties in relation to school improvement through the company and once established the council will consider further commissions.
31. All costs in establishing the company will need to be funded from existing resources. Similarly the cost of all commissions including any monitoring arrangements that the council needs to put in place will need to be contained within existing budgets, whether they be funded from the dedicated schools grant (DSG), or council funds. Such commissioning arrangements will need to be flexible enough to absorb any reductions in funding. It is not anticipated that the council will need to provide any corporate resources to support the operation of the new company. Any support required would need to be provided on a cost recovery basis.
32. The establishment of the new company does not involve the transfer of any staff. All future commissions will need to consider this in the future and that any impact on potential employment and pension costs for the council are identified at that time.

<b>Legal implications – monitoring officer:</b>
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33. For the reasons stated in the report, a company limited by guarantee will be incorporated with the name Schools Alliance for Excellence (SAfE). The council will participate in the company as a 'member' by providing a financial guarantee, usually for a nominal amount such as £1. A key feature of companies limited by guarantee is that dividends cannot be paid to the company's members. Any surplus generated by the company must be retained and reinvested by the company.
34. When constituted as a company, SAfE will be a 'school company' as defined by Section 11 of the Education Act 2002, as amended. Section 12 of the Education Act 2002 requires a governing body wishing to exercise any of these powers first to obtain the consent of its maintaining local authority, the council. In addition, the School Companies Regulations 2002 (as amended) must also be complied with. The regulations allow local authorities to be members of a school company.
35. The regulations also require every school company to designate a local authority as its 'supervising authority'. In SAfE's case the supervising authority would initially be the council because all of the governing bodies are located within the county. If SAfE



grows beyond Surrey, then it is possible that another local authority could become the supervising authority.

36. 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. 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.
37. 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. A council officer who is a director of the company will have legal duties for the management of the company. A conflict of interest will arise if they are also responsible for carrying out the council's responsibilities as supervising authority to monitor the company or commission work from it. Therefore, it would be strongly advisable to ensure that council officers nominated to be on the board of directors do not also have decision making or supervisory responsibility concerning the company as part of their role at the council.
38. The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended (TUPE) would apply to any council employees who are assigned to the carrying out of these functions would transfer to SAfE. It is not anticipated that any staff will transfer as a result of the original commission envisaged in this report.
39. The council must comply with the Public Contracts Regulations 2015 (PCRs) in commissioning services from SAfE. Under Regulation 12(4) of the PCRs, known as the 'joint-Teckal' exemption, the council can award a contract to a company it does not wholly own without undertaking a competitive tender. Three criteria must be satisfied to ensure the joint-Teckal exemption applies. These are:
  - (i) the council exercises jointly with other contracting authorities (i.e. the governing bodies) a control over that company which is similar to that which they exercise over their own departments;
  - (ii) more than 80 per cent of the activities of the company are carried out in the performance of tasks entrusted to it by the controlling contracting authorities (including the council); and
  - (iii) there is no direct private capital participation in the company.

All of these criteria are satisfied in relation to SAfE.
40. An independent external law firm will be appointed jointly by all of the participating organisations to undertake the incorporation of the company and establish the necessary governance arrangements. Legal services will continue to provide support to the project internally.

#### **Equalities and diversity:**

41. The service is universal and SAfE will be expected to monitor the educational performance of children and young people, including those with protected characteristics, including gender, race, disability and pupils who receive free school

meals. The council's commission emphasises a focus on Surrey's most vulnerable young people, including those who are disadvantaged, those with SEND and those in public care. The service will continue to monitor and tackle these inequalities.

### WHAT HAPPENS NEXT

Subject to Cabinet's agreement of the recommendations set out in this report, council officers will continue to work with schools and key partners to ensure that SAfE:

- is incorporated as a company limited by guarantee by 1 September 2019; and
- has the processes and procedures in place to enable the company to deliver the council's commission effectively.

**Contact officer:** Liz Mills, Director of Education, Lifelong Learning and Culture

**Consulted:** There has been internal consultation with the Cabinet Member for All-Age Learning, and been external consultation with representatives of primary, secondary and special schools, and early years settings, the Surrey Teaching Schools Network (STSN), the Guildford diocese and engagement with governors.

### Annexes:

Annex 1: LA statutory duties relating to school quality assurance and intervention

Annex 2: Draft output specification for 2019/20

### Sources / background papers

Surrey CC. Joint Strategic Needs Assessment, 2019

DfES (2002), Statutory instrument, 2002 no 2978, The School Companies Regulations, 2002

DfES (2003), Guidance on school companies

DfE (November 2018) Schools causing concern