

Subject:	Adult and Community Learning		
Date of Meeting:	30th July 2020		
Report of:	Interim Executive Director, Families, Children & Learning		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that information required to update the future delivery model could not be confirmed and was unavailable in sufficient time to comply with the normal timetable for publication.

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report provides an update and further recommendation following the recommendations approved by the Policy and Resources Committee on 30th April 2020 on the future delivery model of the council's Adult & Community Learning offer funded through the Adult Education Budget (AEB) by the Education and Skills Funding Agency (ESFA).
- 1.2 The recommendations were:
- (i) To bring in-house Adult and Community Learning following the expiry of the current arrangements on 31st July 2020;
 - (ii) That additional funding be allocated to the Families, Children and Learning Directorate to cover the associated costs of bringing delivery in-house;
 - (iii) That delegated authority be granted to the Executive Director for Economy, Environment & Culture to secure a one-year lease or license as appropriate on Isetta Square from the Friends Centre and to take any other steps necessary to implement the recommendations in this report;
 - (iv) That delegated authority be granted to the Executive Director for Families, Children & Learning to take forward TUPE arrangements to facilitate the in-house provision of community learning currently delivered by the Friends Centre;

Current position

- 1.3 It has not been possible to enter in to a lease with the Friends Centre on Isetta Square, as they have been unable to secure permission from their head landlord to sub-lease to the council. This permission remains outstanding.
- 1.4 On July 10th officers were informed by the Chair of Trustees that the trustee body voted unanimously to place the Friends Centre into administration. More latterly they have advised this will take effect from 31st July 2020. The council is therefore aware that upon entering a lease with the council, the Friends Centre will seek to enter Administration. Whilst legally possible, it is considered that the council should not enter a lease on this basis, as it is neither morally or ethically right and there is a reputational risk in doing so.
- 1.5 As the council is not able to secure suitable premises, the operating model for adult learning in 2020/21 has had to be adapted which impacts upon TUPE.

2. RECOMMENDATION

- 2.1 It is recommended that the Committee agree:

- (i) That the family learning element of the adult education budget which supports the city's vulnerable families will be delivered directly by the tutors currently employed by the council using online or distanced based learning methods where possible. This will involve the TUPE of relevant staff from the Friends Centre
- (ii) In order to retain and secure the council's ESFA grant for adult education for the academic year 2020/21 sub-contracting arrangements should be put in place. This will provide a suitable timeframe in which to plan and implement measures which will deliver a sustainable service for the council going forward;

- 2.2 Committee note:

- (i) That the £61,030 allocated by committee to support the transition to an in-house adult and community learning service will not be required unless alternative delivery premises are secured.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Following the proposal approved by the [Policy and Resource Committee on 30th April](#) to bring in-house Adult and Community Learning following the expiry of the current arrangements on 31st July 2020, the council has been consulting with the Trustees of the Friends Centre in order to identify staff entitled to transfer under the TUPE regulations and to take forward the recommendation to secure a one-year lease on Isetta Square, the premises currently held on a long-term lease by the Friends Centre.
- 3.2 The council's adult education allocation for 2020/21 is £569,988, is the city's largest. GB MET College's allocation is significantly larger, but it supports a greater geographical area including West Sussex. Additionally, PACA and

Varndean College also have direct allocations from the ESFA. Retaining the council's allocation for residents is at the forefront of the recommendations.

3.3 Isetta Square

3.4 Regrettably, the council is unable to take forward the lease of Isetta Square as anticipated for the following reasons:

- (i) The Friends Centre have not received consent from their landlord to grant a sublease to the council. As highlighted in the original committee report considered by P&R on 30 April 2020 without consent of the Head Landlord a lease from Friends Centre cannot be secured;
- (ii) The council is aware that upon entering the lease with the council, the Friends Centre will seek to enter Administration. Whilst legally it is possible for the council to take a lease knowing this position, it is considered neither morally or ethically right to proceed on this basis and there is a reputational risk in doing so. This was highlighted as a risk in the report submitted to P&R on 30 April 2020;
- (iii) Should landlord consent now be forthcoming, due to time frames, the lease could not be completed prior to the Friends Centre entering Administration (based on the dates the Friends Centre have provided). Once Administrators are appointed, they may wish to realise the value of the long-lease immediately, and not grant the council a lease. The council are unable to proceed assuming the Administrators will grant the Council a lease, as this is not a guarantee;

3.5 The Friends Centre requested the annual rent for Isetta Square upfront in order to support financial planning. To assist the Friends Centre this option was explored. It is not recommended that a full years rent is paid in advance to a company who are in financial difficulty risking public funds. Additionally, the sub-letting requirements under the lease state that the tenant (the Friends Centre) is not able to receive rent on this basis under a sub-lease.

3.6 The council became fully aware of the extent of the Friends Centre's financial difficulties in mid-July following the completion of an in-depth financial assessment undertaken by the council at the request of the Trustees.

3.7 As it is not possible to secure the lease on Isetta Square, properties within the council's portfolio have been reviewed; however, no properties are currently set up for teaching. Works would need to be undertaken to a property prior to the start of the academic year to make it suitable for teaching. This would delay occupation and the property would not be available from 1 August 2020. There would also be considerable costs associated with this. Whilst it depends on the building, and the works required, high level costs are estimated to be in excess of £170,000 based on average fit out and relocation costs.

3.8 TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) .

3.9 As the option to secure a lease on Isetta Square is no longer available, the council is unable to deliver on its ambition to transfer the services currently

delivered on the council's behalf by the Friends Centre in-house from the 1st August because it has no premises or equipment required to deliver adult learning. This means that TUPE will apply to one individual (0.4 fte) who has a significant association with the council contract. Initially, it was anticipated that 21 members of staff would transfer, comprising of:

- 14 part-time fixed-term tutors (1.4 FTE)
- 4 full and part-time support and administrative staff (2.7 FTE) on permanent contracts
- 3 part-time receptionists on permanent and fixed-term contracts (1.1FTE), subject to the lease on Isetta Square being secured.

The council remains in the due diligence phase of TUPE until the 31 July 2020.

- 3.10 The council acknowledges that staff expecting to TUPE to the council will be deeply disappointed by the turn of events and recommendations of this report. The council acknowledges the very short notice, and it is regrettable that staff are now faced with the prospect of redundancy at the end of July, particularly in current economic climate.
- 3.11 The consequence of transferring staff through TUPE, when there is no mechanism by which to deliver an adult learning offer, is that the council will have significant liabilities for staff who are unable to deliver what is required under the grant, which will further impact on the severe financial situation the council finds itself in.
- 3.12 **Delivery mechanisms and way forward for 2020/2021**
- 3.13 The council will deliver an in-house family learning offer which supports the city's vulnerable families, utilising school premises where possible. The council will seek to procure additional provision through sub-contracting arrangements. This approach will secure the adult learning budget in the city for 2020/21
- 3.14 The council has experience of sub-contracting adult and community learning services with local providers who are already meeting the needs of the city's learners. It is envisaged that a competitive tendering process could be run quickly to secure suitable provision within 12 weeks. It is acknowledged this may take us beyond the beginning of the 20/21 academic year. The autumn term adult learning offer in the city will also be challenging due to restrictions in place on all learning environments due to Covid 19.
- 3.15 The ESFA grant has annual rather than termly targets therefore any impact on autumn delivery, due to a delay in procurement or impact of Covid 19 on learner numbers, can be balanced with additional delivery during the spring and summer terms.
- 3.16 During the academic year a scoping exercise will be undertaken with a view to expanding in-house delivery alongside securing suitable accommodation. Consideration will be given to what can be delivered in-house for 2020/21 given the potential ramifications of the impact of Covid-19.

4. CONCLUSION

- 4.1 Following recommendations approved by Policy and Resource Committee on 30th April, to deliver the adult learning service in-house, TUPE eligible staff, and secure a one year lease on Isetta Square to support the transition of the service, the council has worked with the Trustees of the Friends Centre to try and implement the recommendations.
- 4.2 The Friends Centre have been unable to obtain Head Landlord Consent to lease Isetta Square to the council and furthermore they will be moving into Administration from 31st July before the lease would take effect. Proceeding on this basis would cause financial and reputational damage to the council.
- 4.3 The council proposes to use the ESFA funding to continue the in-house family learning offer and procure services from providers as an interim measure. This approach will enable the council to secure its adult learning grant.
- 4.4 Negotiations were entered in good faith by both parties. The chain of events and the necessary due diligence exercise has highlighted significant risks which cannot be overcome within the original timescale and would leave the council at high risk of financial and reputational damage. The proposed delivery model for the next academic year will include a mix of sub-contracting and in-house delivery in respect of family learning. The focus of the service remains on vulnerable and disadvantaged learners. This will enable sustainable planning and delivery of the service going forward.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The current available funding for the provision of adult and family learning programmes for the academic year 20/21 is the ESFA grant of £0.570m plus the one-off allocation of £0.040m from the HRA as agreed by housing committee on 29th April. The revised recommendations in this report would mitigate the Councils exposure to the significant financial risks of leasing Isetta Square or attempting to financially support the Friends centre in the short term. With the Friends centre potentially going into administration in the near future, the original recommendations carried substantial financial risks to the council both in the short and medium term.
- 5.2 Any option being considered to provide additional financial support to the Friends Centre would entail considerable financial risk to the Council. It is unclear what level of support would be required to prevent insolvency and whether at this stage it is even a viable option. In the absence of a revised business model from the Friends Centre and full knowledge of the extent of the liabilities that would need to be met, further analysis would need to be undertaken before any such option could be properly evaluated.
- 5.3 There are, however still some financial risks to the Council from the proposals in the report. The grant currently received from the ESFA is allocated on an annual basis and is not guaranteed to remain at its current level. The grant also has a number of conditions that must be satisfied in order for the funding to be claimed.

If those conditions are not met, some or all of the grant could be withheld. In addition, it is not yet known what the outcome of any procurement process to deliver the required services would be and whether it is possible to meet all of the requirements from the available funding.

- 5.4 At the P&R meeting of 30th April it was agreed to provide additional funding of £0.061m in 2020/21 to enable the insourcing of the adult learning service and to secure suitable premises. The report states that this will not now be required unless alternative premises can be found. At this stage, it is not known whether alternative premises will be needed and if so, what or where that would be. To obtain appropriate premises and make them suitable for teaching would entail additional costs which potentially could be well in excess of this figure.

Finance Officer Consulted: David Ellis Date: 22 July 2020

Legal Implications

- 5.5 The proposed educational services to be provided to fulfil the requirements of the ESFA grant funding in the next academic year, fall below the threshold value of £663,540.00 applicable to those services within Schedule 3 of the Public Contract Regulations 2015 (the Light Touch Services). A formal OJEU process is not therefore required but the procurement exercise for the service must be fair and transparent ensuring equal treatment of all potential providers. The council's Contract Standing Orders (CSOs) will apply to the procurement and award of the proposed contract.
- 5.6 With regard to the possibility of leasing the property and facilities at Isetta Square from the Friends Centre in the light of the decision of the Trustees of the Friends Centre to place the organisation in administration are dealt with for the most part in the body of the report. There is no legal reason why the Friends Centre could not grant a lease to the council ahead of the appointment of an Administrator providing they have the appropriate consents in place as required under their own long lease and the compliance is demonstrated with the terms of that lease. However once an Administrator is appointed by the Friends Centre any discussions regarding the potential to lease Isetta Square or in respect of the delivery of the services will be with the Administrator who will be concerned to fulfil one of the statutory purposes set out in Paragraph 3 to Schedule B1 of the Insolvency Act 1986 being (a) rescuing the company as a going concern; (b) achieving better results for the company's creditors as a whole than would be possible if the company were wound up without first being in administration; or (c) realising property and assets to make a distribution to the secured or preferential creditors.

Lawyer Consulted: Judith Fisher

Date:22.07.2020

- 5.7 "The TUPE regulations will not apply where the current provision of adult and community learning undertaken by the Friends Centre on behalf of the council does not continue on or after 1 August 2020. In the event that such provision is undertaken by the council or a different contractor on its behalf, the TUPE regulations are unlikely to apply if there is a sufficient distance in time between the 1 August 2020 and the commencement of a new adult and community learning provision. Currently it is proposed that the earliest this may occur is

sometime in 2021. The regulations will, however, be applicable to the one member of staff identified at paragraph 3.8 above. If in the event that premises can be secured and the service provision can be continued without a significant break, either with it being brought in-house or sub-contracted, the TUPE regulations will be applicable. Accordingly, those staff identified as being assigned to the council's contract to deliver adult education will transfer."

Lawyer Consulted: Carol Haynes

Date:22.07.2020

Brexit Implications:

- 5.8 Although no immediate and direct impact on these proposals, in the longer-term changes related to the UK's withdrawal from the EU around structural funds that contribute to local education and training may present a challenge or opportunity for the future of adult community learning.
- 5.9 Under the Withdrawal Agreement the UK will continue to receive EU structural funds during the transition period, which is due to end on 31 December 2020. The political declaration on the future UK–EU relationship does not envisage the UK continuing to contribute to, or receive, EU Structural Funds after that point, this includes the European Structural & Investment Fund (ESIF) which is administered and coordinated through the ESFA for the UK to provide training and education opportunities.
- 5.10 In 2017, the UK government announced that it would replace EU Structural Funds with a successor arrangement called the UK Shared Prosperity Fund. In its 2019 manifesto, the Conservative Party reiterated this pledge and committed to "at a minimum match the size of structural funds in each nation".
- 5.11 At the time of writing this report no further information was available on the proposed UK Shared Prosperity Fund. It is anticipated that at some stage in the future the Government will consult on proposals for the fund, at which point the future of the ESFA's funding capabilities will become clearer. Through the consultation the council should seek to secure the retention of funding streams which support the disadvantaged through training and education opportunities.

Equalities Implications:

- 5.12 The aims of the project are to increase confidence and employability for people experiencing disadvantage and vulnerability in the city, especially for women, disabled people, and BME groups to achieve their full potential. The intention to maintain provision for the current financial year enables benefits to be maintained, but the future impact is hard to define, for reasons outlined above. In the context of the COVID19 pandemic, the options for digital learning may enable access by people unable or unwilling to access courses in specific locations, but also present barriers for some (due to lack of confidence, skill or finance for ICT provision). When possible and safe, future provision should employ a range of approaches to maximise benefits.

Sustainability Implications

- 5.13 Central locations are easy to get to by sustainable means so public transport, cycling or walking. This is beneficial as it supports the key council's policies and priorities i.e. Carbon Neutral 2030 ambition & Cycling & Walking Strategy. Whilst continuing to lease Isetta Square from the Friends Centre is the most sustainable solution, access to provision through existing providers and/or alternative fit for purpose city centre venues is considered appropriate.

Covid19 implications:

- 5.14 The impact of Covid 19 on the delivery of adult education remains uncertain. Providers have adapted their offer to accommodate on-line and socially distanced learning. The confidence of learners returning to the classroom is likely to be influenced by the containment of Covid 19 in the Autumn and Winter terms. Unemployment levels are expected to remain higher than usual, and the end of the furlough scheme is likely to have an impact locally. Access to adult learning opportunities should continue to be made available.