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**HEATHFIELD SCHOOL COMPANY**

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**Responsible Cabinet Member - Councillor Cyndi Hughes**

**Responsible Director – Murray Rose, Director of People**

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**SUMMARY REPORT**

**Purpose of the Report**

1. The purpose of this report is to:
  - (a) To inform Cabinet of a school company, Darlington Well Being ('the Company') which is intended to be incorporated by Heathfield Primary School, Darlington.
  - (b) To formally establish the Authority as the supervising authority for this Company and to formally approve the formation of the Company.

**Summary**

2. Cabinet is advised that Heathfield Primary School is forming a school company pursuant to the School Companies Regulations 2002 to further the Company objects of providing a safeguarding and wellbeing service for young people in Darlington.

**Recommendation**

3. It is recommended that :-
  - (a) Members agree the formation of a school company at Heathfield Primary School and to agree that the LEA acts as the supervising authority for the company.
  - (b) Members delegate authority to the Director of People to monitor and supervise the Company in accordance with the School Companies Regulations 2002.

**Reasons**

4. The recommendations are supported by the following reasons :-
  - (a) The requirements of the School Companies Regulations 2002 make provision that the Authority must approve the formation of a School Company if stated conditions have

been met.

- (b) Those conditions having been met the Authority must approve the company formation.
- (c) The Director of People will be delegated authority to monitor these conditions in accordance with the School Companies Regulations 2002.
- (d) The Director of People will be delegated authority to serve the relevant notice on the Secretary of State as required by the regulations.

**Murray Rose**  
**Director of People**

**Background Papers**

- (i) The School Companies Regulations 2002
- (ii) The Articles of Association of the Company

S17 Crime and Disorder	The content of this report will not impact on Crime and Disorder.
Health and Well Being	Positive for young people.
Carbon Impact	There is no impact on carbon emissions as a result of this report.
Diversity	No individual is adversely affected as a result of this report.
Wards Affected	All.
Groups Affected	Young people.
Budget and Policy Framework	No impact.
Key Decision	This is not a key decision.
Urgent Decision	This is an urgent decision.
One Darlington: Perfectly Placed	The outcome of this report will be to provide a contribution to improving health outcomes for children and young people
Efficiency	The outcome of this report is to ensure that safeguarding and wellbeing services can be provided in schools under a self-sustaining model.

## MAIN REPORT

### Information and Analysis

#### Background

5. Under section 11 of the Education Act 2002 ('the Act') governing bodies of maintained schools are able to form companies on their own. Schools are able to set up companies to undertake activities for the purchasing of goods and services, providing services or facilities, or for exercising functions which an LEA is able to contract out. The requirements of which such a Company may operate are set out in the School Companies Regulations 2002 ('the Regulations').
6. The circumstances in which a LEA can refuse to give permission are limited and prescribed in part 3 of the Regulations. They are where a school:
  - (a) Is subject to special measures or has serious weaknesses;
  - (b) Is thought likely to become subject to special measures or be assessed as having serious weaknesses within the next year;
  - (c) Has a deficit budget;
  - (d) has been at fault for a previous insolvency of a school company;
  - (e) has belonged to a school company which failed to act in accordance with the regulations within the last 3 years.
7. Section 12 of the Act also prevents a school from forming a school company if its school's delegated budget has been suspended. A school that has been refused permission to form a company and thinks this decision is unfair can complain to the Secretary of State using the rights of complaint that schools already have against LEA acting unreasonably.
8. All school companies must have supervising authorities and this will normally be the local authority within which the member school or schools are based. The supervising authority has defined powers over companies, some of which can only be exercised in certain circumstances:
  - (a) it may direct the company to provide such information about the company's finances, management and contracts to which the company is a party, as the supervising authority think necessary;
  - (b) it may direct the company to take certain specified steps in order to comply with Regulations;
  - (c) it may direct a governing body of a maintained school, which is a member of the company, to reduce its involvement in the management of the company; and
  - (d) it may direct the governing body of a maintained school, which is a member of the company, to resign as a member of the company.

#### Main Considerations for the Cabinet

9. Heathfield Primary School will form a company in January 2012 for the purposes of developing its wellbeing and counselling services for young people in the Borough. There is no current local authority provision made in this respect .

10. The company is limited by shares and has yet to finalise its internal structures in respect of numbers of Directors on the Board, etc. This is a matter on which the company will be required to obtain its own independent advice. Subject to Cabinet approval, the Council's legal team will advise the LEA in its role as supervising authority.
11. In considering whether to give permission for the school to join the company the LEA needs to consider the criteria outlined in paragraph 6 above and can only refuse permission if any of these criteria are met. Currently:
  - (a) Heathfield Primary School is not in special measures or serious weaknesses and is not expected to become subject to these measures within the next year.
  - (b) The school has not previously been a member of a school company and so has not been at fault for any previous insolvency of a school company nor been involved with a company that has failed to act in accordance with the regulations.
  - (c) Heathfield Primary School has not been in financial deficit with an agreed recovery plan.

The school finished 2010/11 with a year end surplus and are expected to end 2011/12 with a surplus.

12. Should any of these circumstances occur in the future the Regulations state that the LEA as the supervising authority must direct the school either to reduce its involvement in the company or to resign as a member of the company.

### **Monitoring Arrangements**

13. The supervising authority has initial duties to notify the Secretary of State of the particulars of the company when it becomes the supervising authority and ongoing duties to monitor the finances and management of the company.
14. The Company must submit audited accounts to the supervising authority at regular intervals, including provision of audited accounts for its first six months of operation within 10 months of becoming a school company. After that the requirement is for the company to submit annual audited accounts.
15. Regular monitoring meetings will be put in place with the governing body to ensure that the finances and management of the company are in order.
16. The format of any monitoring information needs to be agreed between the supervising authority, the governing body and the company.

### **Environmental Impact of the Proposal**

17. None identified.

### **Risk Assessment**

18. Members of a school company need to make important decisions regarding the structure of the company, its aims, how it is to be funded, terms and conditions for the employment of staff and how any profits are to be divided. As the supervising authority the LEA will not

intervene in the day to day running of the company and should only exercise its decision making powers if there is evidence that a company is approaching or is in financial trouble.

19. Should the company get into financial difficulties the DfES guidance states that it will either have to borrow money to pay its creditors or trade its way out of difficulties. A company that cannot pay its debts will be wound up.
20. Darlington Well Being is a company limited by shares and, according to company law, should the company fall into financial difficulty and be wound up, the risk is limited to the extent of the amount unpaid on shares. This “corporate veil” applies as long as the directors of the company have acted properly and in accordance with the best interests of the company. The corporate veil is lifted if directors have acted improperly and in this case liability falls to those directors.

### **Financial Implications**

21. The company is to be accounted for outside of the school accounts and the finances of the company are not part of the LEA’s funds.
22. Monitoring of the Company’s accounts will ensure that the Company is invoiced for the proper cost of services (school) used by the Company.
23. Projections from the school indicate that the services can be run at a small surplus with any surplus being put back in to the school.

### **Reasons for Proposals**

24. To make Members aware of the formation of Darlington Well Being Ltd., and the requirements for the LEA to act as supervising authority for such a company.

### **Proposals**

25. To agree the formation of a school company at Heathfield Primary School and to agree that the LEA acts as the supervising authority for the company.