1. Introduction

1.1. Schools Forum requested that a summary of the legal relationships that exist between Cognus Ltd and the Local Authority, between Cognus and schools as shareholders and between Cognus Ltd and Schools Forum. The purpose is to clarify the lines of accountability between different bodies and the company.

1.2. The company operates within a legal framework set by company law and other relevant legislation. However, the main documents that govern the relationships between the parties described above, are set out below and summarised in this document:

- The ‘Commissioning Agreement’ between the Local Authority and Cognus Ltd
- The Shareholders agreement
- The Articles of Association

2. Background

2.1. Cognus is a private company limited by shares jointly owned by Sutton schools (25% - known as ‘B Shareholders’) and the London Borough of Sutton (75% - known as A shareholder). The London Borough of Sutton transferred the operation of its education services to the company and the London Borough of Sutton and Cognus have entered into a commissioning agreement which sets out the services to be provided by the company and how these services will be managed and paid for.

2.2. In addition, schools in Sutton buy in specialist services from the company. Additional income is also received in the form of grants and contracts from other organisations, the largest of which is a grant from the Arts Council providing funding for the Sutton Music Service.

2.3. The Company has a clear structure in place to control the way in which it is run. The structure consists of three
levels: Shareholder; Board of Directors and its three committees (with non-executive directors and one executive director) and the Management Team. The Shareholders have entered into an agreement whereby a number of matters are reserved to the Shareholders. The Board of Directors is composed of a Chair and non-executive directors that are appointed by shareholders (both from the Local Authority and from schools) acting in the best interests of the company. There is a scheme of delegated authority that sets out matters reserved to the Board of Directors. Matters not reserved to the Board of Directors are delegated to the Managing Director. Governance, leadership and accountability is provided by the Board of Directors.

2.4. Cognus Ltd has legal reporting lines between the Board of Directors and Shareholders but also reporting lines with commissioners for the services that they provide. This is set out in Appendix A.

3. The Commissioning Agreement

3.1. The commissioning agreement is in effect the contract between the Local Authority and the Company. It states what services are to be delivered by the company and what funding will be provided to pay for those services.

3.2. The commissioning agreement with Cognus is funded via two main sources of income
   - LBS ‘General Fund’ - funds some LA statutory responsibilities also funded by the Council’s ‘General Fund’ - including some LA officer salaries, SEND services, educational psychology, SEN transport, subscriptions etc……
   - Dedicated Schools Grant (DSG) - mainly funding from the high needs block for the provision of specialist support services including Sensory Impairment, Speech and Language/Occupational Therapy, inclusion support, ‘Paving the Way’, Schools Causing Concern, safeguarding, Looked After Children, Travellers Support, (EAL, ASD and SLT services have been reduced back following Schools Forum savings exercise).

3.3. The company provides services to the Council in line with that set out in the commissioning agreement. This includes all General Funded and DSG funded services. The Local Authority Authorising Officer (Kieran Holliday) acts as the A shareholder representative and has certain responsibilities within the commissioning agreement to monitor, review and change services within the agreement as well as powers to take actions should the services being provided not meet the required standards.

3.4. Whilst the LA is the commissioner and Cognus the provider, the commissioning agreement envisages a role for Schools Forum (alongside the LA) in setting out the requirements and desired outcomes for DSG funded services. Generally speaking, the commissioning agreement envisages half yearly or annual reporting from the company with the opportunity for Forum to provide feedback. The last performance reports were provided to Schools Forum on June 2018 and December 2018. The next performance report will be presented to Schools Forum in June 2019.
3.5. In addition to, and independently from, services funded by the General Fund/DSG, Cognus offers traded services to schools inside and outside of the Local Authority funded from their individual delegated budgets (should they wish to purchase). More information about Cognus Services are set out in their brochure which can be found [here](#) and at the Cognus 2019 sales event on the 27th March 2019 at the Chaucer Centre - invites have recently been sent to all schools.

4. **The Shareholders Agreement**

4.1. Generally speaking, day to day decisions on the management of the company are taken by the Board of Directors (see diagram above). The role of shareholders is to hold the company to account and to ensure that the parameters, policies and boundaries established for the company by the Council as shareholder are being adhered to. This is achieved mainly through monitoring of the performance of the company against the annual business plan.

4.2. As such, there are some decisions that are ‘reserved’ to shareholders only - known in the Shareholders Agreement as ‘Reserved Matters’. The Shareholders agreement sets out the governance arrangements as to how shareholders can exercise their interests in the company including making decisions on Reserved Matters.

4.3. The shareholders agreement document sets out what these are and how those decisions can be made. Reserved matters are set out in schedule 1 of the Shareholders agreement and include:

- Annual business plan (adopt or amend);
- Annual report and accounts;
- Change of auditor;
- Dismissal of director;
- Engaging in any business other than as contemplated by the business plan;
- Formation of a subsidiary;
- Listing or trading of shares;
- Variation of the rights attached to shares;
- Winding up or administration
- Dismissal and appointment of Directors and Chair
- Establish or amend any pension scheme

4.4. Some Reserved Matters require only a ‘simple majority’ (more than 50% of votes cast) in order to be passed (in effect the Council as majority ‘A shareholder’ can effect or direct these decisions), OR a Reserved Matter may require a ‘enhanced majority’ (90% of votes cast) where a proportion of B shareholder agreement would also be required. Shareholders are asked to take decisions either through a resolution issued by the company as a Written Resolution or at an General meeting /Annual General Meeting.

4.5. The [Sutton Shareholdings Board](#) (SSB) is a sub-committee of the Strategy and Resources Committee in the London Borough of Sutton and comprises five elected members. SSB acts
on behalf of the Council as the ‘A shareholder’. The LA authorising officer (as A shareholder representative) asks the SSB how it would wish for the officer to vote on decisions that relate to reserved matters. There are some (less important) decisions which can be made by the shareholder representative (LA authorising officer) in between meetings. Individual schools or Academy Trusts, as ‘B shareholders’ vote on reserved matters separately.

4.6. Schools Forum has no part in the role of shareholder.

5. Articles of Association

5.1. The articles of association are in effect the constitution of the company. This document sets out the governance arrangements for the company and the procedural framework for meetings at both board and member level.

5.2. Put another way, this document sets out who has what powers, how decisions are made, what level of delegation is allowed, establishment of committees and desired procedures.

6. Conclusion

6.1. With respect to the original question, the lines of accountability that Cognus operate within can be summarised as follows:

- Cognus is legally responsible to its shareholders and legally required to report to shareholders as summarised above and as set out in the Articles of Association and Shareholders agreement.
- Schools Forum is not a shareholder
- Cognus has a contract (known as the commissioning agreement) with the Council for the services that the Council pays the company to undertake. The legal relationship is with the Council not Schools Forum.
- As a result, whilst there is no legal requirement for Cognus to report to Schools Forum, the commissioning agreement anticipates a role for Schools Forum in terms of specifying, monitoring and reviewing DSG funded services.
- Cognus therefore attends and provides reports to Schools Forum in order to ensure that Forum can fulfill this function.
- More informally, there is sense in Cognus attending Schools Forum regularly for the purposes of improving communication and joint working practices.