

“PUBLIC”

Agenda Item No: 5 (b)

DERBYSHIRE COUNTY COUNCIL
CABINET MEMBER FOR YOUNG PEOPLE

6 November 2018

Report of the Strategic Director for Children’s Services

emPSN ICO & SCO Company Share Transfer

1 Purpose of Report

To support proposals for the company takeover of the East Midlands Public Services Network (emPSN) Limited Company by London Grid for Learning (LGfL).

2 Information and Analysis

The Company

In 2000, a consortium to provide broadband and application services to schools in the East Midlands was created. This was necessary under grant conditions laid down by the Government at the time. This led to the creation of the company now known as emPSN (East Midlands Public Services Network Limited) in 2012. The company was owned by 5 Tier 1 Local Authorities: Lincolnshire, Leicestershire, Leicester City, Northamptonshire and Derbyshire, and operated through a Board of Directors with a nominee from each member Authority. With effect from 31st March 2016, Northamptonshire resigned as an owner of the Company

The company has a ‘Teckal’ status which means that it is owned by local authorities and it operates not for profit but for public good purposes. emPSN is a combination of two companies (ICo and SCo) which work together to provide services to deliver secure network connectivity and associated services to schools and other public sector organisations.

The company is limited by guarantee and the liability of each member for payment of the debts of the company is limited. Every member of the company undertakes to contribute such amounts as may be required (not exceeding £1) to the company's assets if it should be wound up.

The company has 4 full-time and 2 part-time members of staff. It also employs 1 part-time agency accountant and 1 part-time technical consultant. The Managing Director is Mike Kendall who has been in post since the company was formed.

Governance

Each member Local Authority has nominated a Director to sit on the emPSN Board. The Director is entitled to vote on all matters before the Board, except for those matters which affect only contracting members, being those two Councils (Lincolnshire and Leicestershire) which have signed long-term corporate network service contracts through the company.

The Board is supported by Finance and Audit committees; both of which have representatives from all of the member Authorities.

Derbyshire Schools

Around 260 schools across Derbyshire currently contract Broadband connectivity and associated services (such as filtering tools, etc.) through emPSN. The Council does not actively endorse the take-up of services through emPSN over other providers, and schools are able to choose their preferred provider through normal procurement procedures.

Financial Position

Whilst members of ICo contribute an annual membership fee of £5,000 to cover the public good works of the company, the running costs of the company are financed in the main by the agency commission, received from contracts awarded.

The challenge for emPSN ICo and SCo has always been to secure a financially sustainable operating model, such that it can continue to flourish and meet the needs of its Subscribers/Members. The initial financial model was based on rapid growth in sales to the public sector across the East Midlands region, drawing on its reserves for the first couple of years. This growth has been challenging to achieve, hence emPSN has been struggling to secure a long-term operating model, and in recent years has relied on drawing from reserves to offset annual losses.

The company's post-2016 operating model is now financially sound with a small surplus being made during 2017/18. However, it is still dependent on the anchor tenancy of Lincolnshire County Council to guarantee the emPSN regional infrastructure on which all other services are based. Even with the recent decision by Lincolnshire to extend their contract to 2022, this only defers for a couple of years, a key decision about emPSN, its future operations and ongoing financial viability.

Assets and Liabilities

The Company owns infrastructure across the region to deliver broadband services which is managed through a contract with KCOM. This infrastructure creates liabilities that are the responsibility of ICo to ensure this infrastructure continues to provide contracted services that meet current and future needs. These potential liabilities up to October 2022 exceed £800,000.

The projected profit and loss account for the emPSN group for the period to October 31st 2022 realises sufficient funds to meet the known liabilities. However, the liabilities to secure infrastructure continuity beyond 1st November 2022 are not known. The projected profits and loss are based on assumptions about retention and margin with existing Members and Customers, including the key account with Lincolnshire County Council until 31st October 2022.

If the Company were to cease trading, this would create additional liabilities, principally to close the pension fund, making staff redundant and ending the property lease. The current estimate for redundancy is £125k, the pension fund liability if the Admission Body ceases is based on a gilts cessation basis included in the 2017 Triennial Fund Valuation of £503k.

This means that whilst emPSN ICo and SCo are currently operating as a going concern, the proposed takeover would mitigate potential future financial liabilities.

Future Direction and Purpose

The initial demand for a public sector network and associated services has subsided as East Midlands Councils have used alternative procurement routes and found the emPSN option didn't meet their needs.

Towards the end of 2016, the emPSN Board considered options to address the ongoing viability of the company which included an approach from a similar organisation called London Grid for Learning (LGfL) to take over emPSN.

London Grid for Learning is a charitable trust under the governance of local authorities in London. The company turnover during 2016/17 was £24M through the provision of Broadband and other services to support curricula activities across 60 local authorities and 3,000 schools.

Core business for emPSN now revolves around network services to schools across the region and providing corporate connectivity services to Lincolnshire County Council. The reasons for setting up the company in 2012, when Superfast Broadband provision was relatively expensive and the market (particularly for rural schools) was less mature, are no longer valid. This being

the case, member Authorities are beginning to question the need for their continued involvement in the company.

The potential takeover of the company by LGfL will provide security for the emPSN staff, and potentially expand the offer of services to schools, which could also benefit from the economies of scale which LGfL buying power is able to achieve. Specifically, such a takeover will provide:

- Continuity for schools, providing sector and location specific options
- Continuity for existing LA customers
- The ability to develop service catalogue to better meet the future needs of LAs and schools in the region.
- The ability to mitigate legacy and future liabilities
- The basis for a longer-term financial model that can continue to develop
- The ability to appropriate public sector leverage and benefits

3 Financial Considerations

The takeover by LGfL will provide financial security for the company and remove any potential financial liabilities for the Council. Whilst emPSN is a company that is limited by guarantee and liabilities for members are limited to £1, pension deficits and company closure liabilities could expose the council to future financial risks if the Council continued to own the company.

Withdrawing membership of the ICO part of the company will save the Council £5,000 per annum in fees.

4 Human Resources Considerations

The proposed takeover will result in the emPSN continuing as a legal entity in its own right operating within the LGfL Group. Under this arrangement, LGfL will become responsible for all assets including staff which will mean that TUPE is not required.

5 Legal Considerations

Legal Services will continue to support the Strategic Director, in conjunction with specialist external legal advice for Authority members, in order to bring this acquisition by LGfL of emPSN to a satisfactory conclusion for the Council.

6 Other Considerations

In preparing this report the relevance of the following factors has been considered: Legal and human rights, equality of opportunity, health, environmental, transport, property, crime and disorder and social value considerations.

7 Background Papers

None

8 Key Decision?

No

9 Call-in

Is it necessary to waive the call-in period in respect of the decisions being proposed within this report? No

10 Officer's Recommendation

That the Cabinet Member for Young People supports the proposals for a company takeover of emPSN by LGfL and provides approval for the Derbyshire Council representative on the Board of Directors to resign their position along with members from the other East Midlands Councils represented, following the agreed formal completion of the acquisition of emPSN by LGfL.

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