

Forward Plan reference number: FP/473/07/19

<b>Report title: Withdrawal from Schools Broadband provision post 31<sup>st</sup> March 2020</b>	
<b>Report to:</b> Councillor Ray Gooding Cabinet member for Education and Skills	
<b>Report author:</b> Clare Kershaw - Director, Education	
<b>Date:</b> 17 September 2019	<b>For:</b> Decision
<b>Enquiries to:</b> Emma Toublic Systems and Intelligence Manager, Andrew Page, Head of Finance Children and Families	
<b>County Divisions affected:</b> All Essex	
<b>Confidential Appendix</b> This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.	

## 1. Purpose of Report

- 1.1 To seek approval for Essex County Council ("ECC") to withdraw from the school broadband element of the Next Generation Network ("NGN") Services agreement with Daisy Udata Communications Limited ("DUCL") (the "Contract") and to cease the provision of broadband services to schools (the "Service") within the County of Essex from 1st April 2020.

## 2. Recommendations

- 2.1 Agree that ECC will cease the provision of the Service to ECC maintained schools and academies within Essex from 1 April 2020.
- 2.2 Agree to terminate all contracts between ECC and Academy Schools for the Service.
- 2.3 Agree to vary the Contract to remove the requirement to provide broadband services to ECC maintained and academy schools within Essex from 1 April 2020.

## 3. Summary of issue

- 3.1 The Schools Forum is supportive of removing the countywide broadband service and procuring their own individual services, with support from the County Council. They feel this gives them the choice and control to be able to procure a service that meets their needs at the price that they are comfortable with.

- 3.2 ECC currently provides a broadband service for many schools in the county. The Contract for this service has been in place for six years and is scheduled to run for another four. Over those six years schools' needs have changed and we have seen an increasing number of academies procuring their own providers, which has made a countywide service less financially viable for schools with costs increasing annually.
- 3.3 The Service is delivered to ECC under the Contract which provides networking and telephony services, including broadband services for ECC maintained and academy schools. The Contract commenced in January 2013 for a 10 year term, with an option to extend for up to a further 2 years.
- 3.4 The total contracted spend with DUCL under the Contract is approximately £8,000,000 per annum of which approximately £2,600,000 per annum is for the provision of the Service to schools. Costs for the Service comprise two main elements:
- a) Core costs - the cost of providing the connection through the exchange, provision of data centres, firewalls, backup, anti-virus, web filtering and service management.
  - b) Cost of the 'last mile' - the costs of the providing the connection point into the ECC maintained or academy school.
- 3.5 It was agreed at the start of the Contract that investment in the connections and services would be made upfront by DUCL and recouped through annual charges over the life of the Contract. Core costs are fixed for the duration of the Contract. The only reduction in price for ECC when an ECC maintained or academy school exits from the Contract is the "last mile" cost which is the cost of the provision from the connection point to the ECC maintained or academy school.
- 3.6 ECC receives the Service under the Contract and then sells the Service onto ECC maintained and academy schools. ECC maintained schools sign up for this service through approval provided by Schools Forum and the cost of the Service is taken from the Dedicated Schools Grant (DSG) budget allocation of each ECC maintained school. There are no contractual arrangements between ECC and the maintained schools for the Services.
- 3.7 ECC enters into individual contracts for the provision of the Service to academy schools, currently for a service period of two years. The current service period for academy schools is due to expire on 31 March 2020. These contracts will automatically renew for a further two year service period unless the academy school gives three months' notice to terminate before the end of the current service period.
- 3.8 ECC notify DUCL of the ECC maintained and academy schools who have bought the Service or exit the Service via an operational change control notice submitted to DUCL annually.
- 3.9 When the Contract was negotiated and implemented, 99% of schools in Essex purchased the Service. Over the last six years the landscape of schools in Essex

has changed significantly, as has the market for broadband. Many schools that were maintained by ECC have converted into academies and have chosen alternative broadband providers for service and financial reasons. It is financially important for schools to have flexibility in their contracts and shorter term contracts mean more options to switch providers for better prices and effective budget management.

- 3.10 Over the past two years, ECC has been working with the Schools Forum Broadband Sub Committee, set up at the request of the Schools Forum, to consider various options for the continuation of the Contract to maintain service delivery and the associated financial implications. An independent benchmarking exercise was undertaken by Actica Consulting in 2016 which identified that the Service provided represented good value for money. This report is provided in the Confidential Appendix. Over the same period of time, schools that terminated the service have been asked to complete an exit survey and the most common reason for leaving being cited as service quality and cost.
- 3.11 The decline in the number of schools buying the Service has a direct impact on the future price payable by the remaining schools who subscribe to the Service, as the fixed core costs must be met by a reduced number of schools. This has led to an increase in the cost of the Service.
- 3.12 As a result of the continued reduction in the number of schools buying the Service and to ensure price stability, an agreement was reached with the Schools Forum that ECC maintained schools would be provided with the Service for a two-year period up to 31st March 2020.
- 3.13 Despite the two-year agreement there have been unplanned exits from the Service which have resulted in a deficit for the financial year 2018/2019 and a projected deficit for the financial year 2019/2020. This deficit has been met through the DSG and Central Schools Services Block (CSSB).
- 3.14 On 10 July 2019 the Schools Forum unanimously agreed that ECC maintained schools would cease to adjust the DSG to take into account payment for the Service from 1 April 2020.

#### **4. Options**

##### **4.1 Option 1:**

Option 1 would involve ECC ceasing to provide the schools broadband service and doing nothing further to support schools with this service. There is a risk that this would leave schools with insufficient technical knowledge to procure and maintain their broadband service.

##### **4.2 Option 2 (Recommended):**

Option 2 is the recommended option. This option ceases the provision of the Service to maintained Schools and Academy Schools and varies the Contract to remove this part of the service whilst supporting schools to find their own

alternative provision (mitigating where possible the termination costs). This is the preferred option and was the option recommended by the Schools Forum Broadband Sub Committee to the Schools Forum in July 2019.

This option mitigates the cost risk to ECC which arises from keeping this service in the Contract and from the likely risk that further schools leave the Service, whilst ensuring that schools are supported to transition to an alternative provision and continue to deliver the curriculum without disruption.

#### **4.3 Option 3:**

Option 3 is to do nothing and continue to provide the Service. This carries a significant risk that schools will continue to leave the Contract and ultimately make it financially unviable for ECC resulting in adverse cost implications.

#### **4.4 Option 4:**

Option 4 is to exit the entire Contract. This is not viable in the short term because ECC require the remainder of the service provided by DUCL under the Contract until the Contract expires and is re-procured.

### **5. Next steps**

- 5.1 Once the decision has been agreed a full support plan will be put in place to support schools' transition to new arrangements / provider that they choose. ECC will continue working with DUCL to manage the extraction of this service from the Contract and work with the three headteacher associations: the Association of Secondary Schools in Essex (ASHE), the Essex Primary Heads Association (EPHA) and the Essex Special Schools Education Trust (ESSET).

### **6. Issues for consideration**

#### **6.1 Financial implications**

- 6.1.1 There was a deficit of £220,000 for the 2018/19 financial year which reflected that there had been unplanned exits by schools following the two-year agreement (to 31<sup>st</sup> March 2020). This deficit has been funded through the DSG, Central Schools Services Block (CSSB).
- 6.1.2 The forecast deficit for 2019/20 of £359,000 is due to the ongoing effect of schools leaving the contract and inflation and this too will be funded by the Central Schools Services Block within the DSG.
- 6.1.3 As a result of this decision there will be a termination payment payable to DUCL under the terms of the Contract. The maximum termination payment payable is £1,000,000 however, DUCL are obliged under the Contract to take all reasonable steps to minimise any breakage and unrecovered costs. In addition, ECC will be liable for redundancy costs of circa £125,000 for ECC staff employed solely to support the service.

- 6.1.4 Written into the Contract is an obligation on DUCL's part to mitigate the cost of exiting the Contract and information has been provided in respect of an alternative provision to schools. This alternative offer is something that would be negotiated directly between the provider and schools and ECC would not be part of this.
- 6.1.5 Should schools decide to take up this offer then the estimated exit costs, comprising the termination payment and redundancy costs payable by ECC will be adjusted as follows:
- If 25% of schools transfer to the alternative supplier, the exit costs would be circa £787,000
  - If 50% of schools transfer to the alternative supplier, the exit costs would be circa £643,000
  - If 75% of schools transfer to the alternative supplier, the exit costs would be circa £499,000
- 6.1.6 ECC currently contributes £240,000 from Non DSG to the overall cost of schools broadband. The first £240,000 of termination and associated exist costs will be funded from this contribution in 2020/21 and the remaining balance will be charged to all schools that have been part of the contract via DSG. The £240,000 contribution has been included in the Business Plan as a saving for 2021/22.
- 6.1.7 It should be noted that through the Schools Forum Broadband Sub Committee, schools are aware of other providers who also offer a broadband service.

## **6.2 Legal implications**

- 6.2.1 ECC does not have a statutory obligation to provide the Service.
- 6.2.2 There is no mechanism in the Contract for partial termination of services in circumstances that are applicable to the current situation. ECC will therefore seek to vary the Contract with DUCL by mutual agreement to descope the Services that are no longer required by schools and are no longer commercially viable.
- 6.2.3 ECC is a Contracting Authority for the purposes of the Public Contract Regulations 2015 ("the PCR 2015). It is likely that the modification to the Contract will fall with regulation 72 of the PCR 2015.
- 6.2.4 ECC will need to ensure that any contracts with schools and academies are terminated with effect from 1<sup>st</sup> April 2020.
- 6.2.5 ECC is no longer providing the Service and therefore it is for the schools and academies to engage with the market to find replacement providers. ECC cannot endorse or recommend alternative providers.

## **7. List of Appendices**

7.1 Appendix One: Equality Impact Assessment

7.2 Confidential Appendix

**8. List of Background papers**

8.1 None