

<b>Report To:</b>	<b>SCHOOLS FORUM</b>
<b>Date:</b>	26 June 2018
<b>Reporting Officer:</b>	Sandra Stewart – Director of Governance and Pensions Tom Wilkinson – Assistant Director Finance
<b>Subject:</b>	<b>INTERIM ARRANGEMENTS FOR LEP AND PFI DELIVERY FOLLOWING CARILLION LIQUIDATION</b>
<b>Report Summary:</b>	<p>To present a position statement of the progress being made in relation to transfer of former Carillion contracts to Robertson by the Local Education Partnership (LEP) and Private Finance Initiative (PFI) Project Companies.</p> <p>To outline the action required to provide certainty and direction in relation to the future of these contracts and of the LEP itself.</p>
<b>Recommendations:</b>	<p>To note that the contents of this report presented to Executive Cabinet agreed that</p> <ol style="list-style-type: none"> <li>1. The Council consented to the replacement of Carillion in the PFI Contracts to Robertson's subject to their being sufficient safeguards for the protection of the Council and the existing staff; and the Borough Solicitor (in consultation with the Director of Finance and Deputy Executive Leader) be authorised to enter into such arrangements to facilitate this noting the increased project risks that result as a consequence of the Carillion liquidation.</li> <li>2. The Council agreed to extend the Council's arrangement with Inspired Spaces Tameside Ltd (the LEP) until 31 July 2019 to enable an orderly transfer of existing contracts to Robertson's as the preferred provider and to enable sufficient time to review the current arrangements with a view to securing a long term sustainable and affordable solution;</li> <li>3. Also Agreed to the LEP proposal to transfer its existing additional services including Facilities management and catering contracts from Carillion to Robertson FM and to align these with the Council's arrangement with the LEP to end on 31 July 2019 to enable the continuing delivery of services;</li> <li>4. Agreed that any schools receiving services under the catering contract remain until its expiry and/or alternative arrangements being agreed and any schools wishing to terminate sooner will pick up any termination/mobilisation costs to ensure that such costs are not subsidised or incurred by the remaining schools.</li> <li>5. That the Borough Solicitor is authorised to enter into any contracts and or ancillary agreements such as Pension Admission Agreements to facilitate the arrangements proposed in the report.</li> <li>6. That officers bring a further report to Executive Cabinet outlining the scope of the review of the LEP arrangements</li> </ol>

and a project timetable to enable a long term and sustainable solution to be in place following 31 July 2019;

7. Approved the release of up to £100k from the Medium Term Financial Strategy Reserve to fund a detailed strategic review of the LEP and the services delivered by it in order for the Council to determine how best to deliver sustainable and affordable services going forward.

**Links to Community Strategy:** To deliver efficient and effective low cost services.

**Policy Implications:** In line with approved policy.

**Financial Implications:**  
**(Authorised by the Section 151 Officer)**

The unfortunate timing of the collapse of Carillion and end date of the contracts provided by Carillion to the LEP of February 2019 has meant that a successful transfer of contracts to an alternative sub-contractor would be prohibitively expensive. An extension of the LEP arrangements and associated contracts (for effectively one year) would make the contracts attractive enough to prevent any additional charges being incurred by the Council for the provision of these services. The costs of operation of these contracts would not change.

The current cost of PWC providing former Carillion services is about to become significantly more expensive from June 2018, so it is imperative that services are transferred to an alternative provide on substantially the same terms as the existing contract with the LEP. A full reconciliation of the costs and payments will be completed once contracts have transferred from PWC.

**Legal Implications:**  
**(Authorised by the Borough Solicitor)**

In the challenging circumstances that have been created by the liquidation of the Carillion Collapse, the Council has needed to seek expedient short term solutions, which provide critical services and protect and support the workforce who deliver them, whilst undertaking the review required to procure/secure sustainable value for money services going forward.

**Risk Management:**

Significant risks materialised on the liquidation of Carillion. The Council by contracting through the LEP has managed to mitigate a number of these risks. However, the disruption caused by the liquidation of Carillion has meant that it has been necessary to extend the arrangements with the LEP to provide certainty and stability as long term solutions are sought, whilst protecting staff formally employed by Carillion and maintaining service delivery. The budget risks that have emerged can be contained within the Council's risk mitigation contingency fund, although all steps will be taken to find alternative efficiencies and savings to minimise the use of contingency.

**Access to Information:**

The background papers relating to this report can be inspected by contacting the report writer: Tom Wilkinson, Assistant Director Finance.



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## **1. INTRODUCTION**

- 1.1. It is well documented that on Monday 15 January 2018, nine Carillion companies went into compulsory liquidation, with Price Waterhouse Cooper (PWC) taking on the management of the liquidation process. The Council indirectly had two separate relationships with Carillion. One through the delivery of services to six schools under the Building Schools for the Future (BSF) programme, and one through the Council's strategic partnership with Inspired Spaces Tameside Ltd, which is also known as the Local Education Partnership (the LEP). The Council has a 10% shareholding in the LEP.
- 1.2. The Council holds a 45% stake in the companies that built and operate the BSF schools that were finance and operated under the terms of a private finance initiative (PFI). These schools have facilities management and catering services delivered by Carillion.
- 1.3. The LEP strategic partnership delivers the Council's main capital programme schemes, including the Vision Tameside Phase 2 project, and three further contracts:
  - Tameside Additional Services (TAS) contract, which provides facilities management and estates services;
  - Primary School Catering (PSC);
  - Hard and soft facilities management at Samuel Laycock school and hard facilitates management at the adjoining Great Academies Ashton academy.
- 1.4. These contracts were delivered by Carillion through the LEP.
- 1.5. The LEP and the PFI project companies have been working closely with Robertson Group and PWC to make arrangements for the former Carillion staff to transfer to Robertson Group to enable the continuation of services to the Council. The Council as a key stakeholder have made it imperative that the terms and conditions of transferring staff are protected and have sort to keep the contractual arrangements substantially the same.
- 1.6. The arrangement with the LEP is due to expire in February 2019, unless the provisions within the original contract are made to extend.

## **2. PFI CONTRACTUAL ARRANGEMENTS**

- 2.1 The Council entered into two project agreements under the Building Schools for the Future (BSF) initiative on 4 February 2009 and 9 April 2010 with respectively (1) Inspiredspaces Tameside (Projectco 1) Limited and (2) Inspiredspaces Tameside (Projectco 2) Limited (the Project Cos and the Project Agreements) for delivery of secondary schools under the PFI regime. The companies were required to be set up to secure the funder bank loans and for the orderly running of the schools for the contract period of 25 years.
- 2.2 In each case, the sub-contractor selected to provide facilities management services was Carillion Services Limited, which went into liquidation on 15 January 2018.
- 2.3 Since the FM Contractor went into liquidation, the FM Contractor has continued to provide services under a special management regime with PWC, as liquidator, which requires a weekly payment up front for services which includes an administration fee to be paid to the special managers.
- 2.4 The Manager of the services under the PFI special purpose vehicles and equity partner, Amber Infrastructure (Amber) has proposed that each Project Co terminate the relevant FM Contract and enter into a new contract to replace the FM Contract. To do so requires

the consent of the Council. As part of the Proposal, the Council was asked to agree to the following terms:

- (a) waive its right to a collateral warranty from the incoming service provider;
- (b) cancel accrued deductions to the extent that they count towards a termination right;
- (c) waives certain indemnities, and any claim in respect of Project Cos failing to secure indemnities from new provider, in relation to the transfer of staff from the FM Contractor to new provider (and in relation to pensions benefits);

- 2.5 The Council's consent is required to make a material change or termination of the FM Contract. Project Cos are required to submit proposed changes via the Review Procedure and there is a "deemed acceptance" of any proposal submitted in accordance with the Review Procedure if it does not respond within 10 Business Days of receipt.
- 2.6 The grounds on which the Council can object to a submission to terminate or vary the FM Contract are limited under the PFI contract. The Council needs to consider whether the proposed course would on balance of probabilities be likely to result in an adverse effect on the Council's ability to provide Education Services or carry out its statutory functions, or be likely to result in an increase to the Council's liabilities, or would adversely affect a right of the Council under the Project Agreement. Amber may dispute the Council's comments if they are not on proper grounds
- 2.7 The Council considered its position with the granting of consent having regard to:
  - a) its role as ultimate buyer of the relevant services under the Project Agreements;
  - b) its role as 45% shareholder in the holding companies of both Project Cos; and
  - c) any other relevant considerations arising from the insolvency of the FM Contractor, including in relation to the workforce.
- 2.8 The Council rejected the original proposals put forward by Amber as insufficiently protecting staff terms and conditions and felt that the proposals were too short term to provide the services competently and effectively and failed to secure the long term value of healthy projects to the Council (as equity investor in the project holdcos and buyer of services).
- 2.9 Further negotiations and discussion has taken place to secure a suitable acceptable provider of services to the schools with the Council taking the view that it seemed sensible for Robertson's to do this as the proposed replacement building contractor and provider of additional services. This will allow Robertson's to attain some efficiencies of scale particularly in light of their agreement to undertake a 'TUPE like' transfer in circumstances where this does not apply in liquidation and included obtaining pension fund admission agreements to stay in the Greater Manchester Pension Fund.
- 2.10 The Council and Amber together with the Funders of the PFI schools are currently working through the contracts with lawyers to ensure that the rights and protections set out in the contract remained so far as possible the same subject to noting that the failure of Carillion means that any building risks will in part fall back to the PFI cos and by default in part the Council as an investor.
- 2.11 Considerable consultation has taken place with the Trade Unions and whilst they are clearly concerned for their members and unhappy that Carillion has been put into liquidation, which virtually wipes out all legal protections such as TUPE for their members they recognise the efforts being made by the Council to protect terms and conditions and secure jobs and trade union recognition and rights. Whilst the situation has been far from ideal with a significant amount of uncertainty the Trade Union have been involved in the weekly calls with the Official receiver and are fully aware of the national position so are of the view that the best outcome is being secured by the Council in the circumstances.

- 2.12 The Official Receiver publishes a weekly update on staffing on the Government's Insolvency Website at <https://www.gov.uk/government/news/carillion-official-receivers-employment-update--2> and their current position is as follows:
- *in total, to date 11,954 jobs (66% of the pre-liquidation workforce) have been saved and 2,352 (13%) jobs have been made redundant through the liquidation*
  - *a further 1,129 employees have left the business during the liquidation through finding new work, retirement or for other reasons*
  - *this information does not include jobs attached to contracts where an intention to purchase has been entered into but has not yet formally occurred*
  - *just under 2,700 employees are currently retained to enable Carillion to deliver the remaining services it is providing for public and private sector customers until decisions are taken to transfer or cease these contracts*
- 2.13 The Liquidator is now pushing for all operational contracts to finish as soon as possible. They have only recently now provided all the Employee Liability Information, asset and operational details required to enable Robertson FM to take over the services. Tameside Council have facilitated and supported consultation with union representatives and staff.
- 2.14 The pressure to resolve the position and contracts expediently is being heightened by the liquidator seeking to impose substantial increases to the administrative fee of supervising the contracts in the interim.
- 2.15 As a result of these new excessive charges it is imperative that the LEP and the Council seek to enter into new arrangements and move away from PWC as soon as possible.

### **3. IMPACT ON FACILITIES MANAGEMENT (FM) AND CATERING SERVICE DELIVERY**

- 3.1. Shortly after Carillion PLC went into liquidation, Robertson FM contacted the Council and the LEP with a proposal to take over the FM and catering services contracts. In principle, both the LEP and the Council were happy to progress the transfer of the services. The basis of the original discussions was that Robertson would take over the contracts as they were, protect all terms and conditions as if TUPE applied and deliver services for the remaining term of the contracts which were:
- Additional Services – 31 October 2018
  - Primary Catering Services – 28 February 2018
  - Samuel Laycock School with soft and hard FM services, utilities and reactive repairs and lifecycle services and Great Academy hard FM services and utilities – 24 August 2036
- 3.2. It was also agreed in principle that Robertson FM would be able to benefit from a short performance deduction holiday as it established itself under the terms of the contract.
- 3.3. However, as PWC were initially seeking purchasers for all of the operational contracts and had entered into consultation with a Canadian FM company BGIS, they would not release Employee Liability and other information to the LEP to allow the transfers to be completed. On 9 March 2018, it was announced that BGIS had pulled out of discussions with PWC and alternative arrangements would be required to continue service delivery.
- 3.4. By this time, Robertson, the Council and the two PFI project companies in Tameside were having discussions about Robertson also taking over the PFI FM contracts, ensuring the delivery of services remained the same as under the Carillion arrangements.
- 3.5. Now that PWC are pushing for all operational contracts to finish as soon as possible, they have provided all the Employee Liability Information, asset and operational details required

to enable Robertson FM to take over the services. Tameside Council have facilitated and supported consultation with union representatives and staff.

- 3.6. Robertson have organised replacement lap tops, mobile phones and uniforms for transferring staff and have confirmed that they are in a position to take over the services, and have also submitted an application for Admitted Body status to the Greater Manchester Pension Fund scheme on 8 June 2018, which is being reviewed.

#### **4. COST OF SERVICES SINCE LIQUIDATION**

- 4.1. Since 15 January 2018, services have been provided to the LEP and ultimately the Council for 20 weeks, for all services, including Additional Services, Primary Catering Services, Estates, Samuel Laycock soft and hard FM services, utilities and reactive repairs and lifecycle services and Great Academy hard FM services. This has cost £219k per week, but includes a fee for PWC of approximately £52,500 a week. PWC have stated that before final contract sums are settled a full reconciliation will be done to make any adjustments for the actual costs incurred.
- 4.2. However, PWC have now stated that they are significantly increasing their management fee (by more than £100k per week) as they are supporting fewer contracts and that this increase will take place from the beginning of June. The Council has not yet paid these costs as they are considered excessive. Unless agreement is reached soon PWC are likely to threaten to terminate services.
- 4.3. As a result of these new excessive charges it is imperative that the LEP and the Council seek to enter into new arrangements and move away from PWC as soon as possible.

#### **5. THE FUTURE OF THE LEP**

- 5.1. Prior to Carillion entering liquidation, the Council had committed to evaluating the role of the LEP and the delivery mechanisms for the additional services and primary school catering contract, this was reflected in its budget process and budget report. However, the collapse of Carillion, the need to focus on the remobilise the Vision Tameside construction project and the necessity to work with PWC and Carillion staff in sustaining existing front line services have taken priority, meaning that this evaluation process has not commenced.
- 5.2. The timing of the Carillion liquidation has also meant that there is less than a year remaining on the existing contracts, meaning there is insufficient time remaining to make them a financially viable option for a new sub-contractor to mobilise and afford to take on the contracts.
- 5.3. The alternative option include asking PWC to continue to provide services to the end of the contracts is also prohibitively expensive, especially as they are increasing their administration fee for running the contracts.
- 5.4. The option to insource services, which was to be looked at as part of the proposed review of the LEP, is not possible or practical at such short notice because of the lack of in house management resources and capacity, which would seriously jeopardise the front line service delivery, and due to a lack of due diligence create significant additional financial risks for the Council.
- 5.5. In order to allow a proper strategic long term focused review of the LEP and the provision of services currently delivered, it is proposed that the Council seeks to formally extend its arrangements with the LEP to 31 July 2019 and align its contracts to also terminate at that date. The benefits of doing this are:

- Aligning contracts gives certainty and provides sufficient time to allow them to be re-let as one in a single coherent package by the LEP, making it more attractive to sub-contractors;
- It aligns with the end of the school year for primary school catering, giving schools certainty of service and a natural cut off date for them;
- It provides the Council sufficient time to conduct a detailed strategic review of its arrangements and enable it to arrive at the best value solution;
- It will allow the necessary time to consult with schools about the future of the school catering arrangements;
- It will allow the replacement subcontractor to identify any legacy issues from the collapse of Carillion so that these can be adequately addressed before the new arrangements are put in place.

5.6. It is also proposed that the formal review of the LEP commences immediately with a further report to be taken to the July meeting of the Executive Cabinet setting out the timescales of the review, with a view to commence the procurement or in sourcing process by the end of the calendar year. It would be necessary to bring in expert external resources to deliver this review.

## **6. RECOMMENDATIONS**

6.1. As at the front of the report.