

Date 14 July 2021

Education and Inclusion Direct Delivery Project: Future Arrangements for the Provision of Traded Services and Resourcing Budget Allocation

Report of the Head of Education and Learning

Please note that the following recommendations are subject to consideration and determination by the Cabinet (and confirmation under the provisions of the Council's Constitution) before taking effect.

Recommendation:

That the Cabinet be asked to approve:

- A. That all traded services, either partly or wholly traded, transfer into Devon County Council (DCC) to be primarily delivered through the Education and Learning service¹.
- B. The use of a brand name (potentially LDP) be used to market those traded services.
- C. That an allocation of up to £500,000 from the Business Transformation Reserve is made for the Education and Inclusion Direct Delivery Project, as detailed in Section 2. This will ensure the smooth transition of resources from Babcock Learning and Development Partnership LLP (Babcock LDP) to Devon County Council (DCC) on 1 August 2022.

1. SUMMARY

- 1.1 On 10th March 2021, Cabinet approved recommendations which meant all the Education and Inclusion Services currently delivered by Babcock LDP would move back into direct delivery by DCC at the end of the current contract on 1 August 2022.
- 1.2 Part A of this report provides an update on the follow up activity that has taken place relating to Recommendation D regarding the future delivery of the traded services as in [the paper submitted to Cabinet on 10 March 2021](#).
- 1.3 Following consideration, our recommendations support the in-sourcing of the partly and wholly traded services to DCC as a separate branded, zero budget line, traded offer delivered through the Education and Learning service.

¹ Finance staff will be located with the Education and Learning Finance team as appropriate

- 1.4 Part B of this report discusses the additional project resourcing requirements needed to deliver a smooth transition of all staff, and the core services they deliver, from Babcock LDP to DCC on 1 August 2022 and the maximum allocation required to cover these costs.

PART A - EDUCATION AND INCLUSION DIRECT DELIVERY PROJECT: FUTURE ARRANGEMENTS FOR THE PROVISION OF TRADED SERVICES

1. INTRODUCTION

- 1.1 In 2012, a joint venture known as Babcock LDP was formed between DCC and Babcock International following a negotiated procurement procedure.
- 1.2 The joint venture was formed to deliver a service contract for Education and Inclusion services to DCC but also to trade these services as top ups to maintained schools, and as additional services to the newly forming academies and other local authorities. DCC Education and Learning staff were TUPE'd over to the Joint Venture company to deliver the services.
- 1.3 A service contract was put in place for a period of 10 years. The contract will expire on 31 July 2022.
- 1.4 On 10 March 2021, as a result of the extensive analysis and consultation work carried out, the findings of the market engagement work, and the risks identified, Cabinet approved that at the end of the current contract all the Education and Inclusion Services currently delivered by Babcock LDP would move back into direct delivery by DCC. All DCC and Babcock LDP staff have been made aware that as of 1st August 2022 the services currently provided by Babcock LDP, and the staff that deliver them, will transfer back into DCC as part of the Education and Learning service, with the exception of a small core of HR and Finance staff who will transfer into the respective Corporate teams.
- 1.5 Cabinet also authorised the County Treasurer, County Solicitor, and the Head of Digital Transformation & Business Support (in consultation with the Leader of the Council and the Lead Member) to agree the future of the Joint Venture with Babcock Education Holdings Ltd.
- 1.6 In the event the Joint Venture was wound up, they were further authorised to consider the future of appropriate traded services in accordance with the commitment provided at paragraph 3.17 in the Report and recognising that the future delivery of the services will be subject to further scrutiny, as appropriate, and Cabinet in due course.
- 1.7 Following consideration and discussion with Babcock International, it has now been agreed that following the transition of services and staff to DCC, the Joint Venture will be wound up and work is ongoing to execute all legal and financial agreements necessary to complete this work.
- 1.8 As a result of this decision, the future delivery of the traded services currently provided by Babcock LDP has been considered in line with recommendation D of the previous Cabinet paper and a proposal is outlined below in Section 2.
- 1.9 Urgent agreement around the traded services is now required in order to finalise the structure for the in-housing of all staff, and the continuation of uninterrupted statutory duties to schools in line with our commitment in **paragraph 3.17** of the original approval:

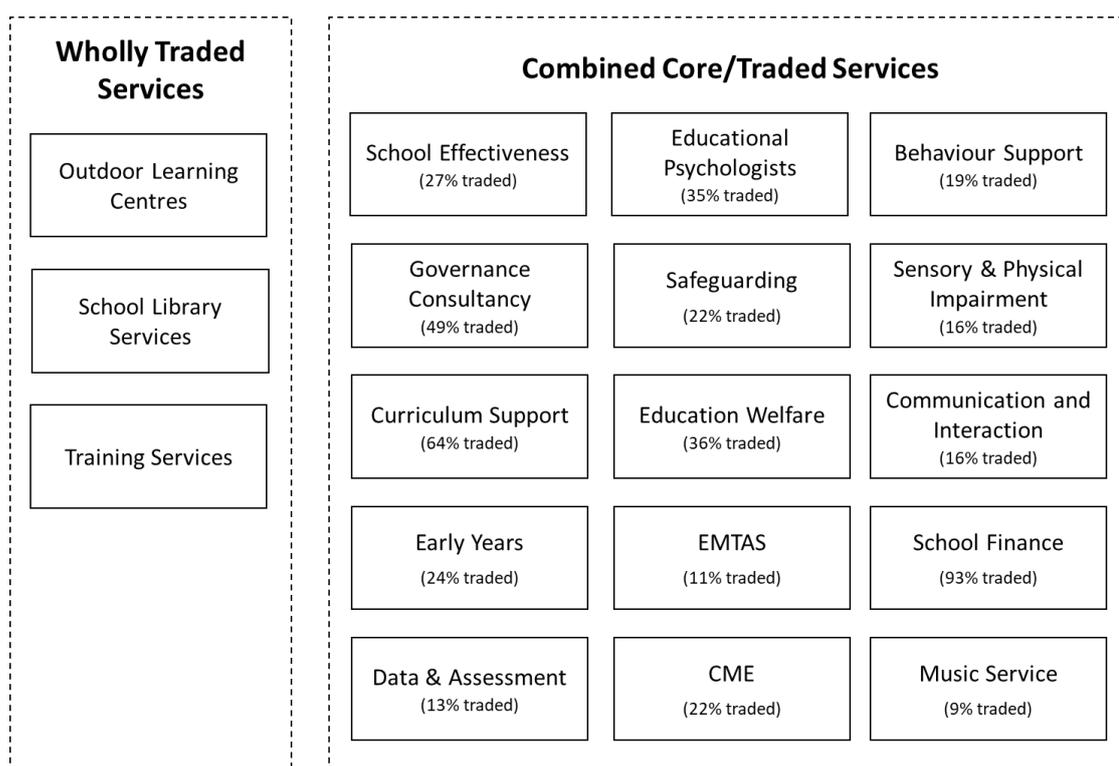
“Furthermore, in the event that the LLP is wound up or otherwise ceases to provide the traded services, the Council will need to determine how the traded services will continue to be provided. These services still provide valuable support directly to schools and would have a significant impact on their ability to deliver and support learners if they were lost. Our commitment to schools in any new arrangements for the Education and Inclusion Services will ensure the traded services are not impacted.”

2. PROPOSAL

For information, the following definitions apply:

Wholly traded – Services that are traded directly between Babcock LDP and schools or other local authorities and will continue to be traded between DCC and schools/other local authorities moving forward.

Partly traded – Core elements which form part of DCC’s statutory duties are funded by DCC (and currently commissioned out to Babcock LDP) but schools can then top up the service they receive by buying additional hours with the same professionals.



- 2.1 We propose all traded services currently being delivered by Babcock LDP, both partly and wholly traded, are brought in to DCC as a separate branded, zero budget line, trading offer to be delivered through Education and Learning.
- 2.2 This approach would allow for unlimited trading with schools and academies. The same staff deliver both the partly traded offer and the core DCC funded elements so will be transferring to DCC whether the traded element transfers or not. Continuing to provide the traded elements would ensure continuity of

provision to schools with staff they know and trust. It will also mean we can retain people of full-time contracts which will help retention.

- 2.3 The wholly traded work is currently promoted and co-ordinated alongside the partly traded offer. This means schools receive a coherent offer for all Education and Inclusion services. Splitting the wholly traded work away from the partly traded work would add an additional level of complexity and management oversight and would also mean a more fractured offer for schools.
- 2.4 Bringing the traded services delivery into DCC would make the best use of capability and capacity that would then sit within Education and Learner Services. This would help retain market share and aid the viability of the traded service but without the additional structure and cost involved in setting up an arm's length company.
- 2.5 Using a separate branding for the service (potentially LDP) will also allow the traded services to be more attractive to the market, increasing the viability. The approach has proven successful with schools for HR ONE and SCOMIS and from feedback would also mitigate the risk for these traded services.

3. OPTIONS/ALTERNATIVES

- 3.1 Traded services, both those that are partly traded and linked to commissioned service and those that are wholly traded, provide their own challenges as they are not commissioned by DCC. Despite this, the traded services are intrinsically linked to the commissioned services and the considerations and options explored for commissioned services directly relate to traded services as well.
- 3.2 DCC has made a commitment to ensure their continuation but without commissioning them directly. Therefore, these services need to cover their own costs, be commercially viable and retain the purchaser's (schools and academies and other Local Authorities) custom.
- 3.3 The following alternative options were previously considered and rejected:

3.3.1 Commission traded services from an external provider or include with externally Commissioned services

As the Education and Inclusion services are being insourced there would be no external provider and commissioning the traded services directly would incur significant additional costs to DCC.

Soft market engagement was carried out to identify the market size and appetite. This identified significant risks in the market which would also jeopardise the traded services.

3.3.2 Deliver traded services through a DCC owned arm's length company

This could be either through a normal trading company owned by DCC or through a company structured as a Teckal company. Both of these

arrangements would require a company structure with all of the associated costs, governance, legal structure and reporting structures needing to be put in place.

The arm's length company would be free to trade unless it were a Teckal company (limited to 20%). Existing staff would TUPE into the arm's length company.

This would in effect split the teams delivering commissioned services who would be integrated into DCC and the teams delivering the traded services who would be in the arm's length company. This would significantly impact the resource, capacity, shared learning and use of engagement and resource of both teams and go against the principle of insourcing the teams to provide an integrated service, which is a particular priority for the SEND services.

3.3.3 Delivery through a partnership arrangement (Alliance)

This approach would require DCC to select partners, potentially schools or academy groups to work together and deliver the services.

The aim would be that as DCC retain the controlling influence the teams delivering traded services could still link with those based in the Education teams.

There would be a potential for schools to be more invested in the service and be part of its development increasing their buy-in as customers.

The risks would be conflicting aims and drivers between partners, meaning commitment and partnership agreements would be required.

Governance may also prove difficult with so many different structures. This may also impact on the flexibility and responsiveness of the traded services.

Through early engagement with potential partners as part of the soft market testing, it was found that none of the potential partners were in a position to take part and would need significant development to reach this point.

Education and Learning will however continue to commission support from schools for specific services as it does now.

4. CONSULTATIONS

- 4.1 Extensive consultation was conducted as part of the rationale for the in-housing of the commissioned services currently being delivered through Babcock LDP. This was detailed in the Cabinet paper presented and approved on 10 March 2021.

5. FINANCIAL CONSIDERATIONS

- 5.1 There will be no additional costs to bring in the traded services to the Education and Learning teams, beyond those already detailed in a separate paper for the Education & Inclusion Direct Delivery project. This is because a) the staff deliver both commissioned and traded services and therefore there will be minimal difference to the number of people TUPEing over and b) the traded services will operate on a cost-neutral basis.
- 5.2 The traded services all currently make a profit. However, a quick decision needs to be made on the future of the traded services to avoid the risk of a loss of income due to an inability to bid for future contracts, many of which Babcock have been delivering for many years.
- 5.3 Babcock LDP have already experienced issues where existing contracts have come up for renewal but the tender for the new contract, that runs beyond 1 August 2022 when they transfer into DCC, includes a non-novation clause meaning they are unable to bid for it unless the commissioning body are prepared to remove that clause.
- 5.4 Babcock's Commercial team have now told Babcock LDP they won't allow them to bid for any further contracts that run beyond the date they transfer to DCC. This risks us losing the revenue from existing contracts which could have been brought in for the next four years. Being able to bid under the new trading arm ahead of the transfer would remove this risk.
- 5.5 In addition, many schools and Local Authorities are currently reviewing service requirements for the coming school year and would like assurance over the future of the services they are commissioning.

6. LEGAL CONSIDERATIONS

- 6.1 The lawful implications/consequences of the proposals/recommendations/proposed course of action have been considered and taken into account in the preparation of this report and the recommendations set out above.
- 6.2 The Local Authorities (Goods and Services) Act 1970 enables DCC to provide traded services of an administrative, technical and professional nature to other designated public bodies including local authorities, schools and academies.
- 6.3 DCC are permitted to market the traded services under a separate brand name provided it is clear the legal entity providing the services is DCC.

7. ENVIRONMENTAL IMPACT CONSIDERATIONS (INCLUDING CLIMATE CHANGE)

- 7.1 The recommendations made are not expected to have any measurable environmental impacts.

8. EQUALITY CONSIDERATIONS

- 8.1 An Impact Assessment has been prepared and is published on the DCC website. <https://www.devon.gov.uk/impact/published>

9. RISK MANAGEMENT CONSIDERATIONS

- 9.1 A risk register is in place for the project and risks have been analysed. The most significant risks identified from a service and an organisational perspective are described below.
- 9.2 As detailed in Section 6 above, the traded services all currently make a profit. However, there is a risk of loss of income due to an inability to bid for future contracts unless a quick decision is made on the future of the traded services.
- 9.3 The bulk of the traded services also form part of DCC's core offer and are intrinsically linked. Staff deliver both the commissioned and traded elements of the service. Not bringing the traded element of the services in-house will mean staff are not being fully deployed resulting in additional costs to the Council.
- 9.4 The staff who currently deliver the commissioned element of the service also deliver the topped up (traded) element of the service, giving the child receiving the service more continuity. If the service is no longer delivered by one provider, this continuity will be lost, which could have a significant impact on some children.
- 9.5 If more schools move to academy status, there will be less demand for Local Authority provision through the core offer, which could lead to a financial loss or surplus of staff within the Council unless we are able to offer an alternative option to purchase those services in order to retain them, as in the current model.
- 9.6 Babcock LDP currently offers a number of wholly traded services, which are highly valued by schools and make a profit. If these services are not brought into Devon County Council along with the other services, these services will be lost as there is no appetite for anyone else to take these on. This would result in a failure to meet our commitment in paragraph 3.17 of the original paper approved by cabinet.

10. PUBLIC HEALTH IMPACT

- 10.1 The proposals outlined in this report are expected to have an overall positive effect on public health as well as on individual children and their families. The proposals support our partnership vision across education, health and social care for all children to have the best start in life and to improve their life chances, ensuring that they are able to achieve their potential and have opportunities to thrive.
- 10.2 Health elements are also picked up in the impact assessment for the report brought to Cabinet on 10 March 2021.

11. CONCLUSIONS

- 11.1 A quick decision on the future delivery of the traded services is needed to help us limit the risk of losing business during the interim period before the transition. It will also allow us to finalise the structure for the in-housing of all staff and the continuation of uninterrupted statutory duties to schools and reduce the impact on staff who are currently facing uncertainty around their future.
- 11.2 Transferring all the traded services into DCC Education and Learning service will enable DCC to provide a range of Education and Inclusion services, which provide consistency for both schools and children and young people and which support flexibility, recruitment and retention.

Background Paper	Date	File Reference
Impact Assessment		https://www.Devon.Gov.Uk/Impact/Published/

Continued

Paper Part B - Education and Inclusion Direct Delivery Project: Resourcing Requirement Costs

1. Introduction

- 1.1 On 10 March 2021, [Cabinet approved the recommendations](#) to bring the services currently delivered by Babcock LDP into direct delivery by the Council through the Education and Learning teams.
- 1.2 The original driver for wanting to in-house the SEND and Inclusion teams from within Babcock LDP was to enable us to provide a more cohesive SEND offer across Devon as part of the ongoing SEND Transformation Programme. The results of this work aims to reduce demand for Education and Health Care Plans, which in turn will help secure sustainable delivery in line with the funding allocated from the DfE. If action is not taken, DCC will have an £83m deficit by the end of March 2022, and this will increase year on year.
- 1.3 Following a lengthy consultation process looking at the future delivery of these services, it was agreed at the Cabinet meeting on March 10th tathe only viable option was to bring all of the services currently delivered by Babcock LDP and the staff who deliver them into DCC.
- 1.4 Initial estimates of the resources needed to deliver the project and to manage the transition of staff from Babcock LDP to DCC within the timescales were included in the March 10th cabinet paper. These estimates have now been fully developed.
- 1.5 This report lays out the costings of the additional staff resources requirements and requests the reserve allocation for the project be agreed.

2. Project Resourcing Requirements

- 2.1 The transition of approximately 250 staff from Babcock LDP to DCC will take place when the recently extended contract ends on 31 July 2022. There is no option to extend this contract further, so it is therefore imperative we are ready to transfer them over on 1 August 2022. Failure to do so will impact on DCC's ability to deliver our statutory requirements.
- 2.2 The project includes five different workstreams – Service Design; HR and Pensions; ICT, Estates and Business Support; Finance and Communications and Engagement. These workstreams and the overall project management will draw on both corporate and operational resources, both from within DCC and Babcock LDP.
- 2.3 Resources within key teams are already under pressure from a variety of demands, including high workload, the impacts of COVID plus demands of other transformational work which are currently underway. The pandemic response has left many teams under pressure as they are picking up work that had to be put on the back burner or are taking on additional projects triggered by the pandemic response. To provide the level of resourcing the Education and Inclusion Direct Delivery project departments will need to

recruit additional fixed term project resources and backfill some of the operational roles required for project work.

- 2.4 With the project spanning over the two financial years the costs are expected to be a maximum of £271,000 for 2021/22 and £168,000 for 2022/23.
- 2.5 The allocation will be held within the Business Transformation Reserve and actual costs transferred accordingly.
- 2.7 Once the service design has been identified any financial benefits will support the DSG Deficit Management Plan to reduce the pressures on the High Needs Block.

3. Financial Considerations

- 3.1 The contract to deliver the Education and Inclusion services through Babcock LDP will be coming to an end on 31 July 2022, with no option to extend further. This means that if the services and staff delivering them were not brought back into DCC, a procurement exercise would have to be undertaken to find a new delivery partner.
- 3.2 When the services currently provided by Babcock LDP were outsourced in 2011/12, consultants and external solicitors were brought in to run the procurement exercise and put in place the Joint Venture. The total cost for this was over £600,000.
- 3.3 If a tender process had needed to be run, the potential corporate costs would total £210,000, excluding external legal fees for any costs linked to setting up any new partnership arrangements.

A further breakdown of the costs is provided below:

Time input by the Strategic Procurement team for a tender process, assuming a straightforward single-phase process is used, would be in the region of £50,000, depending on volume of responses and unforeseen issues. This would be made up of Senior Officer input leading the process, some managerial input and additional input from a Procurement Officer during engagement, evaluation and moderations.

It is important to note that in addition to the Strategic Procurement team, input would also be required from:

- Children's Commissioning throughout the whole process
- Legal Team pre procurement to develop bespoke terms and conditions
- HR throughout to manage TUPE process
- Finance throughout the process
- Operational Education and Learning teams throughout the process for service specification award criteria and evaluation

Potential costs for these resources would be in the region of £160,000.

As a result of the pandemic, additional resources would need to be brought in to cover all of these roles, including the Procurement resources, as the teams are all currently running at full capacity meaning the costs would be actual rather than indicative.

- 3.4 When considering costs for Education and Inclusion, it is important to note that through the soft market testing and engagement carried out by procurement it was identified that there was not a realistic provider market for the proposed services. This meant there was a significant risk of not receiving appropriate bids, which would have significant impacts, including increased costs. It was this issue that was considered during the delivery model appraisal.
- 3.5 If we are unable to secure funding for additional resources, teams within DCC would need to drop work that has only just restarted after being put on the back burner to resource the pandemic response. However, in some cases this wouldn't be possible as the resources are committed to other key projects and work, such as the How We Work programme and delivering capital receipts.

4. Conclusions

- 4.1 In conclusion, the successful delivery of the Education and Inclusion Direct Delivery project is a critical element in achieving the transformation of the Council's SEND offer across Devon.
- 4.2 The ability to bring in additional resources to do the work needed to ensure a smooth transition of staff from Babcock LDP to DCC on 1 August 2022 is vital. We request the allocation from the Business Transformation Reserve for up to £500,000, as defined above, to enable us to do this.

Chief Officer for Children's Services Melissa Caslake

Electoral Divisions: All

Cabinet Member for Education: Councillor Leadbetter

Head of Education and Learning: Dawn Stabb