

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Cabinet
2.	Date:	22nd May 2013
3.	Title:	Yorkshire and Humber Grid for Learning – Trading Arm Development
4.	Directorate:	Children and Young People’s Services

5. Summary

Yorkshire and Humber Grid for Learning (YHGfL) is the broadband consortium across the Region that Rotherham has been a member of since it was established in 2002. YHGfL is currently consulting with member Authorities to look at the possibility of establishing a trading arm which would allow YHGfL to sell services direct to schools within each Local Authority and to external organisations including schools from outside of Yorkshire and Humber.

6. Recommendations

- (i) that Cabinet receive this paper; and
- (ii) that Cabinet approves the making changes to constitution of the Foundation so that external trading can take place.

7. Proposals and Details

YHGfL (the broadband consortium that Rotherham is a member of) is currently consulting with member Authorities to look at the possibility of establishing a trading arm which would allow YHGfL to sell services direct to schools within each Local Authority and to external organisations including schools from outside of Yorkshire and Humber.

Changes to schools funding regimes and the impact of budget cuts in councils has in recent years put additional pressure and a large degree of uncertainty on YHGfL and put into doubt its future.

Over the past year the Foundation has been considering the option to establish a trading arm to ease the uncertainties, exploit further the opportunities that it offers to schools and Local Authorities within Yorkshire and Humber and allow the Foundation to offer services direct to schools rather than via the LAs.

This would safeguard the investments made by all Authorities over the last 11 years and provide competition to those private companies who currently aggressively sell their services to schools.

An extra-Ordinary General Meeting is due to take place on Friday 7th June at which members are asked to vote on whether or not to approve the establishment of a trading arm. The approval of this will be based on a majority decision of member authorities. Sue Wilson, Performance and Quality Manager will be representing Rotherham at the meeting.

8. Finance

A significant investment has been made over the past 11 years from member authorities and it is felt that by allowing external trading to take place this should help to safeguard these investments further into the future.

It is hoped that by generating external income it should in the long term reduce the costs to existing member authorities.

Annually, Rotherham schools contribute £61,000 to the Consortium and an additional £90,000 for broadband connectivity. The current contract with YHGfL expires in May 2014, however we are looking to extend the contract period up to July 2016.

The Foundation was set up as a company limited by guarantee to ensure that no local authority would be liable for more than £1 if the Foundation failed or was disbanded.

9. Risks and Uncertainties

A potential risk for local authorities is if the trading arm were not to be established: the last 11 years' investment in the Foundation would be at risk, as would the connectivity and services to schools currently provided by the Foundation and the costs of replacing them.

If the trading arm were to fail, the maximum cost to the Foundation would be the value of shares issued – likely to be £1 – and any cashflow funding which the Foundation was providing.

If the Foundation were to fail, the maximum cost to member authorities would be £1.

10. Policy and Performance Agenda Implications

YHGfL, in addition to broadband connectivity to schools, also provides resources and services including Continuing Professional Development for teachers, e-safety and e-learning resources which are available for use in Rotherham Schools.

11. Background Papers and Consultation

- Briefing paper from YHGfL – Appendix 1

Colleagues from Legal Services in Rotherham have also been involved in the consultation process and have been liaising with legal representatives from other Local Authorities and solicitors representing the Foundation.

Contact Name: Sue Wilson, Performance & Quality Manager,
sue-cyps.wilson@rotherham.gov.uk
01709 822511

Context

YHGfL Foundation Ltd was set up by 12 local authorities in the region in 2002 to act as a vehicle for joint procurement of broadband connectivity and related services for schools. The way that the local authorities wanted the Foundation to be established meant that it could take advantage of the Teckal exemption to procurement law – in effect, meaning that none of the member local authorities would have to procure services from the Foundation.

Further, the Foundation was set up as a company limited by guarantee to ensure that no local authority would be liable for more than £1 if the Foundation failed or was disbanded.

The governance of the Foundation was also agreed by the local authorities and a Board was established containing a nominee of each member local authority, although the Directors themselves would serve a personal directorship. Thus, although members are invited to attend the Annual General Meeting, the governance of the Foundation was, in effect, delegated to the Board and has been for the past 11 years.

In terms of funding, specific grant was initially available to local authorities to connect schools to broadband and the Consortium agreed that a budget for the work that the authorities wished to commission would be agreed annually – and some local authorities did provide some of that funding from their own budgets.

However, over time, particularly in the last two years, none of the funding comes from dedicated grant nor from local authority budgets. Funding has increasingly come from schools where local authorities have been able to aggregate demand for services from its schools. That shift in funding, together with significant budget cuts for local authorities themselves, has had implications for schools across the region and for how the Foundation must now operate.

As one example of the consequences of funding changes, the Consortium has recently asked the Foundation to change the way it offers a significant part of its current services – from a core provision, paid for by all local authorities equally, to a ‘pay-as-you-go’, optional service. This has the effect of reducing significantly the contribution that the Foundation needs from local authorities for its core services. Clearly, for a company that cannot take commercial risks, this change has the potential to strike at the core of its ability to survive. In addition, the rise of competition from companies looking to capitalise on the immature market which has sprung up over the past two years is putting further pressure on the Foundation.

The Foundation is limited by its Articles and Memorandum of Association to activities which are educational and within the Yorkshire and Humber region – a further limitation on its ability to increase revenue, decrease costs to the local authorities and thus remain viable.

The creation of a trading arm allows the Foundation to overcome these issues and to have a channel which can operate as a full commercial entity – thus having a chance to preserve the investment of local authorities and schools over the 11 years of its existence.

The initial purpose of the Foundation was to benefit schools in the region by providing cost-effective services of a good quality. The Foundation has taken that as its guiding principle and wishes to continue doing so despite the funding issues which beset both local authorities and schools. The purpose of proposing a trading arm is to secure that principle for the future – benefitting schools, whether they are part of a local authority or not, and preserving a link back to local authorities if circumstances change in the future.

The proposal

The document ‘YHGfL Trading arm business plan’ contains all of the information relating to the setup, operation and plans for the trading arm. However, there are some key points that local authorities may want to note.

Funding

The Foundation has never been able to distribute profits or surpluses to member local authorities – it is prohibited from doing this due to its status. And, while the Foundation agrees a budget with the Consortium for the costs of the work being commissioned, it is the Foundation Board which has the final say on how its funds are spent. Clearly, this is one situation where the Directors regularly balance their Director’s responsibility for the well-being of the company with the needs of their nominating (and employing) body. At no point

have member local authorities questioned any decision of the Board – the opportunity to do so at the Annual General Meeting has never been taken by any local authority.

The funding cannot be given back to local authorities as cash but could be used to reduce the Foundation's costs – but that would be for a limited time only, is not sustainable and would not address the core issues which would remain once the benefit of a subsidy runs out.

Further, the funding is support for cashflow for the trading arm rather than a lump sum investment. For that reason, the amount given to the trading arm will fluctuate over time depending upon its needs. That forecast will obviously be reported to the Foundation Board as owners of the trading arm – and it will be within the Board's remit to make decisions about whether, to what extent and when that support should be given. In addition, the trading arm's Board itself (containing commercial and educational sales expertise) would also have a duty to ensure that the trading arm is viable and trading legally.

Governance

As mentioned above, Foundation Directors are responsible for the effective running and profitability of the organisation – but frequently have to balance their responsibilities as employees of their nominating authorities as well. Legal advice suggested that up to two of the existing Foundation Directors also serve on the Board of the trading arm – with appropriate policies and processes relating to conflicts of interest.

Other Directors on the trading arm board would be drawn from people with acknowledged expertise in the commercial sector, meaning that the direction of the company would benefit from the expertise and experience of successful business people. They would be balanced by the Foundation Directors who would also understand the viewpoints of Foundation owners/members.

Local authority risk

As has been mentioned above, a potential risk for local authorities is if the trading arm were not to be established: the last 11 years' investment in the Foundation would be at risk, as would the connectivity and services to schools currently provided by the Foundation and the costs of replacing them.

If the trading arm were to fail, the maximum cost to the Foundation would be the value of shares issued – likely to be £1 – and any cashflow funding which the Foundation was providing.

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Commercials

The financial planning which we have done for a potential trading arm is commercially extremely sensitive and would be of value to any existing or new business with whom we may compete. For that reason, we are reluctant to distribute spreadsheets and documents with details of, for example, cashflow and product or service costs: it would not be sensible to hand over information which would allow others to undercut us.

In the first instance, the Foundation Board will make a decision about a trading arm based on its viability – and that will involve consideration of detailed plans for the business. The Foundation Board has a statutory responsibility to ensure that their decisions do not harm the company: that includes ensuring that a venture such as the setting up of a trading arm is not likely to lead the company into difficulties.

A trading arm Board would also have that responsibility and, given that a number of Directors would have direct experience in the commercial educational market, they would not allow strategies to be put in place that would put the trading arm in jeopardy.

Competition

A number of local authorities in the region have set up traded services which are working in areas which will be covered by the trading arm – those authorities may have some concerns about the impact of a trading arm on their own services. However, we are not aware of the Foundation 'stealing' work or income from local authority services: indeed, we can point to a number of specific instances where the Foundation has worked closely with those services with a view to increasing each other's' value to schools. This would be the aim of the trading arm – to work with local authority services where they exist, as we have always done.

At the same time, we would want the trading arm to be a real alternative to some of the companies currently aggressively targeting local authority schools – something we cannot do due to our status and constraints on any commercial activity.