

**Open Report on behalf of Richard Wills, Executive Director for Environment and Economy (responsible for IT)**

Report to:	<b>Executive</b>
Date:	<b>03 July 2018</b>
Subject:	<b>Access to the Public Sector Network</b>
Decision Reference:	<b>I015986</b>
Key decision?	<b>No</b>

**Summary:**

This Report sets out the options for securing continued access to the Public Sector Network and seeks approval to secure such access through an extension to the existing contractual arrangements procured and delivered through the East Midland Public Sector Network companies as explained in the Report.

**Recommendation(s):**

That the Executive:

- (1) approve the Council continuing to secure access to the Public Sector Network through a continuation of the existing arrangements delivered by KCom secured by an extension of the existing Infrastructure Agreement between KCom and EMPSN Infrastructure Limited to 31 October 2022.
- (2) delegate to the Executive Director of Environment and Economy, in consultation with the Executive Councillor for Highways Transport and IT, the taking of all steps and the approval of all documentation necessary on the part of the Council to give effect to the above decision.

**Alternatives Considered:**

Not to extend the existing arrangements. This would require a complex procurement process to secure alternative means of access to the Public Sector Network making significant demand on the Council's resources.

**Reasons for Recommendation:**

The existing arrangements provide good performance and value for money and constitute a stable element of the Council's overall IT arrangements. Those arrangements, including the proposed extension to 31 October 2022, were procured through a compliant EU procurement process and therefore the

proposed extension can lawfully be pursued without a further procurement. Any alternative means of access to the Public Sector Network would require a procurement process that would be complex and require significant Council resources to achieve. The Council's available IMT, Commercial and procurement resources are required to pursue other workstreams within the area of IMT that are more pressing than the Public Sector Network given that it is performing well. The risk of failure of those other workstreams would increase if a major network procurement was undertaken at the same time. In addition, the landscape of future public sector network provision is changing especially in the area of health and social care.

The proposed extension to existing arrangements will allow the Council to take advantage of the stability of existing arrangements whilst alternative developments both in terms of the Council's own IT and those being pursued by other public sector entities to be implemented and mature prior to decisions being taken by the Council as to its long terms requirements for network services.

## **1. Background**

### **The Public Sector Network**

1. The Public Sector Network (PSN) is a network that connects public organisations to each other, enabling various services to be provided through the network, while maintaining end to end quality, security and integrity. The PSN is separated from the Internet and therefore offers additional security and resilience beyond that of the Internet, e.g. it is less vulnerable to cyberattacks which can be used shut down Internet services and websites.
2. LCC currently accesses the PSN through regional arrangements that operate under the name of East Midlands Public Sector Network (EMPSN). The Council principally uses the EMPSN network to connect its physical sites across the county. The network connects all of the Councils sites, including schools, and provides a trusted connection to Central Government. The Council operates many corporate services through this network such as email, document/file transmission etc, and so continued provision of the network is essential.
3. The numbers of connections are significant which means moving to an alternative provider could be a significant undertaking – figures below:
  - 18 x 1Gbps Exchanges in Lincolnshire
  - 27 x 100Mbps Satellite Exchanges in Lincolnshire
  - 20 + 2 Backhauls Glaisdale & Node 4 1Gbps Links to reach national services
  - 22 x 100Mbps Links
  - 594 x connections at various speeds of which;
    - 245 are Corporate

- 349 are Education

### **Current Arrangements – Company Structures**

4. The Council receives its PSN services through arrangements entered into with two Teckal companies, EMPSN Services Ltd and EMPSN Infrastructure Ltd. Both companies were formed by Local Authority members and are Companies limited by guarantee. The Council is a member of both companies. EMPSN Services Ltd in paragraph is not central to the decision described in this Report so is not described in detail here.
5. EMPSN Infrastructure Ltd on the other hand was incorporated in February 2012 to hold the EMPSN regional infrastructure assets and enter into the contracts designed to secure the delivery of a Public Sector Network using those assets as described in this Report.
6. EMPSN Infrastructure Ltd is limited by guarantee with the liability of each member for payment of debts of the company limited to £1 in the event of the Company being wound up. The company was formed by Derbyshire County Council, Leicester City Council, Leicestershire County Council, Northamptonshire County Council and Lincolnshire County Council. In 2016 Northamptonshire County Council resigned as an owner of the Company; the Company is now owned by the remaining 4 Local Authorities. The minimum number of members of the company is one.
7. Each member is entitled to appoint a director. The Council's director is John Wickens, Chief Digital Officer. The decision-making of the company is split between matters that can be decided by the Board and decisions that are reserved to the members in general meeting. Any matter of the company which exclusively affects any single member's ability to attain or fulfil its public interest objectives in full at all times requires the consent in writing of that member.
8. The EMPSN Infrastructure Ltd latest accounts, to 31 March 2017, filed at Companies House, show a turnover in excess of £159k with a profit (after taxation) of £82k. The balance sheet shows retained earnings of £179k as at 31 March 2017. The company does not employ any staff.

### **Current Arrangements – Contractual Structure**

9. EMPSN Infrastructure Limited contracts with KCom under what is called the Infrastructure Agreement (IA). Under the IA KCom have agreed to:-
  - supply and build the EMPSN network
  - operate, maintain, manage and develop the EMPSN network
  - enter into Member Services Contracts with any of the local authority members of EMPSN Infrastructure Limited who wish to do so for the delivery of services in connection with the EMPSN network;
  - act as a wholesaler to permit connection to the EMPSN Network to other retail service providers including Virgin Media
  - enter into a Framework Agreement with EMPSN Services Limited to enable end users such as schools to purchase certain services from KCom.

10. The Infrastructure Agreement commenced on 1 November 2012 and expires on 31 October 2019 (the Initial Term). The Initial Term can be extended by EMPSN Infrastructure Limited at any time prior to the expiry of the Initial Term by giving not less than 20 Business Days prior written notice to KCom to expire no later than the expiry of the Initial Term. The Initial Term can be extended by such period as is mentioned in the notice subject to a maximum extension period of 3 years.
11. LCC is a Contracting Member of EMPSN Infrastructure Limited which means that, in addition to the IA between EMPSN Infrastructure Limited and KCom, LCC has a direct contract with KCom (the Member Services Contract) for the provision of network connectivity, access services, application services and integration services all as described in a KCom Service Catalogue. LCC pays for those services in accordance with a Price Book maintained under the IA.
12. EMPSN Infrastructure Limited manages the Member Services Contract as agent for LCC and is a party to the Member Services Contract for that purpose.
13. LCC is the only member of EMPSN Infrastructure Limited that has a direct contract with KCom in this way. The term of the Member Services Contract is the same as the IA and is automatically extended if the IA is extended.
14. Generally a member can leave EMPSN Infrastructure Limited on giving 6 months' notice to expire on 31 March. However, as a Contracting Member LCC must remain a member of the company for as long as its Member Services Contract remains in force – i.e. until 31 October 2019 if the IA is not extended – 31 October 2022 if it is. The minimum membership of EMPSN Infrastructure Limited is one member so if other members left the company LCC would have to remain the sole owner of EMPSN Infrastructure Limited until the expiry of the term of its Member Services Contract.
15. The decision whether or not to extend the IA contract with KCom is a decision for the company and not the Council. It is not explicitly identified as a reserved matter. It is therefore a decision for the Board of Directors of the Infrastructure company. This Report seeks approval from the Council that it wishes to secure access to the Public Sector Network through the existing arrangements. If that is what the Executive decide steps will be taken to secure the extension of the contract through the company.

## **Analysis**

- 16 As set out above, unless steps are taken to extend existing arrangements the Council would need to take alternative steps to ensure its access to the Public Sector Network. This would, due to the values involved, require a procurement process to be undertaken. This would be a particularly complex process as it was when the existing Agreement was entered into in 2012. In particular specialist legal input was required to ensure that the resulting contract took due account of all communications regulatory requirements and dealt with the risks associated with the transfer of equipment.

- 17 This is at a time when there are significant demands on the Council's IMT, commercial and procurement resource in terms of:-
- maintaining and improving performance and resilience of the Council's IT platform and services;
  - delivering project work including transformational projects related to areas such as the web and channel shift;
  - exploring options for the future delivery of corporate support services beyond the initial term of the Serco contract including the future of ABWON as the Council's ERP system and the future delivery of IMT to the Council;
  - supporting delivery of the chosen options.
- 18 Each of these demands in itself is inherently risky due to their technical and commercial complexity and carries significant risk to the Council if not carried out successfully. It is the judgment of officers that a Public Sector Network procurement is not within the capacity of the available resource and that to place further demand on the available resource would lead to an unacceptable risk of unsuccessful delivery across these initiatives including in relation to the Public Sector Network.
- 19 In addition to this there is a high degree of uncertainty in terms of the future direction of IMT for the Council. Part of this concerns the Council's own position. In particular the future of the IMT services currently delivered by Serco has not yet been decided.
- 20 In addition there are developments in relation to the wider public sector IMT environment that have not yet been finalised. In particular, the Council will have to transition from the old N3 NHS network to the new Health & Social Care Network (HSCN) as part of a drive to co-ordinate the delivery of health & social care services. Potential options for achieving this would include the Health Service Community of Interest Network recently procured in Lincolnshire. However that needs time to be implemented and mature which may by the expiration of the EMPSN extension offer a strategically advantageous network service to the Council.
- 21 In addition, in the medium term many central Government applications and systems will remain on the PSN network. The Council's preferred model is to secure access to these services, and the Internet, via the same service provider to ensure best value for the broad range of services that the Council requires, e.g. Web hosting, email services, office collaboration, HR systems, and other generic "cloud" services, whilst not becoming reliant on Internet connectivity with its inherent risks and poor fix times. EMPSN would be one option to deliver this strategy cost effectively and without transition activities required of a new provider.
- 22 There are also potential future developments in relation to the EMPSN model where the companies are in discussion with potential partners to increase the scope of educational services it can provide. If the Council were to extend the

agreement it would help ensure the stability of schools connectivity and service is maintained, whilst EMPSN seek to develop those relationships.

- 23 In these circumstances it is considered that the best option for the Council would be to extend the existing arrangements as long as they deliver value for money, perform well and do not in themselves present greater risk than a procurement. The rest of this section seeks to give assurance on these points.

#### *Performance*

- 24 It is the view of the Chief Digital Officer that the current arrangement demonstrates efficiency, good value, good performance, and there are no current performance reasons to consider moving away from the current arrangement. Indeed the current arrangements for the EMPSN represent a stable element of the Council's overall IMT arrangements the maintenance of which will allow the Council to focus its attentions on other areas requiring improvement or which are going through significant change.

#### *Value for Money*

- 25 The procurement of access to the Public Sector Network through the EMPSN arrangement in 2012 delivered significant savings to both Lincolnshire County Council and schools through a consolidated broadband offer enabling greater purchasing power to be achieved. The indicative costings (corporate and schools) included in the Executive decision report of 1 November 2011 were as follows:-

<b>Indicative Annual Connectivity Costs</b>	<b>Current costs £m</b>	<b>EMPSN £m</b>
Corporate	1.30	0.80
Schools	3.26	1.17
<b>Total</b>	<b>4.56</b>	<b>1.97</b>

- 26 The present annual expenditure is circa £1.9m

<b>Sites</b>	<b>2015/16 (cost for year)</b>	<b>2017/18 (cost for year)</b>
Corporate Sites	£322,809	£322,393
Education Sites	£733,699	£520,414
Exchange	£1,127,471	£1,082,881
<b>TOTAL</b>	<b>£2,183,979</b>	<b>£1,925,688</b>

It should be noted that refresh costs are payable over and above these annual costs and are projected to be c £374k in 2018/19 as the passage of time starts to take equipment end of life. These charges are due to the Council's decision not to cover its infrastructure need via a service charge

but rather to capitalise them. This is being reconsidered separately to the basic issue of renewal.

- 27 With support from Schools Forum, a central budget was earmarked within the Dedicated Schools Grant to fund the aggregation of schools broadband services. This central budget supported the broadband costs of all Lincolnshire schools, which achieved significant economies of scale, and provided a resilient, secure and quality broadband service for all schools in delivering the schools educational goals. The centralised contract was considered to be the fairest approach for all schools since it allows schools not to be financially disadvantaged purely by their location, which is particularly important in rural Lincolnshire where broadband costs vary between schools.
- 28 EMPSN currently provide an effective brokerage function (for example, managing the various suppliers across the infrastructure and service companies) using 5 staff to service all member and customer organisations. If the Council does not extend the agreement it would have additional in-house staffing requirements in order to deliver the brokerage function itself at requiring approx. 3 FTE. The Council would also have additional client-side contract management responsibilities required to manage a direct contract relationship with a new provider (these services are not in the Serco contract). It seems unlikely that this additional cost could be offset by better pricing achieved through market testing, in addition the council would expect to incur a significant cost of transition.
- 29 There are limited providers (BT and KCOM) in the market within the Lincolnshire geography and therefore comparison with other areas where the market has more providers is challenging. Comparisons with Lincolnshire County Council's CIPFA Nearest Neighbours is problematic as other Councils do not have their PSN provided in the same way which makes direct comparison difficult if not impossible in some cases. Overall, however, it is considered that the above evidence supports a conclusion that the current arrangements do represent value for money and are competitive with any other similar arrangement that might replace them especially when the costs of change are factored in.

## **Risks and Issues**

### *Reducing company membership*

- 30 As indicated above, the membership of EMPSN Infrastructure Limited currently consists of Derbyshire County Council, Leicester City Council, Leicestershire County Council and Lincolnshire County Council. Also as indicated above, these other Councils do not acquire network services directly from KCom under the EMPSN Infrastructure Agreement. They do not therefore have the same drivers to remain members of the company as the Council does.

- 31 Depending on how many other member authorities remain in the company, the Council could become the sole owner. This requires the Council to consider the commercial risks of sole ownership.
- 32 As a member of both EMPSN Services Limited and EMPSN Infrastructure Limited the Council's liability on a dissolution of either company is limited to the amount of its guarantee (£1.00).
- 33 EMPSN Services Limited employs the EMPSN staff. Although the Services company is not central to the ongoing provision of the Public Sector Network, the Services company is to some extent dependent on the existing KCom arrangements for some of the services it offers to bodies such as schools. If the existing KCom arrangements do not continue this will have some impact on the Services company.
- 34 The Services company is an Admitted Body with the Northamptonshire Fund of the Local Government Pension Scheme (LGPS). Where an Admitted Body ceases to have that status the Admitted Body may become liable to make an exit payment actuarially assessed to cover any shortfall in the funding of the benefits attributable to the Admitted Body's membership of the scheme. Those returns fluctuate as does the potential amount of any exit payment. Payment of the exit payment does not impact on the staff who would still be entitled to receive their pension. If the services company did not have the resources to fund any shortfall it would fall on the Northamptonshire LGPS Fund.
- 35 EMPSN Infrastructure Limited itself employs no staff and carries no risk of pension liability. However, on termination of the Infrastructure Agreement it will remain owner of the infrastructure equipment and will bear the risk of decommissioning it or transitioning it to another arrangement. This is recognised and the company accounts include a reserve of (currently) £220,000 to meet the costs of this liability although it cannot be said at this stage whether it will be sufficient to cover the full cost. This reserve is kept under review and the company takes steps to vary the infrastructure to reflect the scale of demand. Some £246,000 was spent in 2016/17 on this kind of decommissioning which serves to manage the risk at the end of the contract.
- 36 It is not considered that the risks such as they are attaching to sole ownership of the companies or either of them are sufficient to outweigh the advantages of extending the current arrangements.

### *Schools*

- 37 As indicated, Lincolnshire schools have been included within the main EMPSN Services contract with KCom, and are currently funded centrally via the Dedicated Schools Budget. This has significant advantages in aggregating demand and smoothing the impacts of rurality on prices if schools were left to procure alone.
- 38 The greatest risk to schools would therefore arise out of the Council not remaining with the current arrangements since the cost impacts on schools of purchasing access to the PSN individually would be considerable. As a



minimum, schools would require a period to prepare for and adjust to that change.

- 39 However, due to changes towards a National Funding Formula for schools the government is seeking to remove the freedom the Council currently enjoys (subject to Schools Forum support) to centrally retain funding for such aggregated purchasing. It is known that the DfE have agreed to the Council maintaining the current arrangement until 31 October 2019 to reflect the initial period of the EMPSN arrangement. The DfE have been approached for their agreement to those arrangements remaining in place until the end of the maximum extension of the EMPSN arrangements – i.e until 31 October 2022. If that agreement is not given the Council would be committed to making payment for the aggregated demand unless and until schools were transitioned to their own arrangements. The funding of that commitment would need to be considered but options include use of the Dedicated Schools Grant reserve subject to support from the Schools Forum or schools moving to a direct relationship with EMPSN Services Limited in a way which can manage the cost to schools as they transition to new arrangements.
- 40 In fact the inclusion of schools within the Council's aggregated demand is in the interests of the Council as if schools left emPSN in large quantities the Lincolnshire contract value would fall which would limit wider market interest if the Council were to need to procure an alternative supplier in future - extending with emPSN therefore covers the risk if the schools did move away in large numbers.

### *Operational Factors*

- 41 For operational certainty EMPSN are pressing for a decision imminently. EMPSN are keen for an agreement to extend the contract to 2022, allowing new 3 year site connectivity contracts to be provided. Giving certainty now allows emPSN to make good investment decisions in order to remove obsolete equipment from the network.

## **2. Legal Issues:**

### Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- \* Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- \* Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- \* Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- \* Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- \* Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- \* Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

There are not considered to be any equalities implications of the decision which relates solely to the mechanism by which the Council secures access to the Public Sector Network.

#### Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

The JSNA and JHWS have been considered but there are not considered to be any direct implications arising out of this decision.

#### Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

The matters referred to in section 17 have been considered but there are not considered to be any implications arising out of this decision.

### **3. Conclusion**

The existing arrangements for accessing the Public Sector Network through the EMPSN regional arrangements are considered to work well and to represent value for money for both the Council and schools. In these circumstances the continuation of those arrangements through the existing contract right to extend will secure an element of the Council's IT infrastructure which is stable and reliable while other issues concerning existing performance and future development of those services are addressed. An extension of 3 years also allows the Council to assess future options for securing network services especially in the areas of health and social care.

### **4. Legal Comments:**

The Council has the power to extend the existing arrangements as proposed. The legal issues arising out of the decision are addressed in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive.

### **5. Resource Comments:**

The recommendation in the report to approve the Council continuing to secure access to the EMPSN to 31 October 2022 will ensure the continuation of existing services with no disruption to service users. The existing contract secured significant savings for the Council and schools through a consolidated broadband offer, and is seen to be offering good value for money through its resilient, secure and quality service performance. The centralised contract was also considered to be the fairest approach for all schools since it allows schools not to be financially disadvantaged purely by their location, which is particularly important in rural Lincolnshire where broadband costs vary between schools.

A financial risk is present in terms of the central broadband budget held within the Dedicated Schools Grant. The government's school funding reforms to move to the National Funding Formula is removing the flexibility on Local Authorities in retaining central funds for schools. The government is allowing Local Authorities to retain historical funding commitments (through contracts) for pre 2013/14 decisions up to their end point, which the DfE have agreed to the Council maintaining the current arrangement until 31 October 2019 to reflect the initial period of the EMPSN arrangement. The DfE have been approached by the Council for their agreement to those arrangements remaining in place until the end of the maximum extension of the EMPSN arrangements i.e. until 31 October 2022.

If that agreement is not given the Council would be committed to putting alternative arrangements in place to meet this financial commitment, such as the use of the Dedicated Schools Grant reserves subject to support from the Schools Forum or schools moving to a direct relationship with EMPSN Services Limited in a way which can manage the cost to schools as they transition to new arrangements. The latter will need to be carefully managed as this will be a new cost for schools to manage (if the DfE's decision is to remove the central budget) and charges will need to be at an individual school level.

## **6. Consultation**

### **a) Has Local Member Been Consulted?**

n/a

### **b) Has Executive Councillor Been Consulted?**

Yes

### **c) Scrutiny Comments**

This decision will be considered by the Overview and Scrutiny Management Board on 28 June 2018 and the comments of the Committee will be reported to the Executive.

### **d) Have Risks and Impact Analysis been carried out?**

Yes

### **e) Risks and Impact Analysis**

See the body of the Report

## **7. Background Papers**

Document title	Where the document can be viewed
Executive Report "Lincolnshire Public Sector Network" dated 1 November 2011	<a href="http://lincolnshire.moderngov.co.uk/CeListDocuments.aspx?Committeeld=121&amp;MeetingId=1844&amp;DF=01%2f11%2f2011&amp;Ver=2">http://lincolnshire.moderngov.co.uk/CeListDocuments.aspx?Committeeld=121&amp;MeetingId=1844&amp;DF=01%2f11%2f2011&amp;Ver=2</a>

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