

REPORT TO AUDIT AND RISK ASSURANCE COMMITTEE

10 January 2019

Subject:	Interserve PLC Update
Director:	Director – Education, Skills and Employment Executive Director - Neighbourhoods Director – Regeneration and Growth Executive Director- Resources
Contribution towards Vision 2030:	
Contact Officer(s):	Sue Moore: Group Head, Education Support Services Sue_moore@sandwell.gov.uk Lee Constable: Strategic Lead – Strategic Assets & Land Lee_constable@sandwell.gov.uk

DECISION RECOMMENDATIONS

That Audit and Risk Assurance Committee:

1. Review and comment upon the accompanying report.

1 PURPOSE OF THE REPORT

- 1.1 To update members of the Committee on the risks arising from any arrangements the council has with Interserve PLC (Interserve) and how any identified risks are being managed.

2 IMPLICATIONS FOR SANDWELL'S VISION

- 2.1 Effective risk management is a key element of good corporate governance and is essential to the overall performance of the council in meeting its vision 2030. Good risk management will ensure that resources are used efficiently and effectively in the delivery of the Sandwell vision and that assets and resources are protected against risk in the most efficient way.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 In July 2009, the council entered into a Strategic Partnering Agreement (SPA) contract with Sandwell Futures Limited (SFL) as its Local Education Partnership (LEP) for the delivery of capital projects and the provision of facilities management services initially under the Building Schools for the Future programme.
- 3.2 As part of this arrangement, SFL has commissioned a number of contractors including Interserve to discharge its obligations under the SPA with the council. Although Interserve currently has the exclusive right to be awarded certain contracts from SFL relating to major capital projects at secondary schools within the borough, SFL may award other projects to other sub-contractors.
- 3.3 Interserve has been commissioned by SFL and is currently involved in the provision of facilities management services to the five Sandwell schools under the BSF programme and a number of PFI schools (see 4.10 below), as well as the delivery of a number of major school capital projects (see 4.1 below).
- 3.4 The council's contractual relationship therefore is with SFL and not with Interserve.
- 3.5 In December 2018, Interserve issued a press release stating that it was looking at a deleveraging plan in order to deliver an optimum capital structure for the Interserve group to support its long-term, sustainable development. This resulted in a significant fall in its share price. The press release is attached to this report as Appendix 1.
- 3.6 The BBC website reports that a Cabinet Office spokesperson said: "We monitor the financial health of all of our strategic suppliers, including Interserve, and have regular discussions with the company's management. The company successfully raised new debt facilities earlier this year, and we fully support them in their long-term recovery plan."

- 3.7 At the time of preparing this report Interserve continues to trade and deliver services. SFL continues to maintain a watch on the developing situation and is keeping the council informed with any developments.

Following the demise of Carillion PLC, the Cabinet Office is trialling a pilot of 'living wills' with key suppliers, a move that is designed to allow contingency plans to be put in place if a large government contractor goes under. Interserve is one of five suppliers that have volunteered to pilot the creation of living wills. Whilst this is a pilot for central government contracts, the council understands that SFL is also having discussions with Interserve to make similar arrangements at a local level.

4 THE CURRENT POSITION

- 4.1 As noted above, Interserve has been commissioned by SFL and is currently involved in the provision of facilities management services to the five Sandwell schools under the BSF programme and a number of PFI schools, as well as the delivery of a number of major schools capital projects as follows:

Project	Description of works	No. of New School Places	Project value £m	Programmed Completion Date
Works on site:				
Shireland Collegiate Academy	New build extension	275	£4.3m	July 2019
Phase 1, Kelvin Way, West Bromwich (West Bromwich Collegiate Academy)	New school	300	£8.52m	August 2019
George Salter Academy	New build extension	250	£3m	September 2019
Scheme in Development:				
Shireland Technology Primary Free School	Detailed design stage	446	£6.3m	February 2020
Defects claim:				
Perryfields High School	Jubilee Block – Condition Defects with existing block	n/a	£3m	tbc

- 4.2 As noted above, the council's contractual relationship is with SFL and not Interserve. SFL has performance bonds in place that provides financial protection against the delivery of the new build capital projects. This means that no financial liability for contractor failure should pass to the

council in respect of the new build projects. If Interserve were to go in to administration or liquidation it would be for SFL to source an alternative contractor.

- 4.3 The risk to the council therefore is largely in respect of delays that would arise in the timely delivery of the above time critical capital projects to deliver new school places by the required dates, whilst SFL procures new contractors to deliver the schools. The three major projects above for 'works on site' are key to the council delivering sufficient Year 7 places for September 2019. In the case of West Bromwich Collegiate Academy, as a new school there are limited options to provide alternative provision to ensure the school opens on time.
- 4.4 The projects for Shireland and West Bromwich Collegiate Academies are well advanced having started on site in August and September 2018. Works at George Salter Academy commenced in December.
- 4.5 Any immediate collapse of Interserve will bring works to a halt on each site. Since summer 2018 SFL has the option to 'step in' within two weeks to any of the sub-contractor contracts Interserve have entered into. The measure would enable the sub-contractors to be re-appointed by either SFL or a newly appointed main contractor if Interserve were to fail.
- 4.6 Subject to the capacity of the construction industry to respond, SFL would have to look to the re-tender of each capital project. It is difficult to quantify the cumulative delay such an event would cause until a new contractor was appointed.
- 4.7 The council's strategic risk register already includes a risk in respect of school place planning which prior to the Interserve announcement was assessed as red. In the event of a collapse, this risk becomes more prevalent.
- 4.8 With Shireland Technology Primary Free School, the Authority is currently awaiting ministerial approval to proceed with procurement, seeking to award a building contract early February 2019. With the current timeline, the free school sponsor will open a temporary facility for the new school in September 2019, however the consequence of further delay to the new school could lead to that temporary arrangement having to extend to the whole of the academic year 2019/20.
- 4.9 In respect of Perryfields High School (Jubilee Block), the council and SFL have identified significant condition issues with the council seeking a solution from SFL. SFL is currently pursuing Interserve for a resolution of this matter.

4.10 In the event if Interserve collapsed, facilities management contracts can be re-brokered through SFL. Interim arrangements such as direct employment of the displaced Interserve staff by SFL could be put in place to ensure that there is no gap in service delivery, without which the key risk to the council would require a temporary closure of these schools whilst SFL sources a new provider or recruits alternate staff to provide the service. The schools involved are:

- Holly Lodge High
- St Michaels CE High School
- Westminster Special
- Whiteheath PRU
- Oldbury Academy
- Wodensborough Academy
- ACE Academy
- Sandwell Community School

4.11 The council has worked with SFL Ltd to establish some mitigations to provide the council with assurances on the delivery of a number of programmes of work. Moving forward there is a strategy for SFL to engage with a range of supply chain partners, to assist in the delivery of the projects should the worse scenario occur.

4.12 Additional mitigations that are currently being progressed include:

- the transfer of key personnel involved in the day to day management of the council's capital projects and FM services
- the transfer of contract data from Interserve's servers to ensure continuity of access
- SFL will be ensuring it holds a set of all the keys and access codes for the properties and has access to the Helpdesk information
- arranging for Interserve to confirm all project supplier information and staffing arrangements, will place SFL in a robust position, should an alternative provider be required.
- The council has requested sight of SFLs business continuity plan in respect of FM provision and the delivery of the capital projects.

5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

5.1 The schools that would be impacted should there be a change in the Interserve position have been kept updated on the progress and mitigations being actioned as noted above.

6 ALTERNATIVE OPTIONS

- 6.1 There is immediate pressure to deliver on a number of key secondary school projects that need to complete for July and September 2019 to ensure sufficient school places are available to meet demand for the 2019/20 National Curriculum Year 7 cohort.
- 6.2 Interserve are contracted to deliver extension works at George Salter Academy, Shireland Collegiate Academy and Phase 1 of the proposed new West Bromwich Collegiate Academy at Kelvin Way, West Bromwich: and the proposed new Shireland Technology Primary Free School at the Shireland Collegiate campus. Any alternative solution would not mitigate the time critical risk as any alternative would involve a delay in SFL reprocurring an alternative contractor.
- 6.3 Officers have for some time worked with SFL to procure alternative major building contractors to deliver other major capital projects. This includes Phase 2 of the new Q3 Academy Langley and St Matthews CE Primary School where Speller Metcalfe and Arthur M Griffiths & Son Ltd respectively have been appointed through SFL. The next phase of extensive capital building works will need to commence during 2020/21 for the National Curriculum Year 7 cohort in 2021/22.

7 STRATEGIC RESOURCE IMPLICATIONS

- 7.1 As noted above, the council's contractual relationship is with SFL and not Interserve. SFL has performance bonds in place that provides financial protection against the delivery of the new build capital projects. This means that no financial liability for contractor failure should pass to the council in respect of the new build projects. If Interserve were to go in to administration or liquidation it would be for SFL to source an alternative contractor.
- 7.2 It should be noted however that the council is a 10% shareholder in SFL.
- 7.3 The risk to the council therefore is largely in respect of delays that would arise in the timely delivery of the above time critical capital projects to deliver new school places by the required dates, whilst SFL procures new contractors to deliver the schools.
- 7.4 The council's strategic risk register already includes a risk in respect of school place planning which prior to the Interserve announcement was assessed as red. In the event of a collapse, this risk becomes more prevalent.

7.5 Facilities management contracts can be re-brokered through SFL. Interim arrangements such as direct employment of displaced Interserve staff by SFL could be put in place to ensure that there is no gap in service delivery, without which the key risk to the council would require a temporary closure of these schools whilst SFL sources a new provider or recruits alternate staff to provide the service.

8 LEGAL AND GOVERNANCE CONSIDERATIONS

8.1 The legal and contractual considerations are set out within the body of this report.

8.2 The contractual documentation between the council and SFL was negotiated and completed in 2009, and the risks that have been highlighted in respect of Interserve's current position were not anticipated at that time. Despite this, the council's contractual relationship is with SFL, and any remedies for breach or late delivery would be pursued against SFL.

8.3 In the case of sub-contractor insolvency, the exact legal mechanism used to recover control of the various projects, will depend to some extent on the particular route taken. SFL have suggested that the extent of the delay will be controlled as a result of measures put in place. However, previous instances of contractor insolvency have usually resulted in significant delays, and the council will continue to seek reassurance from SFL as to the effectiveness of the measures being taken.

8.4 As highlighted above, the potential contractual remedies for breach, or late delivery, may cover any financial loss, but may not entirely mitigate the reputational and logistical risks to which the council could be exposed in the event of Interserve becoming insolvent.

9 EQUALITY IMPACT ASSESSMENT

As this report does not require a decision an equality impact assessment is not required.

10 DATA PROTECTION IMPACT ASSESSMENT

10.1 A data protection impact assessment is not required as no decision is being sought.

11 CRIME AND DISORDER AND RISK ASSESSMENT

11.1 There are no crime and disorder risks arising from this report.

12 SUSTAINABILITY OF PROPOSALS

12.1 There are no direct sustainability issues arising from this report.

13 HEALTH AND WELLBEING IMPLICATIONS

13.1 There are no direct health and wellbeing implications from this report.

14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND

14.1 Delivery of projects detailed, even if delayed will ultimately still deliver assets fit for purpose forming part of the council's managed asset base moving forward.

15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

15.1 The purpose of the report is to update the Audit and Risk Assurance Committee with the Council's arrangements with Interserve and how any identified risks are being managed.

16 APPENDICES:

Appendix 1 - Interserve PLC, published statement 'Deleveraging Update' and subsequent correspondence.

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