



POLICY AND RESOURCES COMMITTEE

Wednesday 24 March 2021

REPORT TITLE:	EDSENTIAL CIC - LETTER OF COMFORT
REPORT OF:	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

Edsential CIC, a company wholly owned equally by the Council and Cheshire West and Chester Council, has experienced significant trading and financial difficulties as a consequence of the COVID 19 Pandemic. It has been in negotiation with officers of both the Council and Cheshire West and Chester Council with a view to obtaining additional financial support. external auditors require re-assurance that the company is a going concern.

The proposals within this report affect all Wards

The proposals within this report are a Key Decision.

RECOMMENDATIONS

- (1) That the Director of Law and Governance be authorised, in consultation with the Director of Resources, to:
 - (a) provide a letter of comfort to Edsential that financial support will be provided to the company over the forthcoming period, in the form of Covid related funding support and/or a commercial loan, to be offered in conjunction with Cheshire West & Chester Council and subject to approval by this Committee; and
 - (b) consider such a request for assistance from Edsential to this Council, which shall only be granted subject to the approval of this Committee and which consideration should include assessment of the request (due diligence), revised business plan(s) and any conditions considered appropriate to be applied at the point of offer.
- (2) That the Director of Law and Governance be authorised, in consultation with the Director of Children's Services, to appoint a replacement officer as a director of Edsential.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATIONS

- 1.1 Edsential has been provided with a working capital facility to manage its cashflow arrangements, allowing the company to function effectively. It has encountered financial difficulties arising from the Covid-19. Although various government support measures have been utilised by the company, it is likely that the company will need to negotiate additional facilities beyond the cashflow agreement to cover exceptional costs or loss of income arising from Covid-19.
- 1.2 The financial statements for Edsential for the last trading year have been prepared and are due to be presented at its board meeting of 25th March 2021 as complete by their auditors, Crowe LLP, prior to an extended filing deadline of 31st March. In order for the auditors to sign off the company as a “going concern”, however, it needs to be demonstrated that there is reasonable expectation that the company has adequate resources to continue to be operational.
- 1.3 To this end, the shareholders, Wirral Council and Cheshire West & Chester Council, have been asked to provide a letter of comfort that they will provide a means to adequate funding to give assurance that the company will remain viable and have a realistic mechanism for recovering the recent and projected losses.
- 1.4 The core, underlying business (prior to Covid-19) has proven to be profitable and marginally cash generative. Subject to adequate revised business plans, consideration of the company’s resources and long term consequences of any short term support provided and the assessment of need at the close of lockdown and re-opening of the Edsential’s activities, it is considered in the Council’s interest as a shareholder, together with Cheshire West & Chester Council, to provide such funding and the letter of comfort in advance of that detailed application.
- 1.5 The Council’s current appointee to the board of directors of Edsential is Simone White, whose role within the Council has changed upon her promotion to Director of Childrens Services. It is considered, therefore, that her role is best taken up by another officer related to the delivery of education and youth provision and create a separation to respect the conflict of interest between company and Council.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 A decision could be made to not provide a letter of comfort. In that event alternative financing arrangements could be sought by Edsential, albeit such support may be difficult to establish. Not providing a letter of comfort would mean that Edsential’s auditors would be unable to sign off the company’s

accounts. This could make it unlikely that the company could continue to function as a going concern.

- 2.2 Mrs White could remain as appointee director. It was considered that this role best suited to an assistant director or head of service, which is a role Mrs White no longer holds, and would lead to extra capacity being asked of Mrs White whilst fulfilling her new role.

3.0 BACKGROUND INFORMATION

Company and Requested Letter of Comfort

- 3.1 Edsential is a Community Interest Company. It is equally and jointly owned the Council and Cheshire West and Chester Council. Its mission is, "Improving outcomes for children and young people." It was formed in 2015 and, save for the times when it was prevented from doing so during the COVID 19 pandemic, delivered a wide range of education and support functions to schools, academies, parents, and other education establishments. It has generated approximately £18.4M per annum from schools in Wirral and Cheshire West & Chester since its inception.
- 3.2 Approximately £22m of income generating services, focused mainly on catering, cleaning, residential activity, music and school improvement were transferred from both Councils to the newly formed company along with the relevant staffing, contracts and associated expenditure.
- 3.3 Edsential traded profitably for the first years of operation and was projected to generate a further operating surplus of approximately £100,000 for the year to March 2021. Customarily, surpluses have been deployed to reduce start up loan funding received from the shareholder councils and provided grants to schools in both Council areas for school improvement activities.
- 3.4 Over and above COVID pandemic financial pressures, it is noted the company has identified financial pressures caused by paying the local Living Wage as such costs tend to rise more quickly than the company's income from schools. The company has therefore indicated the need to generate new and growing savings in the future as a means to bridge this gap.
- 3.5 As part of the arrangements for establishing the company, both Councils agreed to provide Edsential with a Working Capital Loan facility. The facility is required as the company is reliant upon income streams for services provided, to finance its expenditure. The way the Company operates means that costs of provision are incurred before income is received leading to a temporary cashflow timing issue. The company makes use of the facility as and when it needs to draw down cash to make payments and repaying as cash for services supplied is received.

- 3.6 On 16th December 2020 this Committee agreed to approve the renewal of an interest bearing working capital cashflow agreement of up to £2 million with Edsential for a 5 year term.
- 3.7 The Covid-19 pandemic has impacted upon Edsential's business plans and planned income streams. Although various governmental support has been utilised by the company the company will need to negotiate additional facilities beyond the cashflow agreement to cover exceptional costs or loss of income arising from Covid-19.
- 3.8 Discussions are taking place between the company and officers of the Council and of Cheshire West and Chester Council about the precise nature of the additional financial facilities that should be offered to Edsential. Finalised proposals will be reported to a subsequent meeting of this Committee. In the meantime, the company's auditors are requiring a letter of comfort in order to enable them to be in a position to sign off the company's accounts and for them and the company to have confidence that the business can continue as a going concern.
- 3.9 Covid related grant funding along with commercial loan funding from each of its shareholder councils should not only continue enable it to continue to trade but will also enable it to exploit gaps in its various markets caused by other operators withdrawing or ceasing to trade.
- 3.10 This is particularly true in the area of providing outdoor education residential facilities through a restructured offer which would include a rationalisation of the facilities deployed. The company has already indicated that it will not re-open the Outdoor Education Centre at Oaklands, Nr Llanwrst, in North Wales leased from the Council (and has served notice to terminate the lease). It is planning to close another similarly uneconomic facility owned by Cheshire West and Chester Council.
- 3.11 The process of reviewing the Draft Annual Business Plan for 2020 for shareholder approval was interrupted by the COVID crisis and the company is preparing a revised version for 2021 for presentation to shareholders which will be presented to this Committee for approval in the usual way at the first available meeting. It is expected that this will detail not only the financial support sought from shareholder councils, but also other financial savings measures being proposed by the company, including a partial pay freeze, changes to the pension provision for new employees, the restructuring of the company's residential offer, the reduction in furlough support and the closure of some residential centres. The latter is perceived to have limited financial impact.
- 3.12 It is anticipated that a mixture of Covid related grant funding and a commercial lending by the two councils. Should enable the company to cope well with the impact of the Covid 19 pandemic, It is anticipated that

the new business plan for the company should enable to the company to recover well over the forthcoming years but that there is a need for a short term injection of cash to tide the company over, details of which will be considered at a later meeting. Without the measures set out in the recommendations the Company has indicated that it will be unable to continue to trade.

Company Director

- 3.13 The Council's current appointee to the board of directors of Edsential is Simone White, whose role within the Council has changed upon her promotion to Director of Children's Services. It was considered that this role best suited to an assistant director or head of service associated with children's, education or youth provision, which is a role Mrs White no longer holds, and which would now would lead to extra capacity being asked of Mrs White whilst fulfilling her role as Director at the Council. The previous company director appointed was Mr David Armstrong.
- 3.14 The Council's new Assistant Director for Education has not yet started their employment with the Council. Whilst this person may make best sense to be the Council's appointee, and the existing Cheshire West and Chester Council appointee to the Edsential board is likewise that Council's Assistant Director for Education, this matter has not been discussed with the individual concerned and further options may come to light as a result of that or other discussions. Given that timing, therefore, it is suggested that delegated authority be granted to make the appointment following further discussion.

4.0 FINANCIAL IMPLICATIONS

- 4.1 At this stage, there are no direct financial implications arising from the recommendations made in this report. The financial implications that flow from providing Covid funding support and any commercial loan will be identified once the need and application for funding is known and assessed at the end of the period of Covid restrictions upon the business activities of the company.
- 4.2 Any loan element would be on commercial terms for the councils, so as to comply with subsidy provisions, as they are required to charge a market equivalent rate whilst being able to borrow at significantly lower rates.
- 4.3 Any Covid support funding would be in the form of a grant, potentially from Covid relief funding received from central government as held for these and other purposes by the councils, which would enhance the company's cash position without imposing an additional interest liability. The use of grant funding could place a pressure on the Council's revenue budget and the use of Covid monies would be at the cost of alternative use/demand of these monies.
- 4.4 The use of grant money would be a form of subsidy control and would have to be justified having regard to the Subsidy Control Common Principles.

5.0 LEGAL IMPLICATIONS

- 5.1 Edsential is a local authority controlled company, established under the Local Government and Housing Act 1989 and which operates under the provisions of that and related legislation, including the Local Authorities Companies Order 1995 and the Local Government Act 2003 and Trading Order 2009 as augmented by the Localism Act 2011.
- 5.2 Edsential is established as a Community Interest Company in which the Council owns half of the issued share capital and Cheshire West and Chester Council holds the other half. Edsential accordingly has limited capacity to distribute dividend income and has additional regulatory requirements to meet. There is a commitment that the company is not established for private gain and any surplus or assets are used principally for the benefit of the community.
- 5.3 Its purposes are education support services and other food services. Its activities relate primarily to school catering and cleaning, support to creative and performing arts, governors, health and wellbeing, music, residential visits and training.
- 5.4 Any further financial facility offered to Edsential needs to be subsidy control compliant so as not to provide an unfair advantage to the company and be compatible with the Council's fiduciary duty to local taxpayers. The detailed considerations relating to subsidy control will depend on the nature of the financial assistance that is recommended to this Committee at a later date.
- 5.5 To the extent that it provides such services which are a function of the Council, it would then fall on the Council to discharge such services in its area if the company was to cease to carry those out.
- 5.6 The services currently being delivered by the company are limited to
- (i) the provision of Health and safety Advice and the maintenance of a register for schools where the council is employer when schools organize trips outside normal school hours; and
 - (ii) the co-ordination of the school governors' statutory support function which involves giving relevant advice and sign posting training activities.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 There are no direct implications to staffing, ICT or Assets.

7.0 RELEVANT RISKS

- 7.1 The Company's ability to operate effectively may be compromised if its external auditors are unable to sign off its annual accounts.
- 7.2 In the event that the company ceases to trade, in addition to the negative impact on schools and school children in the area who may receive inferior services from less socially motivated suppliers, there is a financial risk to the council that:
- its working capital loan may not be repaid in full;
 - services will fall back to the council to be delivered;
 - it will be required to cover redundancy costs and possibly other debts of the company, including an outstanding VAT payment (deferred with HMRC approval) of approximately £900,000.
- 7.3 Such risk would be mitigated by the proposals within this report.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Briefings have been provided to Members appointed to the Shareholder Board (sub-committee).
- 8.2 Discussions are taking place between this Council and Cheshire West and Chester Council, between both officers and elected Members, to consider a shared approach.

9.0 EQUALITY IMPLICATIONS

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision, or activity.
- 9.2 Edsential currently delivers advice, support, and training to its employees and to schools, parents and young people on Safeguarding, E-Safety and the application of technology and actively promotes the safe and effective use of technology.
- 9.3 It also offers Safer Recruitment training from the Safer Recruitment Consortium as well as support and guidance on safeguarding.
- 9.4 Through its work with the Governors Services the company provides training on the safe use of technology, Safer Recruitment, Academisation, Pupil Premium funding and preparing for Ofsted.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no direct environment and climate implications.

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APPENDICES

Not applicable.

BACKGROUND PAPERS

'Edsential – Joint Shareholder Financial Update' February 2021
(Not for publication Para 3 (Information relating to the financial or business affairs of any particular person) Sched 12A, Local Government Act 1972)

Council Meeting	Date
Policy and Resources Committee	21 December 2020