



DERBY CITY COUNCIL

SCRUTINY MANAGEMENT COMMISSION 20 September 2011

Report of the Strategic Director of
Neighbourhoods

ITEM 8

SCHOOL MEAL PROVISION IN THE CITY: School Catering Contract Update

SUMMARY

- 1.1 The purpose of this report is to update Members on progress towards implementation of the Cabinet decision, taken on 19 July 2011 to revise our tender approach to procure a group contract to deliver a fully managed school meals service using the Eastern Shires Purchasing Organisation (ESPO) Catering Services National Framework Agreement. This will allow for a contract start date of 31 October 2011.
- 1.2 Four bids were received on 9 September 2011 and officers are currently evaluating these tenders. Bidders were asked to provide a price for delivering the service based on the current condition and equipment levels in schools and set out their future preferred method of meal production, rather than the Council specifying a 'heat and serve' model. Once appointed the Council will work with the provider and schools to explore the most effective strategy for investing the Council's limited capital budget.
- 1.3 It also provides information requested by Scrutiny Management Commission (SMC) in July 2011 about the cost of officer time spent in reaching this stage with the contract for the provision of school meals in the city and the reason for the delay in implementing the original Cabinet decision made in July 2010. The method used to calculate this information about the cost of officer time is set out in Appendix 2 and the key issues and risks for the Council that have arisen from the overall changes to the delivery of the school catering service across the City that have led to delays in implementation of the July 2010 decision are set out in detail in Appendix 3.

RECOMMENDATION

- 2.1 To note the revised approach to the outsourcing of the school catering service by inviting the suppliers to recommend the most efficient and effective production methodology to deliver a fully managed school catering service to schools, nurseries, special schools and children's centres that choose to be part of the group contract.
- 2.2 To note the reasons for the delay in implementation of the July 2010 Cabinet decision to outsource the service and that the original financial model to refurbish all school kitchens to introduce a new regeneration ('heat and serve') cooking production method is no longer a financially viable option for the Council in the light of the small number of schools that have opted into the proposed contract.

- 2.3 To note the total estimated cost of £107,532 for the time spent by officers (£91,532) and consultants (£16,000) in reaching this stage with the contract for the opt in schools and in managing the wider risks and issues associated with the overall management of the provision of school meals in the city.
- 2.4 To note the more detailed issues that are set out in Appendix 3, in relation to both the opt in and opt out arrangements with schools for their school meal provision.

REASONS FOR RECOMMENDATION

- 3.1 To continue to progress with the principal of the Cabinet decision of July 2010, to look for an alternative, more efficient method of delivering school meals.

SUPPORTING INFORMATION

Introduction

- 4.1 On 27 July 2010 Council Cabinet approved a full tendering exercise to outsource the school meals service either through:
- **Option 1:** Outsource the production and delivery of school meals to a Council distribution hub which will transport the meals to school kitchens where the meal will be cooked and served; or
 - **Option 2:** Outsource the school meals service to either a private or public catering provider with a heat and serve process
- It also agreed to further explore a third option of preparation in a Council centralised preparation unit with cook and serve in local school kitchens.
- 4.2 The main driver behind this decision was the need to address significant losses being made by the school meals service and the impact of individual schools deciding to opt out of the Council run catering service.
- 4.3 The expectation was that either a food only or a fully managed service would be in place from September 2011, with the new equipment installed in schools.
- 4.4 Over the past year officers have been working to try to deliver these recommendations. However there have been a number of issues that have emerged along the way that meant that the project team could not deliver the recommendations as they were set out in the July 2010 Cabinet report.
- 4.5 In July 2011 Cabinet agreed a revised tender approach and programme to procure a group contract to deliver a fully managed school meals service using the Eastern Shires Purchasing Organisation (ESPO) Catering Services National Framework Agreement. This will allow for a contract start date of 31 October 2011.

- 4.6 On 29 July 2011 five suppliers were invited to prepare and submit tenders to take over the delivery of a group contract for a fully managed service, and to set out proposals for the future delivery of the service based on their preferred method of meal production, rather than the Council specifying a 'heat and serve' model. The aim is to have a new contract starting on 31 October 2011.
- 4.7 Bidders have submitted their tender based on the current condition and equipment levels in schools; once appointed the Council will work with the provider and schools to explore the most effective strategy for investing the Council's limited capital budget.
- 4.8 The school catering service has put in place a production process to ensure that all schools who have confirmed they are staying in the package will continue to have a school meal for every child who wants one until the new contract is awarded.

Key Issues and Progress

Delivery model and school take up

- 4.9 The 'heat and serve' approach was not favoured by a significant number of schools and as a result the number of schools that have opted to move forward with a group contract has reduced from 79 to 34.
- 4.10 It took some time for schools to decide on whether they wanted to opt in or out of the proposed group contract.
- 4.11 The gradual reduction in the number of schools opting into a group contract caused concern in relation to the financial viability of the model, as some of the savings were to be used to provide for prudential borrowing to match a capital grant that we received for providing the new kitchen equipment.
- 4.12 A meeting with schools on 21 June 2011 updated them on the situation and set out the current proposal. There was discussion on a number of issues that still had to be worked through but on the whole the schools that were represented at the meeting confirmed that they were still happy to move forward with a group contract and that the revised approach to procurement seemed a sensible way forward.
- 4.13 Of the schools that opted out, the Council agreed to give them £8,000 towards the cost of any improvements that they needed to make to their kitchen, this was essentially each school's share of the government grant. The school needed to match this figure, though in reality many schools have now spent significantly more on their kitchens than £16,000.

Condition of kitchens/ capital investment

- 4.14 Since the Cabinet report in July 2010 it has become apparent that the condition of the school kitchens in a significant number of cases is very poor. And whilst the report had included a cost for the new equipment that would be needed, it had only included minor costs for any alterations or repairs to existing kitchens that would be required to meet health, safety and hygiene standards.
- 4.15 In October/ November 2010, when some of the school kitchens were temporarily close a significant amount of staff resource had to be focussed on reopening as many of the kitchens as quickly as possible, which did divert resources from working on the main project. A number of the kitchens are now open and working under a risk management plan, whilst some of the kitchens are still closed.
- 4.16 Although on 7 June 2011, Cabinet approved £200,000 to begin the work to refurbish the kitchens, this only provides a start. Whatever method of meal production is selected, it is expected that a level of capital investment will still be required and further reports to Cabinet will make recommendations on this issue.
- 4.17 Around £400,000 is still available from the government grant, but this does require match funding to draw down.
- 4.18 The new approach proposes that as part of the tender process we ask bidders to not only consider their approach with the existing equipment, but that we ask them to set out a tender price for their preferred model for food production, assuming that there was to be a minimal level of capital investment. A considered view can then be taken during the tender assessment process as to which meal production method would give the Council and schools the best way forward.

Procurement approach

- 4.19 In January 2011 the Project Board made a decision to make use of the Eastern Shires Purchasing Organisation (ESPO) framework contract for local authorities and schools to use to outsource their catering service requirements. The ESPO project timetable assumed that this would be in place by February / March 2011, but the suppliers were only appointed at the beginning of June 2011. This has made it impossible to put out and award a tender for a new service provider to start September 2011.
- 4.20 At the time the decision was made to use the framework it was thought that the framework would allow us to tender for either a food only contract, linked to the 'heat and serve' model, which would mean that the Council or schools would still manage the kitchen staff directly, or tender for a fully managed service. It is now clear that the framework does not facilitate a food only solution.
- 4.21 Due to procurement restrictions it has not been possible for officers to talk to potential suppliers whilst they have been bidding to be included within the ESPO framework. The framework suppliers were approved in early June and we had our first meeting with them on 16 June.

- 4.22 All the suppliers can offer a wide range of food production and service delivery models that include: cook from scratch, transport of hot food to serveries and heat and serve. They also explained that the numbers of meals required at each school and the number of meals that a kitchen can supply would determine which method would be the most cost effective solution for Derby. Therefore, they did not simply think that moving forward with heat and serve as the only method of production was necessarily the right thing to do.
- 4.23 It also became clear that each of the suppliers would be prepared to take on the current service and the kitchens in their current condition. They felt that any investment decisions would be best made in partnership with the chosen supplier and implemented after the contract had started.
- 4.24 This meeting with the suppliers has provided the Project Board with the information required to put together the revised proposal for Cabinet. A revised project timetable has been put in place that sets out an earliest possible start date of 31 October 2011.

Staffing implications

- 4.25 There are clearly significant staffing implications, as staff in the schools that have opted into the group contract will be transferred to the new supplier under TUPE regulations. Staff in community/voluntary controlled schools that have opted out have been transferred to the schools under their line management; staff in foundation/voluntary aided schools that have opted out will be transferred under TUPE regulations to the school's foundation/relevant diocese. Alternatively if the opt out school appoints an external provider of school meals the staff will be transferred under TUPE to their appointed provider. (Appendix 2.)
- 4.26 For staff engaged in the management of the school meals service a number will transfer under TUPE to the new provider, though this has still to be finalised. To the extent that they do transfer the issues will be the same as for the kitchen staff. To the extent that they do not transfer, and are no longer required by DCC, any redundancy costs would need to be covered by the Council. The management team within the Facilities Management Division is currently being restructured in order to fairly assess which staff would move to the new provider and which are retained to manage the remaining work of the division.
- 4.27 There will be contract management and kitchen maintenance responsibilities for the Council in relation to the group contract, which will require a level of resource and this is currently being established. The cost of this will need to be covered by the overall funding available for school meals.
- 4.28 Human Resources officers and senior managers are working with all staff within the catering service to set out the implications clearly and support staff in making transitional arrangements.

Risk management and mitigation

- 4.29 Taking into account the wide range of scenarios that are now emerging for different types of school, the School Meals Project Team have recently undertaken a full risk assessment. This has clarified responsibilities and liabilities of the Council, school governing bodies and potential providers for:
- employment of kitchen staff
 - management of kitchen staff
 - ownership of kitchen building fabric
 - maintenance of kitchen building fabric
 - ownership of school kitchen equipment
 - maintenance, repair and replacement of school kitchen equipment
 - compliance with health and safety legislation
 - delivery of nutritional standard
 - food hygiene during preparation and servicing of school meals
 - ensuring compliance with Council's Contract Procedure Rules and EU procurement law
- 4.30 This work has highlighted the risks for the Council that need to be addressed in the procurement strategy and the strategy for opt out schools. For example, despite an outsourced model for school meals, the Council will retain its overarching responsibilities in relation to community schools. The major findings of this work are contained in Appendix 2 which sets out in more detail information on the legal and personnel issues related to this area of responsibility; covering both the opt in and opt out arrangements with schools.
- 4.31 A timeline setting out all of the key milestones in the project and meetings that officers have attended is attached at Appendix 4.

OTHER OPTIONS CONSIDERED

- 5.1 Retaining the in-house catering service has been considered, but the number of schools opting in to the group contract would not support such a model.
- 5.2 Consideration has been given to the Council not facilitating a group contract and either providing a nutritionally compliant meal to only free school meal entitled children or letting each school take on responsibility for school provision themselves. These options have not been pursued to date as schools that have opted in do recognise the benefits of a group contract and the Council is the best placed organisation to facilitate a group contract on behalf of the schools.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	Emily Feenan Michael Kirk Karen Jewell Christine Durrant Gurmail Nizzer
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For more information contact:	Sarah Edwards 01332 643442 e-mail: sarah.edwards@derby.gov.uk
Background papers:	School Meals Provision in the City Cabinet Report: 27 July 2010 Update On School Meal Provision Cabinet Report: 19 July 2011
List of appendices:	Appendix 1 – Implications Appendix 2 - Information on the cost of officer time spent in reaching this stage with the contract and managing the associated changes in provision of school meals in the city. Appendix 3 – key issues and risks for Derby City Council associated with the changes in arrangements for future delivery of school meals Appendix 4 – Timeline and milestones July 2010 – October 2011

IMPLICATIONS

Financial and Value for Money

- 1.1 It is estimated that the cost of officer time associated with managing and delivering this project over the last year is £91,532 and the cost of consultancy input is £16,000 making a total cost of £107,532. The method used to undertake this calculation of both these figures is set out in Appendix 2.
- 1.2 The potential value of the contract over a three year period is estimated at £4,500,000.

Legal

- 2.1 None.

Personnel

- 3.1 None.

Equalities Impact

- 4.1 An Equality Impact Assessment was carried out prior to the Cabinet approval in July 2010. No significant changes have been made to the proposals since that date.

Health and Safety

- 5.1 The Council has an overarching responsibility for health and safety in community and voluntary controlled schools. Governing bodies in those schools have day to day responsibility for health and safety management but the overarching duty rests with the Council. The governing body is responsible for health and safety in foundation and voluntary aided schools.
- 5.2 As the employer of School Catering Service staff, working in school kitchens, the Council has responsibility for the health, safety and welfare of those staff, irrespective of the status of the school.
- 5.4 Furthermore, the Council has an overarching duty, under section 175 of the Education Act 2002, to safeguard and promote the welfare of all children. This duty exists irrespective of the status of the school or, in this case, the method of school meal provision.
- 5.4 The Council is therefore under a positive duty to actively monitor compliance with health and safety legislation in community and voluntary schools, irrespective of

their status.

5.5 For more detail see Appendix 3.

Environmental Sustainability

6.1 None

Asset Management

7.1 Asset management implications are set out in paras 4.14 – 18 of the main report and in sections 2 and 3 of Appendix 3.

Risk Management

8.1 See Appendix 3 and paras 4.29 -4.31 in the main body of the report.

Corporate objectives and priorities for change

9.1 This project is part of the 'One Derby, One Council' Transformation programme.

INFORMATION ON THE COST OF OFFICER TIME SPENT IN REACHING THIS STAGE WITH THE CONTRACT AND MANAGING THE ASSOCIATED CHANGES IN PROVISION OF SCHOOL MEALS IN THE CITY.

1) Members of the School Catering Project Board

Senior Responsible Owner:

Chris Edwards: Service Director	July 2010 - September 2010
Jo Davidson: Strategic Director CYP	October 2010 – March 2011
Christine Durrant: Service Director	April 2011 – to date

Project Manager: October 2010 – to date

Sarah Edwards, Senior Project Manager

Project leads:

Legal:	Emily Feenan, Solicitor
Legal HR/TUPE:	Charlotte Hutton, Solicitor
CYP:	Gurmail Nizzer Head of School Organisation and Funding
School Catering:	Sandra Cole, Head of Facilities Management
Finance:	Michael Kirk, Acting Head of Finance and Russell Sexton, Acting Principal Accountant
Health and Safety:	John Tyler, Health and Safety Team Leader
Property Maintenance:	Phil Derbyshire, Head of Maintenance and Energy
Procurement:	Dawn Moran, Head of Procurement and Linda Spiby, Category Manager
HR:	Dawn Hughes, HR Advisor

2) Main type of meetings and events requiring officer input

There are six main types of activity associated with the project that have required officer input. These are:

- a) Project management – the Transformation Team
- b) Project Board meetings

- c) Condition of Kitchens Working Group meetings
- d) Consultation events with head teachers and governors
- e) Statutory consultation meetings with staff and unions
- f) The delivery of various work packages such as condition of kitchen surveys, legal documentation, service specifications for tender which was undertaken by officers and where necessary external consultants.

The schedule and number of each type of meeting and the various work packages produced through out the project is set out in the project timeline at Appendix 4. For the purpose of this report the estimated costs of officer input has been calculated using the following average hourly rates:

Grade	Hourly Rate	inc 25% on costs
PO2	17.45	21.81
PO4	20.19	25.24
HOS	25.84	32.30
Director	41.46	51.82

a) Project management

This is a complex project which has required significant input by the Transformation Team. Over the course of the year it is estimated that the project manager has spend an average of 2 days per week managing this project. This equates to a sum of £20,808 over a year.

b) School Catering Project Board Meetings

These meetings are managed by the project manager. They usually last 2 hours and require attendance of:

X 1 Director
 X 4 Heads of Service
 X 2 Principal Officer (PO4)
 X 2 Principal Officer (PO2)

Estimated cost of X14 Project Board Meetings

No	Grade	Hourly rate incl on costs	Average length of mtg – 2hrs	Total £	No of meetings held
1	Director	51.82	2	104	
4	HOS	32.30	8	258	
2	PO4	25.24	4	101	
2	PO2	21.81	4	87	

			Sub-total	550	X 14
Total cost				£7,700	

c) Condition of Kitchen Working Group Meetings

These meetings are managed by the project lead for CYP. They usually lasted 3 hours and required attendance of the project manager and:

X 3 Heads of Service
X 1 Principal Officers (PO4)
X 1 Principal Officer (PO2)
X1 External consultant (Faithful and Gould)

Estimated cost of X10 Working Group Meetings

No	Grade	Hourly rate incl on costs	Average length of mtg – 3 hrs	Total £	No of meetings held
3	HOS	32.30	9	291	
1	PO4	25.24	3	76	
1	PO2	21.81	3	65	
1	External consultant	-	-	Not included	
			Sub-total	432	X 10
Total cost				£4,320	

d) Consultation and Engagement meetings and events with Head teacher and governors

These meetings are managed by the project manager. They usually last 2 hours and require attendance of:

X 1 Director
X 2 Heads of Service
X 2 Principal Officer (PO4)

Estimated cost of X8 Consultation and Engagement Meetings

No	Grade	Hourly rate incl on costs	Average length of mtg – 3 hrs	Total £	No of meetings held
1	Director	51.82	3	155	
4	HOS	32.30	12	388	
2	PO2	21.81	6	131	

			Sub-total	674	X 8
Total cost				£5,392	

e) Statutory Consultation Meetings with Staff and Unions

These meetings are managed as part of the overall project but it is the responsibility of the relevant Head of Service and HR organise and attend the meetings. They usually last 2 hours and require attendance of:

X 1 Director
X 1 Head of Service
X 1 Principal Officer (PO4)

Estimated cost of X6 Consultation Meetings with Staff and Unions

No	Grade	Hourly rate incl on costs	Average length of mtg – 2 hrs	Total £	No of meetings held
1	Director	51.82	104		
1	HOS	32.30	65		
1	PO4	25.24	50		
			Sub-total	219	X 6
Total cost				£1,314	

f) The delivery of project work packages

The production of work packages required to deliver the project are managed by the project manager and agreed by the Project Board. Each member of the project team has produced several packages of work required for successful delivery of the project. Finance have produced some indicative daily costs of different grades of officer and these have been utilised to work out an average cost for their time over the period of one year.

Work packages	Grade	Average number of days per week over 1 year	Total £
Legal work packages	PO4	1.5 day	14,610
Procurement work packages	HOS and PO4	1 day	12,463
Maintenance work packages	HOS	1 day	12,463
Catering Service	HOS	0.5 day	6,231

packages			
School organisation packages	HOS	0.5 day	6,231
Sub total			£51,998
Project work done by external consultants	<ul style="list-style-type: none"> • Specialist legal input • Asset register document for tender 		£12,000 £4,000
Total cost			£67,998

3) Summary: Total estimated cost of officer time spent in reaching this stage with the contract for the provision of school meals in the city.

Activity	Number	Estimated cost of officer input
Project management – the Transformation Team	2 days per week	£20,808
Project Board Meetings	14 meetings	£7,700
Condition of Kitchens Working Group meetings	10 meetings	£4,320
Consultation events with head teachers and governors	8 meetings	£5,392
Statutory consultation meetings with staff and unions	6 meetings	£1,314
Delivery of project work packages by officers	Various	£51,998
Sub total: cost of officer time		£91,532
Delivery of project work by external consultants	Various	£16,000
Total costs		£107,532

KEY ISSUES AND RISKS FOR DERBY CITY COUNCIL ASSOCIATED WITH THE CHANGES IN ARRANGEMENTS FOR FUTURE DELIVERY OF SCHOOL MEALS

Background

- 1.1 A project team was established in September 2010 to deliver the strategy for school catering as set out and agreed by Cabinet in July 2010. However, delivery has proved to be difficult and has been delayed by the emergence of:
 - previously unconsidered, significant risks for Council,
 - a growing understanding of the impact of the poor condition of school kitchens and
 - a lack of support for the proposed new method of school meal production from school governing bodies.
- 1.2 Only 34 of the 79 schools that were in the Council catering package in July 2010 have confirmed that they want to be part of the group contract. It should be noted that many of these schools are nurseries, special schools and children's centres that require small numbers of meals or have specialist requirements that mean it is not viable for them to opt out of a group contract. And some of these are located in Derby's most disadvantaged neighbourhoods.
- 1.3 To date, 45 schools have decided that they do not want to be part of the proposed group contract and are now making their own arrangements for the delivery of school meals. As a result, the remaining service has become more fragmented and new arrangements will need to be put in place to ensure that the Council manages its risk associated with the fulfilment of its overarching responsibilities for health and safety, staff employed in community schools who have been transferred to the management of the school but remain Council employees and for the maintenance of buildings that remain in the Council's ownership.
- 1.4 In 2010/11 the school meals service had a turnover of around £5 million per year. In 2011/12 turnover is estimated to be around £1.7 m.

1.5 Summary of school decisions to opt in or out of the proposed group contract

The table below sets out a summary of the number of schools that are opting in / out of the group contract and their school category (as at June 2011):

	Total	No. of Community Schools / Nurseries / Children's centres	No. of Voluntary Controlled Schools	No. of Foundation Schools	No. of Voluntary Aided Schools	No. of Academies
Opting in	34	30	0	0	4	0
Opting out	45	34	0	5	6	0
Undecided	1	0	1	0	0	0
Not previously in contract	22	12	0	6	2	2
Total	102	76	1	11	12	2

Whilst the position continues to change and evolve with new categories of schools, this table also helps demonstrate the different types of schools in Derby (community, foundation, voluntary aided, voluntary controlled and academies).

An important point is that out of 102 schools, 76 schools are community schools for which the Council retains overall responsibility for a wide range of issues, including health and safety, irrespective of the mode of delivery of school meals. The community school category is critical in that whilst some responsibilities are delegated to schools as a result of revenue funding being delegated through the Scheme for Funding Schools, the Council continues to retain the overall legal responsibility for these schools.

1.6 Whilst there are multiple, complex issues and risks in the School Catering Project which all need careful and detailed consideration, there are three core areas or sub workstreams:

- Workstream 1 – Schools opting into the proposed outsourced group contract
- Workstream 2 – Schools opting out and making their own meals arrangements
- Workstream 3 – Schools previously opted out of the School Catering Service.

This Appendix highlights some of the main health and safety, financial, legal, and personnel implications and risks for the Council in Workstreams 1 and 2. Work on this project has highlighted similar risks and issues associated with schools in Workstream 3. This Workstream area will require further consideration by the Council to ensure that risks are managed but this is not currently contained within the scope of this project.

Health and Safety Responsibilities and Asset Management Planning

2.1 The Council has an overarching responsibility for health and safety in community and voluntary controlled schools. Governing bodies in those schools have day to day responsibility for health and safety management but the overarching duty rests with the Council. The governing body is responsible for health and safety in foundation and voluntary aided schools.

2.2 As the employer of School Catering Service staff, working in school kitchens, the Council has responsibility for the health, safety and welfare of those staff, irrespective of the status of the school.

Furthermore, the Council has an overarching duty, under section 175 of the Education Act 2002, to safeguard and promote the welfare of all children. This duty exists irrespective of the status of the school or, in this case, the method of school meal provision.

2.3 The Council is therefore under a positive duty to actively monitor compliance with health and safety legislation in community and voluntary schools, irrespective of their status.

2.4 The Council has overarching responsibility for:

- asset management planning / Schools Capital Strategy for all categories of maintained schools (community, foundation, trust and voluntary aided / controlled);
- the allocation of capital funding received from DfE;
- the prioritisation process in consultation with schools; and
- the subsequent development of the schools capital programme.

Schools have delegated responsibility for maintenance, premises management and to fund one off capital projects from accumulated revenue balances.

- 2.5 Whilst the Council and schools have some shared responsibility for health and safety, the Council has overall responsibility for capital investment in schools for major projects to address health and safety issues. The recent reduction in schools' devolved capital funding has placed more pressure on the Council's overall Schools Capital funding.
- 2.6 Condition of school buildings and sufficiency of places are likely to be the main areas of focus in the future, following the 2010 Comprehensive Spending Review ("CSR"). Whilst over the years there has been significant capital investment in school premises, there are significant challenges following the reduction in the level of national capital funding available to invest in schools, with a scaling back of most of the planned capital programmes (Building Schools for the Future (£230m), and Primary Capital Programme).
- 2.7 Despite the recent investment in schools, the current backlog for investment in Council schools is in excess of £59m. Furthermore, this condition backlog excludes costs associated with betterment; asbestos identification/removal; work identified as a result of fire risk assessments; any water hygiene remedial work; and any work related to mechanical (heating and boilers) and electrical elements. There is limited capital funding to invest across the schools estate, together with ever increasing condition priorities and health and safety issues to ensure schools remain open. The investment in school kitchens is another major condition priority.
- 2.8 Currently, where a school buys into the School Catering Service, annual and reactive maintenance of school kitchen equipment has been included within that package (through a transfer of schools' delegated budgets for maintenance of school kitchen equipment). This has partly facilitated the Council's management of its health and safety responsibilities within the majority (79%) of maintained school kitchens in the City. However, delegated budgets have been insufficient to address obsolescence of equipment and changes in health and safety legislation. (See para 3.1 – Closure of school kitchens.)

- 2.9 It is now acknowledged that the maintenance backlog and extent of health and safety non-compliance within school kitchens far exceeds that which can be addressed by reactive and annual maintenance alone or by a piecemeal approach to replacement of equipment. A strategy for the refurbishment of all school kitchens is therefore required.
- 2.10 The project team have explored the option of including maintenance, repair and replacement of kitchen equipment within an outsourced contract and concluded that the risk premium charged by external providers, given the poor condition of kitchens, is likely to make this option unaffordable. Furthermore, the ESPO National Framework does not provide for any more than cleaning and light maintenance to be undertaken by the external provider; responsibility for reactive maintenance, repair and replacement of kitchen equipment is retained by the local authority.
- 2.11 Therefore, whilst outsourcing the School Catering Service may generate a saving in relation to the cost of the production of meals. Capital investment will still be required in order to ensure that those school kitchens, which are to be used for school meal production, (whether within the Council's contract or not) are upgraded and improved to meet regulatory requirements.

Closure of school kitchens in November 2010

- 3.1 A decision was taken in November 2010 to close 35 school kitchens due to health and safety concerns. This decision was taken based on initial gas safety checks (undertaken by GasSafe engineers) which identified gas leaks in six of the eight kitchens inspected.
- 3.2 As a result, the Council appointed Midland Counties Heating Services to urgently undertake full gas safety checks (using GasSafe engineers) of all school kitchens and equipment in the 35 closed kitchens. This was followed by checks to a further 31 kitchens.

These checks were undertaken in accordance with The Health & Safety Executive (HSE) information sheet 23 (Rev 1), *Gas safety in catering and hospitality, revised in 2007*. The overall condition of the gas installation was checked against the current BS 6173: 2001 and HVCA document DW172.

3.3 These checks identified three main areas of concern:

- i) adequacy of ventilation;
- ii) provision of replacement / makeup air; and
- iii) lack of gas interlock equipment (a failsafe mechanism which prevents the continued use of gas when insufficient ventilation is present and stops gas flow in the event of failed ignition).

It should be noted that gas safety checks were not undertaken in academy, foundation and voluntary aided schools unless they were in the school meals catering package (Workstream 3).

3.4 Urgent work has taken place to reopen as many of these kitchens as possible. However, this work has not brought the kitchens up to current regulatory standards and 38 school kitchens are operating under a risk management plan as a short term solution and 9 remain closed.

It is not possible to confirm how long the kitchens will remain viable following the repairs should further problems occur with the ventilation systems or equipment. The condition and health and safety issues that led to the kitchens closures have not been fully addressed. Many of the kitchens that remained open also have significant condition issues. Unless capital funding can be prioritised towards this work, there is a risk that the Council may not be meeting its overarching health and safety obligations.

Contractual arrangements

4.1 **Workstream 1: Schools opting into the group contract**

4.2 It is proposed that the Council utilise a framework recently established by the Eastern Shires Purchasing Organisation (ESPO) for a range of catering services including education catering. The ESPO framework states that the minimum requirement for all education catering contracts let under the framework is as follows:

“the delivery of a fully managed school catering service for lunchtime school meals. The components of the requirement include the sourcing of food products and ingredients, the preparation and serving of meals, daily cleaning and maintenance of catering equipment (including washing up) and the general administration of the service, including the provision to the school/authority of relevant management information.”

- 4.3 Six of the framework suppliers attended a meeting with the Council to discuss the opportunity. All six suppliers offer different methods of meal production. The Project Board is therefore of the view that limiting the Council's requirements to a "heat and serve" solution will significantly reduce the number of suppliers who will be able/willing to bid. The Project Board has therefore proposed an approach which specifies the required outcomes from the contract (i.e. the standard of meal produced, taking into account schools' specific requirements) but leaves it to the suppliers to determine the meal production method.
- 4.4 Bidders will be asked to submit their most economically advantageous tender for the provision of the fully managed service, under which the management of the kitchens and staff will transfer to the provider.
- In addition to the evaluation of the detailed solution for meal provision, affordability and sustainability of the meal service will need to be considered.
- 4.5 It is proposed that the contract be for an initial 3 year term with an option to extend by two consecutive periods of 12 months.
- 4.6 ESPO specify the main terms of the contract to be awarded by the Council, however, it is also open to the Council to tailor clauses and specify additional terms to deal with specific Council requirements. It is currently envisaged that specific clauses will be required to cover:
- a reduction in meal price following investment in school kitchens;
 - the provider's remedies in the event of it incurring losses as a result of a school kitchen/item of essential equipment being unavailable through no fault of the provider (the provider will be required to mitigate any such losses);
 - the allocation of risk in the event of a school being closed as a result of unforeseen circumstances;
 - the relationship between the schools, the Council and the provider;
 - pension provisions; and
 - the allocation of employee liabilities (the suppliers have already indicated that an indemnity will be required to cover liabilities associated with equal pay settlements).

- 4.7 Responsibility for maintenance, repair and replacement of kitchen equipment will remain with the governing bodies of the schools. This is a change from the current situation where maintenance is provided by the School Catering Service. Governing bodies will be responsible for organising reactive and annual maintenance of kitchen equipment, including the organisation of annual gas safety checks within the school kitchen.

The new supplier will not accept the financial risk of being unable to deliver school meals as a result of kitchen equipment failures/failures in the structural fabric of kitchens which do not result from the supplier's actions. It is therefore essential that maintenance of kitchen equipment/structural fabric is performed to the necessary standard. The Project Board is currently considering options for ensuring this, including an option whereby schools within the group contract are required to purchase kitchen maintenance from the Council. It is hoped that the cost of such maintenance will be met out of the existing combined pot of school's delegated budget which they transfer to the Council and the free school meals funding and that no additional maintenance charges will be required.

- 4.8 In addition, the Council will continue to monitor compliance with health and safety legislation, to the extent necessary to meet its overarching responsibilities in relation to health and safety in community/voluntary controlled schools.
- 4.9 Although the new provider will be required to provide a fully managed service utilising the existing kitchen stock, it is proposed that the Council allocates capital funding to the targeted refurbishment and adaptation of school kitchens, in a manner which compliments the provider's chosen meal production and delivery method. Where obsolete equipment is removed from kitchens, the Council must make good the kitchen fabric and address all health and safety concerns. It is assumed that kitchen equipment will be "contaminated" and therefore arrangements will need to be put in place to facilitate the removal and disposal of such items.

4.10 Workstream 2: Schools opting out and making their own arrangements for school meals provision

Where a community school has opted/opts out of the group contract, it may provide school meals through:

i. In-house provision

Under this option, there will be no TUPE transfer, as there is no change of employer in law, but management responsibility for school kitchen staff would transfer to the governing body. School kitchen staff will remain Council employees.

The school will be responsible for annual and reactive maintenance of school kitchen equipment. The Council will monitor governing bodies' compliance with maintenance responsibilities/health and safety legislation.

Where a governing body fails to comply with its maintenance responsibilities, the Council will reserve the right to close the school kitchen.

The school will be responsible for all aspects of meal production.

ii. Award of contract for the provision of the meal service to an external provider

Under this option, there will be a TUPE transfer of school kitchen staff to the external provider.

It is assumed that the external provider will be responsible for annual and reactive maintenance of school kitchen equipment. The Council will continue to monitor health and safety compliance and, in the event of failures, will reserve the right to close a non-compliant kitchen.

4.11 Where a voluntary aided or foundation school opts out of the group contract, it may opt to provide school meals either through in house provision or through award of a contract for the provision of the meal service to an external provider. In either case, there will be a TUPE transfer of staff to either the foundation/diocese or to the external provider.

4.12 Where a school does not join the group contract, the governing body of that school will be responsible for reactive and annual maintenance of kitchen equipment; this will include the organisation of annual gas safety checks within the school kitchen.

- 4.13 Schools who purchase the maintenance package from Property Maintenance will have the gas safety checks undertaken on their kitchens and will have the option to purchase servicing of the appliances irrespective of whether they purchase the catering package.

Schools that opt out of the maintenance package will need to employ their own professional advisors and contractors to undertake the gas safety checks and servicing of the equipment. In this case, the Council will need to monitor the kitchens to ensure their compliance with health and safety regulations.

The issue of maintenance in opt out schools is a wider issue than just kitchens and requires a monitoring requirement to ensure compliance with all legislation and regulations relating to the maintenance of school buildings.

Financial implications

5.1 School meals service

In 2010/11 the school meals service has a turnover of around £5 million. Overall the service has returned a deficit of between £80,000 and £370,000 for the last 5 years and in 2010/11 it returned a profit of £80,000, plus an agreed surplus of £50,000 allocated to the general fund.

- 5.2 The school meals service is estimated to receive £72,500 in 2011/12 from the School Lunch Grant (a government grant used to subsidise the cost of meals). This is awarded to schools based on their meal numbers and for those schools currently in the Catering package, it is allocated directly to the Catering service. The grant is no longer ring fenced from October 2010. It is proposed that any school that opts into the 2011/12 group contract passes this grant directly through to the Catering service. This grant is awarded from September to August so the future arrangements for managing this grant will need to be agreed as part of the new group contract management arrangements. Schools that are out of the package can use the grant as they deem necessary.

- 5.3 With a maximum of 34 schools likely to opt into a Catering package on a long term basis, this does not provide a sufficient client base for the service to continue to cover its fixed costs. For 2011/12 the Catering service is budgeted to return a £50,000 surplus to the general fund. Additionally the service is currently charged £257,000 of central support charges. If the Catering service is closed, then there will be a general fund pressure of up to £307,000 to cover these budgeted costs / returns. The actual amount of the pressure is dependent on how much of the costs can be passed onto schools and how much central services can reduce their costs down following the alternative operating model.

- 5.4 Originally it was forecast that the majority of existing schools would opt into an in house Catering service. This would have enabled the kitchens to have been refurbished to a heat and serve specification (funded through use of the DfE grant plus service financed borrowing) and created a sinking fund for subsequent repair and replacement. However, the initial estimate of £5,000 remedial building works per school is now considered to be a material understatement.

Due to the lack of interest in the Council's group contract and the likely withdrawal of an in house Catering service going forward there is no available capital budget to act as match funding for the DfE grant.

- 5.5 Any employee redundancy and / or pension cost associated with changes in the operation is not quantifiable at this stage, but is likely to be incurred in 2011/12.

It should be noted that given the TUPE transfer of all kitchen staff to the new provider, any associated redundancy costs are planned to be met by the new provider, should they decide to restructure. However, this position may have to be re-considered once a detailed review of the tender submissions has been undertaken.

To the extent that staff engaged in management of the school meals service do not transfer under TUPE, and are no longer required by DCC, those redundancy costs would be a pressure on the general fund.

Personnel implications

6.1 Workstream 1: Schools opting into the group contract

In relation to the proposed award of a contract for the provision of a fully managed schools meals service for those schools opting in:

TUPE will operate to transfer school kitchen staff to the new provider. All liabilities associated with those staff will transfer to the new provider, including liabilities associated with equal pay settlements, grievances and disciplinarys and pensions. It will also include liability for redundancies if a redundancy situation arises post transfer.

- 6.2 The new provider will seek an indemnity to cover liabilities associated with equal pay settlements and other specific liabilities known at the time of transfer. In addition, whilst the new provider will probably agree to gain admitted body status and continue to provide access to the Local Government Pension Scheme, it will only do so on the basis of current employer contribution levels; the provider will look to the Council to meet the cost of future increases in contribution levels and costs associated with early retirement, where the cause of such early retirement cannot be attributed to the provider. The Council will require an indemnity, from the new provider, against losses caused by acts/omissions of the provider whilst it is the employer of the school kitchen staff.

- 6.3 It is not yet clear whether all the staff currently engaged in management of the school meals service will transfer under TUPE to the new provider, this is currently being reviewed. To the extent they do transfer, the issues will be the same as for kitchen staff. To the extent they do not so transfer, and are no longer required by DCC, those redundancy costs would be a pressure on the general fund.

6.4 **Workstream 2: Schools opting out and making their own arrangements for school meals provision**

Where a community school opts out of the group contract and moves to in-house provision of school meals:

The school kitchen staff will continue to be employed by the Council, as with other community school employees, because of this all liabilities associated with the kitchen staff will remain with the Council, including liabilities associated with equal pay settlements, grievances and disciplinarys and pensions. It will also include final liability for redundancies if a redundancy situation arises, however, it is expected that the school will cover any redundancy costs if they decide they have too many staff following the opt-out.

Management responsibility for staff will transfer to the governing body and because the governing body have delegated powers, as with other schools employees, the governing body can require the Council as the legal employer to take action (e.g. require the Council to dismiss a member of staff). The governing body may choose not to seek or take advice from the Council and may incur liabilities for the Council without the Council's knowledge. If the governing body acts contrary to advice from the Council, the Council has power to re-charge the governing body for expenditure incurred from an award by an employment tribunal or out of court settlement (plus legal costs).

6.5 Where a:

- community school opts out of the group contract and decides to engage an external provider for the provision of school meals (either initially or at any point in the future); or
- foundation/voluntary aided school decides to opt out of the group contract and either moves to in-house provision or decides to engage an external provider for the provision of school meals,

TUPE will operate to transfer school kitchen staff to the external provider/ Foundation /Diocese ("Third Party"). All liabilities associated with those staff will transfer to the Third Party, including liabilities associated with equal pay settlements, grievances and disciplinarys and pensions. It will also include liability for redundancies if a redundancy situation arises.

- 6.6 Given the potentially complex liabilities associated with school kitchen staff (under the equal pay compromise agreement and pension arrangements), Third Parties may try to “transfer back risks” to the original employer i.e. the Council. The Council must therefore be involved in negotiations with Third Parties and the drafting of contractual provisions relating to the school kitchen staff. The Council will also require an indemnity, from the Third Party, against losses caused by acts/omissions of the provider whilst it is the employer of the school kitchen staff.
- 6.7 Furthermore, as the current employer, the Council would be the transferor and so must be involved in discussions with the new provider, in order to allow the Council to comply with its information and consultation requirements under TUPE. Failure to so comply may result in the Council being liable for up to 13 weeks actual pay per employee.

Redundancy Issues

- 7.1 Where a community school opts out of the group contract and moves to in-house provision of school meals:

There may be a redundancy situation if the school decides that there are too many staff, when they start managing their catering service in house. This is the schools redundancy situation as they do not require as many employees to carry out the work.

Although the eventual liability for unfair dismissal rests with the Council, it is not thought appropriate for the Council to manage and carry out any redundancy exercise. The schools can be advised about the process, the requirements under the Employment Rights Act 1996 for a fair redundancy dismissal and reminded of the option for the Council to recharge their budget if they act contrary to advice (see paragraph 3.2 above). The school will need to pay any redundancy costs.

- 7.2 Where schools are in a collaboration agreement to provide meals, consideration will need to be given by those schools, with advice as necessary, as to the appropriate ‘pool’ from which selection for redundancy should be made, and whether the employees from each school in the collaboration should be pooled together for selection.
- 7.3 The other potential redundancy situation is in the School Meals Service as there won’t be a need to retain all of the management employees. The scope for redundancies will depend on how many employees can be properly assigned to the service that would transfer under TUPE to the new provider and the outcome of current restructuring in the Facilities Management Team.
- 7.4 Section 188 TULRCA will apply where it is envisaged that 20 or more employees will be dismissed for reason of redundancy in one establishment within a certain period of time and means that the employer must comply with collective consultation requirements. As each school is an establishment in its own right, collective consultation requirements will not engage and therefore any community/voluntary controlled schools that have opted out and decide to make redundancies this will not trigger or be included in Council wide figures for collective consultation.

