

Internet Learning Support Programme (ILSP): submission to the IT and Broadcasting Panel by Mr Jeremy Godfrey, former Government Chief Information Officer (GCIO)

Purpose

This memorandum gives a more complete account of the events leading to the selection of dual implementers for the ILSP and my subsequent departure from the Government. It aims to correct any misleading impression that may have been created by the administration's statements on these matters.

The selection process

2. The administration has made a number of written statements about the ILSP selection process, and has answered questions about it in the IT and Broadcasting Panel. The effect of these statements has been to imply that:

- a) There was no political interference in the selection of implementers for the ILSP
- b) eInclusion and HKCSS were invited to collaborate because the evaluation panel and I were unable to identify a single preferred proponent
- c) Normal procedures were followed throughout the selection process.

3. The impression created by the account given by the Government is misleading:

- a) On several occasions before, during and after the evaluation of proposals, it was made clear to me that there was a political requirement to select a particular implementer
- b) The evaluation panel identified a single highest-scoring proposal, though its report also recognised that there were aspects in which another proposal was stronger. I considered that it would be in the

interests of low-income families if a way could be found to combine the best aspects of the two proposals. I therefore proposed to sound out the two organisations about collaboration, with the fallback of selecting the highest-scoring proposal if the initial soundings indicated that collaboration was unlikely to succeed. However I was instructed to formally conclude the selection process prior to collaboration discussions, so that this fallback would not be available if collaboration discussions failed.

- c) When it became apparent that collaboration discussions were unlikely to succeed, the Government asked me for advice on the merits of engaging two separate implementers for different geographical regions (“the dual implementer approach”). I advised that a dual implementer approach was not in the best interests of low-income families, because it would increase administration costs, would reduce each implementer’s bargaining power, and would cause operational complexity for the implementers’ suppliers and business partners. I also pointed out that the Government had never solicited proposals showing how the proponents would implement under a dual implementer regime. The Government had therefore not carried out any objective evaluation of the merits of the proponents as dual implementers. I questioned whether it was normal procedure to pursue a dual implementer approach in these circumstances.

The Government accepted my advice that a single implementer was in the best interests of low-income families. However all my alternative proposals for a single implementer approach were rejected for “procedural reasons”, except that the Government decided on a contingency plan to implement the ILSP via a company under the Financial Secretary Incorporated (FSI) if either eInclusion or HKCSS was unwilling to go along with a dual implementer approach.

In the event, however, eInclusion and HKCSS were instead informed that the Government would not contemplate the FSI option and would use dual implementers – retendering on a dual implementer basis if necessary. The decision to inform them of this

was based on the judgement of a single individual, PSCT, who said she did not consider that the individuals concerned could work together effectively on the Board of an FSI company, even though both groups of individuals had expressed support for the FSI option and willingness to work together on an FSI company Board in the previous one or two days.

4. Following the March Panel meeting, I proposed to the Government that a slightly less detailed version of these points be put on record. The Government subsequently asserted that the points that I proposed to put on record “did not deviate” from the account previously given to the Legislative Council. I told the Government that I regarded this assertion as misleading and arguably dishonest. It now asserts that its reason for denying permission was that I was merely concerned to defend my reputation, rather than seeking to raise an issue of public interest. Neither of these explanations for denying me permission was given to me at the time.

5. The Government has now given me permission to put these points on record and to disclose other confidential information relating to the ILSP selection process provided that “the disclosed information or claim is factually correct and based on evidence and to the extent that the disclosure is relevant and necessary for the sake of the public interest”. In order to assure the panel that the above points are indeed factually correct and based on evidence, I am attaching (at **Annex**) a note of the relevant conversations and discussions within the Government.

Reasons for seeking early termination of my service as GCIO

6. I decided to seek early termination of my service as GCIO because:
- a) I considered that the dual implementer approach would not be in the best interests of low-income families, nor was it consistent with my duty as controlling officer to secure economy in the use of public funds
 - b) I considered that I had been given unconvincing reasons for instructing me to formally terminate the original selection process,

and subsequently for pursuing the dual implementer approach. I considered it more likely that these decisions had been influenced by political considerations.

- c) I realised that it would be my duty to defend the Government's position on these matters. I was not willing to do so, especially as I believed it might make me party to misleading the Legislative Council about the true nature of events.

Rationale for speaking up now

7. At the time I left the Government, I did not consider myself obliged to air my reservations about the selection process in the political domain. I told the Government I would not speak publicly about my reasons for leaving the Government unless it was necessary to correct misleading statements or to defend my reputation. Regrettably, the Government has made use of my name in its misleading narrative of events. If I do not speak up, I could be considered to bear some responsibility for allowing the Panel to be misled, to the detriment of my self-respect and my reputation. I now feel both entitled and duty-bound to set the record straight.

Jeremy Godfrey
Former Government Chief Information Officer
May 2011

Annex

1. This Annex sets out my recollection of the events leading to the Government's decision to split the implementation of the Internet Learning Support Programme (ILSP) between the eInclusion Foundation (eInclusion) and the Hong Kong Council for Social Services (HKCSS). In particular, it records conversations which have led me to believe that decisions on the selection of the implementer for the ILSP may have been influenced by a need to achieve a politically desirable outcome, rather than by the objective of delivering the greatest benefit to low-income families and optimizing value for money in public expenditure. Before I left the Government, I made a separate record of these conversations and asked for it to be placed on the files.

2. This memorandum has been created from memory, so dates are approximate.

The 2009 RAE exercise

3. (*Summer 2009*) During the RAE exercise in 2009, I proposed the creation of a "Digital Inclusion Social Enterprise" to be established with the aid of a one-off cash injection from the Government. The mission of the enterprise would be to secure sources of revenue that would sustain various digital inclusion programmes (such as the District Cyber Centre programme and Internet Education Programme) that had hitherto been funded only on a pilot or non-recurrent basis. The social enterprise would also design and implement other programmes in the light of changing circumstances.

4. (*Summer 2009*) The Financial Secretary (FS) was interested in this proposal and it was shortlisted for further consideration. However when the FS was absent on sick leave, the proposal was turned down because it did not contain enough detail about how the social enterprise would operate.

The 2009 policy address and the FS' taskforce

5. (*September-October 2009*) There had been considerable lobbying in the run-up to the 2009 policy address that the cost of Internet access

should be included in the allowances paid to low-income families to support educational expenses, such as textbooks. The FS asked whether the idea of a social enterprise could be used to address the internet learning needs of low-income families. Based on my knowledge of the competitive dynamics and cost structure of the Internet Service Provider (ISP) sector, I advised that it should be possible to set up an enterprise that provided low-cost Internet access to low-income families.

6. (*October 2009*) The CE then announced in the policy address that he had asked the FS to “co-ordinate the efforts of relevant bureaux to examine, through tripartite collaboration between the community, business sector and the Government, options to provide convenient and suitable Internet learning opportunities for students in need.”

7. (*October-December 2009*) The FS set up a task force with a view to announcing the way forward in the 2010 budget. I was asked to lead a working team to support the work of this task force. We commissioned research among low-income families, and consulted with ISPs and relevant NGOs and industry bodies. We confirmed that it would be feasible to set up a social enterprise with the mission to provide low-cost Internet access, affordable computers and training for parents and children of low-income families.

8. (*December 2009 – February 2010*) I also advised the FS that setting up a social enterprise of this kind would reduce the cost of Internet access and would therefore have a worthwhile impact on digital inclusion. However it would not address the welfare issue raised by stakeholders: that it was unfair that low-income families should have to pay anything towards Internet learning expenses when other education-related expenses were borne in full by the Government. The research had confirmed that low-income families bought Internet access primarily for educational reasons.

9. (*December 2009 – February 2010*) Originally, the FS had commented that the welfare issue was not his assignment. But later he decided to fund an annual cash allowance for low-income families, as well as injecting start-up capital into a social enterprise. The FS rejected options such as a coupon scheme, even though we assessed they would

have a greater impact on digital inclusion, on the grounds that he wished to give greater freedom to low-income families in their choice of ISP.

10. (*December 2009 – February 2010*) During the discussions, the FS made it clear that he considered that iProA brought important skills and that he did not think the project should be left to the voluntary sector. I was asked to brief the Chairman of iProA, on the proposals that were likely to be included in the budget and I did so.

11. (*December 2009 – February 2010*) After the programme had been approved by the Budget Steering Committee, a civil servant in the Commerce and Economic Development Bureau told me that he had been informed that the FS considered it mandatory for iProA to be the implementer. (I do not recall whether he said he had been informed of this by the FS personally, or by a member of the FS's office.) The civil servant also said that we had to run an open and fair process, and could only hope that iProA would use their strengths to win fair and square.

The Request for Proposal (RFP) and evaluation process

12. (*March – June 2010*) Following the announcement of the programme in the budget, I focused on the process of gaining support from the LegCo Finance Committee and on making preparations for an exercise to select an organization to sponsor the creation of the social enterprise. I considered that it was important that the implementer of the programme should bring business expertise, as the enterprise would need to operate in a business-like fashion. I believed that a consortium that included iProA would have a very good chance of being selected in a fair process, as long as they produced a good proposal and as long as the evaluation criteria gave due weight to business expertise. Prior to the formal launch of the RFP, I ensured that the criteria appropriately reflected business aspects. I also met interested parties at their request, including iProA and HKCSS, and briefed them on the strengths and weaknesses that they appeared to have as potential implementers. Eventually, the Chairman of iProA decided to use a new entity – the eInclusion Foundation, which she also chaired – to respond the RFP.

13. (*May –June 2010*) Following issue of the RFP, I arranged two rounds of face to face discussions with each potential bidder, to assist them to put together the best possible proposals that they could.

14. (*July 2010*) After proposals had been received and while they were being formally evaluated, a civil servant in my Office reported to me that he had received a telephone call from the FS's office seeking reassurance that I was aware of the outcome desired by the FS.

15. (*July 2010*) The evaluation process itself was conducted in an unbiased manner by all evaluation team members (me included). Because of my background and knowledge of the Internet industry, I was more conscious than other panel members of the advantages of the eInclusion business model. I marked the eInclusion proposal very slightly ahead of that of HKCSS, whereas other panel members had a clear preference for HKCSS. The overall panel recommendation was to select HKCSS.

Discussions following the evaluation

16. (*July/August 2010*) Following the evaluation, I orally reported the outcome of the evaluation panel's considerations to Rita Lau, Secretary for Commerce and Economic Development (SCED) and, Elizabeth Tse, the new PSCT. I told them that in my opinion the best interests of low-income families would be served by an implementation that combined the best aspects of the eInclusion and HKCSS proposals. However I was not sure whether or how to pursue this. This might be achieved by selecting either of the bidders and working with them to incorporate the best aspects of the other's proposal. It might also be achieved if a collaborative approach could be agreed. SCED and PSCT's political judgment was that selecting eInclusion outright was undesirable because it would probably lead to a LegCo enquiry into the selection process. During these discussions, SCED mentioned that the politically desirable outcome was that iProA members should be able to knock on doors to offer benefits to low-income households. However she also made it clear that she did not wish to give any instruction that interfered with the fairness of the selection process.

17. (*August 2010*) PSCT asked me to set out my thinking in a draft minute. She asked me to bring this to her in hard copy rather than send it

by email, so that there would be no record of the conversation on the file. After further discussions with PSCT, I formally recommended that we explore the possibility of collaboration between eInclusion and HKCSS. Although I knew that this would prove politically convenient, I considered it a proper course to pursue because I considered that a successful collaboration would be in the best interests of the low-income families. PSCT advised, and SCED agreed, that the matter should be considered by a review committee chaired by PSCT with a mandate to give GCIO advice on the way forward.

18. (*August 2010*) During conversations about the way forward PSCT confirmed more than once that there was a “political assignment” to give the project to iProA and that this had come from “beyond the Financial Secretary”. She said she had informed the political layer that delivery of this political assignment could not be guaranteed. She told me that we should do what we considered to be the right thing in the interests of the low income families.

19. (*September 2010*) After I had submitted my formal advice on the way forward, I had a corridor conversation with Mr Greg So, Under-Secretary for Commerce and Economic Development, in which he informed me of a rumour he had heard about the CEO that HKCSS intended to appoint if they won the bid. I told him that the rumour he had heard was not in accordance with the HKCSS proposal. I did not feel that this conversation put me under any particular pressure¹.

20. (*September-October 2010*) The review committee took several weeks to consider the matter. It asked me how I intended to procedurally justify pursuing a collaborative approach, and what my backup plan was if discussions failed. I told them that I had taken the view that the order of preference amongst the options was: a collaborative approach (if agreeable to the parties), followed by awarding the project to HKCSS. If the first preference was not feasible, then I would revert to the second preference. PSCT told me orally that she had not gone to all this trouble in order to end up awarding the project to HKCSS.

¹ This conversation lasted less than a minute and was the only occasion on which Mr So and I discussed the ILSP. As far as I am aware, he played no role in the selection process. It did not seem to me that his remark was designed to put pressure on me to select eInclusion. I include it in this memorandum to dispel the rumour that he was the central figure in putting me under political pressure, and not because I consider that this conversation was material to events.

21. *(October 2010)* My suggested procedural approach was then formally rejected by the review committee, who told me they considered it to be illogical and not procedurally justifiable. Instead it advised me to terminate the RFP process without making a selection, and to commence collaboration discussions as a separate exercise. This I reluctantly agreed to do. The review committee justified its advice on the grounds that, while it considered that the selection process was generally fair, it also considered that there were some procedural defects. (PSCT agreed orally however that none of these supposed defects was likely to have affected the outcome of the selection.)

Collaboration discussions

22. *(October 2010)* Before collaboration discussions commenced, I put together a discussion draft, setting out a view on how collaboration might be structured in a way that seemed to address the concerns of eInclusion and HKCSS. PSCT asked that the draft should include the possibility of splitting the implementation between the two proponents on a geographical basis. I told her that this would be inefficient and would not be in the best interests of low-income families. But I was prepared to leave open the possibility that coordination of front-line support might be split geographically.

23. *(October/November 2010)* During the collaboration discussion, on several occasions, PSCT informed me that she was “protecting me from political pressure”, but she did not elaborate on what this meant.

Contingency planning in the event of failure of collaboration discussions

24. *(November 2010)* By November 2010, it had become increasingly clear that collaboration discussions were likely to fail. I was asked for advice on the merits of a dual implementer approach. I advised that such an approach would not be in the best interests of low-income families, because it would increase administration costs, would reduce each implementer’s bargaining power, and would cause operational complexity for the implementers’ suppliers and business partners. However when I was overseas on a duty trip, I was informed that PSCT had decided that collaboration discussions had failed, that she had

decided on a two-implementer approach and that she proposed to announce it on the day I returned. I objected strongly to this.

25. *(November 2010)* On my return, I discussed alternatives with PSCT. She raised procedural objections to any option that could lead to a single implementer, and was not willing to contemplate measures to mitigate the procedural objections, even though she acknowledged that a single implementer approach would deliver greater benefits to low income families. I wrote to PSCT using very direct language to explain that I could not agree with her decision to pursue a dual implementer approach, that I was not prepared to let it be thought that such an approach was in line with my professional judgment, and that as controlling officer, I would need to draw my reservations to the attention of the Director of Audit. I also pointed out that the Government had never solicited proposals showing how the proponents would implement under a dual implementer regime. The Government had therefore not carried out any objective evaluation of the merits of the proponents as dual implementers. I questioned whether it was normal procedure to pursue a dual implementer approach in these circumstances.

26. *(November 2010)* There was then a private meeting between me and SCED in which we discussed concerns over the breakdown of the working relationship between me and PSCT. SCED told me that PSCT had complained that I had not treated her with sufficient respect. SCED and I did not discuss the merits of the options, but I made it clear that I could not assist the Government in securing support for an approach which I considered to be wrong. SCED acknowledged that I had sincerely-held concerns.

27. *(November 2010)* After SCED debriefed PSCT, PSCT agreed to meet me and we agreed that I should minute the FS recommending the programme be implemented by a company limited by guarantee whose sole member was the Financial Secretary Incorporated (FSI), with Board members drawn from eInclusion and HKCSS. However after I submitted the minute, PSCT added comments to the effect that she preferred a two-implementer approach, and gave only lukewarm support to the FSI approach.

28. (*December 2010*) The FS endorsed the FSI approach as a fallback if collaboration discussions failed and the parties would not accept a dual implementer approach. PSCT expressed surprise at this, saying she thought the FS would have killed the FSI option.

29. (*December 2010*) Following the FS's decision, I thought it likely that the outcome would be an FSI company. I considered this would be a good outcome, but I was concerned about the damage to my relationship with PSCT. I sought to discuss with PSCT how we might rebuild our working relationship but she informed me that she had no interest in doing so and would be recommending that my contract as GCIO should not be renewed. I subsequently wrote to her appealing that she should reconsider and suggesting some ways in which we might rebuild trust but I received no reply.

Failure of collaboration

30. (*December 2010 - January 2011*) Despite some final efforts involving the CEO of HKCSS and the Deputy Chairman of eInclusion, it became clear in early January that collaboration discussions were likely to fail. Unprompted, both parties expressed willingness to support an FSI company, and the individuals involved indicated willingness to serve with one another on an FSI company board. The following day, PSCT said she had no confidence that a Board that included members drawn from the eInclusion and HKCSS boards could operate effectively. She decided that the Government should retender on the basis of a dual implementer approach if either party did not agree to participate in a dual implementer approach. She informed the parties that the FSI approach was not on the table.

31. (*January 2011*) I decided that I could not discharge my duty as GCIO to defend this decision in public. Moreover I did not have confidence that the decision had been unaffected by political considerations. I informed PSCT that I wished to terminate my contract early and chose to play no further role in the implementation of the ILSP.

32. (*January - February 2011*) While the Government was considering my request for early termination, I was informed by one of my staff that the ICAC Corruption Prevention Division had written to my office

expressing grave concerns over the procedural propriety of the decision to select dual implementers.

33. I ceased service as GCIO on 11 February 2011