

Minutes of The Cabinet

**Wednesday 21 July 2021 at 5.00pm
in the Council Chamber, Sandwell Council House, Oldbury**

Present: Councillor R Singh (Chair);
Councillors Ahmed, Crompton, Hartwell, Millard, I Padda,
Simms and Taylor.

Also present: Councillors E M Giles, L Giles, Moore and Shackleton.

Officers: Lesley Hagger (Director – Children’s Services), Rebecca
Maher (Acting Director – Finance), Surjit Tour (Director - Law
and Governance and Monitoring Officer), Elaine Newsome
(Service Manager – Democracy), Sue Moore (Group Head
for Education Support Services) and Wendy Sims (Modern
Slavery – Programme Manager)

137/21 **Apologies for Absence**

Apologies for absence were received from Councillor Ali

138/21 **Declarations of Interest**

Councillor Ahmed declared a personal interest in that he was a
registered taxi driver outside of Sandwell.



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139/21 **Additional Items of Business**

There were no additional items of business to consider at the meeting.

140/21 **SEN Transport arrangements: September 2021 to February 2022**

Approval was sought to initiate a tender process using the current Dynamic Purchasing System (DPS) for the passenger transport contracts from 1st September 2021 until 23rd February 2022.

The Local Authority had a duty and powers to make particular travel arrangements for children with special educational needs and disabilities to facilitate their attendance at an appropriate education provision.

The current DPS for the provision of SEN transport would have ended on 31st July 2021. Contracts had been procured through the current DPS on an annual basis from 24th February each year, up to 23 February 2022.

A closed bid tender process had been held for the award of passenger transport contracts, effective from 1 September 2021 and the proposal for awards to be made had been set out in the report to the Cabinet meeting on 16 June 2021.

A number of challenges had been made regarding the proposals contained in the June 2021 Cabinet report which resulted in the decision of the Cabinet being deferred pending review. At the request of the Leader of the Council, an internal review had been immediately established.



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The resultant internal review, the process of assurance regarding the procurement process via the Council's Audit and Risk Committee, and the request of the Council's Corporate and Budget Scrutiny Board and Children's Services and Education Board to jointly examine existing and proposed arrangements for SEN transport provision, was underway.

The need to ensure arrangements were in place in readiness for the start of the next academic year was understood by Cabinet to be critical. Failure to make such arrangements would have breached the Council's statutory duty. There was a lead-in time for the requisite arrangements to be made. Given the issues arising in respect of the matter and the tender exercise, a very limited window existed to be able to utilise the existing DPS to secure the requisite providers required to ensure service continuity for the start of the academic year for providers that are not able to continue to provide the service from September onwards.

In response to a question raised by the Chair of the Budget and Corporate Scrutiny Management Board, the Leader of Sandwell Council reported that the reason for the delay in bringing the matter before members was to ensure the Council had received the necessary legal advice before extending the current contract. It was also important that the suppliers were contacted and on board with the extension of the current contracts to ensure the continuation of service.

In response to a question raised by the Chair of the Children's Services and Education Scrutiny Board, the Leader of Sandwell Council reported that the use of Personal Budgets to support transport costs for those families with children and young people with SEND had been discussed and was something that could be considered and accommodated in the future. There had been an increase of the use of Personal budgets over recent years and communicating this option to parents was something that the Council would do going forward.



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In response to a question raised by the Chair of the Economy, Skills, Transport and Environment Scrutiny Board, the Leader of Sandwell Council reported that on the allegations that drivers employed by current contractors had not been receiving the National Minimum Wage, the difficulty was that operators operated a self-employed system. The rate of pay may therefore not have been good practice. Following the Modern Slavery examination, the Council's policy was that if good practice was found not to have been implemented, the Council was obliged to report findings to HMRC.

Suppliers had been communicated with to ensure following the contract extension they would continue to have the capacity to fulfil the contract obligations. It was understood that contractors had a good relationship with Sandwell and parents, children and young people who they support.

Reason for Decision

Since February 2018, the provision of passenger transport services had been arranged via a DPS process that was due to end on 31st July 2021. In total there were 122 different contracts delivered by 18 different operators. At present 659 pupils access SEN transport attending 82 Sandwell schools and 47 out of borough schools.

Since 2018 the overall cost of providing travel assistance including parent mileage, travel passes and more recently the offer of personal budgets had increased by 45% from £3,528,000 in 2018/19 to a projected cost of £6,452,000 for 2021/22. Over the same period SEN pupils requiring travel assistance had increased from 680 to 850 with the average cost per pupil increasing from £5,188pa to £7,591pa. The situation was not unique to Sandwell with most Councils in a similar position.



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The pressure on the SEN transport budget had been managed over the past few years using carried forward underspends in the Education Directorate budget and were fully used by the end of March 2021. Additional funding had been provided in the 2021/22 budget, which had been increased to £5,655,000. A projected budget pressure of £800,000 remained. The projected budget however did not reflect the impact of continuing with the current contracts from September 2021 to February 2022. It also did not cover changes to the transport provided from September 2021 which historically had resulted in an increase in projected costs. To support officers with managing the on-going pressures, an independent review of SEN transport provision had been commissioned in March 2021 to provide assurances of the planned transformations and savings plans already in place and identify further potential options to improve service delivery and realise additional savings.

In August 2020 the Cabinet had agreed to establish a new DPS to ensure the ongoing provision of SEN transport for pupils. The new DPS consisted of a list of suppliers who could be approached as and when transport needs are required and only suppliers awarded a place on the DPS would have been considered to provide transport.

The new DPS included higher thresholds for the expectations of the quality of service to be provided, particularly regarding good practice by transport operators in respect of employment and safeguarding, including Modern Day Slavery, as there had been matters raised via anonymous sources that some operators were not complying with good practice.

Arrangements were required to be made for the provision of SEN transport from 1 September 2021 to comply with the Council's statutory obligations and provide assurance to vulnerable children, families and schools that provision would be in place for the start of the new academic year.

It was proposed to use the current DPS to tender for the new contracts from 1 September 2021 until 23 February 2022.



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Alternative Options Considered

A full options appraisal had been developed ranging from the option to do nothing through to approval of the recommendations in the June 2021 Cabinet paper.

An options appraisal had been considered by external lawyers, and advice provided. Both the internal options appraisal and external legal advice had concluded that the continued use of the contracts issued via the current DPS until 23 February 2022 was the most suitable option. Any additional contracts could also be retendered pursuant to the current DPS. It was understood to be necessary to take this action prior to the expiry of the current DPS on 31 July 2021.

Agreed:-

- (1) that the Executive Director of Children's Services, in consultation with the Section 151 Officer, be authorised to:
 - a) Continue to use the existing contracts with providers for the continued provision of SEN transport until 23rd February 2022, in accordance with the terms of those contracts;
 - b) Agree any necessary exemptions be made under the Council's Procurement & Contract Procedure Rules to enable the course of action referred to in a) above to proceed;
- (2) that the Executive Director of Children's Services, in consultation with the Section 151 Officer, be authorised to tender any new work or work that is handed back by operators using the current Dynamic Purchasing System Framework to cover the period 3rd September 2021 to 23rd February 2022.



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- (3) that in connection with Resolution (1) and (2) above, the Director – Law and Governance and Monitoring Officer enter into or execute under seal the contracts and any ancillary documentation in relation to the extension of the contracts for the continued provision of Sandwell’s SEN transport;
- (4) that the Executive Director of Children’s Services, in consultation with the Director - Law and Governance and Monitoring Officer seek assurance from the operators that they are operating within the terms of the existing contracts, and in accordance with the relevant legal framework, and in particular are complying with their obligations in relation to the workforce and good practice. Operators will be required to demonstrate good practice by Friday 13th August 2021;
- (5) that in connection with Resolution (1) above, where validated concerns have been identified, any existing contracts with those operators will be suspended, with immediate effect in accordance with the terms of the contract until adequate assurance has been provided.
- (6) that in connection with Resolution (1) above, constant monitoring of good practice will be in place and operators that do not comply will have their contracts terminated.

Meeting ended at 5.29pm

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