

Report to Cabinet

21st July 2021

Subject:	SEN Transport arrangements: September 2021 to February 2022
Cabinet Member:	Cllr Karen Simms Cabinet Lead Member, Best Start in Life
Director:	Lesley Hagger Executive Director, Children's Services
Key Decision:	Yes
Urgent	Yes – the relevant Scrutiny Chair has been consulted
Contact Officer:	Sue Moore, Group Head, Education Support Services Sue_Moore@sandwell.gov.uk

1 Recommendations

1.1 That the Executive Director, 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;



- 1.2 That the Executive Director, 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.
- 1.3 Subject to 1.1 and 1.2 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.

2 Reasons for Recommendations

- 2.1 The Local Authority has a duty and has powers to make particular travel arrangements for children with special educational needs and disabilities to facilitate their attendance at an appropriate education provision.
- 2.2 The current Dynamic Purchasing System (DPS) for the provision of SEN transport will end on 31st July 2021. Contracts were procured through the current DPS on an annual basis from 24th February each year, up to 23rd February 2022.
- 2.3 The establishment of a replacement Dynamic Purchasing System Framework was approved Cabinet on 12th August 2020 to establish a new DPS for the Provision of Passenger Transport for 2021-25 and ensure the continuity of provision of SEN transport for Sandwell pupils.
- 2.4 Pursuant to the creation of the replacement DPS, a closed bid tender process was held for the award of passenger transport contracts, effective from 1st September 2021 and the proposal for awards to be made was set out in the report to the Cabinet meeting on 16th June 2021.
- 2.5 A number of challenges were made regarding the proposals contained in the June 2021 Cabinet report which resulted in the decision by the Cabinet being deferred pending review, which is currently being progressed. At the request of the Leader of the Council, an internal review was immediately established.
- 2.6 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 robustly examine existing and proposed arrangements for SEN transport provision, require some time for consideration. In the meantime, arrangements must be made for the provision of SEN transport from September 2021 to comply with the Council’s statutory obligations and provide assurance to vulnerable children, families, and schools that provision will be in place for the start of the new academic year.

2.7 The need to ensure arrangements are in place in readiness for the start of the next academic year is critical and it would breach the Council’s statutory duty if not achieved. There is a lead-in time for the requisite arrangements to be made. Given the issues arising in respect of this matter and the tender exercise, a very limited window exists to be able to utilise the existing Dynamic Purchasing System 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. The relevant scrutiny chair has been consulted and is agreeable to call-in being waived.

3 How does this deliver objectives of the Corporate Plan?

	<p>Best start in life for children and young people</p> <p>The Council is required to make arrangements for all children who cannot reasonably be expected to travel to school because of their mobility problems or because of associated health and safety issues related to their special educational needs or disability (SEND).</p>
	<p>People live well and age well</p>
	<p>Strong resilient communities</p>
	<p>Quality homes in thriving neighbourhoods</p>
	<p>A strong and inclusive economy</p>

	Using local operators to provide transport enables the local economy to thrive.
	<p>A connected and accessible Sandwell</p> <p>Public transport is an important component of the system for organising travel to school. Travel assistance training is made available to all children and young people who can benefit from independence in their travel to school.</p>

4 Context and Key Issues

- 4.1 The Local Authority has a duty and has powers to make particular travel arrangements for children with special educational needs and disabilities to facilitate their attendance at an appropriate education provision. These responsibilities are set out in the Education Act 1996, as amended by the Education and Inspections Act 2006 and are summarised in Department for Education Guidance as follows:
- “To make arrangements for all children who cannot reasonably be expected to travel to school because of their mobility problems or because of associated health and safety issues related to their special educational needs or disability (SEND). Eligibility, for such children should be assessed on an individual basis to identify their particular transport requirements.”*
- 4.2 Since February 2018 the provision of passenger transport services has been arranged via a DPS process that is due to end on 31st July 2021. In total there are 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.
- 4.3 Since 2018 the overall cost of providing travel assistance including parent mileage, travel passes and more recently the offer of personal budgets has 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 has increased from 680 to 850 with the average cost per pupil increasing from £5,188pa to £7,591pa. This situation is not unique to Sandwell with most Councils in a similar position; as a result, the Government established a major review into the

provision of SEN transport in November 2019 which has yet to be published.

- 4.4 The pressure on the SEN transport budget has 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 has been provided in the 2021/22 budget, which has been increased to £5,655,000. A projected budget pressure of £800,000 remains. It should be noted that the projections do not currently reflect the impact of continuing with the current contracts from September 2021 to February 2022. It also does not cover changes to the transport provided from September 2021 which historically has resulted in an increase in projected costs. To support officers with managing the ongoing pressures, an independent review of SEN transport provision was 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.
- 4.5 In August 2020 the Cabinet agreed to establish a new DPS to ensure the ongoing provision of SEN transport for pupils. The new DPS consists of a list of suppliers who can be approached as and when transport needs are required and only suppliers awarded a place on the DPS will be considered to provide transport.
- 4.6 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. All matters raised were investigated and various actions taken as described in 4.7 to 4.13 below.
- 4.7 The Council was alerted to concerns about Modern Day Slavery practices in one taxi company on 6th October 2020. The referrer asked to remain anonymous. On 9th October 2020, Sandwell's Slavery and Human Trafficking Operational Partnership (SHOP) carried out a scoping exercise to see if there were any additional concerns from key agencies, which included SMBC, Police, Immigration, HMRC, DWP, Gangmasters and Labour Abuse Authority, Fire and Rescue. There were some police incidents that were not related to modern slavery, but the

outcome of the multi-agency exercise concluded that there was no reason to escalate these concerns from a modern slavery perspective. For Modern Slavery, it is necessary to demonstrate the ACT, the Means and Exploitation as set out below:

Components	What it means
Action	<p>To be a victim of human trafficking, the person needs to be subjected to the act of either:</p> <ul style="list-style-type: none"> • recruitment • transportation • transfer • harbouring • receipt
Means	<p>The apparent consent of a victim to be controlled and exploited is irrelevant when one or more of the following has been used to get that consent:</p> <ul style="list-style-type: none"> • the threat or use of force • abduction • fraud • deception • the abuse of power or of a position of vulnerability • the giving or receiving of payments or benefits
Exploitation	<p>To be a victim, someone must have been trafficked for the purpose of 'exploitation' which may take the form of either:</p> <ul style="list-style-type: none"> • sexual exploitation • forced labour or services • slavery or practices similar to slavery • servitude • forced criminality

4.8 There were concerns at poor wages, however, because workers were self-employed, this would not fit under labour exploitation so there was very little that agencies under SHOP could do. Sandwell's SHOP process has been recognised nationally as best practice, with an

exemplar in the LGA Modern Slavery guide for local authorities; SHOP has also been recognised through national awards.

- 4.8 As the local authority could not use Modern Slavery legislation to investigate the allegations further so the Council used its own due-diligence processes to ensure that standards of the contract were being met. This demonstrated a range of inconsistencies, including clear evidence that the operator was paying low rates, but as the workers were self-employed then National Minimum Wage did not provide a basis for our interrogation of the contract.
- 4.9 On 12th December 2020 a further concern was received by the Council and similar matters were raised. The new concern did not change anything from a Modern Slavery perspective and again, workers were self-employed. Nevertheless, Council managers were concerned that a second concern had been raised and undertook a review of all operators contracted to provide SEN transport. There were no concerns for Modern Slavery evident under Modern Slavery legislation, however, there were still indicators of poor working practices across some operators, and evidence that workers might not be receiving the National Minimum Wage, concerns that workers who were operating as self-employed were working to employment conditions, concerns that there might be cash-in-hand payments and poor invoicing. The concern raised on 12th December 2020 regarding data breaches was unfounded.
- 4.10 In order to highlight our awareness of these matters and the requirement that they be addressed a letter was sent to all operators on 12th March 2021 setting out the steps required to eliminate poor practice. Operators were also informed that the new DPS would require higher quality standards, and that bespoke training would be made available to operators to promote an awareness and understanding of Modern Day Slavery issues.
- 4.11 To ensure acceptable standards via the current DPS, the Travel Assistance Service (TAS) implemented a range of additional measures to ensure good practice as set out in the table below:

Application form for Drivers/Personal Assistants (PAs) requiring a TAS badge
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Monitoring forms (for use by contract monitoring officer)
English tests (spoken language and comprehension)
Driver/PA knowledge tests
TAS5 form, as well as introducing new compliance desktop checks for vehicles tax, MOT, PSV license, etc
Safeguarding children training (approved by West Midlands Police) – online from 2020
TAS Passenger Assistant Training course – includes practical/competency assessment for drivers/PAs using Wheelchair Accessible Vehicles (ramps/lifts) – online from 2020

- 4.12 As a result of Covid-19, further measures were introduced in 2020/21 to provide guidance for operators, schools, passengers, parents/carers, and staff which included passenger checklists, seating plans, cleaning schedules, risk assessments, etc. This will be updated for the new academic year.
- 4.13 Additional training for the Travel Assistance Service team members included refresher training on making referrals to children’s social care, LADO forms and new internal safeguarding procedures; and training on using the new bulk text and email system for use in communicating with parents/carers, schools and operators, and the passenger code of conduct and passenger charter.
- 4.14 To be considered for the award of a place on the new DPS suppliers are required to meet the following Selection Criteria:
- A. Mandatory Exclusion
 - B. Discretionary Exclusion
 - C. Technical and Professional Ability
 - D. Insurance
 - E. Health & Safety
 - F. Licences and Vehicle Compliance
 - G. Project Specific Questions to Assess Technical & Professional Ability

H. Social Value

- 4.15 The process for selecting operators to be awarded contracts was in line with usual procurement procedures as follows:
- Operators were invited to submit an expression of interest to join the new DPS on 12th January 2021;
 - Following a period of clarifications, all submissions were assessed and scored on a pass /fail basis to determine who would be accepted onto the DPS made on 12th March 2021;
 - Following acceptance onto the new DPS operators were then invited to submit tenders for the work;
 - Tenders were evaluated by a panel using a scoring matrix of 50% quality and 50% price. The evaluation was completed on 16th April 2021
- 4.16 The due diligence process required the bidders to provide assurance around their ability to meet the requirements of the contract at the price, quality and social values they had submitted. Specifically, the due diligence assessed the suitability of the bidder's price, quality and social value weightings.
- 4.17 Following publication of the June 2021 Cabinet report, challenges were made regarding the proposals for the award of contracts which resulted in the decision by Cabinet being deferred pending review. The review is currently being progressed through several different workstreams including an internal review of the procurement process, with overview and assurance via the Council's Audit and Risk Committee, and a decision by the Council's Corporate and Budget Scrutiny Board and the Children's Services and Education Board to jointly robustly examine existing and proposed arrangements for SEN transport provision.
- 4.18 These activities will require some time for consideration. In the meantime, arrangements must be made for the provision of SEN transport from 1st September 2021 to comply with the Council's statutory obligations and provide assurance to vulnerable children, families and schools that provision will be in place for the start of the new academic year.
- 4.19 An options appraisal was undertaken regarding how provision could best be secured from September 2021. Of the 11 options identified:

- a) for the sake of completeness, one option considered was to stop providing SEN transport, however, this is a statutory requirement and is therefore discounted;
- b) four of the options would necessitate the use of the new DPS. This was deemed inappropriate prior to the completion of the internal review and the various scrutiny processes;
- c) five of the options would require re-tendering from scratch. This would not provide enough time to secure provision from September 2021 and would not provide time to learn from any issues identified through the internal review and the various scrutiny processes prior to commencement of a re-tender;
- d) continued use of the existing contracts, let under the current DPS, was identified as the most appropriate route to cover the service from September 2021 for a reasonable period to give time for the consideration of the internal review and the various scrutiny processes to be completed prior to procurement for SEN transport. The contracts awarded, were granted on an annual basis, intended to expire 23rd February 2022.

4.20 Independent legal advice has confirmed that procurement via the current DPS was lawful “for an interim period of 6 months during which the Council decides how to proceed in relation to the New DPS.”

4.21 In order to continue to use the existing arrangements with operators, each of the operators will be contacted to ensure that they are able to continue to provide the service specified. Services provided by any suppliers that are not able to continue to provide services specified will be retendered in accordance with the DPS. There is a short window in which to pursue this retendering process.

4.22 There are risks and mitigations to be considered by selecting this option:

	Risk	Mitigation
1	The concerns regarding the poor business practices of some operators cannot be fully addressed through the	Measures that have already been put in place and increased monitoring will help to mitigate this

	continued use of the current DPS.	risk between September 2021 and February 2022.
2	Some of the current providers may not want to continue to provide the services set out within their contracts to February 2022 or may have now accepted other contracts which mean they do not have capacity.	If this happens the work will be re-tendered using the current DPS And other providers on the current DPS could be contracted to cover any immediate need or shortfall.
3	The short timescale combined with factors above may involve some negotiation over the terms of the continued or new contracts (including a possible increase in cost to the suppliers).	The use of a DPS is intended to ensure value for money. The team will have a financial window, within which to operate, and adjustments in the budget may need to be agreed to accommodate any increased exposure.

4.23 It had been intended to use the new DPS to tender new contracts for provision which could not be included in the original tender process or the June 2021 Cabinet report as follows:

- a) SEN transport for pupils who will be attending High Point Academy, a new secondary special school in Wednesbury, the financial value of which cannot be determined until all school places are confirmed and eligible pupils are assessed regarding their need for transport;
- b) transport for excluded primary pupils on behalf of Primrose Pupil Referral Unit, the financial value of which is provided by Primrose Pupil Referral Unit;
- c) transport for Looked After Children on behalf of Sandwell Children's Trust, the financial value of which is provided by Sandwell Children's Trust.

Due to the circumstances set out above in this Cabinet report, it is now proposed to use the current DPS to tender for these contracts from 1st September 2021 until 23rd February 2022. The new DPS arrangement would have provided significant savings for the Primrose Pupil Referral

Unit contract and the Council will be required to provide support in terms of any ongoing budget pressures.

5 Alternative Options

- 5.1 A full options appraisal has been developed ranging from the option to do nothing (i.e. not provide SEN transport) through to approval of the recommendations in the June 2021 Cabinet paper. The options appraisal contains commercially sensitive information which is not possible to share in a public report and so is not attached here.
- 5.2 An options appraisal has been considered by external lawyers, and advice provided.
- 5.3 Both the internal options appraisal and external legal advice have concluded that the continued use of the contracts issued via the current DPS until 23rd February 2022 is the most suitable option. Any additional contracts can also be retendered pursuant to the current DPS. It is necessary to take this action prior to the expiry of the current DPS on 31st July 2021.

6 Implications

- 6.1 The current DPS is due to expire on 31st July 2021 under clause 1.3 of the contract. The Order forms of the contracts anticipated that annual contracts, starting in February each year are granted, up to 23rd February 2022 in accordance with the special terms of the Contract Part A Section 8 of the Invitation To Tender (ITT).
- 6.2 Any extension of the current contracts should be kept under review and reconsidered further ahead of the expiry of any extensions that are sought to ensure that they are not longer than reasonably necessary.
- 6.3 The work of the Council's Audit and Risk Committee, and the work of the Council's joint Corporate and Budget Scrutiny Board and the Children's Services and Education Board will need to complete by September 2021 to ensure that enough time is available should their recommendations, and any subsequent Cabinet decision, require a re-procurement process to secure SEN transport provision from 24th February 2022.

Resources:	<p>The available budget for 2021/22 has forecast pressure based on current demand of £800k. This is expected to increase due to the inability to use the new DPS and changes to reflect new provision from September 2021. The treatment of any overspend at the end of the financial year will depend on the overall position for the directorate. If there are sufficient underspends across the rest of the directorate, the overspend will be expected to be covered within the directorate. If not, it will be necessary to make use of the council's reserves/corporate resources. SEN transport expenditure is included within the Medium-Term Financial Strategy that was approved by full Council in March 2021. However, it is acknowledged that the period of the new DPS contracts exceeds the period for which the Council has an approved budget. This is the case for all Council expenditure commitments beyond 31st March 2022 due to the MHCLG continuing to only provide 1-year funding settlements.</p>
Legal and Governance:	<p>The Legal obligations on the Council in respect of this service and the rules relating to the continued use of the existing contracts and retendering of any additional services are set out within the body of this report.</p> <p>It is possible that a challenge to the approach taken by the Council may be made, and whilst it is not possible to forensically assess the risk of such a challenge, until it is made, the legal advice received on this matter is that the extension is in accordance with the Public Contract Regulations 2015</p>
Risk:	<p>The risks implications and mitigating measures are set out within the report.</p>
Equality:	<p>Children and young people with special educational needs and disabilities (SEND) have protected characteristics under the Equality Act 2010. Local authorities must publish details of school transport for children and young people with special educational needs and disabilities in their local offer. This is set out in the Special Educational Needs and</p>

	<p>Disability Regulations 2014 – schedule 2 paragraph 14.</p> <p>Children who cannot reasonably be expected to walk to school because of SEN, disability or mobility difficulty are eligible for transport under section 508B and schedule 35B (2) of the Education Act 1996. The policy should explain how a child with SEND meets the criterion for school transport.</p>
Health and Wellbeing:	<p>The DfE/DHSC Code of Practice for children and young people with SEND is the statutory guidance that sets out the duties for health and wellbeing.</p> <p>Sandwell’s education system has a strong approach to inclusion and the majority of children and young people with Education, Health and Care Plans attend mainstream provision, or focus provision within a mainstream setting. This enables children to develop firm relationships with peers in a mainstream environment and supports an inclusive Sandwell society.</p>
Social Value	<p>Contracts awarded under the new DPS will require suppliers to demonstrate how they will be responsive to Social, Environmental and Local Economic prospects, and how they will construct and operate their works to deliver a positive impact on the local economic, social and environmental well-being of the local area.</p>

7. Appendices

7.1 Sandwell’s SEN Travel Assistance Policy can be found here: [Special Educational Needs Travel Assistance Policy](#)

8. Background Papers

Cabinet report – 12th August 2020

Cabinet report – 16th June 2021