

# Minutes of Cabinet

**Wednesday 29 May 2024 at 3.30 pm  
in the Council Chamber, Sandwell Council House, Oldbury**

**Present:** Councillor Carmichael (Chair)  
Councillor K Allcock, S S Gill, Hartwell, Hughes, Moore,  
Smith, Taylor and Uddin.

**In Attendance:** Councillor Fenton, E M Giles, W Gill and Jeffcoat.

**Officers:** James McLaughlin (Assistant Chief Executive); Alex Thompson (Executive Director - Finance and Transformation) Mike Jones (Assistant Director - Legal and Assurance); Sally Giles (Director of Children and Education Services); Julie Andrews (Assistant Director - Education Services); Sue Moore (Assistant Director for Education Support Services); Susan Silwood (Communications Senior Lead); Connor Robinson (Democratic Services Officer).

## 53/24 **Executive Director for Finance & Transformation**

The Leader of the Council welcomed Alex Thompson the new Executive Director for Finance and Transformation. The Leader looked forward to working with Alex to continue to assure the financial stability and resilience of the Council whilst driving forward key transformation objectives.

## 54/24 **Apology for Absence**

An apology for absence was received from Councillor Lewis.



55/24 **Declarations of Interest**

There were no declarations of interest made.

56/24 **Establishment of a Flexible Purchasing System for the provision of SEND Transport Services and closure of Dynamic Purchasing System (Pages 9 - 274)**

Approval was sought to establish a new flexible purchasing system (FPS) framework which would be used for seeking competitive tenders for the transport of children and vulnerable adults.

In response to a question from the Chair of the Budget and Corporate Scrutiny Management Board, the Leader of the Council stated safeguarding lay at the heart of the proposals for the new FPS. Beginning with the qualification process, all applicants would need to demonstrate how they managed safeguarding as a company or charity, and crucially, how they would ensure that they kept Children and Young People safe. In addition to requirements to hold a taxi licence, all drivers and passenger assistants delivering the services would be required to hold a Travel Assistance Service (TAS) badge to work in Sandwell. This badge was renewed every 13 months and included a safeguarding test and the annual checking of their DBS clearance. In bringing forward the proposal, the Council had been acutely aware of the need to avoid disruption to service users and to develop a model which could provide stability moving forward. Several measures would be in place to reduce the impact of changes to transport arrangements. These include regular updates to parents and carers, and an offer of a meet and greet with their child's new transport team should their operator change, and close liaison between the TAS team, schools and the operator.

The experiences of all customers and service users was at the heart of the Council's transformation objectives. Moving all contracts to the FPS model provided the opportunity to stagger contract renewals start dates. Most importantly, this would help the Council move away from changing all transport arrangements in



September. The Council's focus was about quality of service and minimising any disruption.

Initially operators would have the opportunity to apply to join up to 3 lots - Lot A for all home to school journeys, Lot B for Children Looked After journeys and Lot Z for any other work the Council chose to tender through the FPS. The FPS provided the Council with the flexibility to determine the size of individual contracts placed through each Lot, and there would be no restriction on the size of operators applying for each Lot, or a limit on how much work they could tender for.

These proposals would strike a careful balance between two statutory obligations – the Council's duty to provide appropriate good quality transport services to children and young people with SEND, all the while balanced with that of statutory best value obligation.

The FPS model introduced agility allowing the Council to respond to changing needs of service users more rapidly. The Council would be able to break down contracts more effectively so that route planning was most efficient both in financial and environmental terms. The Council would have a wider pool of operators and greater flexibility to change the FPS rules should policy or legislation change. Fundamentally, the FPS would promote and encourage a more competitive market with greater opportunities for a wider range of providers of varying scales. In addition, a range of other initiatives were being progressed to reduce the cost or demand, including how the in-house fleet can be utilised, the costing model as to how operators would tender for work, the introduction of collection or drop off points and reducing the use of out of borough provision. Taken together, this was a transformational model which placed children and young people as service users at the heart of the Council's approach.

### **Reason for Decision**

The Council was subject to statutory obligations and had powers to make particular travel arrangements for children with special educational needs and disabilities to facilitate their attendance at an appropriate education provision.



Section.509(1) of the Education Act 1996 required the Council as a local authority to determine whether arrangements were required for the provision of transport for each pupil with an Education, Health and Care Plan (EHCP) who had been assessed as eligible.

If a local authority determined that transport was necessary, then it was required to decide what form of travel assistance was suitable and organise it free of charge. Transport was provided for children, to and from school or other educational establishment, or where transport had been authorised on medical grounds / social need both within and outside the borough. The Council had further obligations under the Children Act 1989 (amended in 2004) (including all associated Regulations and Guidance) and the Care Standards Act 2000 to safeguard and promote the welfare of children.

### **Alternative Options Considered**

The following options were considered and were not recommended:

Retain the current DPS (Contract No. SMBC 21005) and undertake new mini-competitions was not considered to be the most appropriate approach to provide quality of provision, or deliver the most economic and sustainable solution for the Council.

Extend the current Framework (Contract No. SMBC 22011) in full offered no opportunity for new suppliers to apply to join the arrangement: contract periods had to be defined with a termination date: individuals and small size enterprises who had previously provided a good, value for money service to the Council chose not to apply to join the Framework, and an element of competition for some contract Lots was lost as a result.

Do nothing. The Council had a statutory duty to provide home to school travel for eligible children and young people. The internal passenger transport service was unable to assume the current routes procured through the existing Framework Agreement and DPS. Without a framework, DPS or Approved Provider List in place, the Council would need to spot-purchase taxi and passenger transport services. This would not be compliant with the Council's



Contract Procedure Rules and would reduce competition between suppliers, which would increase the overall spend.

New Framework Agreement – A framework agreement was closed for the lifetime of the contract term and over a six-year period there was a high risk of significantly fewer providers remaining, which reduced competition. This was because providers of taxi and passenger transport services enter and exit the marketplace on a regular basis and cannot be admitted (readmitted) to the framework. Furthermore, separate arrangements for processing invoices and checking supplier credentials would need to be implemented, increasing costs and administration functions for the Council.

A FPS offered a range of benefits including scope for new suppliers to join during the lifetime of the contract arrangement, a more flexible application process to attract small, medium and large-scale enterprises to apply, and introduced a more competitive market that had proved economically advantageous to the contracting authority. This option was recommended.

#### **Resolved:-**

- (1) that the Director of Children's Services and Education, in consultation with the Section 151 Officer, the Monitoring Officer / Assistant Director – Legal & Assurance and relevant Cabinet Member, be authorised to:
  - a) make and conclude arrangements for the closure of the current 'Dynamic Purchasing System for the Provision of Passenger Transport Services' (Contract No. SMBC 21005) (the DPS) for the reasons set out in the report submitted and notify all operators who are on the DPS of the decision to close the contract;
  - b) extend any of the existing Call-Off Contracts awarded under the current 'Provision of





Passenger Transport Services for Children and Young People with Special Educational Needs and Disabilities' Framework (Contract No. SMBC 22011) with providers for a period of up to 1 year only until 31 August 2025 for continued provision of SEND transport, in accordance with the terms of those contracts, to ensure continuity of service pending the award of new contracts; and

- c) agree any necessary exemptions pursuant to the Council's Procurement & Contract Procedure rules to enable the course of action referred to in (1) b) above to proceed;
- (2) that subject to the approval of Resolution (1) and sub-clauses, the Monitoring Officer / Assistant Director – Legal & Assurance be authorised to agree, enter into and / or execute under seal (if necessary) all requisite contracts and ancillary documentation in relation to the extension of the contracts for the continued provision of Sandwell's SEND transport, whether by way of contract variation or entering into new contracts;
  - (3) that the Director of Children's Services and Education, in consultation with the Section 151 Officer and the Monitoring Officer / Assistant Director – Legal & Assurance, be authorised to establish a new Flexible Purchasing System (FPS) to award new contracts for SEND Transport work from 1 September 2024;
  - (4) that the Director of Children's Services and Education, in consultation with the Section 151 Officer and the Monitoring Officer / Assistant Director – Legal & Assurance is authorised to:



- a) approve the admission of providers onto the FPS, provided that they meet the selection criteria for admission as set out in this report;
  - b) confirm economic operators / providers meet the selection criteria and will be admitted to specific Lots for which they apply through the FPS;
  - c) invite tenders for, award (whether directly if permitted by law and the Council's Procurement & Contract Procedure Rules or according to any competitive procedure) and sign off, Call-Off contracts through the FPS;
  - d) amend the rules applicable to the FPS, including any specification or terms and conditions of Call-Off contract applicable to the FPS generally; and
  - e) agree amendments to, to exercise extension rights under, to terminate in full or part and to grant any waiver, consent or relief (or similar to any of these actions) in connection with any Call-Off contract which the Council awards under the FPS;
- (5) that the Director of Children's Services and Education, in consultation with the Section 151 Officer, the Monitoring Officer / Assistant Director – Legal & Assurance and relevant Cabinet Member, is authorised to approve expenditure of up to £1.89m per annum within the above FPS on the award of individual compliant Call-Off contracts.

Meeting ended at 3.45pm

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