

Report for: Special Overview and Scrutiny Committee, 3rd December 2019

Title: Call-In of a Decision taken by the Cabinet on 12th November 2019 to approve the award of a contract for the provision of SEND Transport Transformation Consultancy Services to the successful tenderer in accordance with the Council's Contract Standing Order (CSO) 9.07.1(d), for a period of two (2) years commencing end of October 2019 and at a total value of up to £600,000 over the 2 years period, with a further gainshare reward dependent upon demonstrable value of savings delivered in excess of £635,000 per annum

Report authorised by: Ann Graham, Director of Children's Services

Lead Officer: Peter Featherstone, Programme Director, Children's Services

Ward(s) affected: All

**Report for Key/
Non-Key Decision:** Key Decision

1. Describe the issue under consideration

1.1 On 12th November 2019, the Council Cabinet resolved:

- To approve the award of a contract for the provision of SEND Transport Transformation Consultancy Services to the successful tenderer in accordance with the Council's Contract Standing Order (CSO) 9.07.1(d), for a period of two (2) years commencing end of October 2019 and at a total value of up to £600,000 over the 2 years period, with a further gainshare reward dependent upon demonstrable value of savings delivered in excess of £635,000 per annum;
- That the date of commencement of the contract will follow immediately after five working days of the publication of the Cabinet decision to approve, plus a further ten working days standstill period as per public procurement contract regulations; and
- That exploration of a further phase (phase 2) of transformation to insource vehicles and drivers is considered once the transformation of the SEND transport service and the associated savings is secured.

1.2 Following a Call-In of that decision made in accordance with Council procedures, this report provides further information to support the

Overview and Scrutiny Committee's (OSC) consideration of the issues raised in the Call-In.

2. Cabinet Member Introduction

- 2.1 My introduction to the original report considered by Cabinet on 12th November 2019 sets out the case as I see it for that decision. This report deals with the specific points raised in the Call-In, and I now simply and clearly confirm my view that nothing raised in the Call-In or set out in this report changes my view that the decision taken on 12th November 2019 was the right one.

3. Recommendation

- 3.1 It is recommended that the Committee takes into account the information in this report when considering its decision on this matter.

4. Reasons for decision

N/A

5. Alternative options considered

N/A

6. The Decision and the Call-In

- 6.1 On 12th November 2019, Cabinet approved the recommendations set out in a report entitled 'SEND Transport Invest to Save Business Case'. The decision and the report are available on the Council's website, at the link given in section 11 below.
- 6.2 Following the issuing of the draft minutes for the Cabinet meeting, a Call-In of that decision was received and validated, in line with agreed Council procedures. Accordingly, the matter is now to be considered by the Overview and Scrutiny Committee. Section 7 of this report describes and responds to each of the reasons given for the Call-In.

7. Call-In from Councillor Noah Tucker

How will it be ensured that the changes pushed through by this company are purely genuine efficiency savings and not cuts to the level or extent of services delivered, or reductions in the number of children receiving a service?

7.1 The changes that the transformation partner would be commissioned to deliver will support both an improved service to children, young people, and families, and also genuine efficiency savings. These changes will not cut the level or extent of the services currently being delivered, nor reduce the number of children receiving a service.

7.2 The background information detailed within Appendix B of the report presented to Cabinet on 12th November details the scope of the changes that are required to be delivered by the transformation partner. The areas of focus for these savings cover:

- Overhauling the routing of all journeys holistically across the service in a way that best considers the needs of children and young people and the most effective resources available, including the commissioning and implementation of a routing software package;
- using strategic sourcing methodologies to develop the provision and improve the competition and value achieved from private hire providers at procurement and throughout the life of the contract;
- improving the overall performance of the Transport team and how it operates alongside wider SEND teams and other teams involved, including the performance of contracted suppliers;
- introducing a widespread cultural change and management of the expectations of parents, carers, schools, transport users and internal services such as SEND. The aim is that our provision for travel support meets identified needs. Our intention is that Haringey's offer of specialist and / or supported transport is delivered to meet need, but in a manner that is efficient, cost effective, and builds on the already significantly good work in this area. Wherever is appropriate we will make our focus on passenger independence, and our policy framework will always reflect national guidance; and
- in the context of changing expectation and drive to independence, carry out a re-evaluation of all passengers to ascertain their travel eligibility and bespoke requirements.

7.3 The Council has a statutory requirement to have a Sustainable Modes of Travel Strategy and a Transport Policy Statement in place.

- Nationally safe and efficient school transport and travel is a primary need for families of children with SEND. Locally we offer, and will continue to offer, transport for children in line with our travel policy which includes the aspirations to promote independence as far as possible, whilst ensuring children can attend school in a timely way.

7.4 It is not proposed that there will be any substantive changes to the existing SEND Transport policy as a result of any transformation delivered by the proposed transformation partner. The travel policy is clear but there is challenge from families and professionals on the application of the policy both within the Council and from wider professionals. The process for determining travel eligibility and then determining the best form of travel for individuals requires review so that consistent decisions can be made, and that families and professionals are clear on travel and transport eligibility. Whilst revisions to the policy will be made in regard to addressing issues regarding clarity, parents, carers and Members can be assured that the Council will comply with all statutory requirements. If any changes were to be proposed at any point in the future, it would be achieved through co-production work, consultation and with the best needs of our children and young people at its heart. The areas for improvement that were identified within the scoping review and which will be considered in consultation with parents / carers, are detailed below:

- Whilst the policy is robust and set within statutory guidelines, it was not consistently adhered to and was not widely understood outside the SEND Transport team.
- The policy is not concise or clear and lacks customer focus.
- The policy does not provide clear accountability for determining travel eligibility between the SEND Transport team and the wider SEND service.
- The policy needs to clarify use of personal budgets for travel and also needs to set clear expectation in regard to the allocation of 'travel escorts'.
- Families are keen for a review of the processes, including application and the way that routes are planned, to take place. This is because many of our families have been negatively affected by the way that the service is currently delivered.

7.5 In conclusion, the proposal does not mandate cuts to the level or extent of services delivered, or reductions in the number of children receiving a service.

How will it be ensured that there are no adverse changes to the working patterns, staffing levels, conditions or workload of staff?

- 7.6 It is not expected that the changes that the transformation partner would be commissioned to deliver will adversely change the working patterns, staffing levels, conditions or workload of staff who are Council employees.
- 7.7 The background information detailed within Appendix B of the report presented to Cabinet on 12th November details the scope of the changes that are required to be delivered by the transformation partner. The scoping review highlighted several important observations in respect of the Travel team's current capacity and their need for support to improve service delivery. It was reported that the current team structure/resources are insufficient to operate and effectively drive forward the necessary service transformation, and the structure of the team does not clearly identify accountabilities for key tasks or allow for the deputising of the Team manager when required. This lack of accountability and flexibility in the team needs to be addressed if the service is to deliver to a high standard and support the wider aims of the SEND service. Furthermore, the recommendation is that the transformation partner both develops and redefines the existing team so that the structure, capacity and skills within that team are able to improve service levels and ensure improvement becomes an intrinsic and continuing part of the service.
- 7.8 As is normal practice, Children's Services will consult with the Unions when developing any recommendation to the Council to increase the establishment of the SEND Transport team to address this lack of capacity and to redesign how the service delivers the transport needs. The consultation will include consideration of the job description, pay grade, working conditions and working patterns.
- 7.9 Around 110 escorts and travel buddies are directly employed by the Council to support children and young people to travel to and from school or college. In this regard, the number of escorts and travel buddies is determined solely by the total number of children and young people who have been assessed as requiring that support.

Whether the company will have an operational / management role or merely advisory role during their 2-year contract period?

- 7.10 The transformation partner will be responsible for deploying their own staffing resource who will be working alongside the existing SEND Transport team to support the delivery of the recommendations of the scoping review and who will not have any line management responsibility over staff during their two-year contract period. The transformation partner will at all times operate in accordance with the assurance framework detailed later in this report at 7.23.1.
- 7.11 The overall management of the service will remain as present: Head of SEND service, overseen by the Assistant Director for Schools and

Learning. All managerial responsibilities and decision making will fall to officers (including, for example, HR and performance management matters) and not to the transformation partner.

What would be the financial consequences should the council reject all or part of the changes recommended by the company?

- 7.12 The required changes have essentially been detailed within the scoping review (Appendix B of the 12th November 2019 Cabinet report) and were the basis upon which the Invitation To tender was issued to the marketplace for competitive bids. Changes recommended by the transformation partner will be considered and must fall within the terms of the scoping review and the contract agreement.
- 7.13 Any additional activity proposed by the transformation partner to that detailed within the scoping review is, by definition, out of scope.
- 7.14 If changes that had been identified in the scoping review are not implemented, then this will have a direct impact on a reduction of savings to the Council.
- 7.15 Upon approval to proceed with the appointment of the transformation partner, a contract will be prepared that will address:
- Governance and decision making;
 - financial mechanism; and
 - contract exit.

What would be the financial consequences should the council decide to terminate its contract with the company earlier than stipulated?

- 7.16 If the Council chooses not to award the contract to the recommended transformation partner and also not to otherwise proceed with the tender, then there are no financial consequences to the Council.
- 7.17 However, it should be noted that the Council cannot then go back out into the marketplace to tender for the same scope of activity. If the Council were to do so with the same, or largely similar specification, then the recommended transformation partner could seek compensation in regard to their costs in submitting the bid, and a sum reflecting the amount by which the transformation partner would be worse off.
- 7.18 The contract will be awarded under the CCS framework RM6008 MCF2 Call Off terms and conditions. There are two circumstances whereby the Council could terminate a contract with a provider earlier than stipulated:
- i. Failure to Perform
In instances such as material default, financial standing as defined in the terms the onus would be upon the Council to prove that the

provider has not delivered outcomes in accordance with the agreed contract. In such instance, the Council would not be liable for compensation to be paid to the provider and if proven the Council may be able to recover costs for placing the contract and expenditure for the alternate arrangement during the period of the contract.

ii. Termination without cause

In such instance, the Council would be liable to reimburse the provider for proven losses as a direct result of the termination and for which the provider cannot seek compensation from other sources such as insurance. The provider has an obligation to mitigate its losses due to the termination.

7.19 The Council would have to have some specific justification under a contract provision to terminate the contract without risk of being in breach of contract.

- If the Council were to terminate the contract or to try to do so without being able to rely on contractual or otherwise lawful ground, it could be held liable to compensate the Supplier for the resulting losses suffered by the Supplier. The amount of the loss would have to be calculated based on general principles of contract law, essentially the losses that could reasonably be expected to flow from the breach of contract.
- Exactly what loss would be determined based on the T&Cs such as the agreed pricing provisions that would determine how much the Supplier could have expected to be paid if the contract had not been terminated prematurely.
- This would normally not be the full amount payable under the contract but a lower figure reflecting the amount by which the Supplier would be worse off.

Concern that this decision:

7.20 Represents a large transfer of resources from the public to the private sector

7.20.1 The recommendation to commission an external transformation partner represents a one-off transformation opportunity cost that lasts for a duration of two years and it does not represent a large transfer of capital resources from the public to the private sector.

7.20.2 The capital resources deployed represent a risk-free investment to the Council since payments to the transformation partner are directly related to the delivery of savings back to the Council. Upon successful delivery of the contract, the resultant cost of

the consultancy would be paid back by the end of year three following initiation of contract, leaving in place sustainable savings of at least £635,000 per annum.

7.21 May lead to changes that are not in accordance with our values

- 7.21.1 Our values are consistent with the Council in that children, young people, and families remain our foremost concern in regard to service standards, service improvement and the promotion of independent living wherever possible.
- 7.21.2 Responding to the issues previously raised by the Overview and Scrutiny Committee on 4th July 2019 (and reported within the Cabinet minutes of 9th July 2019) that “the voice of users should be at the heart of the service and that it should be co-designed, where possible”, it was agreed by Children’s Services that the approach to change must consider and engage with both parents and schools. To provide assurance, the Assistant Director for Schools and Learning will ensure that during all stages of the partnership with the transformation partner, parents, carers, schools and all relevant stakeholders will be involved in the transformation process.

7.22 May not represent VFM compared with alternative ways forward

- 7.22.1 As detailed within the Cabinet report of 12th November 2019, the procurement process that was undertaken to identify a transformation partner assured value for money for the Council.
- The tender was conducted via the Crown Commercial Services (CCS) Management Consultancy Framework 2, lot 1, which contained 275 suppliers. A shortlisting exercise was carried out, based on the Council’s minimum requirements for the service, which narrowed the suppliers down to 57. All 57 suppliers were contacted with an invitation to submit an Expression of Interest, of which 11 suppliers expressed interest in bidding for the service.
 - The Competitive Tender was in accordance with the framework conditions, which was based on an evaluation weighting of:
 - Price 40%
 - Quality 60%
- 7.22.2 As a competitive tender, providers submitting bids are not aware of other competitors who may choose to bid, nor the value of any other potential bids. It is a reasonable assumption that the providers submitting bids will offer a competitive bid.

7.22.3 The recommended transformation partner has a proven track record in delivering SEND Transport savings, and who was prepared to offer 100% contract fee at risk for non-delivery of savings.

7.23 May lead to reputational damage to the Council and its present leadership, which will be blamed for any adverse effects of changes resulting from the involvement of this company

7.23.1 There will be four levels of assurance in regard to the delivery of the SEND Transport transformation project:

- i. On-going and robust child / young person / parent carer consultation / engagement at the heart of every step of the process.
- ii. Service level operational governance through a monthly steering group who can take 'business as usual' decisions that do not require escalation:
 - Including assurance of 'upskilling' and supporting the development of SEND Transport staff.
 - The steering group will include representation from parents and carers to inform and co-produce service improvements.
- iii. Robust internal governance and assurance of benefits realisation through the monthly Children's Improvement Board:
 - Projected financial savings to be assured by the Council Finance Team;
 - review of 'People Plan' to assure staff development and knowledge transfer.
- iv. Monthly update to Lead Member for Children's Services

Variation of Action Proposed

7.24 In-house work to be undertaken, supported if an external resource is required by a non-profit making and pro-public sector organisation such as APSE of which this council is a member, and in consultation with the trade unions and service users, to identify and progress genuine efficiency savings and service improvements

7.24.1 The Options Appraisal within the 12th November Cabinet report considered an option that included the appointment of an additional staff member with SEND Transport experience alongside internal transformation / change management experience. However, this option was rejected - the disadvantages of this option being:

- A lack of SEND transport transformation / change management experience impacts delivery of service improvements;
- inability to flex the necessary additional SEND transport related experience during expected 'resource-heavy' periods;
- step change in cultural and operating practice is not realised; and
- savings are only partially realised.

7.24.2 In regard to consultation to identify and progress genuine efficiency savings and service improvements, the scoping review was indeed informed by the voice of parents, carers and schools. Some of this feedback was critical of the current service, and the criticism is in line with the evidence provided to the Fairness Commission earlier this year, and evidence provided to the Children and Young People's Scrutiny Panel.

7.24.3 Furthermore, as stated within the 12th November Cabinet report, the transformation partner has assured the Council in the application and through communication with schools that they will work with local parent and carer groups, SEND service, individuals and settings such as schools to co-produce proposed changes. The transformation partner has a track record of engagement with settings and family groups and would be able to use the SEND service's current established communications as well as proposing a specific working party around progression of the transport changes.

7.24.4 In regard to potential external resource by a non-profit making and pro-public sector organisation is concerned, and in addition to the reasons stated above (7.24.1):

- There is a high risk that should the Council re-run the tender to include such an organisation, that the existing recommended transformation partner would be able to claim costs from the Council in regard to the first tender.
- Support provided by an external organisation would not be provided free of charge, and that day rates charged for such consultancy services would be at minimum commensurate with that of the recommended transformation partner, or even potentially higher.

7.25 This is to include consideration of bringing the supply of drivers and vehicles in house

7.25.1 As detailed within the Cabinet report of 12th November, the proposed transformation has two phases. The first phase, that

was recommended to the Cabinet for approval, is to award a contract for an external transformation business partner who has extensive experience working with other authorities, to improve their SEND transport arrangements.

- 7.25.2 Once complete, the second phase as previously stated within the Cabinet report, is to review the current arrangements for provision of vehicles with a view to consider insourcing. This external review would involve parents and carers alongside officers. The outcome of the review will be discussed with the Lead Member for Children's Services, with relevant Cabinet approval for any further changes proposed by the second phase.

8. Contribution to strategic outcomes

- 8.1 The contribution of the decision in regard to strategic outcomes was set out in the report to 12th November Cabinet.

9. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Chief Finance Officer

- 9.1 The financial information reported in November remains consistent with that reported in July.
- 9.2 The current strategy is included in the agreed medium-term financial strategy savings proposals.

Strategic Procurement

- 9.3 In accordance with the Council's constitution the proposed provider has not been advised of the outcome of the procurement process. The Cabinet decision will not be notified to the proposed provider until completion of the Call-In procedure at which point the decision will be advised to proposed provider.
- 9.4 The procurement was undertaken as a further competition under the CCS framework RM6008 MCF2 and in compliance with the rules of that framework.
- 9.5 The contract would be subject to the framework terms and conditions and provide for the consequences of termination by either the Council or the Provider.

Assistant Director of Corporate Governance

- 9.6 This is set out in the accompanying Monitoring Officer report in the agenda pack

Equalities

9.7 As detailed within the report to 12th November Cabinet. The call in comments on the contractual agreement and there are no further equalities comments to add in relation to these points.

10. Use of Appendices

11. Local Government (Access to Information) Act 1985

N/A