

**Report for the Chief Executive**
**Date: 27th April 2020**
**Title of report: Payment of Operators – Passenger Travel**
**Purpose of report:**

The purpose of this report is to request an emergency decision by the Chief Executive regarding whether payments made to operators during Covid 19 and the closure of schools should continue.

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>N/A</b> <b>If yes give the reason why</b>
<b>Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u></b>	<b>Key Decision – No</b> This is only applicable to Cabinet reports <b>Private Report/Private Appendix – No</b>
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	<b>No</b>
<b>Date signed off by <u>Strategic Director</u> &amp; name</b>	<b>Karl Battersby</b> <b>27/4/2020</b>
<b>Is it also signed off by the Service Director for Finance?</b>	<b>Not applicable</b>
<b>Is it also signed off by the Service Director for Legal Governance and Commissioning?</b>	<b>Julie Muscroft 27/4/20</b>
<b>Cabinet member <a href="#">portfolio</a></b>	<b>Give name of Portfolio Holder/s</b>  Cllr Viv Kendrick

**1. Summary**

The passenger travel team arrange school transport for children across the district. It is a vital service ensuring children arrive at school ready and able to learn.

The school transport system is supported by operators and drivers who are key to ensuring our most vulnerable children are transported to school to ensure they achieve their full educational attainment. It is essential to ensure service continuity is maintained during and after the coronavirus outbreak.

Due to Covid-19 the number of routes which are operating have significantly reduced and the service is currently continuing to pay operators in full. The temporary arrangements, such as social distancing and reduced access to schools, implemented by the Government are going to be in place for some time and as such a review of the decision to continue to pay 100% to operators is necessary.

Information from the Cabinet office states that Local Authorities should act swiftly to ensure suppliers at risk are in position to resume normal contract delivery once the outbreak is over.

This report sets out the information required to make this decision relating to, key issues and recommendations from officers.

## 2. Information required to take a decision

The passenger travel team arrange school transport for children across the district. The current contract in place with operators is in place until 2021 and operators are contractually obliged to provide transport which includes minibuses and taxis each day during term time for specific routes.

Following the government guidance school travel routes are operating but have reduced since schools closed to all but vulnerable children and children of key workers.

Home to school transport also tenders providers for a number of other teams within the council namely, Post 16 (Early Support Team), adult day care, social services – looked after children, respite/short breaks and YPAT (Young Peoples Activity Team - after school and holiday clubs.

The other teams listed above also require a decision regarding payment of operators, as their requirements are tendered under the same contract and the overall implications will be the same for each of these services. There is a balance to be struck between paying large amounts of money with no service running, against having operators with a viable business to utilise when normal operating service is resumed.

### Contractual position

The current contract can be varied for the period that schools are closed or during Covid 19 arrangements.

### Other Local Authorities

The approach by other authorities is as follows:-

Leeds (majority in house fleet)	No payment of operators and they are relying upon the in house fleet (their fleet is enhanced by operators) They are considering any claims for payment from operators who state they are 'at risk' of failing to remain a viable business concern
Wakefield	Continuing to pay operators for cancelled journeys, however, caveat that they should undertake other replacement work e.g. FSM deliveries, adult & social care work and demonstrate that they are not claiming government funding e.g. furloughing of their staff.

Calderdale (majority in house fleet)	In house fleet and they are using this provision to deliver across the council where needed  Contracts with operators are suspended
Bradford	Paying 85% of suspended contract fees. Discounted for fuel purposes. Providers as a pre-condition must sign a declaration to provide assurance that payment goes to drivers.  Operators who have furloughed drivers are not paid as those drivers are being paid (80% of salary) by the government.  Payment of the additional 20% is not being met by the authority.
West Yorkshire Combined Authority	Continuing to pay operators – WYCA receive a transport levy received from Council to WYCA

### **Cost**

The cost of paying operators for the routes which are not currently operating are approximately £16,300 **per day**.

### **Timeline**

Department for Transport letter dated 25<sup>th</sup> March 2020, urges Local Authorities to continue to pay operators for home to school transport at the levels before downturn in service provision. Appendix 1-Letter to Local Authorities dated 25<sup>th</sup> March 2020

Procurement Policy Note No.2 dated March 2020, sets out information and guidance for public bodies on payment of their suppliers to ensure service continuity during and after the coronavirus outbreak. It states all authorities should review their contract portfolio and inform suppliers, who they believe are at risk that they will continue to be paid as normal (even if service delivery is disrupted or temporarily suspended) until at least the end of June. Appendix 2 Procurement Policy Note PPN 02/20 March 2020.

Operators were initially informed by email on 23<sup>rd</sup> March 2020 they would continue to be paid when the Covid arrangements initially began but they would be expected to help deliver goods and/or transport passengers across the council as required. The Local Authority had initially received information from WYCA (West Yorkshire Combined Authority) and this requested authorities to continue to pay and for a joint approach to be taken. At that time WYCA were keen to ensure that local authorities were not seen to be profiting from the crisis and were supporting operators that may go out of business.

It is now known the current social distancing measures will be in operation for some time and a more long-term decision is required. The cost to the Council of the routes being paid but are not operated is now clear and the viability of operators who are a key part of the school transport system needs to be considered.

## Key Issues

- ❖ Significant costs to the council when the service being remunerated is not being delivered – approx. **£16,300 per day**
- ❖ Maintaining service provision and viability of operators and ensuring this continues as they will be required going forwards to continue to deliver school transport – particularly as Kirklees does not have in-house provision
- ❖ Whether non-payment of operators will cause any/some businesses to cease trading.
- ❖ The vital service the operators provide is dependent upon many drivers and it is important that payments are passed on from suppliers as per PPN 02/20 Appendix 2. An e-mail has been sent to operators reminding them they should be passing the payment onto drivers.
- ❖ Department for Transport letter dated 25<sup>th</sup> March 2020 and Public Procurement Note No.2 dated March 2020 requires consideration. Particularly regarding transparency and the requirement that suppliers in receipt of public funds during this period agree to operate on an “open book” basis.
- ❖ Alternative government funding now available to self-employed businesses and businesses with employees.
- ❖ Consistency across the Council in how other services and teams have resolved this issue with providers.

### 3. Implications for the Council

When the initial decision was made it included the requirement that the operators would be paid and continue to provide availability to the council and offer transport services where required across the service. A project involving the transport of care workers has been established and could be extended further should the need arise.

The initial decision taken during preliminary business continuity implementation and the changes that have since evolved means that as an authority it is right that we review the position and establish what is the right decision both for children and the citizens and communities as a whole.

- **Working with People**

The service has worked with its partners including schools and operators to ensure the service has continued to meet its statutory obligations. It has also worked well with operators and taken a very supportive stance in order to maintain business continuity. This was to ensure that vulnerable children were placed at the heart of the decisions and to continue and build relationships with suppliers.

- **Working with Partners**

Continuing to provide some payment to operators is helping sustain those businesses within a precarious economic market and also ensures that once the UK moves to post recovery the service can continue to deliver its statutory obligations as those businesses will still be available. The service has worked with various operators and undertaken other work where possible to achieve a partnership and best outcomes possible, but the

time is now right to review that and whether the same approach is still required or necessary.

- **Place Based Working**

Kirklees as a place is made up of different communities and the diversity of its communities is one of its key strengths. The service has worked with a number of partner agencies to ensure the resources achieve the best outcomes for residents, in particular vulnerable children and that the government guidance and requests to continue to transport those children have been implemented.

- **Climate Change and Air Quality**

The service will continue to ensure that vulnerable people are travelling in the most efficient and effective way as this is intrinsically linked to how the Council tackles the Climate Emergency and to carbon emissions.

- **Improving outcomes for children**

Ensuring vulnerable children are reaching their full educational potential supports the council outcomes of best start in life, independence and aspiring and achieving.

Continuing to be able to provide travel solutions and have a market to operate within will ensure the service continues to meet its statutory obligations.

- **Other (e.g. Legal/Financial or Human Resources)**

The contract in place can be varied or amended accordingly and this has been agreed by Legal Services.

#### 4. Consultees and their opinions

- Discussions regarding the options available have been undertaken within service and at senior leadership level. Neighbouring Authorities have been consulted to ensure consistency with suppliers. Considerations of available options and legal requirements have been discussed with legal services and procurement and are set out below: -

Options available: -

- a. **Vary the contract to stop payment** to operators whilst the schools are closed, and the routes are not operating using amended contractual arrangements –
  - signpost to government funding packages on offer
  - operators continue to be paid in full for routes not affected and reimbursed if they are required for any additional routes
  - Provide an ability to consider on a case by case basis whether an operator should continue to be paid if they are unable to claim from the alternative funding schemes available and are at significant risk of remaining viable
- b. **Continue to approve the payment** of operators during Covid 19 and the closure of schools without caveat until a specific date or period
- c. **Suspend and vary the contract - Approve the payment of a reduced** percentage (85%) to operators during Covid 19 with the following caveats in line with Procurement policy note 02/20 regarding transparency:
  - On the signed condition that operators:-
  - Continue to pay drivers (where they have not been furloughed)
  - Are available to be used to transport passengers or services where required across the council
  - Understand that monies will be recovered if claimed fraudulently, found to be taking undue advantage or failing to act with due integrity and transparency

- Understand that they may be prevented from contracting with the Council in the future if found to have been acting fraudulently under the Procurement Contract Regulations 2015

Any option approved will continue to be reviewed alongside business continuity arrangements and Covid 19 to ensure it is both proportionate, appropriate and necessary.

## 5. Next steps and timelines

- In line with Procurement Policy Note 20/20 the Council will work collaboratively with operators to ensure transparency during this period. Operators in receipt of payment must agree to operate on an “open book” basis, this means they must make available any data including ledgers, cash-flow forecasts, the status of their business, availability of drivers, and ability to fulfil contracts.
- Once the decision is approved, this will be communicated to Legal services who will undertake the required drafting amendments to the contract and the decision communicated to the operators via a contract amendment.
- Operators will be required to sign a declaration that they will continue to pay drivers (where they have not been furloughed) and will sign to ensure they understand that if a fraudulent claim is made the Council would seek to recover the payments made and they may be barred from future contracts with the Council. Once the necessary documentation is received payments will be made as per normal arrangements.
- If the decision is to agree the recommendation set out below service delivery will continue but with operators submitting invoices for routes required and being paid a significant proportion of the usual fee with a fuel discount. It will help to ensure operators are paying drivers and that businesses continue to operate and do not become at risk. Vulnerable children will continue to be transported to school.

## 6. Officer recommendations and reasons

The recommendation is for the Chief Executive to approve option c, at paragraph 4. This option will enable operators to continue to receive payments to ensure the following:-

- Operators who are providing routes would continue to be paid in full for those routes.
- businesses remain sustainable and economically viable as far as they can,
- the authority benefits from an additional transport resource should this be required,
- availability of transport for children is widened to enable the service to maintain effective service delivery.
- The cost of option c would be £13,855 per day if all operators were available.

The Covid 19 arrangements have impacted on local operators and the pool of those available has reduced. This would enable the service to continue to have as many options as possible available to transport children as the numbers travelling vary on a week to week basis. This will be balanced against the authority doing all it can to ensure due diligence in that payments are made to those who are acting with transparency and integrity in terms of financial support received.

7. **Contact officer**  
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8. **Background Papers and History of Decisions**  
N/A
9. **Service Director responsible**  
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10. **Appendices**  
Appendix 1 – Letter to Local Authorities dated 25<sup>th</sup> March 2020  
Appendix 2 – Procurement Policy Note PP 02/20 March 2020