

Emergency Agreement to Supplier Relief for Home To School Transport Operators

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report provides a record of the use of officer urgency powers by the Interim Executive Director Families, Children and Learning in respect of supplier relief to Home to School Transport (HTST) providers.
- 1.2 The Council's Constitution contains provision, following consultation with the Chair of the relevant Committee, for the exercise of officer urgency powers where it is not reasonably practicable to obtain prior approval of a Committee or Subcommittee. In such cases, a record of the Officer Urgency Decision is made, including the detail of the consultation undertaken, and reported to the next available Committee.

2. RECOMMENDATIONS:

- 2.1 That the use of officer urgency powers by the Interim Executive Director Families Children and Learning in respect of supplier relief to Home to School Transport providers be noted.
- 2.2 That the provision of supplier relief as detailed in the in the report be agreed.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The COVID 19 pandemic has resulted in significant financial challenges for many of the council's HTST providers and there are vulnerabilities for the workforce of drivers and Vehicle Passenger Assistants. It is essential that providers are supported where necessary, so they can survive the impact of the crisis and resume the essential service they offer as soon as schools re-open.
- 3.2 Prior to any direction from the government, the council had already agreed to pay all HTST operators in full up to the end of March 2020 in recognition of the sudden loss of income from school closures. Operators who carried out runs over the Easter holidays have also been paid in full.
- 3.4 The Government's Policy Procurement Note of March 2020 states that public bodies should pay suppliers until the 30 June 'as normal' if they consider them to be 'at risk' over the current crisis, on the proviso that firms operate an 'open book' approach so public bodies can check that relief is genuinely needed and not being double-claimed.
- 3.5 The current crisis has resulted in significant financial challenges for many of the council's HTST providers, most of whom are heavily dependent on school runs for their financial viability. It is essential that firms are supported where necessary, so they can survive the impact of the crisis and resume the essential service they offer as soon as schools re-open.

- 3.6 The over-riding interest of the council in terms of HTST supplier relief is to ensure the sustainability of services for September 2020 and onwards, and it has been determined the following relief will need to be offered to HTST suppliers 'at risk':
- 3.7 Payment for:
- All journeys being undertaken currently
 - All fixed costs that cannot be reclaimed elsewhere
 - Full payment for the salaries of Vehicle Passenger Assistants, as they are considered a vulnerable workforce
 - Payment to 'top-up' the salaries of drivers and other staff on the furlough scheme or receiving self-employment pay (government schemes pay 80% of income up to a limit and the council would then pay the remaining 20% up to the same limit)
 - In addition, on a case by case basis, the council will consider any exceptional costs that may need to be incurred to ensure the sustainability of individual providers.
- 3.8 No payment will be made for the profit element of business, for costs not incurred (fuel etc) or for staff pay which can reasonably be reclaimed via government schemes (with the exception of VPAs as above). Any grants or other forms of relief obtained through government schemes will be subtracted from relief offered by the council.
- 3.9 All payments to transport providers will be made on a "open book" approach which will allow the council to inspect accounts to ensure firms are not double-claiming and that funds are being used to pay staff

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 In terms of undertaking an urgency decision, delay in confirming financial support for Home to School Transport providers would have created a risk that provision would not be in place when school re-open, either in the academic year 19/20 or from September for academic year 20/21
- 4.2 In terms of alternatives to the urgency decision made, a survey of a range of Local Authorities, who are either our geographical or statistical neighbours, was undertaken. This indicated a wide variety of responses to the payment of HTST providers.
- 4.3 The following options were considered and rejected:
- Pay in full for all contracts as normal irrespective of reduced journeys – that would have resulted in the council paying for costs that were not incurred (e.g. fuel and vehicle maintenance) and funding staff and other costs which could reasonably have been claimed via government schemes
 - Pay only for the reduced number of journeys – current journeys are running at about 17% of normal and the financial consequences are likely to drive key firms out of business and would not guarantee the sustainability of services when schools re-open.
 - Pay a retainer – we considered this option which has the benefit of simplicity – but the structure and business model of our home to school transport providers

varies widely and a blanket retainer would inevitably have had arbitrary 'winners' and 'losers' which would not secure the stability needed.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Agreement of the Chair of Policy & Resources was obtained in advance of the decision being taken, as required by the constitution. The opposition spokespersons for the committee were consulted as required.

6. CONCLUSION

- 6.1 The use of officer urgency powers has ensured that the Home to School Transport providers are appropriately supported during the COVID-19 crisis, thereby supporting the providers to be able to continue to provide transport for vulnerable children going forward.

7. FINANCIAL & OTHER IMPLICATIONS

Financial Implications:

- 7.1 The early forecast for 2020/21 originally estimated a full year spend on HTST of £3.6m resulting in a budget overspend of £1.2m. Supplier relief payments on the basis outlined within the report would see a reduction in the total expenditure on HTST. The value of the reduction is dependent on the length of time the current measures remain in place and decisions made on a case by case basis to support operators. Discussions are currently ongoing with operators and information is being gathered to support any offers made, so it is not possible at this stage to accurately quantify the final level of relief payments. Initial indicative estimates suggest that there could be a reduction in overall costs to the council of up to £0.475m. It should be noted that, in order to maintain a safe service further measures resulting in potentially significant additional costs may need to be considered when schools either partially or fully reopen.

Finance Officer Consulted: David Ellis

Date: 07/05/20

Legal Implications:

- 7.2 The legal implications are set out in the body of the report and in the record of the urgency decision.

Lawyer Consulted: Alice Rowlands

Date: 11/05/20

Equalities Implications:

- 7.5 There are no direct equalities implications in this report. The supplier relief provided to HTST providers does not change eligibility for the service but does ensure essential service provision for vulnerable children with SEND going forward

Sustainability Implications:

- 7.6 There are no sustainability implications arising from this report.

SUPPORTING DOCUMENTATION

Appendices:

1. Record of Urgent Decision taken by the Interim Executive Director Families Children and Learning

OFFICER DECISION

Brighton & Hove City Council

REASONS FOR URGENCY AND WHY NOT PRACTICABLE TO HOLD A SPECIAL MEETING OR URGENCY SUB-COMMITTEE:

The Home to school Transport service is subject to close scrutiny following the issues of September 2019 and it is right and proper that decisions going forward are subject to proper scrutiny and monitoring, hence the reason not to use the scheme of delegation to officers' process.

The need to determine specific arrangements for supplier relief in HTST is now extremely urgent. Given the urgency it is not practicable to hold a special meeting or urgency sub-committee. It is now four weeks since the government's PPN suggested payment of suppliers 'as normal' to the end of June 2020 and [over three weeks since the council responded with local guidance for suppliers over this crisis period \(https://www.brighton-hove.gov.uk/content/council-and-democracy/contracts-and-tenders-council\)](https://www.brighton-hove.gov.uk/content/council-and-democracy/contracts-and-tenders-council).

It has been always been recognised that there are specific fragilities for Home to School Transport suppliers and their staff, which necessitate a bespoke approach to decisions about relief on a case by case basis in addition to generic guidance above, but there have been delays while we consulted other Local Authorities and considered various financial models.

The HTST service has been under intense scrutiny for many months now, following a very difficult introduction of new contracting arrangements from September 19, which left families with disrupted and unsatisfactory arrangements and some children not being able to access school at all for several weeks. In that context, assurance has been given to the community that September 2020 will not be a repeat of last year, but that assurance will be under threat if the financial security of firms and their workforce is not secured quickly.

DETAILS AND OUTCOME OF CONSULTATION WITH THE CHAIR/DEPUTY CHAIR OF RELEVANT COMMITTEE AND OPPOSITION SPOKES:

This Officer decision has been discussed in full with Chair of the CYPS Committee who is in agreement with the proposal.

DATE OF CONSULTATION WITH CHAIR/DEPUTY CHAIR AND OPPOSITION SPOKES:

23.04.20

THE DECISION To note the use of officer urgency powers by the Acting Executive Director, Families, Children and Learning to provide supplier relief to operators as set out below.

REASONS FOR DECISION:

The current crisis has resulted in significant financial challenges for many of the council's HTST providers, most of whom are heavily dependent on school runs for their financial viability. It is essential that firms are supported where necessary, so they can survive the impact of the crisis and resume the essential service they offer as soon as schools re-open.

As this decision has been subject to delay, there is need to resolve increasing uncertainty and anxiety amongst operators, and to prevent key staff leaving firms, either through redundancy or to via employment in other driving jobs or as key workers. This is a threat to the continuity of an essential statutory service when schools re-open, as recruitment of Vehicle Passenger Assistants, in particular, is extremely challenging. Challenges remain post-recruitment also in terms of lead-in time, as all transport staff have to have an enhanced DBS, which can take 6-8 weeks or more to obtain, and also to have training in managing special needs and disabilities. Recruitment issues and the long lead-in time post-recruitment could compromise arrangements for September.

The over-riding interest of the council in terms of supplier relief is to ensure the sustainability of services for September and onwards, and it has been determined the following relief will need to be offered to HTST suppliers 'at risk':

Payment for:

- All journeys being undertaken currently
- All fixed costs that cannot be reclaimed elsewhere
- Full payment for the salaries of Vehicle Passenger Assistants, as they are considered a vulnerable workforce (see below)
- Payment to 'top-up' the salaries of drivers and other staff on the furlough scheme or receiving self-employment pay (government schemes pay 80% of income up to a limit and the council would then pay the remaining 20% up to the same limit)
- In addition, on a case by case basis, the council will consider any exceptional costs that may need to be incurred to ensure the sustainability of individual providers.

No payment will be made for the profit element of business, for costs not incurred (fuel etc) or for staff pay which can reasonably be reclaimed via government schemes (with the exception of VPAs as above). Any grants or other forms of relief obtained through government schemes will be subtracted from relief offered by the council.

Vehicle Passenger Assistants (VPAs)

The council is proposing to support salaries of this group of staff in full without requiring firms to furlough, or require them to access the government's self-employment scheme. This is because their work is so critical to the operation of the HTST service and because the more casual and part-time nature of their work may make it more difficult for them to access government schemes to support workers. VPAs are known to be a difficult workforce to recruit. They are mostly self-employed, with operators recruiting them to work for around 2 hours only per day, before and after school, usually on low wages. The hours are not attractive to many, and consequently, this work tends to be fitted around other jobs or to be taken by workers of retirement age. We have some

information that several VPAs have left already to take on key worker posts over this period. Additionally, VPAs must have an enhanced DBS and these can take several weeks to come through. It is essential for the sustainability of the service that the VPA workforce is protected and the enough time is allowed for workers to be recruited, checked, trained and introduced to families before school starts in September 20.

Capacity to undertake an 'open book' approach

All the above will be in the context of the 'open book' approach suggested in the government's PPN, which will allow the council to inspect accounts to ensure firms are not double-claiming and that funds are being used to pay staff. Discussions with firms will be thorough and detailed, so the council can be assured of robustness of proceedings and the protection of unnecessary spend of public funds.

In terms of staff capacity and skills to assess the needs of our eight HTST suppliers on an 'open book' basis, it has been agreed that Senior officers, including the Assistant Director, Education and Skills, will work alongside colleagues in Finance and Procurement, as needed, to ensure proper and thorough scrutiny of financial information. Internal Audit have also agreed to support officers in instigating the right controls to ensure that public funds are used only for intended purposes.

DETAILS OF ANY ALTERNATIVE OPTIONS CONSIDERED:

Officers understood a survey of a range of LAs, who are either our geographical or statistical neighbours. This indicated a wide variety of responses to the payment of HTST suppliers, from councils paying only for journeys undertaken to others paying in full, but the majority have reached agreement somewhere in between those two, with encouragement to firms to claim from government schemes in the first instance and for councils to provide varying degrees of back-up to that. Some councils are paying a blanket 'retainer' across all suppliers, ranging from 15% - 85% of the usual budget.

The following options were considered and rejected:

- **Pay in full for all contracts as normal irrespective of reduced journeys – that would have resulted in the council paying for costs that were not incurred (eg fuel and vehicle maintenance) and funding staff and other costs which could reasonably have been claimed via government schemes – this option would not result in us fulfilling our duty to manage public funds efficiently and would be unaffordable when the council's own revenue loss is in the region of £8M, while covid-19 related costs are running at an extra £3M a month**
- **Pay only for the reduced number of journeys – current journeys are running at about 17% of normal and the financial consequences are likely to drive key firms out of business – this would not guarantee the sustainability of services when schools re-open.**
- **Pay a retainer – we considered this option which has the benefit of simplicity – but the structure and business model of our home to school transport providers varies widely and a blanket retainer would inevitably had arbitrary 'winners' and 'losers' which would not secure the stability needed. We have therefore elected on the principles above, to hold case by case meetings on an 'open book' approach to ensure the fairest and most efficacious response.**

LEGAL IMPLICATIONS:

Contract variations have been drafted to cover the above over this period. These will require the signing of contracts, which so far, two firms have refused to do. Relief will only be paid on return of signed contracts and signed contract variations.

Lawyer Consulted: Alice Rowland 24/4/20

FINANCIAL IMPLICATIONS:

The service budget for 20/21 is £2.400m but a projected overspend of £1.200m has been factored into the budget for this year. With significant caveats around the reliability of estimates here, Finance have calculated that supplier relief on the basis above would result in a full year cost of somewhere in the region of £3,138,694, which would result in an overspend of £725,094 rather than the projected £1.200m.

Following comparisons with other statistical neighbours, officers have advised that the base budget needs to increase to accommodate current pressures and I think there is an in principle agreement to look at this in terms of forward budget planning.

Finance Office Consulted: David Ellis Date: 24.04.20

DATE OF NEXT COMMITTEE MEETING TO WHICH THE DECISION WILL BE REPORTED:

CYPS Committee 15.06.20

P&R Committee June 2020

Date: 24.04.20	
Signed: Interim Executive Director Families Children & Learning	
Logged by Democratic Services Officer for Annual Report: Name:	Date: