

EXECUTIVE**12 MARCH 2007****MEALS SERVICE FOR OLDER PEOPLE****SUPPLEMENTARY REPORT****REASON FOR URGENCY**

This supplementary report is urgent because it provides members with information and advice in respect of item 22(i) on the Agenda for the Executive meeting of 12th March 2007 (Reference of Items Considered by Overview and Scrutiny Committees – Meals Service). It was not possible for this supplementary report to be available when the Agenda for the meeting was published on March 2nd 2007 because of the short time available for its preparation following the meeting of the Forward Plan Select Committee on 27th February 2007.

1.0 Background

1.1 At the meeting of the Executive on 12 Feb, the Executive considered a report concerning future provision of a meals service. The main recommendation was to go out to tender for a new type of service known as cook on route. Before making any decisions Members heard a deputation from the GMB Union about the impact on Brent Transport Service (BTS) of making a decision to move to the new type of service. BTS currently pays drivers for a full day, with the delivery work for the current meals service taking up the middle part of their day, while the beginning and end of their day is taken up with schools duties.

1.2 Members debated the issue and it was recognised that it would be open to a council department to put in an in-house bid for the new service if they wished to do so. There was also consideration of the issue about whether potential tenderers could be given the option of using the drivers from Brent Transport Service to deliver the service to the Council, and as a result the following recommendation was agreed;

“(v) that, subject to advice from the Borough Solicitor, an option be included in the tendering process for the contractor to use drivers employed by the Council Transport Service.”

1.3 Members decisions on the report were called in to the Forward Plan Select Committee and were considered at that committee on Tuesday 27th February. A number of issues were raised by the Select Committee.

1.4 This supplementary report provides further information for members of the

Executive in relation to the issues raised by the Select Committee. It also provides advice to members concerning the possibility of including the use by the contractor of the council's drivers as an option in the tendering process and the possibility that there be an in-house bid..

2.0 New Recommendations

- 2.1 That the Executive confirm parts (i) – (iv) of their decision at their meeting of 12th February 2007;
- 2.2 That the Executive note that the Director of Children and Families, in consultation with the Director of Housing and Community Care, will decide in accordance with his general delegated powers whether or not to submit an in-house bid;
- 2.3 That the Executive delegate to the Director of Housing and Community Care in consultation with the Director of Children and Families the decision whether or not to include an option to use Council drivers in the invitation to tender for the cook on route service.

3.0 Supplementary Information about Cook on Route

- 3.1.1 In the earlier report Members had some information about the pilot trials of a cook on route service. This report provides more detailed information than the original report on observations of the pilot. Members should note that the pilot was not carried out under any Contract Conditions or in accordance with any specification. However the information obtained from the observations has provided invaluable knowledge in compiling a detailed service specification which will ensure a robust, safe service to vulnerable people in Brent.
- 3.1.2 Prior to making the decision to develop a Cook on Route delivery service, officers contacted 31 London Authorities 17 of which are already running similar services and a neighbouring Borough (Ealing) has recently awarded a new contract for a further four years for a cook on route service. The remaining Boroughs are reviewing their current service with a view to making a decision on the future provision method of Meals on Wheels in their Borough.
- 3.1.3 The Forward Plan Select Committee discussed the report at their meeting of 27 February 2007. Their main concern centred around the practical issues of how under the new cook on route method meals were going to be delivered that were correctly cooked, healthy and at the right temperature. They also raised some questions on general health and safety issues, These issues are covered within this report and will be addressed in the tender specification document.
- 3.1.4 Officers have been able to establish that variation in travelling time could effect the reheating of the meal. However this problem can be solved by specifying the use of automatic temperature control in ovens which regulate the temperature dropping to a minimum on 63 degrees Celsius before the oven switches back on. This will ensure that the meal temperatures will not drop to the danger zone for bacterial growth.

- 3.1.5 To ensure that meals have enough time to reach the correct temperature (75 degrees Celsius) on route, the start of the delivery time will be specified for 12 noon, vehicles will be required to commence their delivery routes at the furthest point from the distribution site and where the travelling is particularly reduced the delivery vehicle will be required to park up to ensure the correct amount of heating time is allowed.
- 3.1.6 On the pilot it became evident that the ovens in the vehicle were not thermostatically controlled and this led to some meals being overheated. This problem will be overcome by specifying the use of thermostatically controlled ovens and a specific time period for delivery.
- 3.1.7 The pilot identified an issue with food hygiene safety especially around the temperature testing using a probe in a sealed meal. This problem will be solved by specifying the use of infra red temperature probes or using surface temperature testing both of which allow accurate testing without the need to disturb the packaging. Meals are also sent on a 6 weekly cycle to the Public Health Laboratory for microbiological analysis.
- 3.1.8 The Brent specification will require the loading of kosher meals on the top shelf of the oven with vegetarian meals on the next shelf ensuring that the meals are regenerated without risk of contamination from any spillage.
- 3.1.9 During the pilot a minority of lids lifted during reheating, this can easily be overcome by requiring delivery staff to use sheet aluminium foil to reseal the meal. This will ensure heat retention, eliminate contamination and prevent spillage.
- 3.1.10 The Brent specification will carry the requirement for a strict daily cleaning programme for vehicles which will be monitored rigorously.
- 3.1.11 The nutritional content of meals is set by the National Association of Care Caterers Association (see Appendix 1). As part of the monitoring regime regular samples of meals will be analysed by constituent part to ensure compliance with the standard as detailed in Appendix 1. At least twice yearly meals will be sent to a nutritionist to provide an independent report and chemical analysis. Particular attention must be paid to the nutritional content of all vegetarian meals to ensure sufficient protein.
- 3.1.12 Following the pilot service users receiving the cook on route meals were surveyed. The results showed that:
- 38% said that the food was slightly hotter,
 - 3% said the lid of the dish had lifted
 - 98% said there was no difference in the colour and texture of the meals
 - 86% said the taste of the meals was the same
 - 85% said they **were not** dissatisfied with any part of the meal
- 3.1.13 During the pilot a client was discovered having fallen, and the driver employed by the pilot company did not know the Brent procedures for dealing with this. There are currently strict procedures about working with vulnerable adults, in particular Manual Handling, Protection of Vulnerable Adults, reporting “no replies” and actions to be taken when a client is unwell, and again these will be included in the specification.

4.0 Potential In House Bid

- 4.0.1 If there is to be such a bid this should be disclosed in the tender documentation and arrangements would need to be put in place to avoid conflicts of interest and risks to confidentiality, and to ensure that the transparency and fairness of the tendering process was not put in jeopardy.
- 4.0.2 It is proposed that in order that there be certainty as to the position, members note that the decision as to whether such a bid will be made will be made by the Director of Children and Families in consultation with the Director of Housing and Community Care under delegated powers, taking into account the feasibility of such a bid, particularly in view of the timescales to be met to ensure that a contract is in place by January 2008.

5.0 Option to use the Council's Drivers

5.1. Operational and Financial Issues Arising Out of Proposal to make BTS Staff Available

- 5.1.1 There are various operational and financial issues that will make it difficult for officers within the Older Peoples Service to include the option of using BTS drivers within the tender documents.

Logistics of seconding BTS staff

- 5.1.2 At present the BTS delivery staff deliver meals for Older People Services during a 2.5 hours period in the middle of the day commencing with the loading of hot meals into vehicles from the kitchen in Neasden at 11.30am. Delivery of meals is normally completed and containers returned to the kitchen by 1.30pm but rarely after 2pm.
- 5.1.3 It is the understanding of officers in Older People Services that some delivery staff are only employed for the delivery of meals however most staff undertake a driving or escorting role on school and/or day centre transport in the mornings and afternoons. Assuming that the morning transport activities are completed by 11am and the afternoon journeys commence from the BTS site from 2.30pm this leaves a window of 3.5 hours where staff would be available for any service or secondment to a cook on route provider.
- 5.1.4 At this stage of the process officers are unaware of the location of all potential tenderers distribution sites, however it is known that one major provider has one in Northolt and another provider in Slough. For Council delivery staff to undertake the cook on route deliveries they would need to be transported to the successful tenderer's distribution site, collect the vehicle, manage the meal regeneration, drive back into Brent and complete deliveries and return vehicle to distribution site. They would then need to be transported back to the BTS site for the afternoon school and day centre transport work.
- 5.1.5 Although officers do not yet know the exact location of the cook on route distribution site it appears the logistics of BTS staff delivering the meals are not feasible due to the limited time available before the commencement of their afternoon duties. Due to the need to travel beyond the BTS site to collect and

return cook on route vehicles there is an increased possibility of delays due to traffic etc and the liability for disruption to their service is not one that a potential tenderer is likely to accept. The potential for disruption to the school and day care transport work is clearly of concern to the Council.

Delay to the Implementation Date of the New Service

5.1.6 The call in process has already caused a delay to the start of the tendering process as it had been timetabled for advertisements to appear on 1 March 2007. Further delay would be necessary if the proposal for BTS staff to be made available to the successful tenderer went ahead to allow time for all the steps explained in section 5.2 below to be completed. It is estimated that this would be at least four months before the tender process could commence.

5.1.7 The consequences of such a delay would be

- Increased anxiety for the nine kitchen staff who are likely to transfer to the successful tenderer and for the administrative team, one of whom may be made redundant.
- The proposed half year savings will not be achieved, equivalent to £40,000 per month of delay.
- A need to further extend the food supply contracts to maintain the current service until the new cook on route service commences which could place the Council in breach of the European public procurement legislation.
- Disruption of the Older People Services work programme.
- If the in house bid was successful they would have had to follow a full EU public procurement process and the Council's Standing Orders to award contracts for the supply of food, arrangements for specialist vehicles and the provision of deep freeze storage.

5.2 Legal Considerations

5.2.1 There are two legal powers that can be relied upon to allow the Council to make BTS drivers available to tenderers. Depending upon which is used, there are differing implications for the employment status of the Brent drivers and different financial and other implications for the Council.

Using the trading powers set out in section 95 of the Local Government Act 2003

5.2.2 The Local Government Act 2003 introduced a power for local authorities to trade for commercial purposes. This power to trade can only be exercised in relation to a function which the local authority is ordinarily empowered to carry out. This power can only be exercised by the establishment of a company but does allow a local authority to make a profit.

5.2.3 The trading company could either be established for the purpose of transferring to it the whole of Brent Transport Service's activities. Alternatively, the trading company could be restricted to one activity, that is the supply of a driving

service to the private sector supplier of the cook on route meals service.

- 5.2.4 For the former scenario, this trading company would then both contract with the private sector provider for the provision of delivery service, and would also have to contract with the Council so that the Council could buy the school's transport service currently delivered by Brent Transport Service drivers. With this option, there would be a TUPE transfer of the BTS staff to the company. Such TUPE transfer would apply only to Council employees. Therefore it would not apply to agency drivers also utilised by BTS who were not Council employees
In the case of such drivers the Council could terminate their placement with the Council and seek to arrange for the placement of the drivers by the agency with the trading company but would not be in a position to require this.
- 5.2.5 In relation to this TUPE transfer, the BTS employees would transfer on their existing terms and conditions and in terms of pension protection the policy "Pension Arrangements for Transferred Staff" agreed by the General Purposes Committee on 27 April 2004 would apply. This means that the company would either have to offer access to the Local Government Pension Scheme by the company becoming an admitted body to the LGPS, or offer the transferring employees an alternative good quality occupational pension scheme broadly comparable to the LGPS, unless there were exceptional circumstances to deviate from this policy. The Council would also have to decide whether to require the trading company to comply with paragraph 7 & 10 of the Code of Practice on Workforce Matters (treatment of new joiners) by balancing the benefits of this against the costs and assessing which would achieve best value.
- 5.2.6 In practical terms, the legal steps that would have to be followed to achieve this result are as follows:
- (a) The company would need to be established by the Council, and the Constitution requires that this is formally approved by the Executive;
 - (b) Before any invitation to tender stage is started, the following documents would need to be available to tenderers;
 - Details of the trading status of the new company
 - (c) A draft contract that would set out the supply terms available to the successful contractor (there are many issues of liability to resolve e.g. as a contractor what liability would it have if one of its vehicles broke down in the course of delivery so that the driver employed by the trading company but working at that time for the contractor was late starting another job that the trading company was also contracted to supply
Financial analysis would need to be undertaken to establish the appropriate charge to the successful contractor.
 - (d) The full TUPE consultation process would need to take place
- 5.2.7 The other option of the company only carrying out the activity of supplying a cook on route meals provider with a driving service will involve a secondment of BTS staff from the Council to the trading company and then possibly from the trading company to the successful contractor for those hours of the day where they would be providing the driving service for the meals provider. The Council has no specific power to second its staff to a trading company and it would have to rely on the well-being power set out in section 2 of the Local Government Act 2000 (see paragraphs 5.2.8 and 5.2.9 below regarding

whether this power would be available to the Council). This option would involve the following main steps:

- The contracts of individuals would need to be varied by agreement (assuming they were not currently drafted so as to allow the Council to make the envisaged changes to working conditions without employee consent).
- Where the individuals are not Council employees the worker and the agency would have to be agree to the worker being placed with the successful contractor for the hours of the day when the worker would work for the external meals provider
- As previously, the company would need to be established (with Executive approval) and the details of this included with the tender documentation.
- A draft contract would need to be provided and included in the invitation to tender as above, and the appropriate charge set following financial analysis
- There may need to be a contract between the Council, the trading company and the successful contractor to cover any secondment arrangement to the successful contractor.
- The variation to the contracts of individuals and the contract between the Council, the trading company and perhaps the successful contractor would need to address issues that commonly arise in connection with secondments e.g. whether the Council's or the successful contractor's employment policies and procedures would apply during the periods when the BTS staff work for the successful contractor

Using the well-being power in section 2 of the Local Government Act 2000 together with the charging powers of section 93 of the Local Government Act 2003

- 5.2.8 The second legal option is to rely in a currently untested way on the well-being power set out in section 2 of the Local Government Act 2000. This power can only be exercised having regard to the Council's Community Strategy but allows a local authority to do anything which promotes the economic, social or environmental well-being of its area. Its use is therefore clear cut when a council is doing something that directly benefits its residents.
- 5.2.9 However, there is also the argument that where the Council does something which will save Council money and this money can then be spent on services to the benefit of its residents, then this is indirectly beneficial to its area. However the difficulty with this argument is that some benefit for residents would have to be demonstrated. The report to members at their meeting of 12th February 2007 indicated that in the view of BTS if the cook on route service goes ahead, the drivers will still have to be paid for the full day despite having nothing to do between the two school runs. There is likely therefore be an indirect saving to the Council that indirectly benefits its residents if there is income and work for those drivers to do to cover the lunchtime period.
- 5.2.10 Having established the likely availability of the well-being power to allow the Council to provide a service to the private sector meals provider, section 93 of the Local Government Act 2003 is then available to authorise the Council charging for this discretionary service provided that the contractor has consented to receive the service. However under this legislation the Council is under a duty to ensure that, taking one year with another, it does not derive a profit from this service.

5.2.11 As above, the drivers would carry out the service and would possibly be seconded, but this would be directly to the new supplier rather than to the trading company. If a secondment were necessary (and this would depend upon the detailed arrangements with the contractor) the legal stages that would be gone through for establishing a secondment are as above save that a trading company would not be involved. In addition, there would be one further stage to go through;

- There would be a need for financial analysis of the appropriate charging rate to ensure no breach of the duty not to make a profit occurred.

5.2.12 In summary, it would be legally possible for an option to be included in the tendering process that the Council's drivers be used by the contractor but there are many steps that would need to be taken first..

6.0 Impact of proposed new meals service on kitchen and transport staff

6.1 As indicated in paragraph 6.6 of the original Executive report, TUPE is likely to apply to the staff working in the production kitchen. As regards the transport staff, TUPE will apply to an individual who is employed by the Council and is currently "assigned" to the meals service. Brent Transport Services use agency workers, many of which have worked in BTS for a number of years, as well as staff who are acknowledged to be employees. These long-standing agency workers may in law be Council employees although whether any particular agency worker was an employee would depend on a variety of circumstances.

6.2 Whether an individual transport employee is "assigned" to the meals service will depend on a number of factors but critical will be the proportion of the individual's working time under his/her contract of employment that is spent in the meals service. As a rule of thumb at least two-thirds of working time must be spent in the transferring service for the individual to be "assigned" to it for the purposes of TUPE. Delivery staff who are only employed for the delivery of meals are likely to be assigned to the meals service; staff who work on school and/or day centre transport in the mornings and afternoons as well on the meals service are unlikely to be assigned.

6.3 Should the proposed new meals service proceed then it seems that most of the transport staff working in the meals service will not transfer to the new contractor as they are not "assigned" to the current meals service. Unless they are used by the contractor then they will no longer be required to carry out a role in connection with the meals service. It will be for the relevant Council managers to decide what action to take given this loss of work for BTS. One possibility would be a restructuring of the service resulting in redundancies, although it is not considered by BTS that this would be feasible without jeopardising school and day care transport.

7.0 Background Information

7.1 Cook on Route Borough Survey Additional questions
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APPENDIX 1 - National Association of Care Caterers Association Standards

MEALS ON WHEELS - Minimum portion sizes of COOKED FOOD

<u>Ozs.</u>	<u>Gms.</u>	<u>Item</u>
1.75	50	Lean roast meat (plus 50g gravy)
4.20-5.25	120-150	Stew, casserole, savoury mince, pies (to include 50g meat) Sausages, 2 per portion using 8 sausages to the pound
2.80	80	Plain fish plus 55g sauce (eg parsley)
3.50-4.20	100-120	Breaded / battered fish
1.75	50	Cheese, cheddar, other animal protein
4.20	120	Potato (sauté, croquette, mashed, boiled, roast, chips)
1.75	50	Gravy
3.50	100	Vegetables (or 2 x 50g)
3.50	100	Salad
0.52-77	15-22	Yorkshire pudding
0.70-1.40	20-40	Dumplings, pease pudding, stuffing etc.
1.23-1.40	35- 40	Fruit sponge, flavoured sponge
1.93-2.45	55-70	Pastry based sponges (eg Bakewell tart, lemon meringue pie)
2.80-3.50	80- 100	Fruit, fresh or stewed
1.93-2.45	55-70	Fruit pie (with min. 50% fruit)
3.68	105	Fruit crumble (with min. 50% fruit)
2.45	70	Suet pudding
2.98	85	Bread pudding
2.63-3.50	75- 100	Custard, evaporated milk etc.
5.60	160	Milk pudding
6.30	180	Milk pudding with fruit (ie: sultanas, apricots, peaches)
3.15-4.20	90-120	Cold sweet (eg fruit fool, cheesecake, creme caramel, ice cream)