

CALL-IN SUB-COMMITTEE MINUTES

29 APRIL 2013

Chairman: * Councillor Jerry Miles

Councillors: * Sue Anderson * Ajay Maru (2)
* Barry Macleod-Cullinane (1) * Paul Osborn

In attendance: Stephen Wright Minute 44
(Councillors)

* Denotes Member present
(1), (2) Denote category of Reserve Members

40. Attendance by Reserve Members

RESOLVED: To note the attendance of the following duly appointed Reserve Members:

Ordinary Members

Councillor Ann Gate
Councillor Susan Hall

Reserve Members

Councillor Ajay Maru
Councillor Barry Macleod-Cullinane

41. Declarations of Interest

RESOLVED: To note that the following interests were declared:

Agenda Item 5 – Call-In of Cabinet Decision (11 April 2013) – Special Needs Transport Change Programme 3 (SNT 3)

Councillor Sue Anderson declared a non pecuniary interest in the above item in that she was a member of a different branch of Unison and as her husband

was Chair of Governors at Kingsbury School. She would remain in the room whilst the matter was considered and voted upon.

Councillor Barry Macleod-Cullinane declared a non pecuniary interest in the above item in that his sister was a teacher at Hatch End High School. He would remain in the room whilst the matter was considered and voted upon.

Councillor Ajay Maru declared a non pecuniary interest in the above item in that his wife was a teaching assistant at Ambrose School. He would remain in the room whilst the matter was considered and voted upon.

Councillor Jerry Miles declared a non pecuniary interest in the above item in that he was a member of a different branch of Unison. He would remain in the room whilst the matter was considered and voted upon.

Councillor Paul Osborn declared a non pecuniary interest in the above item in that he was the Portfolio Holder who had signed the decision on Special Needs Transport 1 (SNT1). He would leave the room if the Sub-Committee discussed the SNT1 decision.

42. Minutes

RESOLVED: That the minutes of the meeting held on 3 April 2013, be taken as read and signed as a correct record.

43. Protocol for the Operation of the Call-In Sub-Committee

The Chairman outlined the procedure to be followed at the meeting and advised the Sub-Committee that they would not be able to decide that the decision was contrary to the policy framework or contrary to or not wholly in accordance with the budget framework as the decision had not been called-in on this ground.

RESOLVED: That the Call-In would be determined on the basis of the following grounds:

- a) inadequate consultation with stakeholders prior to the decision;
- b) the absence of adequate evidence on which to base a decision;
- f) insufficient consideration of legal and financial advice.

RESOLVED ITEMS

44. Call-In of Cabinet Decision (11 April 2013) - Special Needs Transport Change Programme 3 (SNT 3)

The Sub-Committee received papers in respect of a call-in notice submitted by over 150 members of the public.

The Chairman invited the representative of the signatories, Mr Darren Butterfield of Unison, to present the reasons for the call-in of the decision to the Sub-Committee.

The representative of the signatories addressed each of the grounds for the call-in separately.

Ground 1 – Inadequate consultation with stakeholders prior to the decision

The representative of the signatories explained that at the Children and Families Departmental Joint Committee (DJC) on 19 March 2013 the information presented had been inadequate and had failed to include the Cabinet report, the Equality Impact Assessment (EqIA) and the full business case. A letter had been sent by the Unison Branch Secretary to the Leader of the Council requesting that the decision be suspended but a response had not been received. Meetings with staff had taken place on 28 March 2013 and, due to the timing of the sessions, many Special Needs Transport (SNT) staff had been unable to attend. The consultation did not satisfy Section 15 of the Recognition Agreement and consultation after the decision was not meaningful. There had not been any consultation with the 515 service users but there were potential impacts on users including health and safety concerns and any future changes to the eligibility criteria. There did not appear to have been any dialogue with officers in the Community, Health and Wellbeing Directorate or with other Members about the Cabinet report and the EqIA. Two versions of the EqIA were available on the Council's website, one of which was unsigned and undated, while the other had been signed by the Divisional Director Early Intervention Services. It was not clear whether a recognised Council group, such as the Quality Assurance Board or the Corporate Equality Group had met to consider the EqIA. There had not been consultation with Head Teachers on the EqIA.

Ground 2 – The absence of adequate evidence on which to base a decision

The representative of the signatories advised that the evidence provided was inadequate to assess the impact of the proposals and the EqIA assumed no impact on two of the protected characteristics, race and gender. The proposals did not include information on what the new eligibility criteria would be for the service.

Ground 3 – Insufficient consideration of legal and financial advice

The representative of the signatories made reference to the public sector equality duty under section 149 of the Equality Act 2010 and commented that full legal advice had not been given. He explained that if full advice had been provided then the information lacking from the EqIA on race and gender would have been identified.

The Chairman then invited the Portfolio Holder for Children, Schools and Families to address the Sub-Committee. She thanked the representative of the signatories for his presentation and introduced Councillor Phillips, her Portfolio Holder Assistant who had been involved with SNT 3. The Portfolio

Holder for Children, Schools and Families requested officers to respond to the detailed, operational points raised.

The Corporate Director, Children and Families and the Divisional Director, Special Needs Services, made the following comments in response to the presentation of the grounds of the call-in:

- there had been consultation with the trades' unions and with staff prior to the decision. At the Department Joint Committee (DJC) meeting on 19 March 2013, the unions had been in attendance and the proposals had been explained in detail. Meetings with staff had been held on 28 March 2013 at two different times but it was noted that it had been difficult to schedule a date for meetings with staff prior to the Easter holidays. Approximately 40% of SNT staff had attended and additional sessions would be held in different locations for the staff who had been unable to attend. Written communications about the proposals would be sent;
- the principles of the project had been outlined as there were no specific proposals to be explained during the pre-consultation;
- it had been felt to be unnecessary to engage with other stakeholders or service users because currently 20% of the service was outsourced and service users could be collected by either Council staff or an external provider;
- there would be consultation with other stakeholders and service users if there was a major change to the eligibility criteria. At present, it was proposed to refresh the criteria and it was not expected that there would be a significant change in eligibility. It was possible that one outcome of the eligibility refresh would be an increase in independent travel training;
- there had been consultation on the eligibility policy when it was last agreed in 2006 and the proposed refresh would address statutory changes;
- the EqIA would be revised throughout the three year programme and the version submitted with the Cabinet report was an initial version. The EqIA had been considered and developed by various Council officers meaning that it had received sufficient scrutiny;
- the report had been approved by officers from Legal and Governance Services and contained both legal and financial advice.

The Chairman invited the representatives of the signatories, Mr Darren Butterfield and Mr Gary Martin of Unison to ask questions of the Portfolio Holder for Children, Schools and Families. The questions were responded to by the Portfolio Holder and officers including the Corporate Director, Children and Families, as follows:

- the key elements of the business case had been shared with both staff and the trades' unions;
- no one present at the DJC meeting had requested the full business case although the document was available. There would be further consultation on the detailed proposals. The key element explained during the lengthy discussions at the DJC meeting was progressive outsourcing;
- the letter sent to the Leader of the Council by the Unison Branch Secretary on 24 March 2013 had not been specifically copied to the Portfolio Holder for Children, Schools and Families. If it had been then a response would have been pursued. It was not possible to answer on behalf of the Leader as to why a response had not been sent;
- the Council had a statutory duty to provide transport assistance but there did not have to be consultation on how it was delivered. As part of the Cabinet decision, it was agreed that there would be consultation with stakeholders regarding the eligibility criteria and the transport eligibility policy refresh. There were only limited options to change the eligibility criteria and any changes were, in the main, likely to be made to independent travel training;
- one version of the EqIA on the website was draft and there were differences between the two versions because SNT3 was a dynamic project. The EqIA would be revisited during the three year programme. There had been consultation with Members, transport service managers, human resources and legal officers, the Policy Officer, Equalities and Diversity, the Service Manager, Policy and Partnership and the Divisional Director, Strategic Commissioning on the EqIA. It had been commented that the EqIA did not include enough of the positive implications of the project. There was no requirement for the EqIA to be considered at the Departmental Children Equality Group and there was no necessity that the EqIA be considered by the Quality Assurance Group one month prior to Cabinet. A representative for the signatories commented that the EqIAs did not include any profiling information on gender or race;
- strong support for independent travel training but variability as to when it was used had been expressed during the SNT2 project. It was widely recognised that it was good practice to include an element of independent travel training to allow children to travel to school on their own. It should be noted that SNT was for vulnerable young people and their families and due to the dynamic nature of their needs, it was difficult to provide quantitative evidence. Meetings had been held with the head teacher, staff, service users and parents from Shaftesbury School and they had expressed support for independent travel training;

- the letter inviting staff to attend the meetings on 28 March 2013 had not explicitly made reference to outsourcing but had informed staff that at the sessions they would be able to learn about the project;
- the alternative options had been presented at the meetings on 28 March 2013 but it had been explained that in order to achieve the savings there would have to be progressive externalisation;
- an Official Journal of the European Union (OJEU) notice would be issued when a decision had been made on what would be procured and if the financial amount required a notice.

The Chairman then invited Members of the Sub-Committee to ask questions of the representatives of the signatories, the Portfolio Holder for Children, Schools and Families and officers.

A Member asked about the extent of the consultation on SNT 1 and SNT 2 when 20% of the service had been outsourced. In response, a Unison representative advised that the business cases had been provided to the unions and there had been regular meetings. An officer stated that the 20% of the service outsourced was not as a result of SNT 1 which focused on route planning and the vehicle fleet or SNT 2 which addressed travel plans. Taxis had been used to provide 20% of the service for a long time.

The Sub-Committee considered the consultation which had taken place on SNT 3 and questioned whether officers felt it was adequate. The officers commented that the Cabinet decision on 11 April 2013 was to allow the project to progress and that further reports would be submitted on the eligibility criteria.

A Member then queried whether an outline business case had been produced, as had been done by Capita for SNT 1 and 2 and if the established protocol of consulting the unions about the outline business case had been followed. The officers explained that the SNT 3 programme had followed a different procedure. Capita had produced an outline business case when SNT 2 had been nearing completion but this was not pursued and an in-house approach was followed resulting in the current full business case. The outline business case for SNT 3 had involved consideration of a series of options which were developed in the full business case and their suitability considered at various meetings. The process was in line with human resources advice. There had been delays in commencing the consultation due to the decisions being required on the principle of outsourcing and there had been time pressures created by the Medium Term Financial Strategy (MTFS).

When considering the EqIA and the approval process, such as which groups agreed the document, the Sub-Committee requested clarification as to who had approved the EqIA and why key factual information was absent. The officers explained that the EqIA had been considered by some Members of the Children's Services EQIA Quality Assurance group but not at a formal meeting. The document had been shared with divisional directors in the Children and Families Directorate and by the relevant officers such as the

Policy Officer, Equalities and Diversity, the Service Manager, Policy and Partnership and the Divisional Director Early Intervention Services. The lead officer was the Programme Manager.

A Member then commented on the issues raised by officers regarding the timetable and stated that meetings with the unions should have been scheduled. The officers acknowledged that the report could have been submitted to a later Cabinet meeting but informed Members that the advice from human resources was that the requirements for pre-consultation had been met. The unions had been aware of the MTFs and the savings for the special transport service since December 2012.

The Sub-Committee were reminded that it was usual practice for there to be trade union engagement prior to decisions being made by Members. The Sub-Committee suggested that it would be useful for an officer from human resources to be present at the meeting and an officer advised that the Senior Business Partner was able to attend the meeting.

The Chairman welcomed the Senior Business Partner to the meeting.

In response to questions from the Sub-Committee on the level of consultation with the unions, the timing of the consultation and the content of the DJC meeting on 19 March 2013, the Senior Business Partner and other officers repeated that a timetable of future consultation had been prepared to meet the requirements of the Change Management Protocol. The DJC meeting on 19 March 2013 was the appropriate place to consult with the unions. It had been made clear at this meeting that outsourcing was the option being pursued and this was acknowledged in the comments of the union representatives in attendance. Harrow was one of only two London Boroughs which had not outsourced a large proportion of the SNT service.

The Sub-Committee queried when the unions and staff had been provided with documents relating to the project. A Member questioned whether the 60% of staff who had not attended the sessions on 28 March 2013 had received any official communication relating to the project and the proposals. The officers confirmed that staff had received the letter of invitation in advance of the meetings on 28 March 2013. At that meeting staff had been given copies of the presentation. Consideration was being given to the available options for additional staff meetings. The intention had been that all staff would be written to following the Cabinet decision but this had been delayed due to the call-in of the decision. As it was a three year project, the implications for individual staff were not known at present but staff had been informed that the transfer of undertakings (TUPE) would apply. Unison had not received papers in advance of the DJC on 19 March 2013 and had received a presentation at that meeting. There were questions at the staff meetings on 28 March 2013 but these were predominantly from the trades' unions' representatives.

A Member commented that it was not appropriate to disregard protocols, such as trade union consultation because of the MTFs and the current financial challenges. The Member requested clarification on whether the outline business case had been shared. The officers responded that it had not been

as a decision on the savings had not been made at that point and therefore the document had not been shared.

(The Sub-Committee then adjourned from 5.58pm – 6.20pm to receive legal advice).

The Chairman announced the decision of the Sub-Committee and it was

RESOLVED: (unanimously) That

- (1) the call-in on ground (a) – inadequate consultation with stakeholders prior to the decision be upheld and referred back to Cabinet for re-consideration and the Sub-Committee requested that the previously agreed cross party practice of early trade union engagement be followed and it was felt that it was best practice to engage with service users where there was a major change to how a service was delivered;
- (2) the call-in on ground (f)- insufficient consideration of legal and financial advice not be upheld due to insufficient grounds;
- (3) Cabinet to consider requesting a report that outlines the process of drawing up and approving Equality Impact Assessments (EqIAs) for Cabinet level decisions.

and (by a majority decision) that

- (4) the call-in on ground (b) – the absence of adequate evidence on which to base a decision - not be upheld due to insufficient grounds.

(Note: The meeting, having commenced at 4.06 pm, closed at 6.26 pm).

(Signed) COUNCILLOR JERRY MILES
Chairman