



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Cabinet

22nd January 2021

Report of the Head of Engineering & Transport David W. Griffiths

Matter for Decision

Ward Affected: All

Bus Emergency Scheme 2

Purpose of the Report:

1. This report sets out the wider context, the background to, and reasons for the Bus Emergency Scheme (BES) and seeks approval of Members to sign up to the BES 2 scheme.

Executive Summary:

2. Bus travel has been severely affected by the Covid-19 pandemic. Passenger numbers have plummeted, whilst social distancing and additional cleansing requirements have placed added burdens and costs on operators.
3. Welsh Government (WG) and local authorities (LA's) have stepped in to support the sector with substantial financial assistance. There has also been an excellent, ongoing dialogue between all parties to discuss and agree on support arrangements.
4. Prior to the pandemic, WG had consulted on a range of proposed changes to the way bus services are delivered in Wales. A Bus Bill was due to have been brought forward during the current Senedd term. Pressures associated with not only Covid but also the large volume of legal work generated by Brexit and the transition period forced WG to postpone the planned legislation.

5. Due to the large amount of public funding that goes into bus services from WG and LAs, WG would like to see the public sector having greater influence over areas such as the networks of services provided, ticketing and integration with rail services. It also sees a greater role for Transport for Wales (TfW), which is now responsible for rail services in Wales.
6. This raises two issues: (i) short term survival of operators and (ii) longer term reform of the sector. WG believes that these two can be linked. In the short term, the funding being provided to keep operators afloat is therefore being provided with a number of conditions attached. These are to incentivise operators to engage in planned changes that are in line with their longer-term ambitions for reform.
7. The Minister for Economy, Transport and North Wales, Ken Skates AS/MS, has met with Leaders of all 22 LAs, along with his officials, to outline WG's direction of travel. Further details have been included in the Wales Transport Strategy (WTS) which has been the subject of consultation. More recently, the Deputy Minister, Lee Waters MS, met with all Leaders to discuss the WTS but also to encourage LAs to sign up to the BES 2 This is the latest phase of financial support to help operators through the period of the pandemic.
8. Leaders have agreed to establish a Welsh Local Government Association (WLGA) Bus Member Group, with a focus on the longer-term proposals to reform the sector's operations. That group includes the WLGA Leader (who is also the WLGA's Transport Spokesperson), the deputy Transport Spokesperson, chairs of the regional transport bodies and the co-chairs of the WLGA Rural Forum. That Member Group is due to meet with Lee Waters the Deputy Minister on 18th January 2021.

Background:

9. The problems facing operators were recognised at an early stage of the pandemic. Looking ahead, to secure their services for the future, local authorities agreed to continue making payments for contracted services even though many services were initially suspended.
10. Alongside this, WG stepped in to help operators deal with reduced income on commercially operated routes and the additional costs

being incurred. Initially, WG made £29m available from a Hardship Fund, which operated from April 2020 for three months. This Fund was assembled from monies that would otherwise have been paid via Bus Services Support Grant (BSSG), Mandatory Concessionary Fare reimbursement and the 'My Travel Pass' scheme.

11. The BES scheme was then introduced in July to provide ongoing support. This became known as 'BES 1' and it continued to maintain operators' income at historic levels, based on what was being paid to them under previous grant schemes. In return for this financial support WG signalled that it expected operators to contribute to a reshaping of bus services in Wales – to include improved regional networks with greater integration with rail services, smart ticketing and timetabling.
12. 'BES 1.5' was introduced in August, administered by the lead Authorities, through whom BSSG had been paid since 2013. It provided £10m of so-called 'ramp up funding' to support the reopening of schools and economic activity. This funding helped to cover the cost of reinstating services suspended when travel restrictions associated with the pandemic were introduced, and which were needed to meet increasing demand, given capacity constraints of social distancing. BES 1.5 was then extended to the end of March 2021 following the announcement of a further support package in September 2020. Operators were once again asked to sign up to a range of terms and conditions to access the BES funding.
13. WG, working with TfW, are now proposing to enter into a longer-term BES 2 agreement with operators and local authorities to protect services. It will operate for an initial maximum term of up to 2 years from the date BES 1.5 commenced (i.e. up until 31 July 2022, unless market conditions recover sufficiently for an operator to no longer require BES support for any of its services whether they be contracted or commercial.

KEY FEATURES OF BES 2

14. BES 2 will continue to address the loss of fare box revenue and the additional costs associated with responding to the pandemic. Under BES 2 the WG funding will sit alongside local authority funding provided through the Concessionary Travel Scheme and via Revenue Support Grant (RSG) and the BSSG to make up the shortfall.

15. Welsh Government will be a co-signatory to the BES 2 agreement with bus operators, along with TfW. Local authorities retain legal responsibilities for bus services and therefore remain central to determining which local services receive this support. All L.A's need to sign up to the principle of the agreement and the relationship with their Lead Authority, in ensuring that the ongoing emergency funding meets their priorities and is delivered on their behalf. This will provide the legal basis for WG to make payments to the operators. **In this way, WG can use its powers to support operators, whereas the additional funding would breach local authorities' de minimis limits for direct award contracts** (further details in the briefing note in Appendix 1, the full proposed Agreement is in Appendix 2 and the Legal Briefing Appendix 3). The LA's will remain responsible for those services which they currently contract directly with bus operators. LA's will need to consider planning for contingencies, such as if the BES 2 agreement is not signed or the level of funding for BES 2 is reduced during the period of the agreement.
16. Members will be aware that a report was brought to Cabinet on the 10th December 2020 informing Members that the Integrated Transport Unit (ITU) were intending to go out to consultation on the Passenger Transport Subsidised Network in NPT and that a further report would be brought before Members next year. The current contracts are due to expire in September 2021. However, with the possible implications of the effects of the BES 2 agreement, it would be prudent to terminate the current tender process until the BES 2 and associated Legal "umbrella" Voluntary Partnership Agreements or (VPA's) of the four constituent councils W.G and TfW are in place whilst arrangements are developed throughout 2021. BES 2 could impact on local contract procurement. Where a local authority wishes to tender for a new or time expired supported contract the risks associated with predicting farebox revenue, during and immediately after the pandemic, will affect tender prices. In these circumstances, bidders will be required to offer a price that they will charge while BES 2 funding is in place and alternative prices for when BES 2 funding is no longer available, with their tenders covering both before and after the farebox has returned to pre-COVID levels. Accordingly, to ensure that appropriate services are in place for the future, it is requested that all subsidised public transport contracts be extended by one year to minimise the risk posed in this scenario.

17. Key features of BES 2 will be as follows:

- Maximum term until 31st July 2022 or until operators enter into an embedded partnership agreement
- Development and delivery of a Reference Network, intended to provide a range of benefits to communities; multi-operator ticketing; and operator sign-up to an Economic Contract at the heart of WG's Economic Action Plan (and its principles of fair work, health, decarbonisation, skills and learning etc.)
- Long term co-operation and co-ordination across W.G, TfW, LA's and operators by entering into an umbrella VPA with a clear set of obligations and shared standards
- One agreement per operator in each of the regions that they work in, signed by WG, TfW, a lead authority and the operator
- Operators will be allowed to make a (capped) profit on services that has not been possible under emergency funding to date

BEYOND BES 2

18. Discussions are starting to take place in relation to the planning of future networks and the respective roles of WG, TfW, LA's and operators. It is important to note that these are not the prime focus of BES 2 agreement. It will be vitally important for further detailed discussions to take place with Members on these matters. However, this is not a reason to delay the signing of the BES 2 agreement. WG does believe that the BES 2 offer will help to engage operators in the discussions about the future at a time when their income is more dependent that ever on public sector support. In signing up to BES 2, though, LAs are agreeing to financial support being provided to the sector. They are not committing themselves to any specific, future model of bus service management as that will be the subject of further debate.

Financial Impacts:

19. Additional funding from WG beyond the end of March 2021 is yet to be confirmed. However, WG have committed additional funding from September 2020 to support local bus services and officials are working to secure further funding to support these key services beyond the 2020/21 budget horizon. It should also be noted that

there are no financial implications by extending the subsidised bus contracts for a period of one year.

Integrated Impact Assessment:

20. A first stage Impact Assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.
21. The first stage assessment, attached at Appendix (4), has indicated that a more in-depth assessment is not required for the reasons identified in the assessment

Valleys Communities Impacts:

22. There no implications to valley communities associated to the BES 2 agreement.

Workforce Impacts:

23. There are no workforce implications

Legal Impacts:

24. The region will need to review and agree the Lead Authority. This is currently undertaken jointly by Carmarthenshire and Swansea.
25. The legal agreement underpinning the current management and administration arrangements for BSSG for the region will need to be updated and signed by the four constituent Authorities.

Risk Management Impacts:

26. WG have provided local authorities with an overview of potential risks and what attempts are being undertaken to mitigate risks for WG and local authorities:
 - (a) BES 2 could impact on local contract procurement. Where a local authority wishes to tender for a new or time expired supported contract the risks associated with predicting farebox revenue, during and immediately after the pandemic, will affect tender prices. In these circumstances, bidders will be required to offer a price that

they will charge while BES 2 funding is in place and alternative prices for when BES 2 funding is no longer available, with their tenders covering both before and after the farebox has returned to pre-COVID levels. Accordingly, it is requested that all subsidised public transport contracts be extended by one year to the 31st August 2022 to minimise the risk posed in this scenario and that the current procurement process be ceased and suppliers notified.

- (b) The BES 2 arrangements are constantly being reviewed to ensure that requirements do not breach competition, state aid or procurement law and are rendered invalid.
- (c) Operators can challenge the local authority's ability to let new contracts on routes where the operator has registered a commercial service. However, standards that will be specified as part of BES 2 provide an objective way to defend the local authority's right to let a supported contract where the service offered by the operator does not meet the specified standard. Legal advice and guidance will be provided to local authorities to support this statement.
- (d) Consideration will need to be given to planning for contingencies, such as if the BES 2 agreement is not signed or the level of funding for BES 2 is reduced during the period of the agreement. Additional funding from WG beyond the end of March 2021 is yet to be confirmed. WG have committed additional funding from September 2020 to support local bus services and officials are working to secure further funding to support these key services beyond the 2020/21 budget horizon.
- (e) Funding operators in this way is not cost effective and/or operators are not incentivised to be efficient. Accordingly, WG will use the data from operators to assess the cost effectiveness of the expenditure and shape contract terms to incentivise efficiency.

Consultation:

- 27. There has been full consultation with Regional partners, the WLGA, Association of Transport Coordinating Officers (ATCO)

Recommendations:

28. It is recommended that:

- (a) Members agree to the principles of the BES 2 agreement (Appendix 2) to secure (conditional) financial support for the bus sector and to establish a relationship with the regional lead authority and signatory, which ensures that the ongoing emergency funding meets the authority's priorities and is delivered on its behalf.
- (b) Delegated authority be granted to the Director of Environment and Regeneration, the Head of Engineering and Transport in consultation with the Leader and relevant Cabinet Member to enter into a new umbrella Voluntary Partnership Agreement with W.G, Tfw the constituent regional councils and operators as required.
- (c) The current procurement process and consultation for the subsidised local bus network be terminated and that members authorise an extension of the existing contract arrangements with operators for a period of one year to the 31st August 2022 and exclude the requirements of Rule 11 of the Contract Procurement Rules.
- (d) A further report on bus reform proposals relating to the future management of bus services in Wales be brought to Cabinet in spring 2021.

Reasons for Proposed Decision:

29. To secure the funding for bus operators while patronage is low and services are impacted by the pandemic.

Implementation of Decision:

30. The decision is proposed for immediate implementation.

Appendices

Appendix 1: L.A Briefing Note

Appendix 2: BES 2 Agreement

Appendix 3: L.A Legal Briefing

Appendix 4: First Stage IIA

List of Background Papers

None

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