

Birmingham City Council

Report to Cabinet Member jointly with the Director

22nd March 2019



Subject: ATG Administration

Report of: Chief Finance Officer

Relevant Cabinet Member: Cllr Kate Booth – Children’s Wellbeing,
Cllr Jayne Francis – Education, Skills and Culture
Cllr Tristan Chatfield – Finance and Resources

Relevant O &S Chair(s): Cllr Mohammed Aikhlaq – Children’s Social Care
Cllr Albert Bore - Resources

Report author: Paul Stevenson, Business Partner (Interim), Education & Skills

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 This report is to seek approval for an additional payment of £250,000 to be made to the administrators of ATG Contract Services, which went into administration on Thursday 21st March 2019.
- 1.2 The additional payment will be to enable to make payments to ‘ransom’ creditors to enable continuity of the Home to School Transport service, formerly provided by ATG Contract Services.

- 1.3 In addition the administrators will receive payments for the service which would have otherwise been paid to ATG Contract Services, which will be £100,000 per week.
- 1.4 Paragraph 3.7 Part B Council Constitution 11/9/18 provides that if the interests of the Council are jeopardised unless an executive decision is implemented immediately then the Chief Executive in consultation with the Leader (or Deputy Leader in his/her absence) may designate such executive decision as so urgent that its implementation cannot wait until the expiry of the call-in period. The Acting Chief Executive and the Deputy Leader of the Council have agreed that the matters in this report require immediate implementation because without this payment there is a serious risk that the service would cease and there would be significant additional costs attempting to secure alternative provision elsewhere in such a short timescale and no guarantee this would succeed.

2 Recommendations

2.1

2.1.1 That the Cabinet member and Chief Officer approve an additional payment to **M INGRAM & T S COURTMAN ADMINISTRATORS OF ACCESSIBLE TRANSPORT GROUP CONTRACT SERVICES LIMITED** of £250,000

2.1.2 Acceptance of the proposed Temporary Transitional Services Agreement

3 Background

- 3.1 ATG Limited were a major provider of statutory services, most recently holding 48% of the contract for home to school transport with Birmingham City Council. This includes the operation of 210 routes, transporting approximately 1,600 children per day. The value of the ATG contract is £5m per annum. ATG contracted service delivery of the provision to its subsidiary ATG Contract Services.
- 3.2 On Thursday 21st March ATG Contract Services went into administration, putting at risk a significant proportion of home to school transport services. M Ingram and TS Courtman from Duff & Phelps were appointed as administrators of ATG Group Contract Services. ATG is also now in administration.
- 3.3 The administrators have highlighted that there are a number of 'ransom' creditors who are owed funds from the home to school transport services provided and will not continue to provide services unless additional payments are made.
- 3.4 As part of the Transitional Service Agreement the administrators will be requested to provide information on individual payments made to these creditors to ensure they are appropriate and The administrators
- 3.5 If these payments are not made this will put seriously at risk the continuity of the service and there would be significant additional costs attempting to secure alternative provision elsewhere in such a short timescale and no guarantee this would succeed.

4 Options considered and Recommended Proposal

5 Consultation

- 5.1 Due to the emergency situation and the need for immediate action to ensure continuity of services, consultation on potential options is not possible.

6 Risk Management

- 6.1 There is a risk that despite the intentions of administrators to keep services going that services may fail and the front-loading of creditor ransom payments is a risk. However, there is a higher risk of service failure if these additional payments are not made.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 Maintaining service continuity of a key element of the home to school transport service, which is a priority service of the Council.

7.2 Legal Implications

- 7.2.1 The administrators have agreed to continue to trade ATG Contract Services in administration pending sale of the business or the council putting in alternative service delivery arrangements with a view to ensuring the service provision suffers as little service disruption as possible.
- 7.2.2 A draft Temporary Services Agreement has been negotiated with the administrators which sets out the basis upon which the administrators and the ATG Contract Services are willing to trade. The agreement confirms:
- ATG Contract Services shall use its reasonable endeavours to provide the services to BCC as far as reasonably practicable to no worse a service standard than at which they are currently performed
 - Although administrators will use reasonable endeavours to minimise trading cost following termination of the agreement full trading costs cannot be accurately identified at this stage therefore, following termination of the agreement the Administrators will determine full service costs and undertake a final reconciliation exercise. To that extent, where incurred service costs exceed payments received by the company, it will invoice BCC for any final balance outstanding
 - That BCC accepts the inherent risk of trading with an insolvent company and as a consequence of that does not hold the company or the administrators responsible for any failure to carry out the services.
 - BCC indemnifies the Administrators and ATG Contract Services for all liabilities (including third party claims) as a result of providing the services. This liability is capped at £1m in the aggregate, does not apply where the

Administrators have proven to be negligent and any claims must be made within one year of the date of the agreement.

- BCC indemnifies the Administrators against any personal liability arising out save where the Administrators have proven to be negligent. Liability pursuant to this indemnity is capped at £1m in the aggregate.; and
- BCC waives its rights against any claims against the Administrators.

7.2.3 The above were the redlines put forward by the Administrators who have confirmed that without the above protections, they are not willing to trade ATG Contract Services Limited whilst in administration. To address some of the risks, the following mitigations have been provided for in the agreement:

- Administrators to provide weekly reconciliation in reasonable detail of the trading performance of the company together with an explanation of how amounts provided by BCC have been used.
- Duty placed on administrators to act in good faith when calculating any final payment due.
- BCC has the ability to terminate the agreement on one weeks notice and in the event the administrators become aware that the ATG Contract Services may be prevented from providing services or not able to provide the service to the service level carried out by the company prior to the administration, it will notify BCC (no later than 7 days after it becomes aware of this issue) and BCC shall have the discretion to either terminate the agreement and/or consider requests for additional payment to facilitate continuation from the administrators. However, BCC has full discretion to accept or reject and where rejected terminate the services with immediate effect.;
- Indemnities do apply to historic liabilities of the ATG Contract Services; and
- On the provision of one weeks notice BCC may reduce the scope of the services and notify the administrators and ATG Contract Services of the proportionate reduction in the service costs resulting from the same.

7.3 Financial Implications

7.3.1 Approval of this report will mean additional payments for home to school transport services over the period of administration of £250,000.

7.4 Procurement Implications (if required)

7.4.1 N/A

7.5 Human Resources Implications (if required)

7.5.1 N/A

7.6 Public Sector Equality Duty

7.6.1 N/A

8 Appendices

8.1 None

9 Background Documents

9.1 None.

