

# Norfolk County Council

## Record of Individual Cabinet Member Decision

**Responsible Cabinet Member: Cllr Carpenter (Cabinet Member for Children's Services)**

**Background and Purpose:**

The Council currently has a group contract with Norse Eastern Limited to provide catering services to maintained primary schools.

The current contract ceases on 31 March 2024, contains in the region of 110 schools, and is worth approximately £5.8M per annum.

Maintained primary schools may opt into the contract by signing a Service Level Agreement with Norse but must leave if they convert to academy status. There is no obligation for maintained schools to opt into the contract, and they are free to choose an alternative supplier or provide their own meals if they wish.

**Decision:**

**Is it a key decision?** Yes

**Is it subject to call-in?** Yes

**If Yes – the deadline for call-in is:** 4pm, Thursday 8 February 2024

**Impact of the Decision:**

This will ensure there is a suitable provision available for all maintained schools, irrespective of size and available facilities, so that all children will have access to a school meal and thereby ensure the council's general duty to make provision available is fulfilled.

**Evidence and reason for the decision:**

Over the last year officers have been working with representatives of the Schools Forum (the Schools Catering Commissioning Group) to review the group catering contract and determine what schools need from catering provision going forward. Extending the term of the current contract by 12 months to finish school engagement, options analysis, decision making, and subsequent implementation planning was determined by the group to be the best course of action at this time. The extension is possible due to Norse's Teckal exemption status.

Should the Council not extend this group contract, there would be the risk that a number of small rural schools, particularly those without kitchens, would not be able to find a suitable alternative supplier and children would therefore not be able to benefit from a school lunch. The Council would then be failing in its duty to these children.

**Alternative options considered and rejected:**

Without full engagement and consideration of school requirements, it was considered premature to either award a new contract to the incumbent supplier under Teckal exemption or take the contract out to tender at this time. Equally, as the number of schools in the contract have reduced over the previous contract period due to schools converting to academy status, the attractiveness of the contract has reduced for alternative suppliers.

The only remaining option going forward is for schools to procure their own catering arrangements. Whilst approximately a third of Norfolk's smaller schools already do this, there is concern that other smaller schools will be adversely affected if a group catering contract is not made available.

Given the complexities involved, the time required to implement any of these options, and the need to ensure that a broad range of schools are consulted, the SCCG requested that the current contract is extended for a further 12 months.

**Financial, Resource or other implications considered:**

There is no explicit cost to the Council, as all costs of school meals fall to school budgets (for the management fee and for free / adult duty meals) or to parents (for pupil paid meals) or to school staff (for adult paid meals). The Council is not taking the risk relating to volume; if schools leave the contract, the council passes the reduction in income directly through to Norse.

There is a separate agreement with Norse concerning pension liabilities. As a result of this, the Council is taking a risk regarding pension costs on redundancy if Norse loses business (although we would generally expect staff to transfer to the new provider under the Transfer of Undertakings (Protection of Employment) (TUPE) regulations.

**Record of any conflict of interest:**

**Background documents:**

None

**Date of Decision:** 31 January 2024

**Publication Date of Decision:** 31 January 2024

**Signed by Cabinet Member:**

I confirm that I have made the decision set out above, for the reasons also set out.

**Signed:** 

**Print name: Councillor Penny Carpenter**

**Date:** 16.01.24

**Accompanying documents:**

None

Once you have completed your internal department clearance process and obtained agreement of the Cabinet Member, send your completed decision notice together with the report and green form to [committees@norfolk.gov.uk](mailto:committees@norfolk.gov.uk)

# **Individual Cabinet Member Decision Report**

**Item No:**

**Report Title: Schools Catering Contract 1 year Extension**

**Date of Meeting: N/A**

**Responsible Cabinet Member: Cllr Penny Carpenter** (Cabinet Member for Children's Services)

**Responsible Director: Sara Tough, Executive Director Children's Services**

**Is this a Key Decision? Yes**

**If this is a Key Decision, date added to the Forward Plan of Key Decisions: 14 November 2023**

## **Executive Summary / Introduction from Cabinet Member**

The council has a general duty to ensure that provision is 'available' for all children in maintained schools to receive a school meal. However, the Local Management of Schools legislation gives governing bodies the main responsibility for this provision, along with the freedom to choose their own catering provider for their school.

Nevertheless, due to the many smaller primary schools in Norfolk and in particular those with no cooking facilities of their own, the Council ensures provision is available to all schools, irrespective of size and available facilities, by negotiating a group catering contract. The governing bodies of maintained primary schools can opt into this contract via a Service Level Agreement or are free to procure another solution should they wish to do so.

In March 2023 the contract was extended by 12 months in accordance with clause 2.2 of the services agreement so that officers could work with the Schools Forum to review the group catering contract and determine what Norfolk schools' needs and requirements were for catering provision going forward.

Officers have worked closely with representatives of the Schools Forum since that time (the Schools Catering Commissioning Group), culminating in a request from the group to extend the current contractual arrangements for a further 12 months until end

March 2025 to ensure there is sufficient time to finish school engagement, final options analysis, decision making, and subsequent implementation planning.

Building on the previous 2023 deed of variance that allowed for a more frequent review of prices to reflect the current volatility of food pricing, an additional 2024 deed of variance has now been produced to vary the contract in relation to the contract's termination date, and to introduce monitoring / contract management measures to provide assurance to schools. The extension is possible due to Norse's Teckal exemption status.

## **Recommendations:**

Extend the current contract with Norse via Teckal exemption for a period of 12 months with a deed of variance.

## **1. Background and Purpose**

- 1.1. The Council currently has a group contract with Norse Eastern Limited to provide catering services to maintained primary schools.
- 1.2. The current contract ceases on 31 March 2024, contains in the region of 110 schools, and is worth £5.8M per annum.
- 1.3. Maintained primary schools may opt into the contract by signing a Service Level Agreement with Norse but must leave if they convert to academy status. There is no obligation for maintained schools to opt into the contract, and they are free to choose an alternative supplier or provide their own meals if they wish.

## **2. Proposal**

- 2.1 Extend the current contract via Teckal exemption for a further period of 12 months. Make an amendment (deed of variation) to the contract to change the termination date and introduce contract monitoring / management for the period. This extension to the contract will be worth around £6M.

## **3. Impact of the Proposal**

- 3.1 The proposals will ensure there is a suitable provision available for all maintained schools, irrespective of size and available facilities, so that all children will have access to a school meal and thereby ensure the council's duty is fulfilled.

## **4. Evidence and Reasons for Decision**

- 4.1 Three main options were identified by officers and the Schools Catering Commisisoning Group for future arrangements:

- 4.1.1 *Award a new contract to the incumbent supplier under a Teckal exemption;*
- 4.1.2 *Go out to competitive tender;*
- 4.1.3 *Leave schools to make their own catering arrangements.*
- 4.2 It is considered that extending the current contract for a further 12 months until end March 2025 via Teckal exemption is the best course of action, rather than rush into one of the options above. This will ensure there is sufficient time to finish school engagement, final options analysis, decision making, and subsequent implementation planning so that a widely accepted solution for schools is found.
- 4.3 Should the Council not extend this group contract, there would be a risk that a number of small rural schools, particularly those without kitchens, would not be able to find a suitable alternative supplier and children would therefore not be able to benefit from a school lunch. The Council would then be failing in its duty to these children.

## **5. Alternative Options**

- 5.1 Without full engagement and consideration of school requirements, it was considered premature to either award a new contract to the incumbent supplier under Teckal exemption or take the contract out to tender at this time. Equally, since the number of schools in the contract reduced over the previous contract period due to schools converting to academy status, the attractiveness of the contract has been reduced for alternative suppliers, so further market engagement is required to determine viability.
- 5.2 It is possible for schools to procure their own catering arrangements, and most of Norfolk's maintained schools and academies do this already. Whilst approximately a third of Norfolk's smaller schools make their own arrangements, there is concern that some smaller schools will be significantly affected if a group catering contract is not made available.

## **6. Financial Implications**

- 6.1 There is no explicit cost to the Council, as all costs of school meals fall to school budgets (for the management fee and for free / adult duty meals) or to parents (for pupil paid meals) or to school staff (for adult paid meals). The Council is not taking the risk relating to volume; if schools leave the contract, the council passes the reduction in income directly through to Norse.
- 6.2 There is a separate agreement with Norse concerning pension liabilities. As a result of this, the Council is taking a risk regarding pension costs on redundancy if Norse loses business (although we would generally expect staff to transfer to the new provider under the Transfer of Undertakings (Protection of Employment) (TUPE) regulations.

## **7. Resource Implications**

**7.1 Staff:** None

**7.2 Property:** None

**7.3 IT:** None

## **8. Other Implications**

**8.1 Legal Implications:** Nplaw and the Council's procurement team have been involved in the contract renewal throughout

**8.2 Human Rights Implications:** None

**8.3 Equality Impact Assessment (EqIA) (this must be included):**

The Catering Board (now the Consultative Group) completed the EqIA as part of the original contract renewal by considering items including but not restricted to the following:

- The availability of a nutritionally balanced school meal for all children, including those who are eligible for Free School Meals
- The availability of a nutritionally balanced school meal for those children with restricted diets for any reason (e.g. medical, religious, ethical etc.)
- The employment terms & conditions for staff employed in school kitchens

**8.4 Data Protection Impact Assessments (DPIA):** None

**8.5 Health and Safety implications (where appropriate):**

There are no specific implications; however, the Catering Board (Consultative Group) receive reports from Norse Eastern Limited at every meeting in relation to Health & Safety matters such as incidents and staff training.

**8.6 Sustainability implications (where appropriate):** NONE

**8.7 Any Other Implications:** None

## **9. Risk Implications / Assessment**

- 9.1 Should the Council not extend this group contract, there would be a risk that a number of small rural schools, particularly those without kitchens, would not be able to find a suitable alternative supplier and children would therefore not be able to benefit from a school lunch. The Council would then be potentially failing in its general duty to make provision available to these children.

## **10. Select Committee Comments**

## **11. Recommendations**

Extend the current contract in accordance with clause 2.2 for a period of 12 months with the most recent deed of variance.

## **12. Background Papers**

None

### **Officer Contact**

If you have any questions about matters contained within this paper, please get in touch with:

**Officer name: Samantha Fletcher**

**Telephone no.: 01603638581**

**Email: [samantha.fletcher@norfolk.gov.uk](mailto:samantha.fletcher@norfolk.gov.uk)**



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