

**Executive**

**18 November 2021**

Report of the Director of Transport, Environment and Planning  
Portfolio of the Executive Member for Transport

## **Dial & Ride: Funding and Delivery Arrangements**

### **Summary**

1. The York Dial & Ride service is a much valued service by its users and is key to providing them a safe sustainable mode of transport that supports community wellbeing.
2. York Wheels are a local community transport provider and long-time operator of the York Dial & Ride service, they also provide a Voluntary Car Share scheme.
3. The current funding arrangements for York Wheels have expired and need review.
4. The report details the options of procurement of the Dial & Ride services versus a grant funding model for York Wheels.
5. If York Council procures the service it will have full control of the service provided. However, not only is this likely to cost more the risk is that it fails to deliver the flexibility the service delivered by a local charity can.
6. Depending on the decisions made about how the service is delivered there is a further decision required about replacement of two life-expired Dial & Ride minibuses.

## Recommendations

7. The Executive are asked to:

- Delegate to Corporate Director of Place in consultation with the S.151 Officer and Director of Governance authority to enter into a grant funding model with York Wheels for the Dial & Ride Service.

*Reason: To ensure that local community transport services continue to operate at full strength on a stable financial basis.*

- To authorise the grant funded replacement of two minibuses in compliance with current council fleet replacement policies.

*Reason: To ensure that the Dial & Ride service meets the highest reliability and safety standards going forward within the available budget.*

- To recognise the additional cost of the service going forward and note that this will be funded from Bus Service Operator Grant (BSOG)

*Reason: To ensure that new service is funded within available budgets*

- To authorise the Corporate Director of Place a to open discussions with York Wheels about how they may be able to support Blue Badge Holders with access to the City Centre up to the value of £50k.

*Reason: To ensure that the Dial & Ride is part of the solution to ensuring disabled access to the city centre in the future.*

## Background

8. Local community transport provider York Wheels has, for many years, operated the council's Dial & Ride service under a service level agreement. As a York-based not-for-profit charity, with a high level of volunteer support, York Wheels are ideally placed to operate the service in a manner which, in comparison to

alternatives, offers excellent value for money for the council and have a high level of understanding of local needs to travel through extensive links with the local community.

9. York Wheels utilise four accessible minibuses to provide the Dial & Ride service, which offers every older or disabled York resident the opportunity to make a return journey between their home address and the city centre, Askham Bar, Clifton Moor, Foss Islands, Foss Bank or Monks Cross shops once per week. Further information on the service can be found online at [itravelyork.info/dial-ride](http://itravelyork.info/dial-ride) and [yorkwheels.org.uk](http://yorkwheels.org.uk)
10. Prior to the Covid outbreak in March 2020, approximately 5,000 return journeys per year were made on Dial & Ride services, with around 500 users of the service in total of which around 200 are regular users travelling at least twice per month.
11. Approximately 20,000 journeys per year were made on York Wheels' volunteer car scheme, with around 1,500 users in total.
12. During the early stages of the Covid pandemic, the Dial & Ride service ceased operation (between March and August 2020), although York Wheels made some use of the vehicles to provide urgent, non-emergency medical journeys. When the service resumed, bus capacities were limited in order to maintain social distancing. This restriction remained in place until August 2021.
13. Since the relaxation of most Covid restrictions, patronage has returned steadily during 2021, with passenger numbers reaching approximately half the 2019 figure by August. Face masks are still required to be worn on board.
14. Under current arrangements, the council owns and maintains three minibuses, exclusive use of which is granted to York Wheels who operate the council's Dial & Ride service using their own drivers and office admin staff. The vehicles are garaged and maintained by the council at Hazel Court depot. A fourth vehicle used to operate the service is fully-owned by York Wheels.
15. The formal service level agreement between City of York Council and York Wheels continues to roll on but requires annual review. The process of annual review is challenging and does not allow York Wheels to plan, therefore a longer term arrangement is in everyone's interests to safeguard the future of the service.

16. Historically, the true cost of the service has proved difficult to determine as a result of the costs being split across both the council and York Wheels.
17. In summary the contribution can be summarised as follows:
  - Service Level Agreement
  - Concessionary Fare
  - Maintenance of the vehicles
  - Parking and Inspection Costs
18. Service Level Agreement - Under the current arrangements, the council provides £70k annual revenue funding to York Wheels in the form of a service level payment. This amount has remained static since 2012. Using the CPI inflation figure for June 2021, this represents a 16% reduction in real terms since 2012.
19. Under the current arrangements, an unspecified amount estimated to be circa £20,000 of the council's £70,000 annual funding contributes towards administration of York Wheels' volunteer car scheme. This scheme allows volunteer drivers, using their own vehicles, to offer journeys to medical appointments for older and disabled persons at a minimal cost. Because of the use of volunteers as drivers, who are recompensed for out of pocket costs but not paid for their time, the service presents very good value for money.
20. Concessionary Fare - The council makes a further payment to York Wheels to cover the additional cost of permitting Dial & Ride users to travel for half-fare on the production of a valid concessionary bus pass. This is calculated from actual data at the end of each financial year, and usually amounts to approximately £15,000 per year. It should be noted that this is not a subsidy to the Dial and Ride service, but to its users.
21. Vehicle Maintenance Costs - Vehicle maintenance costs are currently covered by the council using Transport budgets. These costs vary from year-to-year depending on the level of repairs needed to the Dial & Ride vehicles and tend to increase in line with average vehicle age, which is currently high with 2 vehicles more than 10 years old. In 2019/20 these costs were approximately £17,500.

22. Parking and Inspection Administration Cost - This is an in kind contribution as no charge is made for inspection administration or parking of the vehicles at Hazel Court and therefore do not appear on the balance sheet. If the council was to sell equivalent services on a commercial basis, the annual cost charged to the client would be approximately £16k per annum.
23. The above cost of the Dial & Ride contributions are summarised in the table below

Annual revenue payment	£70,000 – Grant to York Wheels This is approximately split 50k for Dial a Ride and 20k for Voluntary Car Share Scheme
Vehicle Maintenance	£17,500 Funded from Transport budget (variable based on maintenance requirements)
Parking and Inspection Administration costs	£16,000 – In kind contribution CYC No cost incurred
<b>Total per annum</b>	<b>£103,500</b>
Concessionary support	£15,000 – Payment to York Wheels variable based on Dial & Ride Patronage

#### Current arrangements between the Council and York Wheels

24. The formal arrangement between the Council and York Wheels has expired.
25. It is not tenable for York Council to continue to pay funds to York Wheels without a new formal agreement between the parties.
26. It is also not reasonable to expect a charity to provide a service like Dial & Ride without some understanding of their long term funding arrangements.
27. Advice has also been received that the previous agreement was insufficiently clear with regard to key areas such as responsibility for vehicle maintenance and the licences/permits under which the vehicles are operated.
28. The current vehicle fleet for Dial & Ride is made up of four vehicles. One is wholly owned by York Wheels (grant funded bid

to DfT) the remaining three are owned by the Council. Two of the Council owned vehicles are now life expired and require replacement. The other two vehicles have 3 and 4 years' useful service life remaining.

### **Consultation**

29. Officers have consulted with colleagues from the council's Procurement, Finance and Legal departments in order to evaluate potential options. We have also consulted extensively with York Wheels.
30. As no change to the current level of service being provided is sought by the recommendations, and any future service change under the recommendation would be a decision for York Wheels, the council has not consulted with the users of the York Wheels or Dial & Ride service.
31. York Wheels have a special relationship with many residents of the city helping them address their specific access needs.
32. If Executive are minded to approve the recommendations to grant fund York Wheels, and have made decisions that remove the blue badge exemption from accessing certain footstreets, then a review with York Wheels about how they could support Blue Badge Holders access the city centre could take place.

### **Options**

33. The council therefore needs to determine that should it want to see a Dial & Ride Service delivered in the future how that will be funded.
34. In essence two options are available.
35. **Option 1** [recommended] – Provide a revenue grant to York Wheels to enable them to operate both the Dial a Ride Service and the Voluntary Car Share Scheme as an independent client organisation. Total cost £121,000 per annum index linked revenue funding plus approximately £15,000 per annum concessionary travel reimbursement (variable based on patronage)

And

To provide £170,000 capital funding within the grant (of which £160,000 is already identified in the Transport Capital Programme) for the replacement of two life-expired Dial & Ride minibuses with new Euro VI diesel equivalents.

36. **Option 2** – Provide grant funding to York Wheels to enable them to operate just the Car Share Scheme as an independent client organisation. Total cost £23,000 per annum index linked revenue funding.

And

Undertake a competitive tender to find a Dial & Ride operator from April 2022 to include the provision of 2 vehicles to replace the life expired vehicles

### **Analysis of Options**

37. **Option 1** would see the Council move to a fully-grant funded arrangement with York Wheels
38. The following grant funding would be provided to York Wheels:
- £98,000 annual revenue grant funding for York Wheels to operate the Dial & Ride service.
  - £23,000 annual revenue grant funding for York Wheels to cover administration costs of their volunteer car scheme.
  - One off capital grant funding to allow York Wheels to purchase two new accessible minibuses
  - Transfer of ownership of one seven-year-old accessible minibus, market value approximately £20,000, from CYC to York Wheels.
  - Approximately £15,000 per annum concessionary travel reimbursement (variable based on patronage)
39. A grant funding agreement would be made with York Wheels, clearly stating the permitted use of the capital grant funding and requiring that the vehicles (or an amount of funds equal to their current market value) be transferred to the council in the event that York Wheels decide to cease operating the Dial & Ride service.

40. Under this option, York Wheels would have the opportunity to purchase parking at Hazel Court, plus administration costs of inspections, licencing and servicing, currently provided free of charge, from CYC at a fair market rate (approx. £16,000) and the grant proposed has been increased to reflect the current cost.
41. Subject to agreement with York Wheels, CYC would continue to maintain the Dial & Ride vehicles, however York Wheels will have the right to select an alternative supplier. In either case, an allocation of £17,500 has been made within the grant to cover vehicle maintenance.
42. To ensure York Wheels are operating as an independent body, it will be at their discretion whether or not to take up the council's offer of parking and maintenance facilities.
43. To further reinforce this distinction, a capital grant would be provided to allow all the vehicles used to operate the service to be under York Wheels' ownership. The length of the grant period is to be finalised but is expected to be a minimum of 5 years. A further Capital Grant is expected to be needed in 3-4 years time to replace the other vehicles.
44. The possibility of using electric vehicles for the service has also been investigated in line with the council's Fleet Management policy. The council's policy, approved by Executive on 19th March 2020, states that all new council vehicles under 3.5 tonnes should utilise electric power.
45. The minibuses used to provide the Dial & Ride service have a gross vehicle weight of approximately 5 tonnes and therefore are not required by the policy to be electric. However, the policy decision does require officers to "continue to explore the options for vehicles over 3.5 tonnes to move away from fossil fuels".
46. Dial & Ride, as a short-distance, stop/start service, could be ideal for operation by electric vehicles. Use of EVs would assist the council's air quality objectives however the capital cost of the provision of Electric Vehicles is substantially higher than for diesel vehicles.
47. Quotes have been sought and at least an additional £200k of capital funding would need to be found from other capital sources to upgrade the vehicles to electric operation. It is also anticipated

that the lead in time for delivery would be significantly longer than for diesel buses.

48. It is understood that sufficient charger capacity does not currently exist at Hazel Court, requiring an estimated additional £20k capital funding to install new chargers for these vehicles.
49. Given it is outside of the current adopted council policy and the significantly higher cost of Electric Vehicle this alternative is not recommended by officers at this stage, however grant funding opportunities for the potential purchase of electric Dial & Ride vehicles for future replacements will continue to be pursued.
50. **Option 2** As the service has not been put out to tender since 2012, it is difficult to establish what the competitive bid prices would be. However it is likely that with increasing fuel and energy costs, ongoing national shortages of driving staff and industry-wide uncertainty around the long-term effects of Covid and Brexit on staff availability, bidders would price a significant amount of financial risk into their bids.
51. The advantage of the Council going to the market is that it could specify the service it wants. However, in doing this it also risks removing the flexibility that benefits users that the current delivery model allows.
52. York Wheels, as a non-commercial charitable organisation operating without a view to profit, are able to operate the Dial & Ride service under a Section 19 permit (as defined in the Transport Act 1985). This means they are not required to hold a PSV operator's licence, employ a Transport Manager and their drivers are not required to hold a CPC (Certificate of Professional Competence). As a result York Wheels have significantly lower operating overheads than a commercial transport provider would.
53. Commercial bidders would also factor in an operating surplus, likely to be between 5% and 10%, which would not be present in a bid from a charity or company limited by guarantee.
54. York Wheels are likely to put forward a competitive bid, but should they lose out, the scope of their long-standing charitable operation would significantly decrease and there would be a strong adverse impact on the viability of the York Wheels charity as a whole.

55. Under this option the council would provide £23k per annum revenue grant funding to York Wheels as a charitable donation towards the administration of their volunteer car scheme, although the funding requirements of the scheme are likely to increase if the economies of scale through combination with Dial & Ride would be lost. For example, the cost of the telephone booking system which is at the heart of both operations is currently shared between the two and would be born entirely by York Wheels if the Dial & Ride service was provided differently.
56. Of the options under consideration, the preferred way forward for the council is to provide York Wheels, with an annual revenue grant to continue operating their services. This will clarify the council's total expenditure on the service and create a clear delineation between CYC as the grant provider and York Wheels as the service provider.
57. Through the engagement of Blue Badge holders it has become clear that many do not use Dial & Ride or see it as solution that works for them.
58. Further engagement is proposed to work with York Wheels and the Blue Badge community to see how the Dial & Ride service could be supported and improved, particularly to provide enhanced access for blue badge holders to the heart of the footstreets. An allocation of up to £50k is proposed in 2021/22 to support and enhance the service. Funding for subsequent years would need to be considered as part of future budget considerations.

### **Council Plan**

59. The proposals support the council plan objectives 'good health and wellbeing' and 'getting around sustainably'. This is because:
  - Use of the Dial & Ride service reduces the number of car journeys on York's road network
  - The Dial & Ride service allows people with restricted mobility to access activities they would otherwise find it difficult to reach. This has a range of good outcomes for both physical and mental health

- The Dial & Ride service is also able to access the pedestrianised footstreets area of York city centre and has an important role in providing access to this area for mobility impaired people as a mitigation for the restricted vehicular access to this area.

## **Implications**

- **Financial**

60. The current revenue budget for Dial & Ride is £88k. In addition there is £15k of funding from the concessionary fares budget. The proposed grant funding of £121k is an increase of £33k on the current Dial & Ride budget. This increase can be funded from the annual Bus Service Operators grant received from DfT. The grant funding is intended to be used for the purpose of supporting local bus and community transport services. York's share of the grant is £150k per annum.
61. It would also be necessary to provide a capital grant to York Wheels to fund the purchase of 2 mini-buses to replace the 2 life expired mini-buses at an estimated cost of £170k. There is an existing allocation in the 2021/22 transport capital programme of £160k to fund this. It is proposed to fund the additional £10k by reprioritising and re-profiling the delivery of other schemes within the existing Transport Capital Budget. Further capital grant funding will likely be required in future when the remaining mini-buses also need replacing unless other funding sources become available. This will be considered as part of a future budget process.
62. Members agreed as part of the 2021/22 budget a Covid Contingency of £2.5m to support the council with financial pressures arising from dealing with and recovering from the pandemic. It is recommended that any one-off expenditure incurred supporting the service and encouraging additional provision with Blue Badge groups (up to £50k) is funded from this contingency. Should there be ongoing costs this would need to be considered as part of future budgets.

- **Human Resources (HR)** – none.
- **Equalities**

63. The recommended option would could continue the provision of the Dial & Ride service which is of assistance to residents with protected characteristics. An Equalities Impact Assessment is provided at Annex A.

- **Legal**

64. ***Option 1 – Combination of Revenue and Grant Funding***

***Procurement Risks***

- a. The award of grants sits outside of the Public Procurement Regime under the Public Contract Regulations 2015; however this depends on the exact terms of the grant agreements used by the Council.
- b. A grant is a gift of funds for a specific purpose. In almost all grant agreements, the authority is giving the recipient funding in order for them to provide public services to members of the public; it is not an agreement for the provision of services, directly or indirectly, to the funding body itself.
- c. If in practice, the authority however requires the recipient of any grant to provide something in return for the funding to the authority, then it is more likely that the arrangement will be a public service contract that is caught by the Public Procurement Regime.
- d. However, if the grant is subject to conditions so that the grant beneficiary is likely to be able to do no more than cover its costs in providing the relevant services, it may be that the arrangement will not be considered to be within the scope of Public Procurement Regime. This is because it will not have the necessary cross-border interest.
- e. If a grant is found to be a public service contract which was let in breach of the Public Procurement Regime, it risks being declared ineffective, denying local residents of a much valued service, and causing the Council to clawback all funding and/or assistance provided, which could then significantly impact upon York Wheels' financial and economic standing and their ability to continue to operate, posing a potential

political and reputational risk should the charity become insolvent.

- f. Special care will therefore need to be taken when drafting any grant agreements issued to York Wheels under this option. The documents will need to (inter-alia):
- i) cover both the operational and capital elements of the grant;
  - ii) set out the terms and conditions for continued compliance and monitoring of expenditure under the funding agreement in order to ensure taxpayer's money is being spent properly by York Wheels;
  - iii) incorporate the ability for the Council to review and/or determine the award of the revenue grant on an on-going basis (particularly if this is characterised as a **Service of Economic Public Interest** (see 64(n) below) – e.g. the grant agreement could be set for a period of five (5) to seven (7) years (to tie into the lifespan of the vehicles provided thereunder) but with regular review intervals at say every two (2) or three (3) years to assess whether or not other charitable organisations have been formed in that time to deliver the service, or if grant remains at the necessary level for York Wheels to continue delivering the service;
  - iv) make it clear that York Wheels are not obliged to deliver any services to the Council, and that they may use the funding / assistance for the furtherance of the objectives of the grant agreement as they see fit, but subject to appropriate clawback provisions to recover any unspent or misapplied grant funding, or assets and/or equipment provided in kind (e.g. vehicles).

### ***Subsidy Control (formerly State Aid) Risks***

- g. If we proceed down this route, then a full and detailed Subsidy Control assessment will need to be undertaken by Legal Services in due course.

- h. Despite the fact York Wheels has charitable status, they are arguably carrying out an economic activity in delivering the Dial & Ride service and will potentially be caught by the Subsidy Control Regime (formerly the old European State Aid rules).
- i. Depending on the outcome of this assessment, this will determine whether or not the Council can indeed continue to award the grants to York Wheels without infringing these rules.
- j. If we were challenged, then any grants would potentially need to be repaid to the Council by York Wheels, which again would have a serious impact upon York Wheels' financial and economic standing and their ability to continue to operate.
- k. We have been providing aid to this charity for many years without testing alternatives and this is a risk to be aware of. However as we have already been doing this for many years, that risk may realistically be low.
- l. Subject to a full and detailed assessment in due course, further to the information provided in relation to this report it appears at this stage that it is highly unlikely that the grants described to local charity like York Wheels will be classified as a Controlled Subsidy.
- m. A controlled subsidy for the purposes of these rules, must possess all four (4) of the following characteristics:
  - Does the subsidy constitute a financial (or in kind) contribution such as a grant, loan or guarantee?
  - Has the subsidy been provided by a, 'Public Authority,' including, but not limited to, central, devolved, regional or local government?
  - Does the award of the subsidy confer a benefit on the Recipient in the sense of an economic advantage over its competitors that is not available on market terms?
  - Does the subsidy cause a distortion in or harm to competition, trade or investment between the UK and the EU, or any of the UK's other international trading partners?

m. Any grant to York Wheels arguably fails to meet the above definition because it fails to meet the last two (2) requirements for the following reasons:

i. Awarding a grant to York Wheels is unlikely to give them an economic advantage due to the current lack of similar services within the York Area:-

E.g.

- Whilst most local bus and taxi firms could theoretically have this capability, York Wheels are able to apply for a Section 19 permit (as defined in the Transport Act 1985). This means they are not required to hold a PSV operator's licence, nor employ a professional Transport Manager, and their drivers are not required to hold a CPC (Certificate of Professional Competence). As a result York Wheels have significantly lower operating overheads than a commercial transport provider would.

If the services were procured, again local bus and taxi firms could in theory bid, but would not be able to compete on price with York Wheels because of their inability to obtain these Section 19 Permits.

- Local ambulance services could theoretically provide similar services, but again the likelihood is that they would be unwilling to do so.
  - Whilst other similar charitable organisations may exist now or in the future, there are currently at the time of writing this report none within the vicinity of York that can provide a similar service to residents that York Wheels currently does.
- ii. Given the highly localised nature of York Wheels' activities to the administrative area of York, there is highly unlikely to be any cross border interest and as such any negative impacts on competition, trade and investment between the domestic UK states, as well as the UK's international trading partners. Further, in the event of any possible impact of competition, trade and

investment is arguably offset by the positive impact funding the Dial-a-Ride Scheme in this way will have on the community.

n. Another thing to possibly consider in due course is whether we can argue if York Wheels are providing a Service of Public Economic Interest ('SPEI'), which again would sit outside of the Subsidy Control Rules. For this to apply however, one must be able to argue that the services provided by York Wheels to the public and would not be supplied (or would not be supplied under the required conditions) without public intervention, and are of particular importance to society. In the past, SPEIs have included rural public transport services, so this may worth exploring with York Wheels. However, the Council can only award a subsidy for the delivery of a SPEI if:

- i. it does so in a transparent manner – in other words:
  - the Council regularly reviews the SPEI subsidy to ensure it remains what is necessary to deliver the service; and
  - if the funding is above what is necessary, then the Council authority must recover the excess; and
  - the Council must conduct such a review at least every three (3) years and upon expiry of the grant agreement,

all of which can be built into the drafting of the grant agreement if we decide to go down the route of an SPEI (see para. 64(f) (iii) above); and

- ii. it is satisfied that the value of the subsidy is restricted to what is necessary to deliver that service. Public authorities should take into consideration the cost of delivering the service and what would be a reasonable profit for the enterprise delivering the task when deciding the value of the subsidy.

65. ***Option 2 – Grant funding for the Car Share Scheme and a new procurement of a public service contract for the Dial-a-Ride Scheme***

### ***Procurement Risks***

- a. In terms of the procurement risks for the Car Share Scheme Grant, please refer to para. 64(a) to (f) above.
- b. Any procurement of the Dial-A-Ride Scheme would need to be subject to a robust procurement strategy carried out in line with the Public Procurement Regime under the Public Contract Regulations 2015 and the Council's Contract Procedure Rules.
- c. There is a concern however that there is a strong likelihood that such a procurement will either fail to generate sufficient competition, resulting in York Wheels being the only bidder, or that any other provider who does bid will not be able to match York Wheels on price due to (*inter-alia*) York Wheels' ability to apply for Section 19 Permits (para. 64(m)(i) above), meaning that running a procurement such as may not achieve best value for the Council or local taxpayers.
- d. Further, a public service contract will require Council staff to take a more hands on approach to contract management than if we were to simply provide York Wheels with grant funding to deliver their existing schemes as they see fit, and a public service contract will also need a full specification from the Council, removing any degree of flexibility York Wheels has at present. That said, this will give the Council greater control over service delivery, to ensure that taxpayer money is being spent properly.

### ***Subsidy Control (formerly State Aid) Risks***

- e. In terms of the Subsidy Control risks for the Car Share Scheme Grant, please refer to para. 64(g) to (n) above.
- f. Any competitively tendered service contract for the Dial-a-Ride Scheme would fall outside of the Subsidy Control Regime, provided that a compliant tender exercise has been followed.

## **66. *Additional Legal Considerations***

### ***Short Term extension to current arrangements***

- a. The proposal in Option 1 appears to be the best way to proceed, but there is also an argument that testing the market after nearly a decade to see if there is no alternative option could offer us protection against challenges of anti – competitiveness.
- b. It would also help prove that unless we provided this funding in the future, the market would not fill the gap and the service would cease, which is one of the exemptions allowing us to comply with the new Subsidy Control Regime.
- c. Reviewing how this service is delivered may include considering whether the Council could manage the service itself in a more cost effective way.
- d. Arguably, continuing with a short term arrangement for another year would allow all this analysis to be done, and then if no other viable option were found in this time then the Council would have the evidence we needed and be more justified in setting this arrangement on a longer term footing.
- e. That being said, given the initial Subsidy Control assessment above, and the arguments that such a procurement may not generate the level of competition we hope, one could argue that such a short term arrangement would not provide any benefit in terms of best value to local residents. The short term arrangement would also not negate the need for the Council to purchase the 2 replacement mini buses if continuity of service were to remain reliable.

***Possible future support for Blue Badge Holders with access to the City Centre***

- f. There is also the possibility of further funding in due course for York Wheels to provide support to Blue Badge Holders to access the City Centre.
- g. Assuming that these discussions were successful, and this was something York Wheels were able to provide, if we were to proceed with Option 1, this would then require a Deed of Variation to the existing Grant Agreement or its own Grant Agreement for this additional funding, in either case drafted by Legal Services.

The same Procurement and Subsidy Control Risks outlined in para. 64 would apply to this further grant, and a detailed Subsidy Control Assessment would need to be carried out at time of this award (particularly if by then the new UK Subsidy Control Bill has been passed – any new assessment would need to be carried out in the context of this Bill; at the time of writing it is unlikely that a retrospective assessment for the initial grant will need to be carried out, provided that the initial grant agreement was entered into prior to the new Bill being enacted into law).

- h. If however we proceeded with Option 2, any variation to any public service contract to include the Blue Badge Services will amount to a direct award of a brand new public service contract without advertisement, unless we can successfully argue that one of the permitted categories of variation under Regulation 72 of the Public Contract Regulations 2015 applies.
- i. Based on the information in this report, either:
  - i. the Council would need to draft the Specification of the Dial-a-Ride Contract in such a way that it allows at any time from service commencement for the Council to require the provider to deliver the Blue Badge Services at a future date, subject to formal written notice and sufficient funding being in place at that time. The specification will need to fully detail the Blue Badge services required and may also need to set out all relevant outputs, KPIs, service levels, and payment provisions at the point of tender, even if the Service may not be required until a much later date. This would then be a compliant public service contract variation under Regulation 72(1)(a) of the Public Contract Regulations 2015;
  - ii. otherwise, any variation made at the time would have to comply with one of the other permitted exemptions under the rest of Regulation 72, which will require an assessment by Legal Services and Procurement prior to such a variation, and a Deed of Variation drafted by Legal Services.
- **Crime and Disorder** – none.

- **Information Technology (IT)** - none
- **Property** – none.
- **Other**
- **Risk Management**

67. It is anticipated that the recommended option would continue the current level of service to residents in the city. However there are currently significant cost (fuel prices) and resource (driver availability) pressures on public transport services and this could have a negative impact on the level of service which can be provided in the future. The grant level will be reviewed as part of the annual budget setting process to address these pressures.
68. There is a risk that the grant agreement approach proposed in the recommended option could be challenged on a Subsidy Control Assessment or Procurement basis but the risk of a successful challenge is considered low.
69. There is a risk of significant additional cost if the service was to be procured commercially rather than operated through the proposed grant arrangement.

## **Contact Details**

**Author:**

**Chief Officer Responsible for the report:**

**Sam Fryers**  
**Public Transport Planner**  
**Transport**  
01904 551434

**James Gilchrist**  
**Director of Transport, Environment**  
**and Planning**

**Report**  **Date** 10/11/21  
**Approved**

*Neil Ferris*  
*Corporate Director Place*

**Report**  **Date** 10/11/21  
**Approved**

**Specialist Implications Officer(s)**

Financial:

Name: Patrick Looker

Title Finance Manager

Tel No.

Legal:

Name: Daniel Moynihan

Title Senior Solicitor

Tel No. 01904 554143 (Ext. 4143)

**Wards Affected:** *List wards or tick box to indicate all* **All**

**For further information please contact the author of the report**

**Background Papers:**

**N/A**

**Annexes**

Annex A – Equalities Impact Assessment