

EXECUTIVE DECISION

From: Matt Dunkley CBE, Corporate Director of Children, Young People and Education

To: Sue Chandler, Cabinet Member for Integrated Children's Services

Subject: Special Educational Needs Therapies – provision of personalised therapy for a named child

Key decision Overall service value exceeds £1m and affects more than two Electoral Divisions.

Decision Number: 21/00053

Classification: Unrestricted

Past Pathway of report: Children's, Young People, and Education Cabinet Committee – 30 June 2021

Future Pathway of report: Cabinet Member Decision

Electoral Division: All

Summary:

This report provides Cabinet Member with the background and rationale for establishing a contractual arrangement for Special Educational Needs provision for Therapies.

Recommendation(s):

The Cabinet Member for Integrated Children's Services is asked to agree to the proposed decision (attached as Appendix A) to:

A) Implement a Qualified Provider List for Special Educational Needs Therapies provision to fulfil the Council's responsibilities in meeting the needs identified in a child's Education, Health and Care Plan.

B) Delegate decisions about the establishment of the new arrangements to the Corporate Director for Children, Young People and Education, or other Officer as instructed by the Corporate Director for Children, Young People and Education.

1. Introduction

1.1 There are a broad range of organisations involved in commissioning therapy services such as Clinical Commissioning Groups (CCGs), local authorities, NHS

England, schools, and colleges.

- 1.2 KCC currently commission a range of therapy services to meet the needs identified in a child's Education Health and Care Plan (EHCP) and where there is an identified need for specialist therapeutic services.
- 1.3 KCC spend for **personalised therapy in provision for a named child** in 2019/20 was £381,707 spot purchased from the market. For 2020/21 this figure totals £428,917 and there are currently three distinct arrangements in place, more details on these arrangements are highlighted in Section 3:
 - Preferred Provider List
 - Non-preferred providers
 - Personalised funding arrangements
- 1.4 Services are currently purchased from over 47 providers, ranging from special schools to individual therapists.
- 1.5 The types of therapies purchased include speech and language, Cognitive Behavioural Therapy (CBT), hydrotherapy, play therapy and Occupational Therapy (OT).
- 1.6 A decision is needed on the future contracting arrangements for therapy services and this paper sets out options for consideration. To further help inform these options ongoing analysis will continue to look at:
 - Analysis of need and future demand
 - Gaps in current provision
 - Outcomes required and Key Performance Indicators
 - Specification for services required.
 - Financial understanding/cost of service/benchmarking
 - Stakeholder mapping
 - Market engagement/capability
 - Contract management required.
 - Service interlinks and dependencies.
- 1.7 Due to the services being a county provision, and that the length of the proposed Qualified Provider List (QPL) will be for a minimum of three years'. A key decision will be required to approve the spend and any future arrangements would need to be competitively tendered.
- 1.8 The Special Educational Needs (SEN) spend for SEN Therapies in 2019-20/2020-21 (table 1) is summarised below:

Personalised Therapy for Named Child (Spot Purchased)	
Year	Spend
2019-2020	£381,707k
2020-2021	£428,917k

2. Legislative Context

2.1 The SEND Code of Practice states that:

- *Health or social care provision which educates or trains a child or young person must be treated as special educational provision and included in Section F of the EHC plan. (9.73 of the SEND Code of Practice 2015)*
- *Speech and language therapy and other therapy provision can be regarded as either education or health provision, or both. However, since communication is so fundamental in education, addressing speech and language impairment should normally be recorded as special educational provision unless there are exceptional reasons for not doing so. (9.76 of the SEND Code of Practice 2015)*
- *Agreement should be reached between the local authority and health and social care partners about where provision will be specified in an EHC plan. (9.75 of the SEND Code of Practice 2015)*
- ***In cases where health care provision is to be treated as special educational provision, ultimate responsibility for ensuring that the provision is made rests with the local authority (unless the child's parent has made suitable arrangements). (9.76 of the SEND Code of Practice 2015)***

3. Current Service Arrangements

- 3.1 A function of the SEN Therapies Team is to understand the needs of the individual children and to source relevant therapies across the county to deliver the provision set out in the EHCPs.

Preferred Providers

- 3.2 Preferred Providers sign up to a 'qualities focused framework' when agreeing to deliver a service through SEN therapies arrangements. They are independent, usually sole practitioners, who are responsible for their own business/governance, Continuing Professional Development, and professional conduct standards.
- 3.3 They agree to share their DBS and professional registrations with KCC so that their suitability can be assessed for meeting the needs of either a group of highly specialist needs or for individual support (IPAT-Individual Personalised Arrangements for Therapy).
- 3.4 Preferred Providers give updates on SEND protocols and EHCP focused planning with parents and stakeholders in addition to focusing on the delivery of direct 1:1 contact with the child.

Non-preferred Providers

- 3.5 These are providers who have not signed up to the Quality Framework, so the SEN Therapies Team spot purchase a service from them. These are often parental preferred providers and have provided evidence as part of a tribunal appeal.

- 3.6 Typically these are organisations rather than single providers who provide highly specialist therapy that cannot be easily sourced elsewhere.
- 3.7 The SEN Therapies Team closely monitor these providers and have highlighted that some providers often do not follow protocols and process. These providers are tracked by the SEN Team in terms of case dispute (which are reportedly higher with these providers) in terms of misunderstandings and financial discrepancies and higher costings.

Personalised Funding Arrangements

- 3.8 These are where the SEN Service provide a budget to the family to secure their own therapies. There is a signed agreement with the family and SEND Service but there is no agreement between the providing therapy service and the SEND Service. This means there are no specified expectations (other than to deliver what is specified in the EHCP) and no way to formally review the ongoing need and effectiveness of the therapy.
- 3.9 The SEN team have advised that these tend to be independent providers who are less aware of the strategic context and want to work a few hours in a school of their choice.
- 3.10 There is no clear accountability route or capacity to evaluate the impact of the use of the funding.

4. Options Appraisal

- 4.1 The Public Contracts Regulations (PCR) 2015 mean that spot purchasing arrangements above the specified financial arrangements are not acceptable.
- 4.2 This paper sets out to introduce the available options with further details on the options listed after the table.

Option 1	Do nothing – the services would continue to be delivered via the current spot purchasing arrangements and not compliant with PCR 2015.	The service will continue to be provided.
Option 2	Implement a Dynamic Purchasing System	The new contractual arrangements would commence on 1 st Sept 2021 (TBC).
Option 3	Purchase services through a Qualified Provider List	The new contractual arrangements would commence on 1 st Sept 2021 (TBC).

4.3 Option 1 – Do nothing

4.4 The services continue to be delivered via the current spot purchasing arrangements - no additional staff resources would be required or disruption to delivery of current service levels.

4.5 This option does not comply with the Public Contract Regulations 2015. Therefore, the current arrangements limit KCC's ability to shape and control the market to ensure the right capacity and provision is available. KCC has limited influence over the outcomes of the service and limited contract management tools to improve supplier poor-performance.

4.6 Option 2 - Implement a Dynamic Purchasing System (DPS)

4.7 This option would require a DPS Framework to be set up for the services. This requirement could use the 'light touch' regime as defined in the Public Contracts Regulations 2015, allowing the tender and contract to be designed around the specific needs of the service.

4.8 Implementing a DPS would have limited disruption to status quo and delivery of current services. The DPS would allow new entrants into the market with providers being required to pass a minimum capability and standard can be split into lots to accommodate different specialism, or location.

4.9 There is however, currently a complex supply market, with a mixture of larger suppliers, NHS providers, charities, and sole traders. The market is also delicate in that there is a scarcity of provision and supply in particular with OT services and is essential that care is taken to prevent destabilising the current market. These differing categories of suppliers could result in a variable appetite for a formal tender process, possibly impacting continuity of supply.

4.10 Option 3: Recommended Option - Purchase services through a Qualified Provider List (QPL)

4.11 This option means that services could be purchased through a QPL. Using the 'light touch' regime, suppliers would have to be registered to provide the services and would be selected based on quality not price.

4.12 The same challenges with suppliers as outlined under option 2 need to be considered; market engagement would be needed to ensure all suppliers are informed and able to be involved in the tender.

4.13 This framework will establish standard terms and conditions for all suppliers, improving contract management tools and remedies available and ensuring minimum standard of supplier capability.

4.14 Providers will be able to apply to join the Kent Qualified Provider List (QPL) by submitting a fully completed Selection Questionnaire (SQ) and an indicative pricing schedule. Support will also be available for suppliers to access and submit this. The Selection Questionnaire will ask providers to give their

registration and relevant body to self-certify and that they have relevant insurance cover in place and safeguarding measures which will be consulted with SEN Therapies Team or what level of information is required. Providers can join, leave, or resubmit indicative pricing information at any time.

- 4.15 Currently there is a preferred provider list and qualities framework to ensure best outcomes for children and young people, however moving to a QPL, will in addition provide some stability and sustainability to this market and provide a compliant contractual basis to work more closely with providers when planning future requirements.
- 4.16 Providers on the QPL will be invited to engage in dialogue with KCC to enable shared learning and continuous improvement. As part of this dialogue, providers are invited to inform KCC about anticipated capacity levels and potentially the SEN Therapies Team could purchase vacant or upcoming provision on the QPL or award 'flexible block contracts' to providers on the QPL to meet current or anticipated demand for future provision.
- 4.17 The QPL can be in place for an agreed contractual period during which providers can be called off to deliver services without the need for a competitive exercise such as a mini-competition. This process can allow services to be procured quickly and easily.

5. Legal arrangements

- 5.1 The Office of the General Council has been approached and has recommended Invicta Law be instructed to draft the QPL contract and advise/support the procurement of the QPL using the light touch procurement process.

6. Other corporate considerations

- 6.1 Not applicable.

7. Governance

- 7.1 Overall budget responsibility sits within the Children and Young People and Education's Directorate, with service accountability in the SEN and Disabled Children and Young People's Services Division.

8. Recommendation(s)

- 8.1 The Cabinet Member for Integrated Children's Services is asked to agree to the proposed decision (attached as Appendix A) to:

A) Implement a Qualified Provider List for SEN Therapies provision to fulfil the Council's responsibilities in meeting the needs identified in a child's Education, Health and Care Plan.

B) Delegate decisions about the establishment of the new arrangements to the Corporate Director for Children, Young People and Education, or other Officer as instructed by the Corporate Director for Children, Young People and Education

Background Documents:

Report to the Children, Young People and Education Cabinet Committee – 30 June 2021

<http://kcc-app610:9070/ieListDocuments.aspx?MId=8525&x=1&>

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