

## **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: Non-Maintained and Independent Special School (NMISS) Commissioning Strategy**

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

**Classification:** Unrestricted

**Decision number –** 21/00049

**Past Pathway of report:** Children and Young People's Cabinet Committee

**Future Pathway of report:** Cabinet Member Decision

**Electoral Division:** All

### **Summary:**

This report asks the Cabinet Member to agree to a more co-ordinated approach to securing placements for children in Non-Maintained Independent Special Schools.

### **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 Dynamic Purchasing System to procure Non-maintained and Independent Special School (NMISS) placements; and

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

## **1. Introduction**

1.1 Non-maintained Independent Special School (NMISS) placements form part of the wider Special Educational Needs and Disabilities (SEND) Service and are required to fulfil KCC's statutory responsibility to provide suitable education for all students. NMISS placements have not previously been strategically commissioned and the spend is increasing year on year. There is a need for a strategy to commission placements in a consistent manner, with mechanisms to enable KCC to monitor quality, improve outcomes and ensure placements offer best value for money.

- 1.2 The SEND Written Statement of Action (WSoA) and forthcoming Strategy for Children and Young People with SEND 2021-24 aim to address the increasing need for special school placements. This will be done through inclusion work with Kent's mainstream schools and a review of the Education, Health and Care Plan (EHCP) process. However, there will continue to be a short-term increase in required NMISS placements. Longer term it is expected the requirement for these placements will reduce, but there will remain a need for these placements and for the placements to be commissioned in a consistent way with suitable contract management.
- 1.3 The proposed strategy will implement standard contract terms, a Dynamic Purchasing System and tools for future modelling and value analysis.

## 2. Current Arrangements

- 2.1 Currently, KCC spot purchases NMISS placements. This means costs and terms are inconsistent and lack transparency.
- 2.2 The following table presents the types of placements KCC made for CYP with EHCPs in 2018-19:

2018-19	Number of Schools	Number of Placements
NMISS, including Special Post 16 Institutions	109	1016 (18%)
Maintained Special Schools owned by other LAs	23	129 (2%)
Maintained, or academy, special schools	23	4422 (80%)
Total	155	5567

- 2.3 On average a NMISS placement cost £36,899.01 per pupil per annum in 18-19 and a maintained special school cost £25,399.01 per pupil per annum in 19-20. Different data sources were used for these figures hence the difference in years available, however any variation between consecutive years would be minimal.
- 2.4 The average cost of NMISS placements is 45% more than a maintained special school placement. This will include property costs that a KCC placement does not show in the comparison data available.
- 2.5 Analysis of the top ten suppliers, based on 20-21 forecast spend, is summarised below:

School	Total Education Cost	Number of Pupils	Average Education Cost Per Pupil	Capacity (August 2020)	KCC placement as percentage of capacity
Heath Farm School	£4,026,232.55	74	£54,408.55	106	69.8%
Ripplevale School	£3,793,985.05	112	£33,874.87	125	89.6%
West Heath School	£2,913,687.99	54	£53,957.18	150	36.0%

Meadows School	£2,466,445.81	55	£44,844.47	90	61.1%
Trinity School and College	£2,052,580.92	74	£27,737.58	170	43.5%
Hope View School	£1,811,446.58	71	£25,513.33	130	54.6%
Helen Allison School	£1,634,721.27	32	£51,085.04	83	38.6%
Caldecott Foundation School	£1,517,083.32	28	£54,181.55	65	43.1%
ISP School (Kent)	£1,331,286.36	33	£40,342.01	42	78.6%
Great Oaks Small School	£1,273,188.00	39	£32,645.85	40	97.5%

- 2.6 Notably, KCC placed students can amount to as much as 97.5% of the total capacity of a school. This suggests strategic relationships could improve cost and performance management of these arrangements.
- 2.7 A Dynamic Purchasing System (DPS) is a type of Framework contract that allows other providers to join throughout the term of the contract, as long as certain criteria are met. The proposed DPS would utilise the light touch regime to purchase placements in block as well as individually and can be broken down into lots based on different criteria. This allows for strategic relationships to be developed and for KCC to shape provision through setting criteria. A DPS would be compliant with the Public Contract Regulations (PCR) 2015.

### 3. Options Appraisal

3.1 The following table sets out the options considered, along with the advantages, disadvantages and risks of each option:

Option	Advantages	Disadvantages	Risks
<b>1 – Do nothing</b>	<ul style="list-style-type: none"> <li>• Requires no staff/resource change.</li> <li>• Processes already established.</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Non-compliant (PCR 2015).</li> <li>• Little to no control over costs and quality of placements.</li> <li>• Limited information received from providers/lack of transparency regarding placements.</li> <li>• Inconsistent monitoring and outcomes for CYP.</li> <li>• Placements continue to be made which may not be appropriate for the student.</li> <li>• Providers continue to form relationships that can unduly influence transitions and/or only accepting places on conditions outside of KCC's expectations.</li> </ul>	<ul style="list-style-type: none"> <li>• Costs continue to increase exponentially, on a place-by-place basis and in total due to increasing numbers of places required.</li> <li>• Placements continue to be inequitable (schools providing provision not included in the EHCP) which carries a reputational risk to KCC if parents/the public were to be made aware.</li> <li>• Placements ending poorly and/or KCC being poorly informed regarding issues is a potential reputational risk for</li> </ul>
<b>2 – Establish a Qualified Provider List (QPL)</b>	<ul style="list-style-type: none"> <li>• Spend is compliant with PCR 2015.</li> <li>• Limited disruption to status quo</li> <li>• Would establish standard terms and conditions for all providers, improving contract management tools and remedies available.</li> <li>• KCC has improved influence through the contractual arrangements versus 'Do Nothing'.</li> <li>• Ensures minimum standard of</li> </ul>	<ul style="list-style-type: none"> <li>• Resources needed to set up the QPL and for the on-going management of providers.</li> <li>• If selection solely on quality, it may not provide clarity of costs charged.</li> <li>• Market engagement essential to ensure providers are well informed of requirement.</li> <li>• Cannot control costs once QPL has been let.</li> <li>• Better suited to stabilising markets, rather than influencing.</li> </ul>	<ul style="list-style-type: none"> <li>• With the current market the pricing being set at tender may be a disadvantage rather than an advantage as providers are setting pricing currently.</li> <li>• If the market fluctuates and prices lower, pricing being set at tender can become a disadvantage.</li> <li>• Providers do not want to engage.</li> <li>• Prices could still rise without</li> </ul>

	<p>provider capability.</p> <ul style="list-style-type: none"> <li>•Ease of provider selection</li> <li>•Simpler contracting method for smaller providers.</li> <li>•Flexibility in selection process for place on list.</li> <li>•Improved monitoring and quality of outcomes for CYP.</li> </ul>	<ul style="list-style-type: none"> <li>•Does not enable more strategic conversations to take place.</li> </ul>	<p>KCC input after contract award.</p> <ul style="list-style-type: none"> <li>•Contract management tools not robust enough for marketplace such as NMISS.</li> </ul>
<p><b>3 – Establish a Dynamic Purchasing System (DPS) <u>Recommended Option</u></b></p>	<ul style="list-style-type: none"> <li>•PCR 2015 light-touch regulations permit contract to be adapted to meet the needs of SEND/the marketplace.</li> <li>•Reviews of standards can be set for regular intervals.</li> <li>•Processes for quality assurance (outcome monitoring) and pricing (price increases/transparency over costs) can be built into terms and conditions.</li> <li>•Limited disruption to delivery of current services.</li> <li>•Allows new entrants into the market to be added to DPS.</li> <li>•Providers required to pass a minimum capability standard.</li> <li>•Can split into lots to accommodate different specialisms, or locations.</li> <li>•Enables competitions through providers bidding for opportunities, this mechanism can be defined to work in a manner suitable for the service.</li> <li>•There is an opportunity to</li> </ul>	<ul style="list-style-type: none"> <li>•Resources needed to set up the DPS and for the on-going management of providers.</li> <li>•Grouped contract awards need to be published in OJEU/Find a Tender System.</li> <li>•Market Engagement needed to ensure providers are engaged with process.</li> <li>•If lot structure is incorrect it can affect the efficacy of call-offs.</li> <li>•If spot-purchased spend continues it can undermine the viability of the DPS.</li> <li>•Quality threshold for ‘strategic’ lot needs to be robust to allow better schools to pass but discourage poorer quality schools.</li> </ul>	<ul style="list-style-type: none"> <li>•Providers do not want to engage/refuse to join the DPS which may be essential to providing appropriate placements for students, leaving KCC no option but to contract outside of it.</li> <li>•If not coordinated with policy for maintained provision, it will be difficult to influence and shape the market to deliver services we need with sufficient capacity to cover the ‘gaps’ in maintained provision.</li> </ul>

	<p>stimulate the market.</p> <ul style="list-style-type: none"><li>•Spend is compliant with PCR 2015.</li><li>•Standard terms and conditions in place for all call-offs.</li><li>•More robust contract management tools and remedies available to manage provider performance.</li><li>•Raises the standard of professional capability of providers; those that do not meet this level still have the chance to improve and be included on DPS in future.</li><li>•Still enables parental choice or Tribunal judgements to be placed directly at schools on DPS.</li><li>•Create additional lot with different quality threshold, terms and conditions adapted to allow strategic negotiations directly with suppliers in this lot.</li><li>•Link conversations with suppliers to Predictive Modelling Tool to manage capacity within marketplace to meet gaps in maintained provision.</li><li>•Greater influence over development of capacity in schools to those types of provision that are required.</li><li>•Improved monitoring and quality of outcomes for CYP.</li></ul>		
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<p><b>4 - Increase internal provision (SRPs/maintained special school places)</b></p>	<ul style="list-style-type: none"> <li>•Offers KCC greater influence on quality and cohort organisation/placements (KCC could direct placements).</li> <li>•Transparency of costs and surplus, if applicable, reinvested in schools, i.e., not-for-profit charitable trusts.</li> <li>•Spend is compliant with PCR 2015.</li> </ul>	<ul style="list-style-type: none"> <li>•Government process and strategy regarding creating further maintained provision is limited and approval takes a long time, as does the process of building and opening provision.</li> <li>•Provision can be inflexible and creating it is resource intensive so it is not easily decommissioned.</li> <li>•Increasing the capacity of existing provision involves a statutory process so cannot be done quickly.</li> </ul>	<ul style="list-style-type: none"> <li>•Increasing internal provision which may not be required once work from other workstreams takes effect.</li> </ul>
<p><b>5 – Flexi-block contracts/bespoke arrangements with providers</b></p>	<ul style="list-style-type: none"> <li>•Processes for quality assurance (outcome monitoring) and pricing (price increases/transparency over costs) can be built into terms and conditions.</li> <li>•Reviews of standards can be set for regular intervals.</li> <li>•Limited disruption to status quo.</li> <li>•Limited disruption to delivery of current services.</li> <li>•Providers required to meet certain standards to be considered for a flexi-block arrangement (and contract require standards to be maintained).</li> <li>•Spend is compliant with PCR 2015.</li> <li>•More robust contract management tools and remedies available to manage provider performance.</li> </ul>	<ul style="list-style-type: none"> <li>•Resources needed to set up the contracts and for the on-going management of providers.</li> <li>•Market Engagement needed to ensure providers are engaged with process.</li> <li>•May not meet KCC’s needs long term/reflect the changes the WSoA work will cause which are currently difficult to quantify.</li> <li>•KCC could pay for vacant placements if capacity not used in a planned way.</li> <li>•No strategic overview of the whole market – restricted to influencing relationship with specific schools.</li> <li>•Difficulty in influencing development of capacity for those schools not engaged with.</li> <li>•No improvement in contractual relationship with those schools not engaged with.</li> </ul>	<ul style="list-style-type: none"> <li>•Providers do not want to engage/refuse to negotiate a flexi-block.</li> <li>•Committing to contracts/arrangements which are not flexible enough to reflect KCC’s changing needs.</li> <li>•Being committed to funding existing placements if a school falls below minimum standards, contract needs to provide robust contract management clauses in this scenario.</li> </ul>

	<ul style="list-style-type: none"> <li>•Raises the standard of professional capability of providers; those that do not meet this level are encouraged to do so to have a flexi-block contract or bespoke arrangement with Kent.</li> <li>•Reduced risk to schools should ease pressures and provide better value for KCC.</li> <li>•Quick to arrange with top providers.</li> <li>•Offers stability of placements for children and young people.</li> <li>•Less time will be spent negotiating on an individual basis saving resource in the long term.</li> </ul>		
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- 3.2 The recommended option is Option 3, a DPS, as it is considered a suitable and proportionate commissioning introduction to this market. Whilst some of the other routes could be explored, they would be better suited to a more developed relationship, making sure the market is more mature and able to tender for opportunities. Commissioning a DPS stabilises the marketplace and establishes a different relationship between KCC and this sector, which can be built on in future opportunities.
- 3.3 Stakeholder engagement has already commenced with market engagement informing the choice to use a DPS specifically. Parental engagement will be undertaken to inform the specification.



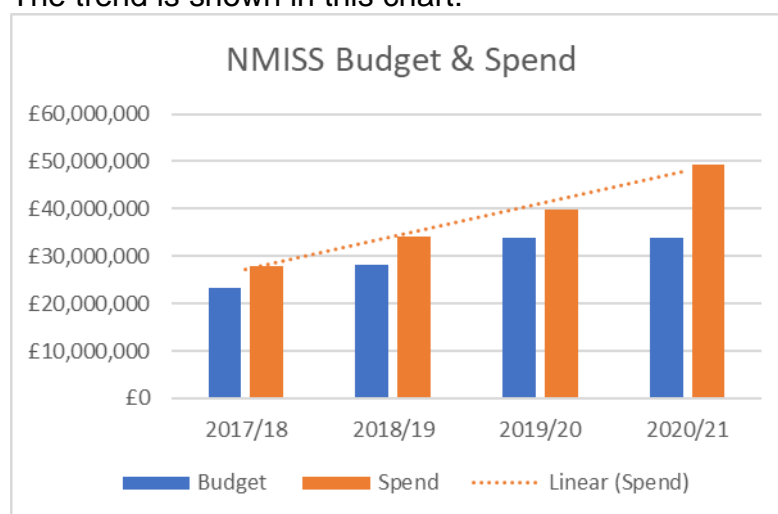
## 4. Financial Implications

4.1 The spend per annum for NMISS placements has been increasing significantly over the last four years to a current total of £49,244,606.

4.2 The budget and spend per financial year:

Financial Year	Budget	Spend
2017/18	£23,370,700	£27,911,115
2018/19	£28,044,300	£34,167,515
2019/20	£33,768,800	£39,772,645
2020/21	£33,768,800	£49,244,606

The trend is shown in this chart:



4.3 The placements fall under the Special Educational Needs & Psychology Services key service line within Special Educational Needs and Disabilities (SEND) Division budget, line 65 in the 2021/22 KCC Budget.

4.4 The KCC School's Commissioning Plan forecasts demand for NMISS placements increasing in the short-term, meaning total cost will increase short-term. The proposed DPS aims to reduce individual placement costs through baseline analysis, strategic negotiation and standard terms and conditions controlling price increases.

4.5 Longer term, it is expected this contract will standardise costs and ensure placements are the best value for money. Additionally, other work to reduce KCC's reliance on the NMISS sector will increase competitiveness in the market to reduce costs further.

## 5. Legal implications

5.1 Kent County Council has a statutory responsibility under The Education Act 1996 to provide education for all children and young people (CYP) until the age of 19, or 25 for those with Education, Health and Care Plans (EHCPs). Associated legislation includes The Children and Families Act 2014, the SEN Code of Practice (2015), the Equality Act 2010 and The Special Educational Needs and Disabilities Regulations 2014.

- 5.2 Within this statutory framework, KCC is commissioning placements for CYP with EHCPs whose needs cannot be met in mainstream schools or maintained special schools with the aim to implement a new consistent, quality driven process.
- 5.3 This work is taking place as a result of the Ofsted and Care Quality Commission (CQC) joint review of SEND provision for Kent CYP and the resulting WSoA KCC implemented to address the concerns of the review. The commissioning of NMISS placements is a result of several areas found lacking in the review which are addressed through the following workstreams of the WSoA:
2. Inclusive Practice and the Outcomes, Progress and Attainment of Children and Young People
  3. Quality of Education, Health and Care Plans
  4. Joint commissioning and governance

Kent Local Area SEND Written Statement of Action 2019  
([https://www.kent.gov.uk/\\_data/assets/pdf\\_file/0008/99719/SEND-Written-Statement-of-Action.pdf](https://www.kent.gov.uk/_data/assets/pdf_file/0008/99719/SEND-Written-Statement-of-Action.pdf))

- 5.4 Advice will be sought from the Office of the General Counsel regarding the support required for the development of legally binding, standard terms and conditions in the contract.

## **6. Equalities implications**

- 6.1 An EqIA screening has been completed and found a full action plan was not required. This will continue to be developed and reviewed as this project progresses.

## **7. Other corporate implications**

- 7.1 School placements are within the scope of Education and this project will align with and support Education's Commissioning Plan and upcoming Sufficiency Plan.
- 7.2 A standard approach to placements will be developed as part of this project in conjunction with the SEND Service.

## **8. Governance**

- 8.1 The financial implications are in line with existing spend, with the aim to reduce spend in the long term. The Cabinet Member is asked to delegate decisions on the commissioning process and the implementation of the new contracts to the Corporate Director for Children, Young People and Education.

## **9. Conclusions**

- 9.1 The DPS approach to procuring NMISS placements is the nationally recommended approach. A DPS offers more flexibility in procurement options to encourage more engagement from providers and to adapt to the changing SEND landscape over the next few years.

- 9.2 Commissioning have worked with SEND to identify possible barriers to improving the NMISS placement process and conclude a DPS will enable placements to be made efficiently whilst adapting to pressures such as parental preference.

## **10. Recommendation(s):**

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

- A) Implement a Dynamic Purchasing System to procure Non-maintained and Independent Special School (NMISS) placements; and
- B) Delegate decisions about the establishment of the new arrangements to the Corporate Director for Children, Young People and Education (CYPE), or other Officer as instructed by the Corporate Director for CYPE.

## **11. Background Documents**

Report to the Children and Young People's Cabinet Committee – 30 June 2021  
<http://kcc-app610:9070/ieListDocuments.aspx?MId=8525&x=1&>

Equality impact Assessment

## **12. Contact details**

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