

# KENT COUNTY COUNCIL – RECORD OF DECISION

## DECISION TAKEN BY:

**Cabinet Member for Integrated Children's Services**

## DECISION NO:

21/00086

**For publication** [Do not include information which is exempt from publication under schedule 12a of the Local Government Act 1972]

### Key decision: YES

*Key decision criteria. The decision will:*

- a) result in savings or expenditure which is significant having regard to the budget for the service or function (currently defined by the Council as in excess of £1,000,000); or
- b) be significant in terms of its effects on a significant proportion of the community living or working within two or more electoral divisions – which will include those decisions that involve:
  - the adoption or significant amendment of major strategies or frameworks;
  - significant service developments, significant service reductions, or significant changes in the way that services are delivered, whether County-wide or in a particular locality.

### Subject Matter / Title of Decision

Commissioned Open Access Provision for Youth Services and Children's Centres

### Decision:

As Cabinet Member for Integrated Children's Services, I agree to:

A) directly award contracts to all existing commissioned Open Access provision (Youth Services, seven providers, for 16 months and Children's Centres, two providers, for 12 months) on the same terms and conditions and values as the current contracts. The contracts will end on 31 March 2023

### Reason(s) for decision:

- Decision required because total value of contracts will exceed the threshold for a Key Decision and impact across multiple districts of the Local Authority.

### Background:

- This proposal is to seek authorisation for contracts to be awarded directly to the existing commissioned Open Access providers (Youth Services and Children's Centres). Current contracts for the youth provision, expire on 30 November 2021 and for the two commissioned Children's Centres on 31 March 2022.
- The Direct Award is required for reasons of extreme urgency (reg. 32(2)(c)).
- The Direct Award will be for a period of 16 months for the Youth provision and 12 months for the Children's Centre contracts to bring them both in line to the end on 31 March 2023.
- The Budget consultation [documentation](#) published in July 2021 demonstrated three key areas of public support.
  - Reducing our number of buildings (77.6% agreed)
  - Delivering more than one service from our buildings (91.7% agreed)
  - Delivering more services using online technology (73.8% agreed)
- As a result of these findings, it was important that we took the time to rethink future plans, not least as any tender exercise commenced would commit the Council to new contracts for several years.

## Options

- 1. Do Nothing:** Allow the contracts to lapse. KCC funded Open Access Offer, particularly in rural localities, will be greatly reduced and in the case of the two commissioned Children's Centre's (Millmead, Thanet and Seashells, Swale) fully removed.
- 2. Allow contracts to lapse and if applicable TUPE across staff from incumbent providers:**  
This option may impact on the ability of the current providers to continue operating as well as significantly increase the headcount of KCC Open Access staff. The flexibility afforded to the organisations to respond rapidly to local need will also be removed.
- 3. Externally procure a new service:** Since the award of these contracts in 2016 there have been no new entrants to the market that could provide a district wide provision with no mobilisation time. This would result in a gap in provision at the very time when young people who have already experienced a reduction in opportunities due to Covid-19 need it most. As a result of the pandemic, the Council has established a Strategic Reset Programme which is reviewing, amongst other things, the use of the Council's estate. Work on the Future Assets Programme is still in progress to respond to changing Covid guidance and to shape our future approach for community, office and specialist buildings across Kent.. The outcome of this will be pivotal to the development of specifications and service design for any new procurement. If Commissioners were to commence a procurement in advance of this review, contracts would potentially need to be changed or ended to minimise any duplication and maximise value for money.
- 4. Directly award contracts (due to reasons of extreme urgency (reg. 32(2)(c)) for a period of 16 months to the seven providers of Youth Services and 12 months to the two providers of commissioned Children's Centres to bring both in line to the 31 March 2023.** In the Council's approach to the response and recovery of Covid-19, the Strategic Reset Programme has identified workstreams that will look at how the Council can reset its priorities resiliently. The impact of this has provided uncertainty in the development of a procurement process. It is proposed that a full commissioning plan will be developed before the end of the proposed Direct Award contracts that will consider the long-term effects of Covid-19 on the local communities they serve.

Work on the Future Assets Programme is still in progress to respond to changing Covid guidance and to shape our future approach for community, office and specialist buildings across Kent. Once the Council has a clear agreed direction of travel post Covid-19, a balanced and informed commissioning plan can be developed that does not risk adversely impacting the deprived communities served. This plan will need to consider the long term added value that providers will continue to deliver and how this can be quantified moving forward to evidence the continuing viability of the services being commissioned to the external market.

To meet this need, all services will need to be "extended" by way of directly awarding a 16-month contract with the seven incumbent youth providers and a 12-month contract with the two incumbent children's centre providers under Direct Award, with the terms and conditions, contract values etc being unchanged.

### Other Considerations:

The current providers of the youth contracts have been in place with KCC to deliver an aspect of open access provision for in excess of ten years. Commissioners have worked extensively with the wider market since 2012 to understand the landscape of providers and both capability and capacity to provide a district-wide offer. Since the last major procurement in 2016 of these contracts, the provider landscape in Kent has not changed dramatically and there are no new providers entering

the market that have the capability of delivering a district wide offer.

The Children's Centre procurement process in 2018 had only two providers that were able to deliver in the geographical areas. This has not changed in the last three years and as such, there would be no advantage in developing a new procurement process to assess the same providers against an unchanged market.

For any provider coming into the market there would be challenges relating to buildings, access, and reputation. It is therefore considered that with the time constraints in place, it would not be possible for a new provider to come in and offer a service without there being a sizable gap in provision whilst they mobilised. The Direct Award is proposed to set contracts on the same terms and conditions to the end of March 2023. Any new provision would not be mobilised in time for the contract to end. The potential TUPE requirements for a procurement will further limit the timeframe

Based on the options appraisal and further discussion at an Informal Member Briefing on 18 October 2021, the recommended option is **Option 4 - Directly award contracts due to reasons of extreme urgency (reg. 32(2)(c)) for a period of 16 months to the seven providers of Youth Services and 12 months to the two providers of commissioned Children's Centres to bring both in line to the 31 March 2023.**

### **Consultees**

The Decision time-frame does not allow for Cabinet Committee consideration. Non-Executive Members engaged prior to decision on 18 October 2021.

### **Financial implications**

- This action seeks to continue the funding of services at the same level for 16 months for Youth Services and 12 months for Children's Centre to the end of March 2023. There is an option in the contracts to terminate with a three-month notice period, should that be required.
- The existing contracts are fully funded within the current revenue budget for the Youth Services and Children Centres key service lines. The Children Centre budget is funded from a combination of the KCC base budget and public health grant. The Youth Services budget is funded from both the KCC base budget and Dedicated Schools Grant.
- The value of the contracts will remain unchanged for the period of the extension, there are no further financial implications from this proposal.

### **Legal implications**

- Whilst there is no statutory requirement to provide Open Access youth work, Kent County Council has maintained a strong commitment to an offer which has always included VCS organisations as part of delivery. The Open Access offer in Kent contributes to young peoples' learning and development, working to give a sense of place and purpose and to reach their full potential.
- The two Children's Centres form part of the totality of offer available to Children and Parents. By not having the two commissioned centres in place we would not be removing the children centre offer but would be detrimentally impacting two communities that are amongst the most deprived in the county.
- Action by way of Direct Award means awarding contracts without competition which is not compliant with Spending the Council's Money or the Public Contract Regulations 2015. The risk has been mitigated through knowledge of the market and whether there are other organisations that could deliver the services at scale and pace at a time where the Country is

recovering from Covid-19. Legal advice has also been received on this approach and satisfies the requirements as set out in Public Contracts Regulations 2015 (PCR 2015) clause 72(1)(e) and clause 72(8) which permits modifications to contracts so long as not materially different.

- In addition, Covid-19 has altered many aspects of everyday life. Clause 32(2)(c) of PCR 2015 states that an extension can be granted to a contract if there circumstances which could not have been foreseen, reasons of extreme urgency and modification does not alter overall nature of the contract.

**Equalities implications**

An Equality Impact Assessment (EqIA) screening has been completed and has concluded that the proposed option does not present any adverse equality impact.

**Cabinet Committee recommendations and other consultation:**

The Decision time-frame does not allow for Cabinet Committee consideration. An All-Member Briefing was delivered on 18 October 2021.

**Any alternatives considered and rejected:**

Option 1 – Do Nothing: Rejected on the grounds that this would leave many communities, children and young people disadvantaged at a time when they are in need of greater levels of support due to the pandemic and not be aligned with the Council’s Reconnect Programme.

Option 2 - Allow contracts to lapse and if applicable TUPE across staff from incumbent providers: Rejected on the grounds that this would reduce levels of flexibility in the response to both the Reconnect and Containment Outbreak Management Fund activity whilst also significantly increasing the internal headcount of Open Access provision with little added benefit. The local authority in the case of the two children’s centres would also not have a physical location to deliver from.

Option 3 - Externally procure a new service: Rejected on the grounds that any new procurement would not be able to align with the agreed outcome post Covid-19. This would potentially render them unfit for purpose in a relatively short time period which would require either a contract variation or a complete re-procurement.

**Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:** None



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signed

date