

# KENT COUNTY COUNCIL – RECORD OF DECISION

**DECISION TAKEN BY:**

**Sue Chandler**

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

**DECISION NO:**

**22/00047**

**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**

**Educational Psychology – Recommission service for increased capacity**

**Decision:**

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

- A) Scope and develop a specification for a commissioned service to provide additional capacity for the provision of Educational Psychology services
- B) Commence a procurement to tender for a service, award a contract and develop robust contract management for oversight of the contract performance.
- C) Delegate authority for the Corporate Director Children, Young People and Education, in consultation with the Cabinet Member, to award a contract and implement the Decision.

**Reason(s) for decision:**

- 1.1 Since the enactment of the Children and Families Act 2014, demand for the Council to carry out Education, Health and Care Needs Assessments for Children's Special Educational Needs (SEN) has increased year on year. The Council has a statutory duty to seek an Educational Psychology assessment report for all children for whom an EHC needs assessment has been agreed.
- 1.2 Kent County Council remains subject to a Written Statement of Action (WSOA) following the Ofsted inspection of the Local Area in January 2019 which identified weaknesses in nine key areas. One of those areas was the ability of the Special Educational Needs and Disability (SEND) Service to deliver Education, Health and Care Plans (EHCPs) in a timely manner and to an agreed quality. The provision of an Educational Psychology (EP) assessment or advice for all children within a six-week timescale was a critical factor affecting delivery of the Council's statutory duties. In July 2020, the figures indicated that only 29% of EHCPs were delivered in line with statutory timescales. By July 2021 there was a backlog of approximately 450 children waiting for an EP assessment as part of their Education, Health and Care needs assessment.

- 1.3 In 2020, an external provider was commissioned to provide additional EP capacity for the initial assessments required for EHCPs. This has reduced the number of initial assessments waiting over 20 weeks and brought KCC closer to meeting its statutory duty. It is predicted that by the end of July 2022, 80% of EP assessments will be completed within the six-week statutory deadline, assuming the number of initial EHC needs assessment requests remains within the range forecast.
- 1.4 The Council is seeking the provision of high-quality EP support to complete statutory assessments in accordance with the template provided by the Local Authority and within designated timescales. Ongoing support to the service will be provided, through the award of a contract to a third-party provider, to significantly reduce the likelihood of a future backlog or lengthy waiting times.

## 2. Background

- 2.1 Changes to legislation introduced by the Children and Families Act 2014 increased the age range for which Local Authorities were responsible for undertaking a statutory assessment of children's special educational needs (0-25 years), increased the strength of the role of parents and lowered the threshold that Local Authorities apply when making a decision whether to carry out an Education, Health and Care needs assessment.
- 2.2 The result in Kent has been a dramatic rise in the number of requests for EHC needs assessment of children's special educational needs. The EP assessment of a child's special educational needs is mandated in the Education, Health and Care needs assessment process. The capacity of Kent Educational Psychology Service (EPS) was insufficient to address the increased demand from the existing staff structure. This issue was highlighted as a weakness in the Ofsted Local Area SEND Inspection report (2019).
- 2.3 Capacity to enable the Council to meet statutory duties by providing the EP assessment in timescale for every child for whom an EHC needs assessment is carried out has been addressed through engagement of additional locum capacity and the procurement of EP assessment reports through an external agency, quality assured by Kent Educational Psychology Service Senior EPs. The provision of EP assessment reports has increased annually as a consequence, to keep up with demand.
- Between April 2019 – March 2020 the EPS produced 1680 pieces of statutory assessment report.
  - Between April 2021 – March 2022 the EPS produced 2971 statutory assessment reports.
  - This is equal to an **77% increase** in two years.
- 2.4 The Kent EP Service is currently working towards consistently meeting and maintaining the performance target of providing 80-90% of EP advice for the Local Authority's EHC needs assessments within six weeks of referral. The backlog of assessments from previous years has been addressed, currently EP advice is generally provided within eight weeks of referral on average. Achieving this key performance indicator remains dependent on the provision of locum and agency EP assessment reports.
- 2.5 Educational Psychologists are hard to recruit (there is a national shortage). There is an on-going recruitment drive in the Kent EP Service and a programme of employment of trainee EPs and assistant EPs to provide a pathway into the profession and employment in Kent. Kent EP Service has vacancies, which have been reduced in recent years through effective recruitment and retention strategies. There remains a gap between demand and capacity of Kent EP Service (even if fully staffed) to provide assessment advice to meet the demand of EHC needs assessments in Kent. Whilst the SEND Strategy seeks to reduce demand for EHC needs

assessments, the expectation is that this will take between two to three years to have a significant impact on the volume of EHC needs assessments required.

- 2.6 Kent County Council maintains approximately 20,000 EHC Plans, a significant number of which have not been updated and amended and/or actions taken following annual review. It would be expected that Educational Psychology advice contributes to approximately 10% of EHC Plan annual reviews to support Local Authority decision-making with regard to provision (Section F), placement (Section I) and whether to maintain or cease an EHC Plan. Current capacity of Kent EP Service is such that EP advice contributes to fewer than 1% of annual reviews.
- 2.7 Key to scoping the requirements for a procurement is to understand the national changing landscape of Educational Psychology services. It is well reported that there is a national shortage of qualified EPs, which is compounded by a reduction in qualification pathways and a large number of qualified EPs leaving the sector. Additionally, Academy Trusts have been directly recruiting Educational Psychologists for roles in their schools in order to meet needs. For some EPs, this work is more attractive than the completion of assessments and plans. In turn, this further reduces the pool of available EPs.
- 2.8 The shortage of EPs and the increasing demand for EHCP Assessments has led to spiralling costs for the buyers of their services. Soft market research suggests that costs could increase by as much as a third for the same levels of provision.

### 3 Options Appraisal

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

Option	Advantages	Risks
<p><b>1. Do nothing: The current contract will end 30 November 2022.</b></p>	<ul style="list-style-type: none"> <li>• Annual saving of approx. £1m (using payments from 2021/2022)</li> </ul>	<ul style="list-style-type: none"> <li>• Reputational, legal and financial - Kent County Council would not be able to meet statutory duties under the Children and Families Act 2024 and would be at risk of Judicial Review. Poor Ofsted re-visit outcome. Parents seeking redress may be awarded costs.</li> </ul>
<p><b>2. Build capacity in-house to provide assessments and reviews to meet demand</b></p>	<ul style="list-style-type: none"> <li>• Can exercise greater control of in-house performance</li> <li>• Less susceptible to volatile market pressures</li> </ul>	<ul style="list-style-type: none"> <li>• This is unrealistic – the Kent EP Service has taken a proactive approach to recruitment and retention and there remains vacancies in the staffing structure.</li> </ul>

<p><b>3. Engage increased local locums (cost per assessment £1100)</b></p>	<ul style="list-style-type: none"> <li>• Currently this is more cost-effective</li> </ul>	<ul style="list-style-type: none"> <li>• There are a limited number of local locums available. Current market pressures are such that Kent locums have taken on work in other Local Authorities, if and when the rates of remuneration are better.</li> <li>• There is insufficient capacity in the locum market to meet demand.</li> </ul>
<p><b>4. Re-procure the EP service to provide additional capacity</b></p>	<ul style="list-style-type: none"> <li>• There will be continued capacity to perform initial assessments</li> <li>• KCC will be able to access a national pool of EPs</li> </ul>	<ul style="list-style-type: none"> <li>• It is likely that we will be able to procure fewer assessments for the same financial envelope from the last service, however competition in the tender process will test this.</li> </ul>
<p><b>5. Continue with the hybrid approach for a further two years and review after one year – this means re-procuring an EP service to provide additional capacity</b></p>	<ul style="list-style-type: none"> <li>• The hybrid approach procuring additional agency EP assessments and engaging local locums enables the provision of EP assessment advice for the Council's EHC needs assessment and some annual review assessment advice in the most responsive and flexible way, providing the greatest chance of enabling Kent County Council to meet its' statutory duties.</li> </ul>	<ul style="list-style-type: none"> <li>• Providers may not tender for a service that has no minimum guarantee of business, or with a sliding scale. The commercial model will need to be clearly understood by those managing the EP assessments and advice to get the most cost-effective option at allocation</li> </ul>

3.2 **Based on the above options appraisal the recommended option is Option 5 - Continue with the hybrid approach for a further two years and review after one year – this means re-procuring an EP service to provide additional capacity**

3.3 It is expected that the initial contract term will be 12 months with the option to extend for a further 12 months. There will be a requirement to include flexibility within this term to ensure delivery is fit for purpose and meets any change in demand.

**4 Commissioning Approach**

4.1 A Prior Information Notice will be advertised on the Kent Business Portal requesting potential providers to feed back on the proposed delivery model and scope of provision.

4.2 Part of any Invitation to Tender will include but not be limited to:

- The requirement for statutory timeframes to be met for initial assessment.
- Previous experience in working against a backdrop of relevant legislation.
- An ability to flex the model of provision between both face-to-face delivery and a virtual offer to not only protect against any further COVID-19 restrictions but also match delivery to the needs of children and young people.
- A track record in embedding the voice of children and young people in the development of

provision

- Ability to flex model to accommodate fluid numbers of referrals both in type and workload.

## 5 Timelines

- 5.1 Should the recommended option be agreed, informal market engagement will commence in May 2022.
- 5.2 Specification development and publication of a notification on the Kent Business Portal can commence on publication of the Key Decision.
- 5.3 A procurement process will commence to ensure that there is no gap in provision, allowing a new service to be in place from 1 December 2022.

## 6 Financial Implications

- 6.1 The use of the contracted provider to complete Educational Psychology assessments and to support annual reviews is expected to flex dependent on the availability of new and existing directly employed EPs, access to the locums, the delivery of the provider, and overall demand for Education Health and Care Plans.
- 6.2 Current service spend is £923k in the past 12 months. This reflects the fluctuations in the number of assessments provided each month by the provider, which ranged between 40 and 100 per month over this period.
- 6.3 The cost of the service would need to be adjusted for market changes. Soft market research suggests feasibly a 30% uplift due to market pressures will be required (as described section two above).

Procurement Stage	Date
Market Engagement	May 2022
PIN Published for EOIs	July 2022
ITT Issued	August 2022
Evaluation and Moderation	October 2022
Contract Award	October 2022
Contract Start Date	December 2022

- 6.4 It is predicted that between 40 and 100 assessments per month will be required in order to provide sufficient capacity to KCC's EP Service. The expected spend therefore is between £0.7m and £1.8m per annum with the contract term being one year with a one-year extension option. The Key Decision is therefore on the maximum spend value of £3.6m over two years.
- 6.5 All Education Psychology activities are funded by the General Fund revenue budget and a small amount of traded activity with schools. The 2022-23 budget for the total Educational Psychology service is £4.6m of which approximately £2.0m is for the commissioning of additional capacity from external providers. It is recognised due to a combination of both the increase in rates and high demand there is a risk the service may overspend in the short term whilst additional wider measures are put in place to support the reduction in the number of EHCP referrals by supporting more children with SEN at an earlier stage to avoid escalation of need. The financial position will be reported in the monitoring report to Cabinet during the year.

## **7 Legal implications**

- 7.1 The Local Authority has a statutory obligation to complete assessments (EHCPs) in a 20-week timeframe. As an authority we are, in a number of cases, failing in this duty, impacted by the capacity of the EP Service. With current capacity, supported by the existing contract, it is estimated that The Council will be in a better position to meet this obligation. The recommissioning of a service to provide additional EPs will give the authority the best chance to continue to meet this responsibility, clear the current backlog and maintain that position going forward.
- 7.2 In 2019 Ofsted and the CQC undertook a joint inspection of Kent's SEND offer and how this is implemented across the county. The inspection identified the following
- The Fragmented system means that too many children and young people with SEND do not get the support they need
  - Families experience a high level of confusion about what support is available. Resulting in the belief that an EHCP is essential to ensure their child's needs are met.
  - Kent does not yet successfully prioritise the needs of children and young people with SEND.
  - Children and young people with SEND experience unacceptable inequality when accessing services in Kent

## **8 Equalities implications**

- 8.1 An Equalities Impact Assessment has been completed and identified no high negative impacts and the following positive impacts were identified:
- An increase in the total number of assessments available to meet the needs of young people who are in need of an Educational Psychology assessment who may/may not be SEN
  - A reduced wait to access support which may be dependent on the completion of an assessment
  - Young people and their families will be supported to achieve and will have their wellbeing positively impacted as a result of receiving an assessment service in a timelier manner

8.2 Whilst, by its nature, the service will exclude those who do not fulfil these criteria, the choice of these restrictions is justified, and any other protected groups are not affected.

## **9 Other corporate implications**

- 9.1 The existing Data Protection Impact Assessment will be reviewed and amended as necessary for a new service.

## **10 Governance**

- 10.1 The Educational Psychology Service is positioned in the SEN and Disabled Children and Young People Division in the Children, Young People and Education Directorate.
- 10.2 Following the Key Decision and compliant procurement process, the contract will be awarded by the Corporate Director of Children, Young People and Education, in consultation with the Cabinet Member for Integrated Children's Services.

**Cabinet Committee recommendations and other consultation:**

The Children's and Young People Cabinet Committee considered the decision on 10 May 2022.

**Any alternatives considered and rejected:**

4.1 In order to reduce the backlog and waiting times for the completion of EHCPs, and to support the Educational Psychology Service, additional capacity is an ongoing requirement, with some flexibility as the positive activities start to make an impact in reducing the need and requests for ECHPs

4.2 The preferred option is Option 5 – Continue with the hybrid approach for a further two years and review after one year – this means re-procuring an EP service to provide additional capacity. Commissioners will commence procurement and the timeline allows for a contract to be in place for 1 December 2022.

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



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signed

01-06-22  
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date