

EXECUTIVE DECISION

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

Sarah Hammond, Corporate Director of Children, Young People and Education

To: **Children, Young People and Education Cabinet Committee – 13 September 2022**

Subject: **Special Educational Needs – External Tuition Services**

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

Decision Number: 22/00078

Classification: Unrestricted

Past Pathway of report: N/A

Future Pathway of report: Cabinet Member Decision

Electoral Division: All

Summary:

This report provides the Children, Young People and Education Cabinet Committee with the background and rationale for establishing a formal contractual arrangement for Special Educational Needs provision for Tuition services that do not form part of the Service Level Agreement with The Education Programme and are currently delivered by external suppliers. This will ensure suitable quality of provision and establish an onward destination for children receiving the service.

Recommendation(s):

The Children, Young People and Education Cabinet Committee is asked to **CONSIDER** and **ENDORSE**, or **MAKE RECOMMENDATIONS** to the Cabinet Member for Integrated Children's Services on the proposed decision (attached as Appendix A) to:

A) Implement a 'Modified Dynamic Purchasing System' for Special Educational Needs External Tuition provision to fulfil the Council's responsibilities in meeting the needs identified in a child's Education, Health and Care Plan.

B) Delegate decisions on 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, in consultation with the Cabinet Member.

1. Introduction

- 1.1. In April 2020, Commissioners embarked on a programme of work to understand the direct delivery and external purchasing of Tuition services. The first phase was to understand the direct delivery, and support the development of a Service Level Agreement with The Education Programme for internal tuition services. The second phase was to review what services KCC purchases externally, and make sure that Children and Young People (CYP) are getting the best outcomes possible.
- 1.2. In September 2021 the SEND Service established a formal Service Level Agreement with the Fair Access Team in the Education division. This expanded The Education Programme tuition service to allow for CYP with SEND to access tuition whilst awaiting placement within a school environment. This service is intended to be delivered over a 12-week period prior to placement, though some pupils may access the service for longer for a variety of reasons. In addition, there is a cohort of CYP who currently receive tuition from external private providers. These students were not included in the initial commissioning activity that developed the SLA.
- 1.3. Kent County Council is currently purchasing tuition services from a variety of external suppliers, providing educational support to CYP. These services are spot purchased without formal contracts and a clearly defined specification, leading to concerns of due diligence for suppliers, inconsistent outcomes, and an inability to evidence value for money. SEND is seeking to establish a framework with a range of suitably experienced providers to deliver Tuition Services for those children of compulsory school age and post 16 who, by reason of exclusion from school or otherwise, will not receive a suitable education without such arrangements.
- 1.4. Currently the SEND Service consult with The Education Programme before referring to the external market. A Service Level Agreement (SLA) is now in place and will be fully operational by January 2023 between the SEND Service and The Education Programme. This has increased capacity within The Education Programme to meet the requirements of the SEND Service for all equivalent standard placements, one to one tuition for a significant number of CYP under 16-years-old.
- 1.5. However, The Education Programme currently does not offer:
 - provision for over 16-years-old;
 - group tuition;
 - Educated other Than At School (EoTAS) in non-academic subjects e.g., riding therapy; and
 - formal qualifications such as GCSEs.
- 1.6. A decision is needed on the future contracting arrangements for external tuition provision outside the scope of the SLA and this paper sets options for consideration.

2. Current Arrangements

- 2.1. Usage of the external market for both equivalent standard and other tuition has grown steadily. The allocated budget for 2021-2022 was £2.35m although this financial year (March 2022) the out-turn spend had exceeded £3.26m.

SEN Spend	Financial Year				
	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
External Tuition Spend	£862,000	£924,000	£1,391,000	£2,244,000	£ 3,054,000
The Education Programme	£141,000	£130,000	£ 157,000	£274,000	£ 206,000
Total SEND Spend	£1,003,000	£1,054,000	£1,548,000	£2,518,000	£3,260,000
Allocated budget		£851,000	£ 851,000	£ 851,000	£ 2,350,000

2.2. All provision was spot purchased from the market, excluding The Education Programme. This has meant no clarity on costs, or control over cost increases as well as insufficient tools to manage supplier performance when this is poor. The overall outcome is to create a consistent commissioning approach for SEN external tuition provision for a named child with a clear pathway back to other educational settings where appropriate, a common specification, clarity of costs and improved contract management tools.

2.3. The increased staffing growth budgeted for in the SLA should give the service, capacity for a 108 CYP per term if the 12-week programme of tuition is adhered to. At present (2021-2022) standard tuition services work with 293 CYP, it is predicted that the majority of these will move to SLA when it is fully operational, post January 2023 however, for 115 CYP within the post 16 cohort (2021-2022) we still need to engage with the external market to meet their needs and provide the outcomes required.

2.4. A full breakdown for 2021-2022, can be found below including current providers, number of CYP and breakdown of cost inclusive to all post 16 requiring standard tuition.

2.5. The table below shows the current providers, spend and number of the CYP cohort requiring tuition post 16

Provider for Post 16 Standard Tuition	Total Spend 2021-2022	Number of CYP per provider
Tuition Extra (current spend which will include CYP under new scope of SLA)	£1,056,030.00	86
Classroom Ltd	£16,200.00	1
Fair Ways Community Benefit Society	£17,760.00	1
Fresh Start in Education	£15,420.00	1
Independence Development Ltd	£21,342.00	1
KMS Kent Ltd	£72,426.45	8
Teaching Personnel	£305.18	1
Tuition – KCC re-charge	£15,152.50	5

Winchmore Tutors	£98,539.00	11
Grand Total	£1,313,175.13	115

2.6 For a variety of reasons some CYP will not be able to access mainstream education or be within the scope of the SLA within the Education Programme. Currently their needs are being met by individual bespoke packages delivered via the external market. For example, CYP undertaking GCSEs, riding therapy, vocational programmes and post 16 educational provision or EoTAS.

2.7 The table below shows the External Tuition Providers outside the scope of the SLA (The Education Programme), the spend the number of the CYP cohort with complex tuition needs

External Tuition Provider	Total Spend 2021-2022	Number of CYP per provider
Tuition Extra (>12hrs)	£388,166.50	14
Write-Trak Ltd	£504,322.00	49
Kings Reach	£171,410.00	6
National Teaching & Advisory Service	£82,550.00	5
Beeline Behaviour Change Ltd	£20,000.00	1
Pay parent	£13,192.00	1
Independence Development Ltd - Edwin Therapeutic Unit	£10,671.00	2
Nicola Lythgoe – Sunflowers	£10,500.00	1
Symbol	£5,837.00	1
Nisai Learning	£2,916.66	3
Cambridge Online Education Ltd	£4,000.00	1
Wiltshire Wildlife Trust	£2,600.00	1
Nelson Park Riding Centre	£1,666.68	1
The Reading Doctor (Herne Bay) Ltd	£1,520.00	1
A+bility	£840.00	1
Creepy Claws	£6,210.00	2
Grand Total	£1,226,401.84	90

2.8 The need of the cohorts shown at 2.5 and 2.7 above cannot currently be met by the Education Programme and therefore their needs must be met by the external market.

3. Legislative Context

3.1 Kent County Council has a statutory responsibility under The Education Act 1996 to provide education for all Children and Young People until the age of 19, or 25 for those with an EHCP. 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.

3.2 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 Written Statement of Action (WSOA) KCC implemented to address the concerns of the review. The commissioning of External Tuition 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

4. Options Appraisal

- 4.1 The Public Contracts Regulations (PCR) 2015 mean that spot purchasing arrangements above the specified financial threshold of £213,477 are not acceptable.
- 4.2 This paper sets out to introduce the available options with further details on the options listed after the table.

<u>Option 1</u>	Do nothing	The services would continue to be delivered via the current spot purchasing arrangements, with no clear pathway out of Tuition, no consistent contract terms or contract management tools, no clarity of costs and not compliant with PCR 2015.
Funding	Total spend would continue to increase.	
<u>Option 2</u>	Implement a Dynamic Purchasing System	The new contractual arrangements would commence on 1 January 2023 (TBC).
Funding	Current spend on External tuition is £3,054,000 per annum	
<u>Option 3</u>	Expand the current SLA for The Education Programme's capacity and amend to fully meet the service's tuition needs (increasing the offer per student)	The new contractual arrangements would commence on 1 January 2023 (TBC).
Funding	Until the SLA is live and operational it is not possible to fully cost this option.	
<u>Option 4</u>	Recommended Option – Purchase services through a 'Modified Dynamic Purchasing System'	The new contractual arrangements would commence on 1 January 2023 (TBC).
Funding	Current spend on External tuition is £3,054,000 per annum	

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 to CYP.
- 4.5 **This option is not recommended** as it 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 is available and the right service being delivered. KCC has limited influence over the outcomes of the service and limited contract management tools to improve supplier poor-performance and there is no clear pathway out of tuition for CYP.
- 4.6 **Option 2 – Implement a Dynamic Purchasing System (DPS)**
- 4.7 This option would tender and let a DPS to deliver Tuition services. The procurement would 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 service users.
- 4.8 Implementing a DPS would have limited disruption to the status quo and delivery of current services, though market engagement and support would be required for some providers as part of the procurement. The DPS would allow new entrants into the market to apply to join, with providers being required to pass a quality threshold to be awarded a place on the contract. The DPS can be split into lots to accommodate different specialisms or geographic locations to improve the delivery of services at a local level.
- 4.9 The tender documentation and evaluation methodology can be designed to ensure the procedure is clear and that the tendering process is not a barrier. Support and training will be made available in the use of an eTendering portal such as ProContract. Market engagement will be essential to ensure all suppliers continue to be involved in the tender process.
- 4.10 A formalised contract with a defined pathway out of tuition would enable improved control of costs for tuition services. Establishing a pathway out of tuition would reduce spend in this area.
- 4.11 **This option is not recommended** as the supply market is a mixture of smaller and more established providers; this could result in a variable appetite for a formal tender process. It is possible that smaller providers lack capacity to complete an 'Invitation To Tender' and therefore impact the continuity of supply.
- 4.12 **Option 3 – Expand the current SLA for The Education Programme's capacity and amend to fully meet the service's tuition needs (increasing the offer per student)**
- 4.13 This option would analyse and assess whether The Education Programme could be expanded to fully meet the SEND Service's need for Tuition services. Increasing the offer, using the new virtual learning platform, and considering other options (e.g., offering small groups at Adult Education Centres etc.) to offer a well-rounded service, as well as linking with Therapies/other areas to ensure the full provision set out in the EHCP is met. There would also be a well-defined pathway out of tuition where appropriate.

- 4.14 Internal provision would enable SEND to provide a holistic service supporting a CYP and delivering education, incorporating wider services as required, such as SEN Therapies. Referrals can be made more quickly through internal processes. Offer would be compliant with statutory guidance by providing full-time education, or as close as possible with needs considered. This approach would also be compliant with Spending the Council's Money and the PCR 2015.
- 4.15 **This option is not recommended**, further increasing the scope of The Education Programme would require additional resources and staffing to ensure the service is able to meet the needs of a wider group of CYP. Additionally, until the new SLA is fully mobilised it is difficult to analyse whether the service can support CYP with specific needs that are not covered at present. This includes alternative EoTAS learning, formal qualifications, and post 16.
- 4.16 If the Education Programme is unable to support these CYP then such services would need to be commissioned separately.
- 4.17 The SLA with The Education Programme has not yet been fully mobilised and will not be at full capacity until January 2023. Moreover, one model of tuition may not meet all the needs of CYP with an EHCP, and the SLA might not be capable of being expanded to meet the current capacity levels required, and variety of services needed.
- 4.18 **Option 4: Recommended Option – Purchase services through a 'Modified Dynamic Purchasing System'**
- 4.19 **This recommended option** would explore whether tuition could be purchased through a 'Modified Dynamic Purchasing System' (MDPS) created using the provisions of the 'light touch' regime in the PCR 2015. Providers would have to be registered with appropriate professional bodies to deliver their services. Provision suitable for the needs of each CYP could be selected primarily on quality, ensuring that the needs of the CYP is paramount. Price will be included in award decision ensuring transparency of costs is made available.
- 4.20 The same challenges with the market as outlined in option 2 need to be considered; market engagement would be required to ensure all providers are involved in the tender and able to submit bids. The tender process would also be less formal than for option 2 and can be adapted to better suit smaller providers.
- 4.21 This framework will establish standard terms and conditions for all providers and ensure clarity of costs. It would provide improved contract management tools, the remedies available to manage performance would be enhanced, and it would ensure a minimum standard of provider capability. It would also provide a defined pathway for each CYP to an onward destination.

- 4.22 Providers will be able to apply to join the MDPS by submitting a Selection Questionnaire (SQ), this will include evaluation against agreed quality criteria and provide an indicative pricing schedule. Support would be made available for providers in the use of ProContract to improve market engagement with the procurement. Providers will be required to confirm they possess appropriate professional qualifications, as described within the specification.
- 4.23 To be awarded a place on the MDPS, Providers will need to evidence that they have suitable professional expertise, suitable insurance cover, relevant Health and Safety policy and appropriate Safeguarding policy. SEND will advise on the requisite quality threshold and evaluation criteria to determine professional competence. Wider support will be sought from Legal, Finance and Health and Safety to ensure all aspects of the contract adhere to KCC policy.
- 4.24 Providers on the framework can join, leave, or resubmit pricing schedules at any time. Call-offs will be based on the most suitable provider to meet the specific educational need of the CYP identified in the EHCP. Selection will be based on a combination of professional expertise and price.
- 4.25 SEND do not currently have an established contract in place, tuition services are spot-purchased. There are no standard contract terms, or specification used to provide consistent outcomes for CYP. Additionally, there is also no due diligence of providers undertaken to ensure a sufficient Safeguarding Policy, Health and Safety Policy, adequate insurance cover and financial robustness.
- 4.26 Tendering and establishing a MDPS, will provide stability and sustainability to this market, begin developing capability with providers and provide a compliant contractual basis for working more closely with providers when planning future requirements. It will also ensure that the above risks are mitigated.
- 4.27 The SEND Service ambition is that fewer children are out of school for less time, therefore providers on the MDPS will be invited to engage in dialogue with KCC to enable shared learning and continuous improvement, driving improvement in the quality of provision. A formalised contractual relationship will enable SEND to identify suitable tuition support to meet the needs of CYP and ensure that capacity is available in the market when needed.
- 4.28 The MDPS will be designed to ensure that tuition for CYP can be purchased quickly using a combination of quality and price criteria, quality will be based on the most suitable provider to meet the needs of the CYP. This process can allow services to be procured quickly and easily. In addition, 'flexible block contracts' (also known as 'soft-block contracts') could be used to reduce costs where there are several CYP requiring tuition from the same provider.
- 4.29 A formalised contract with a defined pathway out of tuition would enable improved control of costs for tuition services. Establishing a pathway out of tuition would reduce spend in this area.

4.30 The table below outlines an indicative timetable for the key procurement activities:

Stage	Date
Prior Information Notice (PIN) issued	September 2022
Call for Competition and SQ issued to Tenderers	September 2022
Deadline for Tenderers questions	November 2022
The Authority's response to Tenderers questions	November 2022
SQ returned by Tenderers	December 2022
Evaluation and tender list approval	January 2023
Award	February 2023
Issue intent to award letters	February 2023
Standstill period complete	February 2023
Mobilisation Period	February 2023

5. Voice of the Child

- 5.1 To make sure that the voice of children and young people is embedded in this commissioning activity, Commissioners will contact the Participation Team to seek views from anyone that has or is receiving Tuition services. We would then talk to the CYP and for them to tell us what it is like to receive these services, what they do or do not like and how and where we can improve, in order that we can include their views in the development of the Service Specification. This will also identify which CYP want to be involved in the creation of the evaluation process, including developing a question from the perspective of CYP on what is important to them from a Tuition service. This will require Providers to bid using an evidence-based response which the CYP will evaluate and score. In addition to this evaluation process, providers will be required to demonstrate and be scored on how they are able to capture the voice of the child and young person themselves.
- 5.2 We will also liaise with SEN colleagues to contact those CYP in receipt of Tuition services and identify whether they would also like to contribute.
- 5.3 In order for the voices of CYP to be continually heard, it is proposed that the Educational Psychologist Team alongside Commissioners will design a draft survey to be shared with CYP to assess the appropriateness of language and content. This in turn will be incorporated into the survey which will be sent annually to all CYP who are in receipt of Tuition. Specific themes will be identified by the Educational Psychologists who will follow up through a process of qualitative interviews with CYP and feedback accordingly. This will ensure that Tuition Providers are delivering provision in a way that supports CYP in their development and re-engagement with Education.

6. Legal involvement

- 6.1 The Office of the General Council will be approached to provide legal support to draft the Modified Dynamic Purchasing System contract and advise/support the procurement using the light touch procurement process.

7. Equalities implications

7.1 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.

8. Other corporate considerations

8.1 Other parts of the Council access Tuition services from the private market. A scoping exercise will be undertaken to see whether this Framework can be adapted to include the requirements of the Virtual School Kent and Community Learning and Skills.

9. Governance

9.1 Overall budget responsibility sits within the Children and Young People and Education's Directorate, with service accountability in the Special Educational Needs and Disabled Children and Young People's Services Division.

10. Conclusions

10.1 There is an urgent need to establish a formalised contractual arrangement with suppliers of External Tuition services. This will establish a pathway out of Tuition and ensure consistent outcomes for CYP. It will also provide enhanced contract monitoring tools and control of costs. Considering the supply market involved, a Modified Dynamic Purchasing System is the most appropriate contracting model

10.2 Commissioning have worked with SEND to identify methods to improve the use of Tuition to ensure that there is an agreed onward destination for CYP receiving the service. At present the new SLA with the Education Programme is still being mobilised, it is not therefore appropriate to consider further expansion of this service until the SLA is live.

11. Recommendation(s)

11.1 The Children, Young People and Education Cabinet Committee is asked to CONSIDER and ENDORSE, or MAKE RECOMMENDATIONS to the Cabinet Member for Integrated Children's Services on the proposed decision to:

A) Implement a 'Modified Dynamic Purchasing System' for Special Educational Needs External Tuition provision to fulfil the Council's responsibilities in meeting the needs identified in a child's Education, Health and Care Plan.

B) Delegate decisions on 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, in consultation with the Cabinet Member, to implement the Decision.

12. Background Documents

[Internal Tuition SLA Key Decision](#)

13. Contact details:

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