

KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

DECISION TO BE TAKEN BY:

Cabinet Member for Education and Skills

DECISION NUMBER:

25/00020

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: Community Learning and Skills (CLS) - Sub-contracting Education and Skills Funding Agency provision for 16 to 19 years olds

Decision:

As Cabinet Member for Education and Skills, I agree to:

- A) APPROVE the sub-contracting of provision for the delivery of the 16 to 19 year olds Study Programme for Community Learning and Skills, and Post 16 provision for those aged 19 to 24 with an Education, Health and Care Plan through an evidence based commissioning programme to align with the Decision [24/00085 and associated updated key decision](#)
- B) APPROVE the commissioning approach to procure a two year contract with an option to extend for 12 months.
- C) To DELEGATE authority to the Corporate Director of Director of Children, Young People and Education, in consultation with the Cabinet Member for Education and Skills, to exercise relevant contract extensions and enter into relevant contracts or legal agreements; and
- D) DELEGATE authority to the Corporate Director of Children, Young People and Education, to take other relevant actions, including but not limited to, finalising the terms of, and entering into required contracts or other legal agreements, as required to implement the decision

Reason(s) for decision:

Decision required because total value of contract(s) will exceed the threshold for a Key Decision and impact across multiple districts of the Local Authority.

Background

Since September 2018, The Education People (TEP) have worked alongside Community Learning and Skills (CLS) to understand the picture of provision for 16 to 19 year olds who are NEET. An annual gap analysis is undertaken by TEP and has demonstrated a lack of provision across most districts

Available provision for NEET young people has been held in a deficit position for several years, and recent changes have further impacted this deficit. At any one time, between three and five of the 12 districts have no suitable provision available to the NEET population of Kent.

Without entering into commissioning arrangements, Kent is likely to see a continued reduction in the provision available.

What is being proposed?

Kent County Council has a statutory duty to secure enough suitable education and training provision to meet the reasonable needs of all young people in their area who are over compulsory school age and under 19, or aged 19 or over and for whom an EHCP is maintained. To meet this statutory obligation four options were explored with a focus on maximising delivery to meet the need of NEET young people in Kent.

1. Do Nothing
2. KCC deliver all provision for NEET
3. Subcontract all provision
4. Deliver a mix of direct provision via CLS and commissioned provision

The proposed decision is **Option 4** - to deliver a mix of direct provision via CLS and commissioned provision. Procurement will be aligned with decision 24/00085

The Key Decision (24/00085) taken on 9 October 2024 was to enable sub-contracting of provision for vocational and specialist provision for Adults. However, to ensure clarity in the policy choice being taken by the Cabinet Member, it was necessary to take a subsequent key decision to integrate an update to the earlier decision. The details of the decision can be found here (insert link once fed has been published). .

Through implementing this Key Decision, the Commercial and Procurement Division identified a contractual framework approach under the 'Light Touch' regime of the Public Contract Regulations (2015). This was to have a competitive procedure with negotiation and establish a multi-supplier framework.

The legal advice received by the Commercial and Procurement Division suggested adding a second "Lot" to the Adults Learning contract to accommodate the 16 to 19 provision, which can be enabled at a point that funding and governance is in place.

Whilst funding arrangements are yet to be finalised, by procuring a multi supplier framework, and utilising a 'Lotting' approach with no guarantee of any spend or volume of spend for the Adults Learning Provision, the Local Authority can initiate procurement without incurring any risk should the funding not be forthcoming as there will be no guarantee of call off from the contract.

Financial Implications

CLS funding is received from the DfE. The funding amount for 2025/2026 totals £9,729,000, with funding allocation £729,444 allocated for 16 to 19 year olds and £8,500,000 for vocational and specialist provision for Adults.

There is a potential for an additional £301,452 per annum in the 16 to 19 provision, which could fund an additional 91 places. This funding is yet to be confirmed.

Under current guidelines, the ESFA allows the Local Authority to retain up to a maximum of 20% for management and oversight costs. However best practice indicates a target ceiling of 15% of the sub-contracted delivery amount to support the commissioning, operational management, procurement, selection, audit, and subsequent contract management.

The wider planned restructure of CLS delivery will ensure CLS is fully funded from both grants and fee income when completed (including any sub-contracted element) and there will be no expectation of contribution from the general fund.

This proposal complies with Spending the Council's Money requirements.

In accordance with the Cabinet decision to support the recommendations in the paper Securing Kent's Future on 5 October 2023, the approach set out makes sure that, in line with Objective 2 (Delivering savings from identified opportunity areas to set a sustainable 2024/2025 budget and MTFP) any future procurement does not over specify need, ensuring best value for the Local Authority. Spend will be limited to the total value of the grant funding received, , whilst also 'working to achieve the delivery of value for money, whilst considering how to maximise wider public benefit' through the reduction of those young people who are NEET.

Legal implications

Local Authorities have duties relating to participation, which include broad duties to encourage, enable and assist Young People to participate in education or training. Specifically:

- The Education Act 1996 - To secure enough suitable education and training provision to meet the reasonable needs of all young people in their area who are over compulsory school age but under 19 or aged 19 or over and for whom an Education, Health and Care (EHC) Plan is maintained.
- Section 68 Education and Skills Act 2008 - To make available to all young people aged 13 to 19, and to those between 20 and 25 with Special Education Needs (SEN), support it considers appropriate to encourage, enable and assist them to effectively participate in education or training.

The procurement activity for this 'Lot' would be amending a procurement tendered and procured under the Public Contracts regulations 2015. The New procurement act 2025 does not go live until 24 February 2025 and we are permitted to procure this under the existing PCR 2015 regime.

Equalities implications

An EqIA has been undertaken and is currently under review. The EqIA has not identified any negative impacts, as the proposal would offer new opportunities to protected groups.

Cabinet Committee recommendations and other consultation:

Children, Young People and Education Cabinet Committee will consider this decision at its meeting on 27 February 2025. This Decision is for the Cabinet member for Education and Skills.

Any alternatives considered and rejected:

1. Do Nothing - Maintain the status quo with current provision levels delivered by the market and CLS. The LA has the statutory responsibility to secure enough suitable education and training provision. There is currently not enough provision to meet need. The LA would not meet statutory obligations

2. KCC deliver all provision for NEET- Build an internal provision that meets need. There is currently no additional budget available to grow CLS provision, a lack of suitable building stock to house provision. Challenges in the provision of niche/specialist courses and tutor recruitment and retention very hard to manage at a whole county level.

3. Sub contract all provision - Commission all provision through a framework. This option would Remove oversight of a statutory obligation giving a loss of control and oversight of statutory requirements

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

signed

date