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**From:** Sarah Hammond, Corporate Director - Children, Young People and Education

**To:** Rory Love, Cabinet Member for Education and Skills

**Subject:** Community Learning and Skills (CLS) – Sub-contracting and Skills Funding Agency provision for 16-19 year olds

**Decision no:** 25/00021

**Key Decision :**

- *Savings or expenditure of more than £1m*
- *Affects two or more Electoral Divisions*

**Classification:** *Unrestricted*

**Past Pathway of report:** Children's, Young People and Education Cabinet Committee  
27 February 2025

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

**Electoral Division:** All divisions and Members

<https://democracy.kent.gov.uk/mgMemberIndex.aspx?bcr=1> )

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**Is the decision eligible for call-in?** Yes

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**Summary:** This report provides the background and proposal for commissioning educational provision for young people in Kent who are over compulsory school age and under 19, or aged 19 or over and for whom an Education, Health and Care Plan (EHCP) is maintained.

**Recommendation(s):** 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](#)
  - B) APPROVE the commissioning approach to procure a two year contract with an option to extend for 12 months.
  - C) 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
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## **1. Introduction**

- 1.1 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. Additionally, Local Authorities are required to make available to all young people aged 13 to 19, and those between 20 and 24 with an EHCP, support it considers appropriate to encourage, enable or assist them to effectively participate in education or training.
- 1.2 Community Learning and Skills (CLS) is a Division within the Children, Young People and Education Directorate that provides learning opportunities for Adults and Young People. Core to this work is the opportunity for individuals to improve core skills such as English and Maths. There is a statutory responsibility for delivering education to young people over the age of 16 who are Not in Education, Employment or Training (NEET).
- 1.3 Funding for CLS and associated education and training courses comes from the Education and Skills Funding Agency (ESFA), the Adults Skills Fund (ASF) Greater London Authority (GLA) budget.
- 1.4 KCC strives to reduce the number of Young People who are NEET . Part of this ambition is delivered as part of the wider offer that includes working with the Skills and Employability Team within The Education People (TEP) who work with education providers to prepare students for the world of employment.
- 1.5 KCC has historically funded an element of provision for those NEET aged 16 to 19 years old from the European Social Fund (ESF) via subcontracting arrangements between The Education People and colleges and/or other providers. Due to the removal of this funding following Brexit, 2019/2020 saw a near collapse of provision that is still yet to fully recover, leaving many young people without access to suitable education options. Details with gaps in provision can be found in Appendix A - Kent 16 to 19 Provision Gap Analysis 2023.
- 1.6 Funding for this workstream, in part, comes through the ESFA grant from the Department for Education (DfE).
- 1.7 ESFA funding rules have changed and have redefined 'partners' as sub-contractors. This alteration requires KCC to enter into contracting arrangements with providers to realise growth opportunities for the delivery of 16 to 19 year olds provision. The DfE have recommended that KCC directly commissions some provision for Young People aged 16 to 19 (up to 25 with an EHCP) rather than use commissioning arrangements through a third party such as a Local Authority Trading Company (e.g. TEP)
- 1.8 Current funding arrangements with the DfE are 'lagged' by two years (i.e. not paid until two years after delivery) which has removed the capacity of the market to keep up with increasing demand. This 'lagged' funding approach sets in place current budgets based on data returns made by CLS from two years behind, as is usual for this sector. In exceptional circumstances additional funding can be awarded, however this requires demonstratable in-year growth of provision. It is this additional

funding that will be used to finance provision in a sub-contracting arrangement through commissioning.

- 1.9 CLS are working with the DfE to address the financial lag, however this is unlikely to be in place in time to meet current need.
- 1.10 It is estimated that in 2024/2025 there will be a requirement for an additional 725 places than are currently available for 16 to 19 year olds. In order to mitigate for Gaps in provision for NEET Young People (as set out in Appendix A) new provision needs to be developed both internally within CLS and via an externally commissioned arrangement with providers.
- 1.11 On 9 October 2024, the Cabinet Member for Education and Skills took the Key Decision - [24/00085](#)- KCC CLS Sub-contracting Education and Skills Funding Agency provision to enable sub-contracting of provision for vocational and specialist provision for Adults aged over 19. The Young People's element, for persons aged 16 to 19, was not able to progress as part of that original decision due to a late change of funding guidelines which necessitated a further review.

## **2. Key Considerations**

- 2.1 There are multiple teams and areas of work across KCC that have a responsibility to reduce the number of NEET Young People in Kent, this includes both CLS and TEPs Skills and Employability Team.
- 2.2 Funding received from the ESFA is in place to support the provision for those 16 to 19 year olds (19 to 25 years old for those with an EHCP). The current grant funds the Community Learning Service provision. There is currently not any surplus funding to grow provision through a commissioned service.
- 2.3 Should additional funding be received, CLS would need to enter into commissioning arrangements to meet need across the county for 16 to 19 year olds. This provision needs to focus on filling the gaps of current provision, for example, level one provision, rolling/multiple in year entry points, specialist/niche courses
- 2.4 The Key Decision taken on 9 October 2024 was to enable sub-contracting of provision for vocational and specialist provision for Adults. The Young People's element, for persons aged 16 to 19, was not able to progress as part of that original decision due to the late change of funding guidelines which required further consideration
- 2.5 Through implementing this Key Decision, the Commercial and Procurement Division identified a contractual framework approach under the 'Light Touch' regime of the Public Contracts Regulations (2015). This was to have a competitive procedure with negotiation and establish a multi-supplier framework.
- 2.6 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. The procurement process has an expected commencement date of 10 February

2025. The contract will run for an initial term of two years with an option to extend for 12 months.

- 2.7 Additional contracts or alternative frameworks may need to be procured, pending full exploration of options, in liaison with colleagues in the Commercial and Procurement Division, for the 16 to 19 year olds (up to 25 years old with an EHCP) cohort to support the delivery of provision.
- 2.8 In order to meet need, whilst minimising financial risk to the Local Authority, the proposal is to continue with the procurement of the provision for vocational and specialist provision for adults and include an additional 'Lot' specifically for Young People aged 16 to 19 year olds (up to 25 year olds for those with an EHCP).
- 2.9 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. Therefore, a Key Decision is now required to progress the provision of both the 16 to 19 year old Study Programme and a provision for those aged up to 25 with an EHCP.

### **3. Background**

- 3.1 Since September 2018, The Education People (TEP) have worked alongside CLS to understand the picture of provision for 16 to 19 year olds who are NEET. An annual gap analysis is undertaken by TEP (see Appendix A) and has demonstrated a lack of provision across most districts.
- 3.2 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.
- 3.3 Whilst exacerbated by COVID, the reduction in provision has been largely due to the removal of funding options, in particular the European Social Fund (ESF) and Reconnect funding, both of which supported alternative delivery to meet the needs of those young people for whom School or College is not a suitable provision.
- 3.4 Some of the provision which has lost ESF funding specialised in encouraging take up and delivering courses that NEET young people want to attend. In addition to this reduction there is little existing rolling provision, that is provision which has various starts across the academic year, enabling learners to move from one unsuitable course onto one that meets their needs. This hinders learners particularly from February onwards, often requiring the individual to wait until the following September to access education again.
- 3.5 Other impacts on provision for 16 to 19 year olds include;
  - **Changes in funding** - Provision in the county was heavily reliant on European Social fund and subcontracting. European funding ceased in academic year 2023/2024 and subcontracting has become rare due to changes in government policy. There was some short term funding for NEET provision associated with COVID recovery but this too has ceased. The government established the Shared

Prosperity Fund as a replacement for European funding, but this was devolved to the districts, who have largely prioritised other needs.

- **Failure by the DfE to meet need** - Local Authorities have the responsibility to ensure sufficiency by identifying gaps in provision and then reporting them to the DfE. Gaps should then be filled by the DfE. KCC have reported a shortfall, and due to funding constraints the DfE has been unable to fill the gaps. To mitigate for this, the DfE had previously agreed an additional 450 places for the county, however, they withdrew their offer days before the beginning of the academic year.
- **Regulatory Issues** - Ofsted requires training providers to ensure the same levels of attainment and attendance as mainstream providers. Due to the nature of the NEET cohort, many providers have been unable to do so. Several providers have received low Ofsted ratings as a result of this, making it hard for them to operate.
- **Tutor recruitment and retainment** -. There are examples of provision across the county (e.g. Catch 22 – Deal) closing due to an inability to recruit sufficient tutors. This is also evident in CLS provision which has not been able to grow provision specifically due to difficulties in recruiting and retaining tutors.
- **Unsecure funding** – Reduced and removed budgets has led to training providers either leaving the market or diversifying their offer to meet the needs of cohorts where funding is more secure.
- **Increasing cohort size** – With lower attainment in GCSE results in 2024 and an increasing number of NEETS, almost all provision for low attaining learners were filled early in the academic year, leading to rising NEET numbers.

3.6 Without entering into commissioning arrangements, Kent is likely to see a continued contraction in the provision available. The number of places available over the last few years as set out in Figure 1. Demonstrates a precipitous decline in 2023/2024 that without action will continue into 2025/2026.

Figure 1. Available Education places for 16 to 19 year olds in Kent

16 to 19 places	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024
Kent	1451	755	799	1101	1106	733

Figure 2. Summary of provision deficit and priority level

District	Numbers needed 2024/2025	Priority for Action	Providers operating
Countywide online Maths and English	250	High	4
Canterbury	60	High	2
Swale	50	High	4
Thanet	75	High	2
Ashford	35	Medium	1
Dover	60	High	2
Folkestone and Hythe	25	Med/Low	3
Maidstone	50	High/medium	3
Tonbridge and Malling	30	High/medium	1
Tunbridge Wells	10	Med/Low	0
Dartford	25	Medium	2
Gravesham	25	High/medium	5
Sevenoaks	30	High	0
<b>Total</b>	<b>725</b>		

3.7 Figure 2 sets out the levels of need in each of the districts demonstrating how many additional places are required in each district to meet need for 2024/2025 As part of the evaluation process for prospective providers, social value will be explored and providers will be asked to demonstrate how they meet KCCs social Value priorities. This can include, but not be limited to how provision is working towards Net Zero, how apprentices are employed as part of business delivery or how any 'profit' is re-invested back into the business to enhance the offer and the local community.

3.8 Framing Kent's Future - Our Council Strategy 2022-2026 and Securing Kent's Future - Implementing the subcontracting proposals for specialist provision for young people, in the two cohorts identified, will contribute towards delivering on the following priorities:

- To support the Kent economy to be resilient and successfully adapt to the challenges and opportunities it faces over the coming years.
- To work with partners to develop a skills system for Kent that delivers skills that are resilient to changing workforce needs and opportunities and supports people to achieve higher level skills.

#### 4. Options considered and dismissed, and associated risk

4.1 The table below summarises the options considered, the challenges and strengths and recommendations.

Option	Description	Challenges	Strengths	Reason for not taking forward
1. Do Nothing	Maintain the status quo with current provision levels delivered by the market and CLS	The Local Authority(LA) has the statutory responsibility to secure enough suitable education and training provision. There is currently not enough provision to meet need	Limiting risks to budgets that are currently paid two years in arrears	LA would not meet statutory obligations
2. KCC deliver all provision for NEET	Build an internal provision that meets need	No additional budget available to grow CLS provision. A lack of suitable building stock to house provision. Niche delivery for vocational skills that are currently not delivered by CLS . Market would be unhappy with all funding being subsumed by the LA. Possible impact on Ofsted rating for provision Tutor recruitment and retention very hard to manage at a whole county level	Oversight of provision	No capacity to deliver totality of provision
3. Sub contract all provision	Commission all provision through a framework	TUPE considerations to disband CLS Removes oversight of statutory obligation	Would enable a flexible local offer	Loss of control and oversight of statutory requirements
4. Deliver a mix of direct provision via CLS and commissioned provision	Utilise existing service provision delivered by CLS and use any additional growth funding to commission additional provision through a framework	Awaiting clarification from the DfE as to levels of growth funding	Framework can be procured with no guarantee of volume or spend, minimising financial risk whilst also preparing for potential funding	N/A

- 4.2 The recommended option is Option 4 - Deliver a mix of direct provision via CLS and commissioned provision.

## **5. Financial Implications**

- 5.1 CLS funding is received from the DfE. The funding amount for 2025/2026 totals £9,729,000, with the DfE allocating £729,444 to 16 to 19 year olds and £8,500,000 for vocational and specialist provision for Adults.
- 5.2 There is a potential for an additional £301,452 per annum in the 16 to 19 year olds provision, which could fund an additional 91 places.. It is this money that will be made available for a procurement process, once it is confirmed
- 5.3 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.
- 5.4 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.
- 5.5 This proposal complies with Spending the Council's Money requirements.
- 5.6 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.

## **6. Legal implications**

- 6.1 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.

## **7. Equalities implications**

- 7.1 An Equality Impact Assessment (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.

## **8. Data Protection Implications**

- 8.1 All subcontractors (providers) will be expected to sign up to the Kent and Medway Information Sharing Agreement as part of the contract. Secure methods of returning learner data will be agreed. A DPIA screening will be undertaken and the full DPIA will be completed once the providers are identified

## **9. Other corporate implications**

- 9.1 There are multiple teams and areas of work across KCC that have a responsibility to reduce the NEET numbers in Kent, this includes both CLS and TEPs Skills and Employability Team. There is a need to bring all the NEET strands together to ensure that there is one strategic approach. This overview will work to ensure that both need and statutory duty is being met whilst maximising efficiencies and budget lines.

## **10. Governance**

- 10.1 Through the Officer Scheme of Delegation, the Corporate Director of Children, Young People and Education, in consultation with the Cabinet Member for Education and Skills, will implement the decision as detailed in the Recommendation.

## **11. Conclusions**

- 11.1 KCC has a statutory duty to secure enough suitable education and training provision to meet the reasonable needs of all young people. Without entering into commissioning arrangements, KCC will not be able to meet current and future projected need.
- 11.2 To minimise financial risk to the Local Authority, the proposal is to add an additional 'Lot' to the Adult Learning Provision specifically for 16 to 19 year olds (up to 25 for those with an EHCP). This does not guarantee any volume to providers and, should the funding not be forthcoming, the Local Authority will not be committed to any spend as a result of this contract
- 11.3 Additional contracts or alternative frameworks may need to be procured, pending full exploration of options, in liaison with colleagues in the Commercial and Procurement Division, for the 16 to 19 year old cohort to support the delivery of provision.



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**Recommendation(s):** As Cabinet Member for Education and Skills I agree to:

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- B) APPROVE the commissioning approach to procure a two year contract with an option to extend for 12 months.
- C) 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

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## 12. Appendices

- [Subcontracting funding rules for post-16 education and training \(excluding apprenticeships\) \(publishing.service.gov.uk\)](#)
  - [<https://www.gov.uk/government/publications/adult-skills-fund-funding-rules-for-2024-to-2025>](#)
  - [Education Act, 1996](#)
  - [Participation of Young People in education, employment or training, Statutory Guidance](#)
  - [Kent 16-19 Review - Pathways for All](#)
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- Appendix 1 - Kent 16-19 provision Gap Analysis 2023 for students not on mainstream courses

## 13. Contact details

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