

KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

DECISION TO BE TAKEN BY:

Beverley Fordham, Cabinet Member for Education and Skills

DECISION NUMBER:

25/00097

For publication

Key decision: YES

Subject Matter / Title of Decision External Tuition (Special Educational Needs and Disability) – additional funding to enable the allowable extension

Decision:

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

- a) Approve an additional £16 million funding allocation, increasing the total contract value to £31 million, to enable the extension of the SEND External Tuition Modified Dynamic Purchasing System (MDPS) contract to 31 August 2028
- b) DELEGATE authority to the Corporate Director for 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 necessary to implement the decision to extend.

Reason(s) for decision:

External Tuition plays a vital role in ensuring that Kent County Council meets its statutory duty under Section 19 of the Education Act 1996¹ to provide suitable education to children and young people who, by reason of illness, exclusion or otherwise, are unable to attend school. For many children with SEND, Tuition provides either a temporary intervention to bridge a gap in school attendance, or a longer-term package of provision agreed under an Education, Health and Care Plan (EHCP) where mainstream or specialist placements are not suitable.

The Modified Dynamic Purchasing System (MDPS) was commissioned for an initial three-year period to August 2026 [Key Decision - 22/00078](#), with the option of two further one-year extensions. It was initially estimated that the total contract value over five years would be £15m, with £9m allocated for the initial term (£3m per annum). Due to many factors, spend on Tuition has increased significantly, which has been seen nationally, not just in Kent.

Commissioning practice reviews contracts annually. The Tuition MDPS is due to end within the next 12 months and therefore consideration has been given as to whether to re-procure the contract now, or enact any allowable extensions, subject to contract performance. The Children, Young People and Education Directorate Management Team agreed that the extensions should be enacted to allow stability to the Tuition service and complete operational improvements in purchasing and align

¹ [Education Act 1996](#)

to the wider Transformation programme of the SEND service. However, further authorisation is required as the estimated total contract value is likely to be exceeded.

Financial Implications

External Tuition is funded from the High Needs Block of the Dedicated Schools Grant (DSG). KCC is currently overspending on its High Needs Block and is part of the Safety Valve Programme. The Department for Education funding is contingent on the development of a plan to achieve value for money with the existing SEN regulatory framework and to aim to reach an in-year breakeven position. Where the continued use of external Tuition is required, it is imperative this is commissioned on a cost-effective basis. The use of the MDPS is expected to support this aim.

The scale of demand has significantly exceeded projections, with forecast spend of £15m by the end of the initial three-year term, the level originally intended to cover a five-year period. Therefore, this proposal is to increase the contract value by a further £16m for the full extension period, September 2026 to August 2028, based on current spend assuming no mitigating action or further rises in demand.

The table below shows the current spend profile. The current estimate for 2025–2026 is £8m. Spend through the contract increased by 117.5% between 2023-2024 (full year) and 2024-2025. This is coupled with demand increasing by 95% (315 to 614 arrangements) between 2023-2024 and 2024-2025

| SEND Spend | *2023-2024 | Percentage | 2024-2025 | Percentage |
|---|------------|------------|------------|------------|
| MDPS | £1,692,568 | 90.20% | £6,311,332 | 92.50% |
| Non –MDPS | £129,918 | 6.90% | £339,418 | 5% |
| Other (refers to direct payments to maintained schools, other LA's and parents. | £54,351 | 2.90% | £175,321 | 2.50% |
| Total | £1,876,837 | | £6,826,072 | |

*The Contract started on 1 September 2023. The data shown is 7/12 of the annual spend for contracted providers

Significant activity is required to address the costs and purchasing practice and to understand the overall impact of the significantly increased demand, alongside all other activity in the SEND Transformation programme. This includes:

- Moving the oversight of Alternative Provision to the Quality Assurance Team to improve management and development of appropriate processes and protocols. Develop staff expertise and consistency in decision making (i.e. when Tuition is appropriate).
- Introduce measures to improve data recording and management
- Continue to raise awareness of MDPS processes, managing officers who do not follow them.
- Continue to apply robust measures to financial controls and price increase requests.
- Regularly review existing packages of support to determine if packages can be reduced or ended.

Furthermore, there needs to be greater understanding of the impact of increased use of Section 19 provision requests where Local Authorities are required to arrange suitable alternative education for children of compulsory school age who cannot attend school, along with the rise of Emotional School Based Avoidance and increased requests from parents for EOTAS packages of support, and

tribunals agreeing these when previously they may not have.

Extending the total contract value for the remaining term of the extended contract reflects a more realistic estimate whilst further operational improvements are embedded. For example, it enables the SEND Service to embed Tuition purchasing processes fully within the Quality Assurance Team. In parallel, the thematic review of children and young people not in school will inform pathways for reintegration into education and preparation for adulthood.

Legal implications

Under Section 61 of the Children and Families Act 2014², a local authority may arrange special educational provision outside of a school setting, but only where it determines that attendance at school would be inappropriate for the child or young person. The local authority retains responsibility for both securing and funding this provision. Misapplication arises when EOTAS is used solely due to lack of available placements, which does not meet the legal threshold under Section 61(2).

The duty under Section 19 of the Education Act 1996 requires every local authority to make arrangements for the provision of suitable education at school or elsewhere for children who, by reason of illness, exclusion or otherwise, cannot attend school. This duty applies to pupils of compulsory school age, and the provision must be:

- Full-time or as close as possible to full-time, unless medically unfit.
- Suitable to the pupil's age, aptitude, ability, and any SEND.

This duty is further reinforced by a suite of complementary legislation:

- SEND Code of Practice (2015)³ – statutory guidance under Section 77
- SEND Regulations 2014⁴ – specifically The Special Educational Needs and Disability Regulations 2014 (Regulation 51).
- Equality Act 2010 – section 20⁵ requires reasonable adjustments to avoid discrimination against disabled pupils.

These laws require that all children and young people receive an education that is appropriate to their age, ability, aptitude, and any SEND. In addition, there is a specific legal requirement under Section 39 of the Children and Families Act 2014 for local authorities to secure the nearest appropriate school placement capable of meeting the child's needs, unless parents elect otherwise.

In 2025, the Department for Education issued updated guidance on Alternative Provision (AP)⁶. While Tuition is not explicitly defined within this guidance, local authorities interpret it as falling within the broader Alternative Provision framework, especially where it functions as a substitute or interim arrangement for pupils not in school.

The MDPS was let under the Public Contract Regulations (2015)⁷ and the extension action complies with the legislation. Under the Procurement Act 2023⁸, all Dynamic Purchasing Systems have to end by 27 October 2028. It is expected that the recommissioning of a new contract will commence in late 2026, by which time the new landscape for Local Government will be understood. Notwithstanding this, the extension past the 1 April 2028 can be disaggregated to the new landscape, should that be required. If not, notice can be given prior to the end of the extended contract.

²[Children and Families Act 2014](#)

³[SEND code of practice: 0 to 25 years - GOV.UK](#)

⁴[The Special Educational Needs and Disability Regulations 2014](#)

⁵[Equality Act 2010](#)

⁶[Alternative provision - GOV.UK](#)

⁷[The Public Contracts Regulations 2015](#)

⁸[Procurement Act 2023](#)

Section 149 of the Equality Act 2010 establishes the ‘public sector equality duty’ which is an “have regard to” duty, requiring public bodies to consider equality in their decisions.

Equalities implications

An Equality Impact Assessment has been completed, and no high negative impacts have been identified. The MDPS supports children who are disproportionately affected by barriers to education, including those with disabilities, long-term illness, or exclusion.

Data Protection Implications

A Data Protection Impact Assessment is in place. Risks include variable data quality, inconsistent use of Synergy codes, and lack of integrated systems across SEND services. Mitigations include data cleansing, improved definitions, centralised recording, and closer oversight by the Quality Assurance Team.

Cabinet Committee recommendations and other consultation:

Any alternatives considered and rejected:

Option 1: Re-procure for a new contract to start September 2026. This option would involve commencing a new procurement in 2025.

Benefits would include updated market testing and the opportunity to reset the contract scope and KPIs. However, drawbacks significantly outweigh benefits. The provider market has not changed substantially since 2023, meaning the same providers are likely to re-tender. This option would bring high procurement and transition costs for limited benefit.

Option 2: Do not extend or re-procure, reverting to spot-purchasing

This would mean allowing the MDPS to end in 2026. This option carries high risks with the loss of contractual oversight, safeguarding checks, and quality assurance. Increased cost through uncontrolled pricing and the risk of failing statutory compliance. It is also likely to create a negative impact for some children and families reliant on continuity of provision.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

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signed

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date