

From: **Patrick Leeson, Corporate Director for Education and Young People's Services**

To: **Education and Young Person's Cabinet Committee**

Subject: **Decision No:14/00153 - SEND Mediation and Disagreement Resolution Services**

Non-Key

Classification: **Unrestricted**

Future Pathway of Paper: Cabinet Member Decision

Electoral Division: All

Summary: This report describes how the Council will meet its duties in relation to the provision of the SEND Mediation and Disagreement Resolution Service which is a statutory requirement of the Children and Families Act 2014 (specifically Part three, sections 51-57 and 60) for Council's and seeks endorsement of the proposed decision as set out.

Recommendation:

The Education and Young People's Services Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member for Education and Health Reform on the proposed decision to enter into joint commissioning arrangements and award a contract to the preferred bidder for delivery of Mediation and Disagreement Resolution Services as identified by the tendering process currently underway.

1. Introduction

Background

Prior to the implementation of the Children and Families Act 2014 every Local Authority in England had a statutory duty to make arrangements for parents of children with special education needs and disabilities to access independent mediation services where there was disagreement about the provision outlined in a child's Statement of Special Education Need (SSEN) or where a parent disagreed about a decision the Local Authority had made in relation to the statutory assessment process.

Only parents had the right to access mediation and only in cases where this related to a Local Authority decision or the content of a child's Special Educational Needs Statement (SSEN) which could be appealed through a Special Educational Needs Tribunal.

Kent County Council complied with these duties through a collaborative contract in partnership with other local authorities in the South East Region.

Changes to Local Authority Legislative Duties

Part three of The Children and Families Act 2014 implemented on 1 September 2014 outlined new statutory duties for each Local Authority (LA) in England, which includes a duty on Local Authorities to provide Independent Mediation, Mediation Advice and Disagreement Resolution Services

The group of people who can now access this service has been extended to include young people with special education needs and disabilities as well as parent(s)/carer(s) of children with special education needs and disabilities (SEND).

Disagreement resolution services are available:

- Between parent(s)/carer(s) of children with SEND or young people with SEND and Clinical Commissioning Groups (CCGs) or Local Authorities about health or social care provision during Education, Health and Care needs assessments, while Education, Health and Care (EHC) plans are being drawn up, reviewed or when children or young people are being reassessed
- To all young people with SEND or the parent(s)/carer(s) of children with SEND that have a disagreement with the School, early years provider or college about the special educational provision made for a child or young person, whether they have Education Health Plans or not
- Between parents or young people and local authorities, the governing bodies of maintained schools and maintained nursery schools, early years providers, further education institutions or the proprietors of academies (including free schools), about how these authorities, bodies or proprietors are carrying out their education, health and care duties for children and young people with SEN, whether they have EHC plans or not.
- To support Local Authorities and Health commissioning bodies to resolve disagreements in relation to the drawing up of Education Health and Care plans.

Chapter 11 of the SEN Code of Practice: 0-25 years explains the requirements in full. The most recent version currently out for consultation can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365616/Draft_Updated_Special_Educational_Needs_and_Disability_Code_of_Practice_for_consultation.pdf

- 1.1 Although the current contractual arrangements are compliant with the new regulations following negotiations between the chair of the group (KCC) and the provider to achieve a temporary solution they are considered to pose an unacceptable risk of challenge due to material variances that will occur, in costs, provision levels and as a result of the number of times the current contract has been extended.
- 1.2 The current contract will expire on March 31st 2015 and Kent County Council has identified, and negotiated 'in principle' agreement from other parties, the proposed arrangements to discharge its statutory duties from April 1st 2015.

2. Current position and next steps

2.1 Proposed arrangements for service delivery after the expiration of the current contract would establish a collaborative and multi local authority partnership with 14 other South East local authorities Region who are known as the South East Group (SEG)

2.2 The membership of the SEG is as set out below:

1. Bracknell Forest	2. Buckinghamshire
3. East Sussex	4. Essex
5. Kent	6. Medway
7. Milton Keynes	8. Oxfordshire
9. Portsmouth	10. Reading
11. Southampton	12. Surrey
13. West Berkshire	14. West Sussex
15. RB Windsor and Maidenhead	16. Wokingham

2.3 The central procurement team has supported the process to date and has offered invaluable advice and support, it is envisaged they will continue to support the process following the Cabinet Member decision in order to maintain the current best practice approach and to ensure compliance to all legislative and KCC requirements. The SEG have collectively paid for this support.

2.4 The proposed collaborative arrangements will include:

- internal collaboration within the Council between education (SEN) and Social Care (adult and children's services) and the 7 Clinical Commissioning Groups (CCG's) who are all subject to these new duties.
- external partnership working with 15 other LAs in the South East Group.
 - CScomplaints who will manage the process on behalf of adults and children's social services have formally agreed
 - The 15 other participating LAs have agreed and already submitted a signed collaborative agreement (exemplar attached)
 - The agreement of the CCG's is currently an 'in principle' agreement given by Martin Cunningham (Senior Associate for Disabled Children, South East CSU acting on behalf of the 7). This will be finalised when it has gone through their governance processes

2.5 The original contract was based on provision of unlimited mediations for each member local authority, it is proposed that the new contractual arrangements are modified to reflect the new responsibilities in the following ways:

- A core subscription service to provide the telephone information line, issue of certificates, operational infrastructure, information materials and 5 mediation or disagreement resolution meetings for use over the contracts lifetime.
- A 'Pay As You Go' (PAYG) service for the provision of mediation and disagreement resolution meetings, including all tasks such as making the arrangements within statutory timescales, production of pre and post mediation documentation and venue costs

- An option to extend once for a period of 2 years – the proposed decision delegates to officers in consultation with the Cabinet Member to decision to extend the contract.

2.6 The Department for Education (DfE) was impressed by the early stages of this proposal during a recent monitoring visit in September 2014 and the Joint Commissioning was viewed as an example of good practice. The officer will update the DfE during their next monitoring visit scheduled for 11 December 2014.

2.7 Negotiating the in principle agreements from departments within KCC and from other local authorities in order to progress to decision stage has necessitated a significant amount of KCC officer time. The detailed preparatory work will ensure that local authorities and their health partners in the South East are able to provide a seamless service to all parents and young people who live in the region, in accordance with the intention of the legislative requirements of the Children and Families Act 2014. The participating authorities have expressed gratitude for Kent County Council officer's leadership of this project.

2.8 In order to further ensure smooth transition from old arrangements to new KCC has prepared a draft document for early years providers, schools and post 16 institutions (attached) and this will be communicated to schools prior to the implementation of the proposed changes in April 2015

3. Financial Implications

3.1 The cost of the annual core subscription services will be lower than the annual costs incurred for the existing contract (£24,103.21)

3.2 It is estimated that Kent's annual contribution for the core service will be £12,480.00 in the first year and £7,480.00 in years 2 and 3. The exact price of the core subscription service is dependent on the cost submitted by the successful tenderer.

3.3 The previous contract allowed for unlimited use of mediation services and as such allowed KCC the benefit of certainty of cost for budgeting purposes. However Kent's historic use of the service has been low and therefore did not offer value for money. It is considered that the cost outweighed the benefit and therefore the PAYG method is now proposed.

3.4 Under the PAYG arrangements it is estimated that each Mediation or Disagreement Resolution meeting will cost in the region of £1,000, and will include the cost of a qualified mediator with knowledge in SEND, all pre meeting preparation, reports writing and venue costs. The precise cost of each Mediation or Disagreement Resolution (DR) Meeting is dependent on the price submitted by the successful tenderer.

3.5 Should the number of referrals from last year (7) be repeated in 2015 and all of those referrals were to be continued to mediation, the new contractual arrangements would still offer a £10,000 annual saving for the service. However this figure is indicative only and is dependent on the number and kinds of services provided.

Mitigation of financial risk

3.6 Where disagreement resolution has been requested, this must be with the consent of all parties involved. Given the extent of persons eligible to request DR and the considerable range of circumstances in which DR can be requested

this aspect of the new duties poses a risk to spend. It should be noted that there is no central budget that covers the persons in the scope of this duty.

- 3.7 To mitigate this risk, KCC and the other 15 local authorities in the group are proposing that whilst they must make the arrangements for the provision of DR and parents or young people requesting those services should not have to fund them, it will be the responsibility of the party or parties with whom the parent or young person has a disagreement to fund the meetings (see draft notice to providers attached)
- 3.8 The contractual specification arrangements make clear that the provider must ensure they have such an agreement from the identified funding party or parties.
- 3.9 KCC cannot yet predict DR meeting usage as this is a national new service requirement there is currently no data. It remains that this is a statutory requirement and the KCC proposes the following steps to reduce negative financial impact, namely:
 - A requirement for SEN caseworkers to offer to meet with families at least twice during the SA process. The second meeting will focus on agreeing the EHC Plan content and early resolution of any disagreement
 - In relation to Disagreement Resolution parties cannot be compelled to attend although this would be encouraged in appropriate circumstances
 - It is the responsibility of the party involved to agree to participate in the disagreement Resolution meeting and to fund the cost of that meeting. Parties involved could be schools, colleges, adult services, children services, education or health
- 3.10 Since the new legislation has been in place, officers from the education directorate have been asked to participate in one Mediation meeting. This led to a successful resolution without recourse to SENDT which of course also has a cost in terms of officer time to prepare for tribunals. SEN have a dedicated tribunal team.

4. Options considered

- 4.1 The LA were unable to maintain the status quo as the current contract will expire on 31st March 2015 and service changes need to be accurately reflected in the new contract.
- 4.2 A single tender action was considered but rejected given the economic advantages of this course of action and the stability this approach would offer in a time of the biggest changes within SEN for 30 years

5. Legal implications

- Advice has been provided via the central procurement team, who are satisfied with the actions taken
- Advice was also sought from legal in relation to the Collaborative Agreement between the LAs and they are satisfied about the action taken

6. Equalities implications

An equalities impact assessment has been undertaken and can be viewed at the link below:

7. Governance Implications

- 7.1 The Officer Scheme of Delegation will provide the governance pathway to allow officer to take any necessary actions to implement the decision once taken including signing the contract on behalf of KCC

8. Conclusions

- 8.1 Kent County Council must make arrangements for the provision of these services in order to be compliant with its statutory responsibilities.
- 8.2 Joint Commissioning is an innovative and best practice approach to delivery that will create efficiencies and provide good service for users. Kent has agreement from 15 local authorities to jointly commission this contract
- 8.3 A collaborative approach across the South East Group will ensure consistency of service for parent(s) or carer(s) or young people across the region and epitomises the spirit of the Children and Families Act legislation, which requires services to enter into joint commissioning arrangements to provide a better service for families

6. Recommendation:

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7. Background Documents

Link to Children and Families Act 2014

<http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

Link to the SEND Code of Practice:0-25

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365616/Draft_Updated_Special_Educational_Needs_and_Disability_Code_of_Practice_for_consultation.pdf

8. Contact details

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