

From: Mrs Sue Chandler - Cabinet Member for Integrated Children's Services

Subject: Formal Statement of reconsideration of Decision 20/00017 –
Reconsideration of Early Help Services

Formal Statement: Decision 20/00017, following review and reconsideration, is confirmed and will progress to implementation with immediate effect.

Summary: This statement sets out the reasoning for confirming Decision 20/00017 for implementation, following consideration by the Scrutiny Committee on 23 June and review by Cabinet on 29 June. The decision to confirm and progress to implementation of the decision has been taken with due consideration of comments made by both the Scrutiny Committee and Cabinet.

Introduction

- 1.1. Scrutiny Committee sat on 23 June 2020 to consider the call-in of Decision 20/00017, specifically the decision to utilise Teckal for The Education People to deliver the Not in Education Employment or Training (NEET) service from 1 October 2020. The current services are delivered by CXK having successfully tendered for the contract in 2016.
- 1.2. Following a resolution by the Scrutiny Committee to refer the decision to the decision-maker for reconsideration, an extraordinary Cabinet meeting was held on 29 June to first consider the decision and the comments made by Scrutiny.
- 1.3. Cabinet explored the points raised by members of the Scrutiny Committee and considered the explanations provided by Officers and me as the relevant Cabinet Member. Cabinet resolved to confirm the decision and request that I issue a formal written statement to that effect.
- 1.4. The following information is provided to clarify the reasoning for the confirmation of the decision and evidence appropriate consideration of the comments and concerns raised by the Scrutiny Committee. The effect of this written statement is that authority is granted for KCC to progress with implementation of the decision, as originally taken on 29 May 2020.
- 1.5. The NEET service works directly with young people who have been NEET in excess of six weeks or who have experienced multiple periods of NEET. This contract has been varied once already in July 2019 to include those young people who are entrants in the Youth Justice System and those young people who are home educated and have a higher risk of becoming NEET post year 11.
- 1.6. Since 2012, the NEET service provision has been externally commissioned, under three consecutive contracts, with services provided by CxK, formerly Kent Connections. The contract value forms approximately 12% of the organisation's total income.

- 1.7. The NEETs contract has close links to the work undertaken by the Skills and Employability team, which sits within the KCC Local Authority Trading Company (LATCo), The Education People (TEP).
- 1.8. One of the key findings in the Ofsted / CQC inspection of Special Educational Needs and Disability (SEND) services in March 2019 was that education services for children with SEND were not joined up. The current contract makes no provision for SEND children and cannot currently be amended to do so.
- 1.9. To include these services would detract further from the original scope of the contract and could result in legal challenge.
- 1.10. KCC can decide to include this service provision in the contract with TEP without the need to undertake a public procurement provided certain requirements are met:
 - The contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments.
 - More than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority.
 - There is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.
- 1.11 For clarity and ease of reference, the following responses are provided under the summary headings provided by Democratic Services for the Scrutiny Officer Report to Cabinet.
- 2. There was a need for transparency over the decision made (to bring the NEET Support Service provided by CXK in-house to The Education People).**
 - 2.1. Following approval from Services Commissioning Board in September 2019, CXK were informed in writing of a proposed contract extension with the current contract ending 30th September 2020. This extension was to enable officers to look at the suite of Early Help Commissioned Services and undertake a commissioning exercise to ensure a consistent offer with Integrated Children's Services which provides children, young people and their families with a coordinated offer of support.
 - 2.2. Further discussions with the provider took place during formal contract management meetings and again in January 2020 when they were advised that the authority would be proceeding towards the contract's end date following the last extension (30th September 2020).
 - 2.3. Following the notice of forthcoming decisions, first published in February 2020, the recommendation report was due to be presented at CYPE Cabinet Committee in May 2020 meaning that papers would have been available to the

public in April 2020. Due to the Covid-19 pandemic this meeting was cancelled and replaced with a virtual decision-making route via the instigation of a Pre-Proposed Record of Decision (PROD) and then PROD which became available to the public in May 2020.

2.4. It was not known whether the option to utilise Teckal or go out to procurement would be selected and therefore to maintain a level playing field in any procurement, KCC should not be providing any provider an unfair advantage. Officers guided CXK to the KCC website to see the published papers and the recommendation.

3. Concerns were expressed as to why it was decided not to go down the route of open procurement - the impression was that a decision had been made to bring the NEET Support Service provided by CXK in-house to The Education People without any material consideration of the alternatives and without consultation.

3.1. As part of any commissioning activity, officers would consider and assess options on whether a service could or should be 'made' or 'bought'. By utilising tools such as the Outsourcing Decision Matrix officers can identify which tasks or processes should be kept in-house, and which should be outsourced.

3.2. The two factors for consideration are 1) Strategic Importance: How important it is to the authority and 2) Operational Importance: How much does the service contribute to other work streams achieving their targets. In both cases the NEET Service provision scored highly suggesting that the service should be retained in an internal provision.

3.3. With TEP's position in the education arena on both a local and national level NEET reduction is now a key part of the school improvement strategy led by TEP School Improvement team. By integrating the NEET service into their portfolio this would allow a joined-up approach to the prevention of NEET.

3.4. By utilising Teckal, KCC can guarantee a smooth transition with no gap in service. A direct alignment with work already taking place in TEP, the Skills and Employability Service would ensure that the new arrangements will strengthen the relationship with education and skills providers already working with TEP.

4. The service provided by CXK was effective and well-regarded.

4.1. The current contract has been managed well and this was recognised by officers in both the initial report and the presentation to Scrutiny. However, the overall NEET figures have increased and there are a number of vulnerable groups who do not access support.

4.2. The contract must meet the needs of those young people both with a SEND diagnosis and for those young people that are beneath threshold of diagnosis but still have a high level of need. In order to enable this change, material changes to the original scope of the contract are required. Therefore, a contract variation is not considered to be a robust-enough mechanism to apply these significant changes and would therefore be open to challenge.

5. Questions were asked as to the ability of The Education People to meet any additional demand.

- 5.1 In 2020, the number of places available to young people who are NEET reduced by over 800 across the range of sub-contracted provision, due to a significant reduction in European Social Fund (ESF)/Education and Skills Funding Agency (ESFA) funding. Despite this, the coordinated approach of the Interdependencies group and the district NEET meetings, led by TEP, meant the NEET percentage only increased by 0.1% between January 2020 and April 2020, at the same time the percentage of Not Knowns reduced by 1.6%.
- 5.2 The strong relationships that TEP has with Kent schools, Further Education (FE) Colleges and training providers enabled local negotiations leading to an increase in some local provision and minimised the immediate impact. More significantly, the countywide response has enabled TEP to directly lobby the ESFA to increase the level of funding in Kent. TEP has started a new ESFA tendering process for additional NEET support training which is expected to begin over the summer which it is anticipated will reduce percentages further.
- 5.3 Operational knowledge gained through the district NEET support networks means that that operational intelligence feeds directly into strategic planning and vice versa. A good example of this and its impact is the response to the collapse of the ESF funding of NEET support provision in Kent.
- 5.4 TEP's approach to its role as the strategic lead for NEETs within the county is to draw partners together to streamline processes and problem-solve. It has often used its own staff to add capacity to the system and to overcome problems caused by the number of parties involved in county tracking and NEET support. NEET reduction is also a strand of the careers strategy which is led by the Enterprise Coordinators who work with schools to ensure that Careers Education, Information, Advice and Guidance (CEIAG) is delivered well within schools with a focus on students who are 'at risk'.
- 5.5 The integration of the support service into the at risk of NEET work going on in schools and colleges is an opportunity to deal with any presenting issues at source, creating relationships with young people before problems arise.

6. Conclusion

- 6.1. TEP has the strategic lead for NEETs and manages the work undertaken by the Skills and Employability team. With the need to improve the authority's offer to NEET young people with both diagnosed and undiagnosed SEND it would be advantageous to ensure a seamless service provision to meet need.
- 6.2. Procurement legislation does not allow for a material change in the specification of a current contract. Whilst the service has been well delivered under the remit of the existing contract, it is no longer fit for purpose and it would not be appropriate to extend under the current terms and conditions.

- 6.3. Commissioning best practice on the outsourcing of service provision suggests that those operations that are of both a high strategic importance and a high operational value should be retained as part of an internal provision. As a LATCo TEP is under the control of the authority and has the same status as an internal department for the purpose of Teckal.
- 6.4. The requirements of Teckal have been met and therefore KCC can award a contract to TEP without the need to undertake a public procurement.
- 6.5. In view of the above clear responses to the issues raised by the Scrutiny Committee and taking account of the determination by Cabinet on 29 June 2020 that the decision be confirmed, I am satisfied that my original decision taken on 29 May 2020 was appropriate, lawful and proportionate and therefore I am content to formally confirm the decision for implementation.

Formal Statement: Decision 20/00017, following review and reconsideration, is CONFIRMED and will progress to implementation with immediate effect.



Signed:

Date: 30th June 2020

Sue Chandler – Cabinet Member for Integrated Children’s Services