

KENT COUNTY COUNCIL – RECORD OF DECISION

DECISION TAKEN BY:

Sue Chandler,

Cabinet Member for Integrated Children's Services

DECISION NO:

21/00053

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

SEND (Special Educational Needs and Disabilities) Therapies Provision Commissioning Strategy

Decision:

As Cabinet Member for Integrated Children's Services, I agree to:

- A) Implement a Qualified Provider List for Special Educational Needs Therapies provision to fulfil the Council's responsibilities in meeting the needs identified in a child's Education, Health and Care Plan.
- B) Delegate decisions about the establishment of the new arrangements to the Corporate Director for Children, Young People and Education, or other Officer as instructed by the Corporate Director for Children, Young People and Education

Reason(s) for decision:

- Decision
 - Decision required because the total value of contracts will exceed threshold for a Key Decision.
- Background
 - KCC currently commission a range of therapy services to meet the needs identified in a child's Education Health and Care Plan (EHCP) and where there is an identified gap in health provision. Services are currently purchased from multiple different providers,

ranging from special schools to individual therapists.

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- There are currently three distinct arrangements in place, Preferred Provider List, Non-preferred providers and personalised funding arrangements.
- Services are currently purchased from over 47 providers, ranging from special schools to individual therapists. The types of therapies purchased include speech and language, Cognitive Behavioural Therapy (CBT), hydrotherapy, play therapy and Occupational Therapy (OT).

- Options Appraisal

1. Do nothing
2. Establish a Dynamic Purchasing System (DPS)
3. Establish a Qualified Providers List

Recommended is Option 3, to establish a Qualified Provider List, as this would enable KCC to stabilise this market and allow better planning for future demand for services. This option is also preferable for smaller providers.

Currently there is a preferred provider list and qualities framework to ensure best outcomes for children and young people, however moving to a QPL, will in addition provide some stability and sustainability to this market and provide a compliant contractual basis to work more closely with providers when planning future requirements.

- The risks involved with not taking this decision include:
 - continued non-compliant spend (PCR 2015)
 - inconsistent provision and outcomes for CYP with EHC Plans.
 - KCC limited influence to shape and control the market to ensure the right capacity and provision is available.

- Strategic Plan

- This will support the following strategic outcomes of KCC:
 - Kent's children have the best start in life and families get the right help and support when they need it; and
 - every young person in Kent gets the education, skills and experiences they need for a successful future.

In addition, this service will support achievement of the following priorities:

- Special Educational Needs and Disability (SEND): We are committed to working in partnership to make the necessary improvements for children and young people with SEND and their families.
- Implementing the Kent Special Educational Needs and Disabilities (SEND) Written Statement of Action Plan: [...] Following the result of our Ofsted and Care Quality Commission (CQC) inspection in 2019, we are focusing on designing better, more inclusive services to improve the quality of services for children and young people with SEND.
- Support for vulnerable young people: Our role is to champion children, young people, parents and families. We want to improve life chances and close the achievement gap for vulnerable young people.

- Financial Implications

- The SEN spend for SEN Therapies in 2019-20/2020-21 is summarised below:
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Personalised Therapy for Named Child (Spot Purchased)	
Year	Spend
2019-2020	£381,707k
2020-2021	£428,917k

- These provisions fall under the Special Educational Needs & Psychology Services key service line within Special Educational Needs and Disabilities (SEND) Division budget, line 65 in the 2021/22 KCC Budget.

- Legal Implications

- The SEND Code of Practice states:
 - Health or social care provision which educates or trains a child or young person must be treated as special educational provision and included in Section F of the EHC plan. (9.73 of the SEND Code of Practice 2015)
 - Speech and language therapy and other therapy provision can be regarded as either education or health provision, or both. However, since communication is so fundamental in education, addressing speech and language impairment should normally be recorded as special educational provision unless there are exceptional reasons for not doing so. (9.76 of the SEND Code of Practice 2015)
 - In cases where health care provision is to be treated as special educational provision, ultimate responsibility for ensuring that the provision is made rests with the local authority (unless the child’s parent has made suitable arrangements). (9.76 of the SEND Code of Practice 2015)
 - Invicta Law have been engaged to provide relevant advice regarding the establishment of a Qualified Provider List.
 - If we continue and do nothing, will be non-compliant with the Public Contract Regulations 2015.

- Equalities implications

- An Equality Impact Assessment (EqIA) screening has been completed and has concluded that the proposed decision does not present any adverse equality impact.

Cabinet Committee recommendations and other consultation:

The Children’s and Young People Cabinet Committee considered the decision on 30th June 2021. <http://kcc-app610:9070/ieListDocuments.aspx?MIId=8525&x=1&>

Any alternatives considered and rejected:

- Option 1, to do nothing, was discounted because the spend is non-compliant with the Public Contract Regulations (PCR) 2015. Therefore, the current arrangements limit KCC’s ability to shape and control the market to ensure the right capacity and provision is available. KCC has limited influence over the outcomes of the service and limited contract management tools to improve supplier poor-performance.

- Option 2, Implementing a DPS, would have limited disruption to status quo and delivery of current services. There is, however currently a complex supply market, with a mixture of larger suppliers, NHS providers, charities, and sole traders. The market is also delicate in that there are scarcity of provision and supply in particular with Occupational Therapy services and is essential that care is taken to prevent destabilising the current market that we have. These differing categories of suppliers could result in a variable appetite for a formal tender process, possibly impacting continuity of supply

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



16th July 2021

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signed

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date