

## EXECUTIVE DECISION

**From: Sue Chandler, Cabinet Member for Integrated Children's Services**

**Matt Dunkley CBE, Corporate Director of Children, Young People and Education**

**To: Children, Young People and Education Cabinet Committee – 14 September 2021**

**Subject: External Fostering Placements Commissioning Strategy**

**Key decision Overall service value exceeds £1m and affects more than two Electoral Divisions.**

**Classification:** Unrestricted

**Past Pathway of report:** N/A

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

**Electoral Division:** All

### **Summary:**

This report provides the Children, Young People and Education Cabinet Committee with the background and rationale for tendering for a new Framework Agreement for Independent Fostering Providers, jointly with Medway Council, from April 2022. A short contract from 1 February 2022 to 31 March 2022 will also be required.

### **Recommendation(s):**

The Children, Young People and Education Cabinet Committee is asked to CONSIDER and ENDORSE, or MAKE RECOMMENDATIONS to the Cabinet Member for Integrated Children's Services on the proposed decision to:

A) Direct Award a two-month contract on existing terms and conditions to existing Framework Providers from 1 February 2022 to 31 March 2022`

B) Competitively tender a new Framework Agreement for Independent Fostering Providers, jointly with Medway Council, effective from 1 April 2022.

C) Delegate decisions and necessary actions regarding the award of the contract 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.

## **1. Introduction**

- 1.1 This paper provides an overview on the planned future commissioning and procurement arrangements for external fostering placements for children and young people aged 0 – 18 years.
- 1.2 Local Authorities as part of their Sufficiency Duty must take steps to secure, as far as reasonably practicable, sufficient accommodation within its areas to meet the needs of children they are looking after. The proposed decision directly relates to this duty by aiming to provide a sufficiency of foster care placements which meet demand and the needs of the children and young people and, helps support social workers in matching the requirements to providers and foster carers.
- 1.3 The Council already has a comprehensive in-house fostering service. However, there are times when the needs of individual children cannot be met by the foster carers that are available. This means that we search externally for approximately 20% of our fostering placement needs in order to meet our sufficiency requirements.
- 1.4 To ensure we meet our Sufficiency Duty and are able to achieve the required outcomes for each child and young person, the Council already has in place contractual arrangements with Independent Fostering Providers.

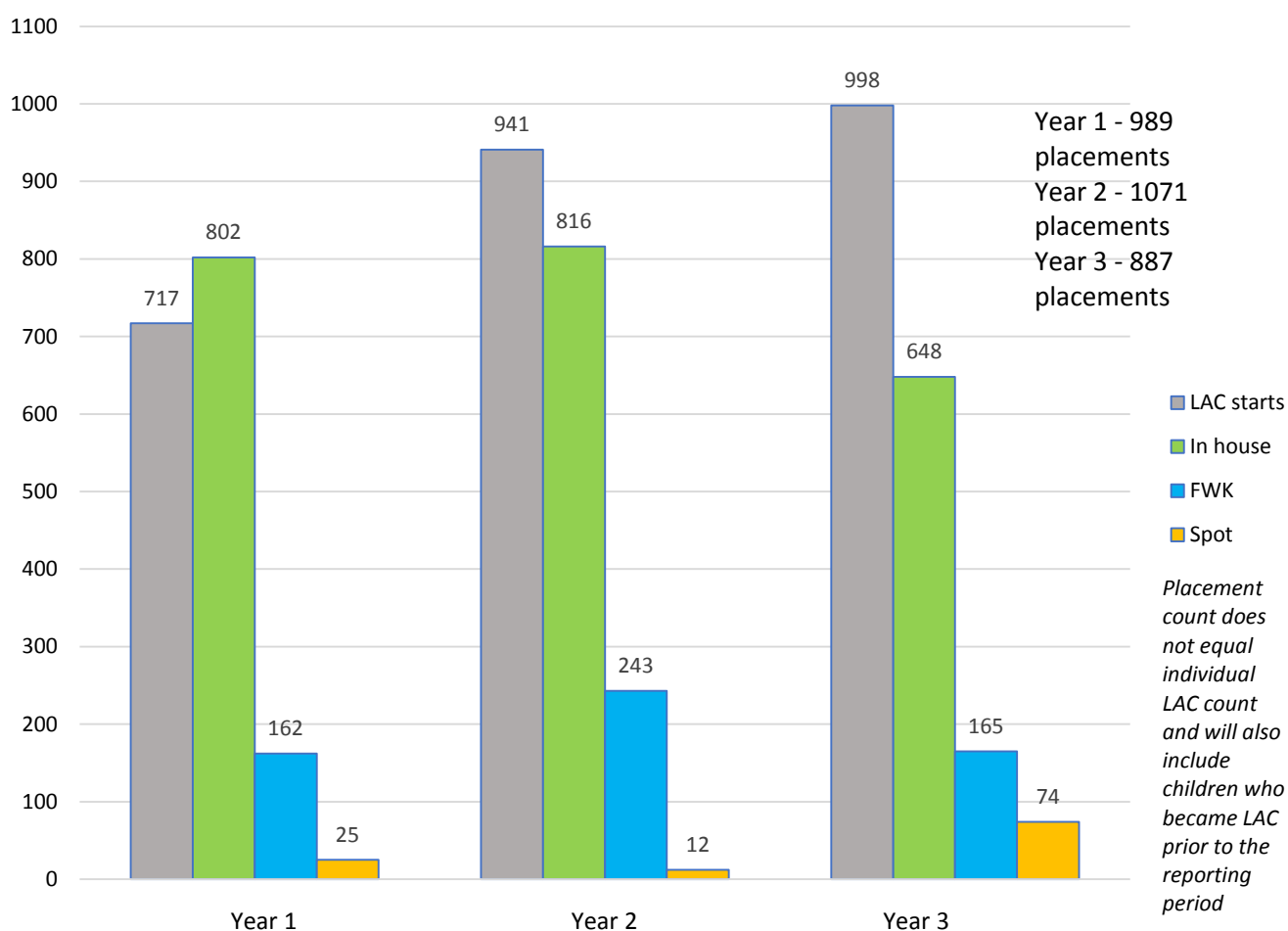
## **2. Current Arrangements**

- 2.1 The current Independent Fostering Provider Framework Agreement is a joint arrangement between KCC and Medway Council. It went live on the 1 February 2018 and is due to end on or before the 31 January 2022.
- 2.2 It is proposed that a short (two month) contract will be awarded (effectively an extension) to the existing Framework providers taking the expiry date up to 31 March 2022. This will enable the new Framework Agreement once it has been tendered and awarded to be aligned to financial years which will greatly assist in the reporting of performance and financial data, and internal budget build processes.
- 2.3 There are currently 36 Independent Fostering Providers who are part of the Framework Agreement, working in partnership with the Kent and Medway Councils.
- 2.4 With two categories of need (Standard and Enhanced) we are able to call-off placements for children and young people with a range of needs and children with disabilities for the following placement types:
  - Long term or permanent placements (as per care or placement plan; 12-months and over)
  - Short-Term/Task Focused/Bridging placements (up to 12 months)
  - Short Break Placements for disabled children
  - Parent(s) and Child(ren) Placements
  - Step Down Placements

- Emergency placements (same day, out of hours and/or within 24 hours of referral)
- Sibling placements
- Solo placements (with no other children within the foster household)

2.5 Re-procuring a new Framework Agreement provides an opportunity to re-shape placement types and categories of need based on the learning gained through operating the current Framework and future needs and demands linked to the Sufficiency Strategy.

2.6 In terms of utilisation of the current arrangement the following chart shows the number of new Looked After Child (LAC) starts and the number of new placement starts across all provider types (in-house, Framework and spot). LAC placement data has been provided by MII.



2.7 The following provides additional headlines in terms of how well the current arrangement has been employed:

- The IFP Framework and categories of need (Standard and Enhanced) along with the various placement types such as short and long term placements and parent and child placements is well-utilised with the exception of those for Disabled Children and Short Breaks.
- There is an average of 20-21 new placement starts per month which is greater than the original forecasted demand of between eight and 14 starts per month (with a confidence of 70%).
- Year three is showing a decrease in placements called-off from the Framework but an increase in spot purchases. This increase in spot purchases in Year three has been influenced by a number of factors, particularly regarding the impact of Covid-19. A number of foster carers registered with IFP's chose not to take placements due to their health vulnerabilities resulting in a reduction in available vacancies.
- The largest majority of placements made are for the 11–16-year-olds.
- Over the three years we have seen a gradual increase in the number of Parent and Child (P&C) placements required.
- Overall IFP's have a larger proportion of children with higher risk scores compared to those placed in-house although this distinction is becoming less clear.
- There is strong partnership working with Medway Council on contract management, an approach which the market strongly supports. Arrangements include an escalation process on poor performance and contractual defaults with discussions and actions agreed taken between Strategic Commissioning, the Total Placement Service (TPS) and the Local Authority Designated Officer (LADO)/Safeguarding teams. Consultation with the local supplier market has shown that they are particularly supportive and keen on this approach.

2.8 Through the commissioning and tendering of this contract, we 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.
- Every young person in Kent gets the education, skills and experiences they need for a successful future

2.9 In addition, this service will support achievement of the following priorities in KCC's Children in Care and Care Leavers Strategy 2018-2022:

- Work more closely and innovatively with providers of accommodation.
- Review our approach to current spot purchased services and, where appropriate, develop new contracting models.
- Improve the matching process to create greater placement stability.
- Review mental health support for children in placements with Health colleagues.
- Deliver a new value model for placements which are highest cost.
- Explore the potential for collaboration with other authorities.

2.10 The proposed re-procurement of a Framework Agreement provides further opportunities to collaborate with Medway Council and allows the efforts and

gains which have been made to improve relationships with the supplier market continue to be built on. Feedback received from providers has also shown they are very familiar with Framework Agreements and is a contracting approach which they favour.

### 3. Options considered

3.1 The options considered are detailed below:

#### 1. Do nothing

Option	Risk	Benefits
<p>Do nothing – let the existing arrangement lapse and spot purchase individual placements.</p>	<ul style="list-style-type: none"> <li>• Prices would be free floating with the market deciding what they wish to charge. KCC would have no control for managing annual price rises.</li> <li>• There is a legal risk that KCC would not be legally compliant as there would be no over-arching contractual arrangement.</li> <li>• May not be able to collate performance data and intelligence from providers. E.g., recruitment data however could consider other routes for seeking specific information such as utilising surveys.</li> <li>• Quality of close partnership working could decline across whole sector.</li> <li>• Decline in availability of placements due to IFA's working closely with contracted local authorities and offering preferential placements. This could result in other LA's placing children in Kent &amp; Medway and thereby limiting choice and availability.</li> <li>• Commissioner</li> </ul>	<ul style="list-style-type: none"> <li>• KCC would not be tied to a particular group of providers for a period time.</li> <li>• Minimal commissioning work required including less contract management, however processes would still be needed regarding safeguarding and sanction alerts. However, placements would only be made with Ofsted registered providers who would be legally obliged to comply with fostering regulations and associated quality guidance.</li> <li>• Possible to still have a relationship with the market but would need to identify alternative ways to influence.</li> <li>• No tendering process to be undertaken along with no requirement to evaluate bids. Categories and types of placements would not be required as each placement would be individually negotiated.</li> </ul>

	<p>relationships with the Kent &amp; Medway IFA Forum likely to decline.</p> <ul style="list-style-type: none"> <li>• Communication and sharing of key information/intelligence would be weakened.</li> </ul>	
--	---	--

## 2. Framework Agreement (Proposed Option)

Option	Risk	Benefits
<p>Competitively tender for a new Framework Agreement with fixed prices and set categories of need. New contract start date 1 April 2022 (process to commence in 2021)</p>	<ul style="list-style-type: none"> <li>• As a closed arrangement we would not be able to allow new market entrants to join the framework.</li> <li>• Likely to still require some spot purchasing.</li> <li>• If a provider wanted to offer a lower price than they originally tendered provided it was stipulated in the terms and conditions, we could accept a lower price. However, there is less incentive for a provider to do this as they are holding the risk by offering a fixed price across placement types. Providers will take a view on seeking a higher margin on some placements to offset lower margins on others.</li> <li>• Providers may choose not to tender and prefer spot contract arrangements where they determine the costs depending on demand in their service (based on a business decision rather than needs of the child)</li> <li>• KCC will need to pre-determine categories of need and age group in order to allow for price</li> </ul>	<ul style="list-style-type: none"> <li>• Clear pricing mechanisms - Agreeing prices at the tender stage for a period time gives certainty to the market.</li> <li>• Meets Procurement Regulation rules.</li> <li>• A closed arrangement means providers cannot resign and then re-join at higher prices.</li> <li>• Able to link and control annual price increases to KCC budget planning processes.</li> <li>• Strong contract management arrangements in place to ensure service is delivered in accordance with agreed performance and quality levels.</li> <li>• Easier to maintain and develop supplier relationships for an open and constructive relationship. Most local providers like having a strong relationship with their host authority.</li> <li>• If done in partnership with Medway Council there will be consistency in tendering, pricing, contract management, and the call off arrangements for placements and the potential to realise some economies of due to our joint scale.</li> <li>• Providers are used to working with Framework Agreements.</li> <li>• The existing contractual arrangements have worked well, commissioning intentions have been met and risks well managed.</li> <li>• There is an appetite and willingness within the local market to work with both Kent &amp; Medway in some form of joint contractual arrangement other than spot contracts. Potential to develop further</li> </ul>

	<p>differentiation. There is a risk that these categories will not reflect the complexity of needs of individual children needing a placement.</p> <ul style="list-style-type: none"> <li>• The need to fix prices over a multi-year framework (e.g., 4 years) may mean that we experience a sharp increase in average weekly costs of IFA placements in 2022-23 as providers will probably seek to 'price in' the risk that we will not agree to increase rates in subsequent years, however this risk could be partially offset by stating clearly the price review process during the course of the agreement.</li> </ul>	<p>partnerships/collaboration across the county.</p> <ul style="list-style-type: none"> <li>• Fixed prices are positive from a TPS perspective as otherwise they could spend considerable time on pricing negotiations some of which may be unrealistic.</li> </ul>
--	--	---

### 3. Establish a Qualified Provider List / Dynamic Purchasing System (DPS)

Option	Risk	Benefits
<p>Qualified Provider List (QPL) or Dynamic Purchasing System. Any Ofsted registered IFA would be able to join</p>	<ul style="list-style-type: none"> <li>• Prices cannot be fixed.</li> <li>• Prices given at time of entry are indicative only and the providers cannot be held to them. Prices will be determined with each provider on their financial and vacancy position. On emergency cases prices are likely to be higher due to 'needing to place'. This may drive up prices across sector.</li> <li>• Using a DPS would allow new providers to join the Framework, however it would also allow existing providers to leave and re-join with a different</li> </ul>	<ul style="list-style-type: none"> <li>• Minimise the need for any spot purchasing outside of the QPL/DPS.</li> <li>• New providers can join at any time.</li> <li>• Enables additional discussions about the needs of the child and this is directly linked to what you would pay. TPS would need to negotiate on a case-by-case basis.</li> <li>• Less likely to experience a significant change in prices when the existing Framework ends.</li> <li>• Contract management arrangements can be put in place. This arrangement could re-focus this activity so that indicative prices are monitored to see if they are met or whether individual providers are deviating. This would provide evidence on costs and facilitate challenge in terms of provider</li> </ul>

	<p>indicative pricing mechanism which would reduce any cost leverage with this market.</p> <ul style="list-style-type: none"> <li>• This model would mean additional work by Total Placement Service (TPS) in terms of negotiating prices. For referrals not planned with sufficient time and of a more reactive nature there is the potential to be pushed into an “emergency” price.</li> </ul>	performance.
--	---	--------------

#### 4. Block Contract Arrangement

Option	Risk	Benefits
Agree a block contract arrangement with a select group of Providers	<ul style="list-style-type: none"> <li>• Does not take into account increases in demand / service pressures</li> <li>• Providers can feel they are being forced to take placements which may be unsuitable, a risk that matching becomes less important</li> <li>• Any voids within the block arrangement would still incur a cost.</li> <li>• Close monitoring is required to ensure maximum use made of the block arrangement</li> </ul>	<ul style="list-style-type: none"> <li>• Pre-agreed number of placements for a set cost – early access to vacancies.</li> <li>• Costs would be set and known enabling better budget management.</li> </ul>

#### 5. Regional Arrangements / Consortia

Option	Risk	Benefits
Join a Regional Arrangement	<ul style="list-style-type: none"> <li>• If we joined an existing arrangement rather than creating our own regional arrangement it would be harder to maintain and manage relationships in their current guise.</li> </ul>	<ul style="list-style-type: none"> <li>• DfE, national bodies and market are supportive of regional arrangements due to consistency of approaches.</li> <li>• Potential for authorities to leverage combined buying power.</li> <li>• Use of the same referral/placement forms, notice periods and clarity on</li> </ul>



	<ul style="list-style-type: none"> <li>• The more partners in an agreement the harder it is to get a consensus for change and one size does not fit all with the sufficiency needs and demographics of Kent &amp; Medway.</li> <li>• It is difficult to evidence that combined buying power as part of a larger regional arrangement would bring savings.</li> <li>• Responsibilities in terms of contract management differ between models; this would either be carried out by the agency running the arrangement or each local authority would take responsibility on behalf of the region for provider inspections in their respective geographic boundary. For an Authority, the size of Kent with a sizeable provider population this could be a big commitment which would require dedicated resources. It is likely we could be carrying out compliance requirements with providers that we would not actually be using.</li> <li>• Costs of joining regional arrangements are significant e.g., to join West London Alliance is a minimum of £50k p/a up to £100k p/a depending on what package was required.</li> </ul>	<p>complexity thresholds may support easier consideration of referrals.</p>
--	---	---

3.2 Option 2 is the recommended option, to competitively tender for a new Framework Agreement with fixed prices and set categories of need and to issue a short contract from 1 February 2022 to 31 March 2022. Our intention is to have a contract length of four years with the ability to extend by individual

years up to another four years following a review with Medway. This approach will be agreed through market engagement.

- 3.3 The new contract will have a start date of 1 April 2022. It is further recommended that we continue working in partnership with Medway Council to deliver efficiencies in terms of future contract management costs. In the short term there will also be opportunities to share procurement costs and in the development of any contract terms, conditions, and related schedules.
- 3.4 This approach provides an opportunity to re-think the structure of placement types and categories of need and consider additional specialist placements such as comprehensive therapeutic programme step across placements from residential into foster care (both in-house and IFP) through a lotting strategy. All bids will be evaluated based on a combination of quality and price with a standardised contract for all providers.
- 3.5 We would not expect to move any children that are already in settled placements as a result of the outcome of the tender. The existing Individual Placement Agreements would continue to run and will suffice to ensure no disruption to the agreed placement.

#### 4. Financial Implications

- 4.1 The majority of the funding for external fostering placements is in existing revenue budgets within Integrated Children's Services (ICS), with some in the Disabled Children and Young People Service (DCYPS).
- 4.2 Spend on all IFP placements (Framework & Spot Purchased) over the past three years is as follow. This spend is funded by either the UASC Grant or the Council's revenue base budget, as appropriate. The budget is currently sufficient to cover these costs:

<b>IFP Spend (Framework &amp; Spot including legacy placements)</b>	<b>Year 1 18/19</b>	<b>Year 2 19/20</b>	<b>Year 3 20/21</b>
Citizen Children	£9,169,501	£11,279,982	£9,024,416
Unaccompanied Asylum-Seeking Children (UASC)	£2,084,163	£1,789,437	£2,066,452
<b>TOTAL</b>	<b>£11,253,664</b>	<b>£12,069,419</b>	<b>£11,090,868</b>

- 4.3 The variation in prices negotiated by different local authorities, case by case, benefits generally the providers and not the councils. There is evidence of local authorities driving up the pricing by competing with each other for the same carer.
- 4.4 An additional issue in terms of pricing is that other local authorities are placing a significant number of children in care in Kent with the independent sector.

They often pay more (particularly the London Boroughs) and are limiting the remaining capacity for Kent's children along with any levers we may have with the market.

- 4.5 In terms of future pricing at the tender stage, any review processes will be agreed beforehand with Finance before the Invitation To Tender is issued and embedded within the terms and conditions of the new contract. It is intended that Consumer Price Index (Housing) (CPIH) will be used as the indicator for price increases with some recognition of the impact of National Living Wage increases for younger staff working in the IFP's. These increases are in line with other price reviews on all services within KCC and nationally and are funded from Pay and Price Pressure monies.
- 4.6 Based on the analysis of placements purchased within the current framework, these proposals are expected to help stabilise and improve predictability of future price increases for placements purchased within the Framework. Future financial pressures in relation this framework. will therefore be limited to the annual price uplift as set out in the contract linked to CPIH, avoiding other price increases linked to the market (as set out in points 4.3 & 4.5). Price pressures will be reflected in the Medium-Term Financial Plan and could range between £0.2m - £0.4m per year depending on future inflation and demand.
- 4.7 Future demand for external fostering placements and the balance of placements purchased on the framework or on a spot basis is dependent on both the estimated change in the number and need of Looked After Children and the success of the Change for Kent Children Programme initiatives (as set out in 4.8). In recent years the total number of looked after children has fluctuated mainly due to the fluctuations in the number of UASC supported, whilst the number of citizen children has remained relatively stable (although the demand for residential placements has increased). The proposed framework will be designed to help address this trend. The expectation is the number of placements purchased through the framework will increase by ensuring placement types within the framework meet these current trends in need, and so reducing dependence on spot purchases.
- 4.8 As KCC progresses with its Change for Kent Children Programme the work continues to have a view on how our in-house fostering capacity can be increased and the support to foster carers improved in order to provide a safe family environment for those children who are identified as able to step across from residential provision. Whether the step across from residential care is into an in-house foster care household or one provided by an IFP, utilising foster care in this way will provide opportunities for efficiencies against residential spend. Additionally, any increase in our own foster care capacity will reduce our need to call-off external fostering placements and thereby avoid the costs associated with external fostering placements. Providing appropriate alternatives to residential care will help to support the current savings target of £2.2m already included within the Medium-Term Financial Plan.

- 4.9 Based on the current spending levels of approximately £11.1 million per annum on all external fostering placements the total value of the new four year contract, to the proposed four individual years of extensions totals £88.8million (this excludes future price inflation).

## **5. Legal Implications**

- 5.1 KCC is obliged to fulfil its statutory responsibilities regarding fostering as set out in The Children Act 1989 (Section 22G), the Sufficiency Duty and other regulations and guidance such as the National Minimum Standards for Fostering Services. In summary local authorities are required to take steps which meets the needs of children that the local authority is looking after, and whose circumstances are such that it would be consistent with their welfare for them to be provided with accommodation that is in the local authority's area ("the sufficiency duty"). KCC's own Sufficiency Strategy supports the use of KCC foster care prior to accessing placements through IFP's, recognising that good placement matching should be paramount in searching for placements.
- 5.2 Due to the approximate value of the new arrangement, it does mean that the contract will require Sealing by our Legal department in line with the Council requirements.

## **6. Equalities Implications**

- 6.1 An Equalities Impact Assessment (EQIA) screening has been completed and no high negative impacts have been identified. The EQIA will continue to be developed and reviewed as this project progresses.

## **7. Other Corporate Implications**

- 7.1 The statutory requirement for this service lies with the CYPE Directorate however, the process of sourcing placements resides within the Strategic Commissioning Division in Strategic and Corporate Services Directorate.

## **8. Governance**

- 8.1 Cabinet Committee are asked to delegate decisions on the commissioning process and the implementation of the new contracts to the Corporate Director for Children, Young People and Education.

## **9. Data Protection implications**

- 9.1 There is a completed Data Protection Impact Assessment (DPIA) for the current IFP Framework Agreement. This will be reviewed once the new contract has been awarded.

## 10. Conclusions

- 10.1 Re-procuring a Framework Agreement meets the procurement regulations. It provides the Council with the ability to call off a range of placement types and sets a clear pricing structure which can be linked to the Council's annual budget planning processes.
- 10.2 Strategic Commissioning have worked with the market, Virtual Schools Kent, and the Children in Care teams to identify the risks and benefits for any new contract arrangement and a Framework Agreement remains the most suitable option going forward to assist in meeting our sufficiency duty for fostering.

### Recommendation(s):

The Children, Young People and Education Cabinet Committee is asked to CONSIDER and ENDORSE, or MAKE RECOMMENDATIONS to the Cabinet Member for Integrated Children's Services on the proposed decision to:

A) Direct Award a two month contract on existing terms and conditions to existing Framework Providers from 1 February 2022 to 31 March 2022.

B) Competitively tender a new Framework Agreement for Independent Fostering Providers, jointly with Medway Council, effective from 1 April 2022.

C) Delegate decisions and necessary actions regarding the award of the contract 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.

**Background Documents:** None

### Contact details

#### Report Author(s):

Christy Holden, Head of Commissioning  
(Children and Young People's Services)  
Phone number: 03000 415356  
E-mail: [Christy.Holden@kent.gov.uk](mailto:Christy.Holden@kent.gov.uk)

Madeline Bishop, Commissioner (Children and  
Young People's Services)  
Phone Number: 03000 415852  
E-mail: [madeline.bishop@kent.gov.uk](mailto:madeline.bishop@kent.gov.uk)

#### Relevant Director(s):

Sarah Hammond  
Name and Job title: Director Integrated  
Children's Services (Social Work Lead)  
Phone number: 03000 411488  
E-mail: [sarah.hammond@kent.gov.uk](mailto:sarah.hammond@kent.gov.uk)