

KENT COUNTY COUNCIL – RECORD OF DECISION

DECISION TAKEN BY:

Sue Chandler

Cabinet Member for Integrated Children's Services

DECISION NO:

22/00078

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

Special Educational Needs (SEN) – External Tuition Services

Decision:

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

- A) Implement a Modified Dynamic Purchasing System for Special Educational Needs External Tuition provision to fulfil the Council's responsibilities in meeting the needs identified in a child's Education, Health and Care Plan (EHCP). The contract will include types of Tuition not currently provided by The Education Programme such as tuition provision for over 16-years-old, group tuition, Educated other Than At School (EoTAS) in non-academic subjects and formal qualifications such as GCSEs. It is expected that the contract will be for three years with two optional one-year extensions. The contract will include break clauses to allow early termination if required.
- B) Delegate decisions on 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, in consultation with the Cabinet Member

Reason(s) for decision:

- Decision

Decision required because the total value of contracts will exceed threshold for a Key Decision.

- Background

Kent County Council currently purchases Tuition Services from a variety of external suppliers, providing educational support to Children and Young People (CYP). These services are currently spot purchased without formal established contracts and specifications, leading to concerns of due

diligence of providers, inconsistent outcomes, and questionable value for money. SEND is seeking to secure a range of suitable and experienced providers to deliver Tuition Services for those children of compulsory school age and post 16 who, by reason of exclusion from school or otherwise, will not receive a suitable education without such arrangements.

- Options Appraisal

1. Do nothing
2. Establish a Dynamic Purchasing System (DPS)
3. Expand the current Service Level Agreement SLA for the Education Programme capacity and amend to fully meet the service's tuition needs (increasing the offer per student)
4. Establish a Modified Dynamic Purchasing System (MDPS)

Recommended is Option 4, to establish a Modified Dynamic Purchasing System, 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.

A MDPS framework is to ensure best outcomes for children and young people. Will 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:

Respond to national policy changes on SEND provision, work with SEND families to rapidly improve the service provided to SEND children and work with mainstream schools so more can accept and meet the needs of children with SEND, increasing choice and proximity of school places.

- Framing Kent's Future Our Council Strategy, 2022-2026

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.

KCC Strategic Delivery Plan, 2020-23

- Financial Implications

The SEN spend for External Tuition Provision is summarised below:

SEN Spend	Financial Year				
	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022

External Tuition Spend	£862,000	£924,000	£1,391,000	£2,244,000	£ 3,054,000
The Education Programme	£141,000	£130,000	£ 157,000	£274,000	£ 206,000
Total SEND Spend	£1,003,000	£1,054,000	£1,548,000	£2,518,000	£3,260,000
Allocated budget		£851,000	£ 851,000	£ 851,000	£ 2,350,000

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

Kent County Council has a statutory responsibility under The Education Act 1996 to provide education for all CYP until the age of 19, or 25 for those with EHC Plans. Associated legislation includes The Children and Families Act 2014, the SEN Code of Practice (2015), the Equality Act 2010 and The Special Educational Needs and Disabilities Regulations 2014.

Continuing with the current arrangements will remain non-compliant with PCR 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, Young People and Education Cabinet Committee discussed this recommendation on 12 October 2022.

The Decision in this Record of Decision has been amended from the Recommendation Report to reflect the discussion of the Committee, in that it was felt the recommendation was too broad and did not cover the expected length of the contract.

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 Dynamic Purchasing System (DPS), would have limited disruption to status quo and delivery of current services. The market is complex, with a mixture of size and type of suppliers. These differing categories of supplier could result in a variable appetite for a formal tender process, possibly impacting continuity of supply.

Option 3, Expand The Education Programme's capacity to fully meet the service's needs (maintaining the current offer per student)

Spend would be compliant with PCR 2015. Internal provision does enable SEND to manage all aspects of provision supporting a CYP and delivering education, incorporating other services as required, such as SEN Therapies.

Further increasing the scope of The Education Programme would require additional resources and staffing to ensure the needs of CYP are met. There will still be CYP with specific needs that are not covered, such as alternative Educated other Than At School (EoTAS) learning and qualifications and post 16, such services can be commissioned as a separate activity.

The new SLA with The Education Programme has not yet been fully implemented, lessons learnt, and potential risks have not been fully explored. The service will not be at full capacity until January 2023. Moreover, one model of tuition would not meet all the needs of CYP with an EHCP, and the SLA could not meet the current capacity levels required.

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



24/10/2022

.....
Signed

.....
Date