

KENT COUNTY COUNCIL – RECORD OF DECISION

DECISION TO BE TAKEN BY:

Rory Love, Cabinet Member for Education and Skills

DECISION NUMBER:

25/00007

For publication

Key decision: YES

Subject Matter / Title of Decision: Non-Maintained Independent Special School (NMISS) Dynamic Purchasing System (DPS) – Contract extension

Decision:

As Cabinet Member for Education and Skills, I agree to:

1. APPROVE the extension of the NMISS DPS contract by one year to end 31 August 2026, with a view to re-procure a new framework to commence from 1 September 2026, under the new Procurement Act 2023.
2. DELEGATE authority to the Corporate Director for Children, Young People and Education, in consultation with the Cabinet Member for Education, to enter into extensions to the existing contracts, as required, to ensure service continuity
3. DELEGATE authority to the Corporate Director for Children, Young People and Education, to take other relevant actions, including but not limited to entering into relevant contracts or other legal agreements as required to implement this decision.

Reason(s) for decision:

The Non-Maintained Independent Special Schools (NMISS) Dynamic Purchasing System (DPS) was established on 1 September 2022. The contract is for a period of three years, ending 31 August 2025, and contains three optional one year extension clauses, which if activated in full, would result in the contract ending 31 August 2028.

A review of the NMISS DPS in February 2024 identified challenges with the current contract. Some of these challenges cannot be addressed within the scope of the current contract and require a new arrangement, procured under the new Procurement Act that will:

- Enable changes to the admission criteria of the DPS supporting a shift from volume to quality of provision, including an ability to adapt and amend over time as needs change
- Explore block contracting as an option that officers believe can provide financial benefits and better value for money
- Facilitate the development of more strategic relationships with providers

An extension of the existing DPS is required in order to allow time to undertake a re-procurement process. A Key Decision is being sought to extend the DPS as the substance of the original decision taken to implement the DPS is not considered sufficient to enact an extension to the contract on the basis of the original delegations provided. The possibility of extending the DPS was always provided for.

Background

Securing Kent's Future

The number and cost of placement of children and young people in the NMISS sector has been growing year on year since 2017. Any future model must deliver improved outcomes for children and young people with Education Health Care Plan (EHCP) and evidence best value for money. This means that future provision must focus on improving outcomes and contributing to a financially sustainable system for the future, in line with the Council's budget recovery strategy - Securing Kent's Future.

Framing Kent' Future 2022 - 2026

Longer term, it is expected that this contract will standardise costs and ensure placements are the best value for money. Additionally, other work to reduce KCC's reliance on the NMISS sector will increase competitiveness in the market to reduce costs further. This will support the Priority 1 (Levelling up Kent) in Framing Kent's Future strategy to:

- Maintain KCC's strategic role in supporting schools in Kent to deliver accessible, high quality education provision for all families.
- Drive improvements in the educational attainment, skills and employment rates and public health outcomes for deprived communities particularly in coastal areas.
- Work with our partners in developing preventative approaches into improving and narrowing health inequalities that limit educational attainment and progress of communities in the most deprived areas and other population groups that experience poorer than average outcomes.

Equalities Assessment

An Equalities Impact Assessment has been completed. The extension of the DPS means that issues with the current contract cannot be addressed and will remain the same during the extended period. This includes issues with the quality of provision. The impact of this on the affected protected groups will be mitigated through robust contract management and performance monitoring. The one year extension period will be used to undertake market and stakeholder engagement with a view to re-procuring the services through arrangements made under the Procurement Act 2023, and that will also seek to address and mitigate any issues identified within the EqIA.

Financial Implications

Total spend on Independent and Non-Maintained providers of special educational needs placements is forecast to be in excess of £80m (taking into account expected income) in 2024-2025 as outlined in the latest monitoring report to Cabinet on 30 January 2025, of which approximately £50m (approximately 60%) is spent on contracted providers through the Non-Maintained Independent Special School Dynamic Purchasing System. Therefore the estimated cost of the extension of one year is of the same value, subject to changes in demand over the next year, with the total cost of the contract c£200m over the life time of its contract of four years (September 2022 to 2026).

The cost of this contract is reported against the Special Educational Needs and Psychology Services key service budget line, and total spend on Independent and Non-Maintained schools is reported with Section 3g (School Budgets) of the Council finance monitoring report to Cabinet. Whilst this spend is expected to be fully met from the High Needs Block of the Dedicated Schools Grant (DSG), and would not be a direct cost to the General Fund, there is a significant accumulated deficit on the DSG (estimated to be £222m by March 2028), which the Council has agreed to contribute a total of £82m to (in addition to a DfE contribution of £140m), between 2023 and 2027, to help pay-off the deficit by 2028-2029.

If the DPS contract was not to be extended, all contracts would revert to a "spot purchase agreement" with all the associated financial and operational risks.

Legal Implications

Commercial and commissioning officers have advised that explicit provision to enable KCC to

extend the DPS was included when it was originally established under the Public Contract Regulations 2015 (as amended). As such, provided the extension will remain within the original advertised financial value of services required, and are within budget, then it is open to KCC to extend the DPS in accordance with its terms and any process set out for doing so.

As the DPS is open for new suppliers to seek to be onboarded to the DPS during its terms there is no risk of challenge from the market that they are being denied an opportunity to bid to be admitted onto the NMISS DPS, during the extension period.

Data Protection Impact Assessment

A DPIA is in progress and will be completed prior to commencement of the procurement of the new framework .

Cabinet Committee recommendations and other consultation:

No Cabinet Committee consultation is possible due to timescales, to ensure that the extension is compliant with the new procurement Act 2023.

The decision will be reported to a future Children's, Young People and Education Cabinet Committee. The Chair of the CYPE Cabinet Committee was advised of the need to take the decision prior to the next committee.

Any alternatives considered and rejected:

The following options were considered and discarded:

1. Allow the current DPS to expire at the end of August 2025 and revert to spot purchasing arrangements.
 2. Extend the contract by the full three years to end 31 August 2028 and re-procure a new service to start from 1 September 2028.
 3. Extend the contract by two years (ending 31 August 2027) and re-procure a new service to start from 1 September 2027.
 4. Allow the current DPS to expire at the end of August 2025 and re-procure a new service to start from 1 September 2025.
- Option 1 was discarded as it does not comply with the Procurement Act 2023.
 - Options 2 and 3 were discarded as extending the current contract for two or three more years means that more schools will be admitted to the DPS under the current admission criteria, thereby compounding the issues already identified.
 - Option 4 was discarded as there is insufficient time to undertake full market engagement and to redesign and co-produce a new offer from September 2025.

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



14.2.2025

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signed

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date