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**From:** Sarah Hammond, Corporate Director Children Young People and Education

**To:** Rory Love, Cabinet Member for Education and Skills

**Subject:** Non-Maintained Independent Special School (NMISS) Dynamic Purchasing System (DPS) – Contract extension

**Decision no:** 25/00007

**Key Decision :** Yes

- It affects more than two Electoral Divisions
- It involves expenditure over £1m

**Classification:** Unrestricted

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

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

**Electoral Division:** All divisions

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**Is the decision eligible for call-in?** Yes

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**Summary:** This report provides an update on the activity since the Non-Maintained Independent Special School (NMISS) Dynamic Purchasing System (DPS) was established in 2022, including an options appraisal and recommendation to extend the DPS arrangements for a period of one year past its current end date of 31 August 2025. The contract has three allowable one year extensions and this request is to use one of those whilst recommissioning of a new contract is undertaken.

**Recommendation(s):**

That the Cabinet Member for Education and Skills 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 and Skills 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.

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## **1. Introduction**

- 1.1 Kent County Council has a statutory responsibility to provide suitable education for all children and young people. A report on the 'Non-Maintained and Independent Special School (NMISS) Commissioning Strategy' was presented to Children's, Young People and Education Cabinet Committee on 30 June 2021 outlining issues with the approach taken to placing children and young people in NMISS placements with a recommendation to implement a Dynamic Purchasing System (DPS) that would address these issues<sup>1</sup>.
- 1.2 Following the Key Decision ([Decision - 21/00049 - Non-Maintained and Independent Special School Commissioning Strategy](#)), the NMISS DPS was established in September 2022. The contract was for an initial 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 DPS contract ending on 31 August 2028.
- 1.3 This report sets out the current and future demand in the NMISS sector, the role that the sector will play in transforming the SEND education landscape in Kent, the progress made in meeting the original aims of implementing the DPS and an options appraisal regarding the future of the DPS beyond August 2025.
- 1.4 The term of the contract and extension clauses were not sufficiently detailed within the original Decision Report and delegations in 2021. This report rectifies the omissions within the initial Decision.
- 1.5 With the implementation of the Procurement Act 2023 on 24 February 2025, to extend this contract, it should be completed while the Public Contract Regulations of 2015 are still in force (as this contract was let under that regime.) Therefore, the Cabinet Member for Education and Skills is asked to take the decision to extend the NMISS DPS contract out of cycle due to the new Procurement Act starting before the next Children's, Young People and Education Cabinet Committee in February.

## **2. Key Considerations**

- 2.1 Future provision of placements in the NMISS sector must be considered within the wider context of emerging strategies and SEND transformation that have been implemented in response to the Kent Local Area SEND Ofsted and Care Quality Commission (CQC) inspection in 2019 and revisit in 2022 as this transformation will change the demographic of children and young people that use this provision.

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<sup>1</sup> [Non-Maintained and Independent Special School \(NMISS\) Commissioning Strategy](#)

- 2.2 The Countywide Approach to Inclusive Education (CATIE) and Locality Model for School Inclusion will drive greater inclusion of children with SEND in mainstream settings and schools.
- 2.3 The review of maintained special schools<sup>2</sup> has crystallised the need for the ‘right child in the right placement’ ethos. The Special School Review proposals seek to ensure all Kent’s special schools admit and educate children and young people with the most complex needs, leaving a smaller cohort of pupils requiring placements in the NMISS sector.
- 2.4 The number and cost of placements 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 Plans (EHCP) and also 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 2022 – 2026<sup>3</sup>.
- 2.5 KCC produces an annual SEND Sufficiency Plan for children and young people. Improved understanding of how the NMISS sector is used can support Strategic planning for SEND provision linked to the SEND Sufficiency Plan<sup>4</sup>.
- 2.6 Future commissioning of NMISS must also align to the outcomes identified in the Strategy for the Future of Education in Kent 2025 – 2030<sup>5</sup> and SEND Strategy<sup>6</sup> and the forthcoming Children’s Wellbeing and Schools Bill.

### **3. Background**

- 3.1 The key drivers to establish a DPS framework for education placements outside of the mainstream and maintained provision for children and young people with an EHCP was to enable Kent County Council (KCC) to monitor the quality of provision, improve outcomes for children and young people and ensure placements offer best value in a way that could not be achieved through the process of spot purchasing.
- 3.2 To achieve the above, the initial focus was on volume and enabling as many schools as possible to join the NMISS DPS, creating sufficient capacity to reduce reliance on placements outside of the framework through spot purchasing. To this end, the NMISS DPS has been a success.
- 3.3 Based on all independent placements between April and November 2024, 21% of NMISS schools in Kent are on the DPS, with 56% of placements being made at DPS schools. Schools on the DPS tend to be better value for money, with placements made at those schools offering, on average, a lower annual cost. A summary is outlined below.

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<sup>2</sup> [Special Schools Review](#)

<sup>3</sup> [Securing Kents Future - Budget Recovery Strategy.pdf](#)

<sup>4</sup> [SEND Sufficiency Plan October 2023](#)

<sup>5</sup> [A Strategy for the Future of Education in Kent 2025-2030 | Let’s talk Kent](#)

<sup>6</sup> [Kent SEND Strategy 2025-2028 | Let’s talk Kent](#)

NMISS Status	No. of schools	% of schools	No Out of Area	% Out of Area	No of placements*	% of placements	Total Gross Forecast Spend 2024-25 (£M)	% of spend	Average Gross cost per pupil 2024-25 (£K)
DPS	26	21%	5	9%	1159	56%	46.76	54%	40.34
non DPS	98	79%	48	91%	910	44%	39.99	46%	43.95
<b>Total</b>	<b>124</b>	<b>100%</b>	<b>53</b>	<b>100%</b>	<b>2069</b>	<b>100%</b>	<b>86.75</b>	<b>100%</b>	<b>41.93</b>

*\* This is the total number of children who attended an independent placement between April 2024 and November 2024. This includes children who started and left placements during this period.*

- 3.4 A review of NMISS DPS was undertaken in February 2024 to understand the extent to which the DPS was being used to make placements, achieving value for money and delivering the outcomes intended. Key findings of the review identified barriers and challenges related to the NMISS sector more broadly that impacted the delivery of Key Performance Indicators and positive outcomes for children and young people placed in schools on the DPS.
- 3.5 The recommendations from the review included a whole system approach to ensure all systems, structures and processes are appropriately aligned to maximise the intended impact of the contract, reinforcing the benefits of the DPS.
- 3.6 Since the review, significant progress has been made in improving processes, relationships and communication with the NMISS sector. These include:
- Improved joined up working between Children’s Commissioning and SEND colleagues which reduces mixed messages to the market and improved performance monitoring.
  - Revised Key Performance Indicators (KPIs) launched September 2024 (with positive feedback from providers).
  - Design, implementation and roll out of the NMISS DPS Hub as a one stop shop for all communications, intelligence and submission of KPIs. (with positive feedback from all stakeholders).
  - Quarterly market engagement events for providers on the DPS to reinforce key messages and ensure the market is in tune with Kent’s direction of travel in relation to SEND and Education.
  - Work with SEN Placement Team to embed use of the Placement App and use of DPS as a placement tool.
  - Design and implementation of a new fee increase request process, resulting in successful fee negotiations for the 2024/2025 academic year, and cost avoidance of over £1m against existing placements.
  - Establishment of an NMISS Steering group with a temporarily appointed independent chair to lead on supporting the development of an NMISS three year strategy and annual implementation plan.

## Demand Profile

- 3.7 Kent Analytics produced a set of data taken as a snapshot from January 2024. The data reflects the demand profile of placements in the NMISS sector. The data indicates that in January 2024 total of 1839 Kent pupils were placed across 120 schools in the independent sector (DPS and non DPS schools).
- 3.8 Based on this snapshot, the demand for provision in the independent sector is predominantly for children and young people with Autistic Spectrum Disorder (ASD) accounting for 45% of placements, Social Emotional and Mental Health Needs (SEMH) accounting for 33% of placements and Speech Language and Communication Needs (SLCN) contributing to 11% of placements. The demand is highest in the secondary phase (75%), and peaks in year 10.

#### Commissioning Intentions

- 3.9 A renewed focus on improving outcomes for children and young people within the context of delivering a financially sustainable SEND system in the future means that quality will become the focus area for NMISS in any future commissioning arrangements.
- 3.10 To achieve this, it is critical to reset the evaluation criteria, with a higher quality threshold that schools must achieve to be admitted to the framework. This cannot be achieved under the current arrangements.
- 3.11 With greater assurance regarding the quality of provision, the local authority can consider use of block contracting (currently not used) to achieve better value for money. This, together with, increased scrutiny of how funding and resources are used and how schools meet outcomes for children and young people will provide greater assurance that schools on the framework will be able to support pupils with the highest levels and complexities of SEN needs.
- 3.12 We will explore opportunities to work more collaboratively with other local authorities, particularly Medway, sharing knowledge of the sector, expertise and potentially resources to achieve shared outcomes. Specifically, we will ensure that any future contract is able to respond to changes implemented after Local Government Reorganisation.
- 3.13 As noted in section 1.2, the current term of the contract ends on 31 August 2025. There are three explicit one year extensions provided for within the contract and original advertisement. The intention is to extend the current DPS contract for one year until 31 August 2026, in order to allow time to undertake a procurement process to implement a new framework from 1 September 2026.
- 3.14 Extensive market and stakeholder engagement will inform the key principles for a new framework. Early discussions with schools indicate sector readiness to work more collaboratively with the local authority to achieve these aims.
- 3.15 The new arrangements will address issues identified within the current DPS contract and ensure that it meets the needs of the transforming Kent SEND landscape and continuum of education support.
- 3.16 In the interim period, during the one year extension, more schools can bid to join the existing DPS framework until the contract expires. Currently the NMISS

DPS is open for schools to submit bids at any time, meaning it can be difficult to plan for the evaluation and onboarding process because of the ad-hoc nature of submissions. For this process to be better managed, as part of the extension, it is proposed that the NMISS DPS bids are switched to rounds, with the opportunity being open to new bidders quarterly. This does not require any contract variation and can therefore be implemented under the existing terms and conditions. Amendments will be made to the Invitation To Tender (ITT) and to the Prior Information Notice (PIN) published to advertise the rounds.

#### **4. Options Considered and dismissed, and associated risks**

4.1 The following options have been considered and discarded. See Appendix 1 for more detail:

1. Allow the current DPS to expire at the end of August 2025 and revert to spot purchasing arrangements.
2. Extend the contract for the full three years to end 31 August 2028 and re-procure a new service to start from 1 September 2028 or earlier.
3. Extend the contract for two years to end 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 September 2025.

4.2 The recommended option is to extend the current DPS for one year (ending 31 August 2026) and re-procure a new service to start from 1 September 2026. This option will allow the Council sufficient time to undertake market engagement activities and to re-procure a new framework that can address the issues identified to ensure that the NMISS market responds to the transforming SEND landscape and is best placed to meet the needs of children and young people.

4.3 Longer term, it is expected this contract will standardise costs and ensure placements are best value. 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 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

4.4 Any future commissioning activity must be considered within the strategic context of:

- The Council's commitment in discharging its statutory duty for children and young people with SEND.

- The Council's drive for greater inclusion of children and young people with SEND in mainstream settings and schools, as outlined in the CATIE.
- Delivery of the Safety Valve.
- The Council's adherence to a robust, transparent and legally compliant procurement process in commissioning placements at independent or non-maintained special schools.

## **5. Financial Implications**

- 5.1 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).
- 5.2 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.
- 5.3 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.

## **6. Legal implications**

- 6.1 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.
- 6.2 As the DPS is open for new providers 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 during the extension period as they can ask to be admitted to the DPS.

## **7. Equalities implications**

- 7.1 An Equalities Impact Assessment has been completed. Extension of the DPS contract means that issues with the current contract cannot be addressed and

will remain during the extended period. This includes issues reported on 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 will also seek to address and mitigate any issues identified within the EqIA.

## **8. Data Protection Implications**

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

## **9. Other corporate implications**

9.1 There are no other corporate implications.

## **10. Governance**

10.1 Accountability for statutory functions in relation to Safety Valve sits with Corporate Director for Children, Young People and Education. Responsibility for delivery sits with the Director for Education and Special Education Needs.

Delegated authority will be given to the Corporate Director for Children, Young People and Education, to enter into extensions to the existing contracts, as required, to ensure service continuity

## **11. Conclusions**

11.1 In considering how to address the above issues, the following factors have been considered:

- The NMISS DPS contract has the option to extend up to three years beyond 31 August 2025. These options can only be implemented incrementally in one year extensions at a time.
- Addressing the issues identified in this report, cannot be achieved under the existing terms and conditions of the DPS contract. It is necessary to change the admission criteria of the DPS and shift the focus from volume to quality of provision in the re-procurement.
- There is insufficient time to undertake full market engagement and to redesign and co-produce and procure a new offer from 1 September 2025.
- Extending the current DPS 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.
- The proposal is to extend the contract by one year to end 31 August 2026, and to re-procure a new framework commencing 1 September 2026, under the new Procurement Act 2023.
- Currently the NMISS DPS remains open for applications throughout the timeline of the framework. As part of the extension, it is proposed to switch the timeframe for new bidders to quarterly rounds. This would not require any contract variation, but there would need to be amendments made to



the Invitation To Tender (ITT) and to the Prior Information Notice (PIN) published to advertise the rounds.

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

That the Cabinet Member for Education and Skills 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, 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.
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## **12. Background Documents**

- Equality Impact Assessment

## **13. Appendices**

- **Proposed Record of Decision**
- Appendix 1 - Options Appraisal

## **14. Contact details**

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