

**Report of Head of Complex Needs**

**Report to Director of Children's Services**

**Date: 06/10/14**

**Subject: Request to award contracts to post 16 special education needs (SEN) learning providers under the exempt contracts clause of Contract Procedure Rules**



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| Are specific electoral Wards affected?<br>If relevant, name(s) of Ward(s):   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration?  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In?  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| Does the report contain confidential or exempt information?<br>If relevant, Access to Information Procedure Rule number:<br>Appendix number: | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

**Summary of main issues**

1. There are approximately 230 high needs students in post 16 education provision from the City.
2. From April 2013 the Local Authority became responsible for the administration of element 3 funding for post 16 learners. This is top up funding required over and above that provided by the place funding (element 1 and element 2); to enable a student with high needs to participate in education and learning. The Education Funding Agency (EFA) makes an allocation to Local Authorities for element 3, through the Dedicated Schools Grant (DSG). This forms part of the high needs budget. Local Authorities then use their high needs budget to pay top-up funding to institutions.
3. The Head of Complex Needs wishes to put robust contract arrangements in place with all providers in receipt of element 3 funding to ensure all learners achieve good outcomes in accordance with their Education Health & Care Plan.
4. The Head of Complex Needs wishes to award contracts under the exempt contracts clause of Contract Procedure Rules in order to meet the Local Authorities obligations under the Children & Families Act 2014.
5. The Head of Complex Needs only wishes to contract with providers that are registered with the Education Funding Agency to receive element 1 & 2 funding. This ensures the initial place funding of the student's placement is funded directly by the EFA and is not required to be funded by the Local Authority.

6. The list of providers in receipt of element 3 funding is in appendix 1. It is proposed to establish an overarching call off contract, or service level agreement for maintained schools, with the named providers and each individual student's Education, Health & Care Plan (EHCP) will form the call off arrangement.
7. The contract value differs each year according to the number of students eligible for element 3 funding and according to their individual needs. For information the total amount of post 16 element 3 funding in 2014/15 is £1,918,527.

## **Recommendations**

1. The Director of Children's Services is recommended to award contracts to providers listed in appendix 1 under the exempt contracts clause of Contract Procedure Rules in order to meet the Local Authorities obligations under the Children & Families Act 2014. The contract shall commence on the 1<sup>st</sup> September 2015 and expire on the 31<sup>st</sup> August 2016, with the option to extend for four further periods of 12 months.
2. The Director of Children's Services is recommended to approve the award of a contract to new providers, not listed in appendix 1, in exceptional circumstances where the individual student's needs cannot be met by any of the providers listed in appendix 1.

## **1 Purpose of this report**

- 1.1 To seek approval to award contracts under the exempt contracts clause of Contract Procedure Rules in order to meet the Local Authorities obligations under the Children & Families Act 2014

## **2 Background information**

- 2.1 There are approximately 230 high needs students in post 16 education provision in the City.
- 2.2 From April 2013 the Local Authority became responsible for the administration of element 3 funding. This is top up funding required over and above that provided by the initial place funding (element 1 and element 2); to enable a student with high needs to participate in education and learning.
- 2.3 The EFA makes an allocation to local authorities for Element 3, through the dedicated school grant (DSG). This forms part of the high needs budget. Local Authorities then use their high needs budget to pay top-up funding to institutions.
- 2.4 All learners that attract element 3 funding will have an Education Health & Care Plan (EHCP) which identifies their learning institution. The most appropriate learning institution is determined in consultation the learner and their parent/carer. The Casework Officer (SENSAP) will make a recommendation of provision based on the learner's needs and a consideration of best value for the council.
- 2.5 Provision is named in the EHCP or Learning Difficulty Assessment (for those students that are older) so there is a commitment to fund that organisation.
- 2.6 Funding is allocated to providers on an annual basis via the funding for inclusion (FFI) mechanism. FFI funding is allocated using criteria divided into 7 bands relating to specific areas of need. The FFI handbook, including the criteria can be found in the FFI Handbook, which is available on the Leeds City Council website.

## **3 Main issues**

- 3.1 The Head of Complex Needs wishes to ensure robust contract arrangements are in place with all institutions in receipt of element 3 funding.
- 3.2 High needs funding for 16 to 25 year olds consists of both place funding (elements 1 and 2) and top up funding (element 3). In all instances, top up funding (element 3) has to be agreed by the local authority with an institution, and a contract must be in place between the two parties. If the local authority does not agree to pay top up funding for a student, then they are not counted as high needs for funding purposes.
- 3.3 Robust contract arrangements will ensure:
- The Local Authorities meets its obligations under the Children & Families Act 2014.
  - Funding is spent wisely.

- Learners in receipt of element 3 funding achieve good outcomes in accordance with their Education Health & Care Plan.
- Providers in receipt of element 3 funding meet their obligations under the Children & Families Act 2014.

3.4 The learning institutions are identified within each learner's EHCP; based on a consultation with the learner, their parent/carer and their Casework Officer. These contracts fall under the exempt contracts as it is not possible to award these contracts on a competition basis.

3.5 The Head of Complex Needs only wishes to contract with providers that are registered with the Education Funding Agency to receive element 1 & 2 funding. This ensures the initial place funding of the student's placement is funded directly by the EFA and is not required to be funded by the Local Authority.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.2 All institutions in receipt of element 3 funding were invited to attend an event on 14<sup>th</sup> May 2014. A presentation was made to providers explaining the proposed contract arrangements.

4.1.3 Attendees were invited to be involved in the development of the agreement.

### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 The equality, diversity, cohesion and integration screening form is attached as Appendix 2. This form identifies that an impact assessment is not required in this case.

### **4.3 Council policies and City Priorities**

4.3.1 The awarding of these contracts supports the councils priorities to:

- Spend money wisely.
- Ensure the most vulnerable are protected.
- Increase numbers in education, employment or training.
- Improve support where there are additional health needs.

### **4.4 Resources and value for money**

4.4.1 The individual contract values are dependent on the individual learners needs.

4.4.2 The most appropriate learning provision is determined in consultation with the Casework Officer, the learner and their parent/carer. The Casework Officer will make a recommendation of provision based on the learner's needs and a consideration of best value for the council.

4.4.3 The Head of Complex Needs only wishes to contract with providers that are registered with the Education Funding Agency to receive element 1 & 2 funding.

This ensures the initial place funding of the student's placement is funded directly by the EFA and is not required to be funded by the Local Authority.

#### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 The annual spend on post 16 element 3 funding in 2014/15 is £1,918,527; we therefore deem that this decision is subject to call-in.
- 4.5.2 The decision to award these contracts falls under the exempt contracts clause of Contract Procedure Rules.
- 4.5.3 In making their final decision, the Director of Children's Services should be satisfied that the course of action chosen represents best value and ensures the local authority meets its obligations under the Children & Families Act 2014.

#### **4.6 Risk Management**

- 4.6.1 There is a risk of increased expenditure should the decision be taken to award contracts to providers not in receipt of element 1 and 2 funding.
- 4.6.2 If robust contract arrangements are not put in place with institutions in receipt of element 3 funding there is a risk that the Local Authority will not meet its obligations under the Children & Families Act, or that learners will not achieve good outcomes.

### **5 Conclusions**

- 5.1 Awarding these contracts under the exempt contracts clause of Contract Procedure Rules will ensure:
  - The Local Authorities meets its obligations under the Children & Families Act 2014.
  - Funding is spent wisely.
  - Learners in receipt of element 3 funding achieve good outcomes.

### **6 Recommendations**

- 6.1 The Director of Children's Services is recommended to award contracts to providers listed in appendix 1 under the exempt contracts clause of Contract Procedure Rules in order to meet the Local Authorities obligations under the Children & Families Act 2014. The contract shall commence on the 1st September 2015 and expire on the 31st August 2016, with the option to extend for four further periods of 12 months.
- 6.2 The Director of Children's Services is recommended to approve the award of a contract to new providers, not listed in appendix 1, in exceptional circumstances where the individual student's needs cannot be met by any of the providers listed in appendix 1.

### **7 Background documents<sup>1</sup>**

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website,

7.1 None

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unless they contain confidential or exempt information. The list of background documents does not include published works.