

Report of Head of Complex Needs

Report to The Director of Children's Services

Date: 18/05/16

Subject: Invoke contract procedure rules 21.2 and 21.7 to the post 16 special education needs (SEN) learning provider's contracts, under the exempt contracts clause of Contract Procedure Rules



Are specific electoral Wards affected? 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? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. There are approximately 420 high needs students in post 16 education provisions 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 Head of Complex Needs wishes to invoke rule 21.7 to vary :-

6.1 The contract of Leeds City College to enable them to take pre-16 learners as part of their Academy provision. This supports the development of Social & Emotional Health (SEMH) in the city.

6.2 The contract to all other providers, mainstream and Independent Specialist Providers from the contract last year (2015-2016) to make contracts more conducive to the City's and the pupils needs.

7. The Head of Complex Needs wishes to invoke rule 21.2 to extend :-

7.1 The contract for the mainstream providers for 4x12 months

7.2 The contract for the Independent Specialist Providers (ISP) for 1x12 months (It is likely we will be moving contracts for ISP to the regional White Rose Framework in the future so we are wishing to take up a 12 month extension at this stage).

8. The list of providers in receipt of element 3 funding is in appendix 1. It is proposed to establish an overarching call off contract as last year or service level agreement for maintained schools, with the named provider. Each individual student's Education, Health & Care Plan (EHCP) will form the call off arrangement.

9. 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 2015/16 is £4.9 M.

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 1st September 2016. The mainstream providers contract will expire on the 31st August 2017 with no option to extend. The ISP contracts will expire on 31st August 2017 with the option to extend for a further three 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 extend and vary contracts under the exempt contracts clause of Contract Procedure Rules in order to meet the Local Authorities obligations under the Children & Families Act 2014
- 1.2 Variation to Leeds City College contract - Including students in 14-16 Academy provision together with other minor variations.
- 1.3 Variation to mainstream providers - The parties to this agreement will jointly review this agreement annually as part of the commissioning process, other minor variations also.
- 1.4 Variation to Independent Specialist Providers - The Council and the Company will negotiate the Individual Learner Package based on the additional provision required to meet individual Learner needs. The additional provision required will be described within the learners Education Health and Care Plan. Payment will be made during the second half of each term on receipt of a valid invoice, other minor variations also.
- 1.5 To extend the said contracts for either one or four years.
- 1.6 Any changes to the package of support which impacts on the current payments will need to be negotiated between the Council and the Company through the annual review process.

2 Background information

- 2.1 There are approximately 420 high needs students in post 16 education provisions 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 14th 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 Best Council Plan

4.3.1 The extension and variation 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 2015/16 is £4.9 M; we therefore deem that this decision is subject to call-in.

4.5.2 The decision to extend and vary 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 Extending and varying 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 approve the extension and variation 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 documents¹

- 7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.