

Report of Head of Complex Needs

Report to Director of Children & Families

Date: 14/06/17

Subject Permission to extend and vary the existing Post 16 SEN contracts with non-maintained learning institutions for 2017/18



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. This report seeks approval to extend and vary contracts for those learning institutions listed in appendix. The agreements are concluded exclusively between public authorities, therefore, by virtue of Regulation 12(7) of the Public Contracts Regulation (PCR) 2015 the arrangements fall outside the scope of Part 2 of the PCR and are not procurements for the purposes of the Council's Contract Procedure Rules (CPR) by virtue of CPR 1.5.2 The Agreements ensure that the Local Authority complies with its obligations under the Children & Families Act 2014.
2. Due to the previous system being very complex and difficult to understand, in 2013, the Department for Education made changes to the way in which schools were funded. The national changes were designed to make the provision for High Needs students more equitable, affordable and improve outcomes for young people. The changes to the funding system resulted in local authorities becoming the commissioners of local provision to meet the needs of their young people.
3. In September 2014, contracts were awarded to those mainstream providers and independent specialist providers (ISPs) which had been named in young people's plans. There are currently contracts in place with mainstream providers which expire 31st August 2020 and ISPs which expire 31st August 2017. This decision seeks to vary all contracts to ensure they continue to be fit for purpose and extend the contracts with ISPs up to 31st August 2020.

4. The Head of Complex Needs wishes to continue these robust contract arrangements with all providers in receipt of element 3 funding to ensure all learners achieve good outcomes in accordance with their Education Health & Care Plan.
5. Contract values differ 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 top up funding for 2015-16 was £4,089,688. This was for 532 learners in total.

Recommendations

1. The Director of Children & Families is recommended to approve the:
 - a. Extension of existing contracts with Independent Specialist Providers (ISPs) for the remaining three x 12 month extension periods, taking these contracts to 31st August 2020 and
 - b. Variation of existing contracts with both ISPs and mainstream providers to ensure they continue to be fit for purpose.

As the agreements are concluded exclusively between public authorities, by virtue of Regulation 12(7) of the Public Contracts Regulation (PCR) 2015 the arrangements fall outside the scope of Part 2 of the PCR and are not procurements for the purposes of the Council's Contract Procedure Rules (CPR) by virtue of CPR 1.5.2 1 The Agreements ensure that the Local Authority complies with its obligations under the Children & Families Act 2014.

1 Purpose of this report

- 1.1 This report seeks approval to extend and vary contracts for those learning institutions listed in appendix 1. As the agreements are concluded exclusively between public authorities, by virtue of Regulation 12(7) of the Public Contracts Regulation (PCR) 2015 the arrangements fall outside the scope of Part 2 of the PCR and are not procurements for the purposes of the Council's Contract Procedure Rules (CPR) by virtue of CPR 1.5.2 1 The Agreements ensure that the Local Authority complies with its obligations under the Children & Families Act 2014 as follows:
- 1.2 Variation to existing contracts with mainstream providers which run until 31st August 2020 - Minor updates to reflect developments within Children & Families such as early help assessment.
- 1.3 Variation as paragraph 1.2 but for contracts with ISPs which currently run until 31st August 2017.
- 1.4 Extension to contracts with ISPs for a period of three years until 31st August 2020.
- 1.5 Any changes to the packages of support which impact 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 Due to the previous system being very complex and difficult to understand, in 2013, the Department for Education made changes to the way in which schools were funded. The national changes were designed to make the provision for High Needs students more equitable, affordable and improve outcomes for young people. The changes to the funding system resulted in local authorities becoming the commissioners of local provision to meet the needs of their young people.
- 2.2 As part of this, 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.
- 2.3 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. There is a requirement for the local authority to agree any allocation of top up funding (element 3) and to put in place contracts between the two parties.
- 2.4 For high needs learners with an Education Health & Care Plan (EHCP), Post 16 placements are made in line with the statutory SEN Regulations (2014) and the Code of Practice which states that the LA must name the preferred setting of the young person and the family unless it is unsuitable for the age, aptitude and ability of the child or young person or the attendance of the child or young person would be incompatible with the efficient education of others or the efficient use of

resources. If young person or family preference cannot be agreed, 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. There is a commitment for the Local Authority to fund the named institution in a call off arrangement.

- 2.5 Learners without an EHCP apply and access college placements through the normal admissions process, without SENSAP being involved. They would be subject to the college's specific entry requirements etc and there is still a duty on the college to support the young person's needs when they attend. Settings are allocated funding based on their identified needs. In most cases this will be based on the previously identified Funding For Inclusion (FFI) in place in the High school. If there was no previous FFI then settings make a case for top-up funding to SENSAP. Most of these learners access sixth form colleges and Leeds City College. There were 43 young people funded in post 16 institutions without a plan in 2015/16 (8% of total).
- 2.6 Learners can attend a range of post 16 learning institutions including maintained schools, academies, Independent Specialist Colleges, free schools, Specialist Inclusive Learning Centres (SILCs) and post 16 colleges. For those which are non-maintained institutions, a contractual arrangement is needed. The Local Authority as commissioner also has a responsibility to commission from maintained institutions and so service level agreements can be issued which mirror responsibilities and requirements within contracts. Where a maintained institution converts to an academy, a cooperation agreement would be needed as both the Council and academy are public bodies.
- 2.7 We have two types of contract which reflect different funding arrangements for either mainstream providers or independent specialist providers (ISPs). For example, mainstream colleges make an application to the Council for each individual learner that requires additional learning support costs (element 3 funding) as per the funding for inclusion (FFI) handbook. For Independent Specialist Colleges, the Council and the institution negotiate the Individual Learner Package based on the additional provision required to meet individual learner needs.
- 2.8 Post 16 top up funding for 2015-16 was £4,089,688. This was for 532 learners in total, including 43 without a plan.

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 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.
- 3.4 When SENSAP knows the destinations of young people needing Post 16 provision (usually in March/April), any institutions named in the young person's plan without an existing contract are awarded one under the provisions of the delegated decision made in 2014/15 which approved the award of a contract to new providers where in exceptional circumstances an individual student's needs cannot be met by any of the providers listed in appendix 1. At the same time, all existing contracts are updated by way of contract variations as needed.
- 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

- 4.1.1 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.
- 4.1.2 Attendees were invited to be involved in the development of the agreement.
- 4.1.3 Young people are also consulted as part of their EHCP where a provision is named.

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 Council priorities to:
- Spend money wisely.
 - Ensure the most vulnerable are protected.
 - Reduce the number of young people not in education, employment or training.
 - Improve outcomes for CYP with special educational needs and/or disability.

4.4 Resources and value for money

- 4.4.1 Post 16 top up funding for 2015-16 was £4,089,688 but individual contract values are dependent on the individual learners needs and so vary from institution to institution and year to year.

- 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.
- 4.4.4 SENSAP will be responsible for monitoring an individual Learner's outcomes against their EHCP. This will be through the annual review cycle of the EHCP in line with the guidance set out in the SEN Code of Practice. The Children & Families Commissioning Team, in collaboration with SENSAP, will be responsible for addressing any issues of non-compliance with this agreement.
- 4.4.5 Robust contract arrangements ensure:
- The Local Authority 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.

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 £4.09 M; it is therefore a key decision and is subject to call-in. The decision was published on the forward plan on 4/05/17.
- 4.5.2 As the agreements are concluded exclusively between public authorities, by virtue of Regulation 12(7) of the Public Contracts Regulation (PCR) 2015 the arrangements fall outside the scope of Part 2 of the PCR and are not procurements for the purposes of the Council's Contract Procedure Rules (CPR) by virtue of CPR 1.5.2 1 The Agreements ensure that the Local Authority complies with its obligations under the Children & Families Act 2014. Therefore the decision to extend does not fall within the Council's CPRs.. Also it is not possible to award these contracts on a competition basis because the institution is named in the young person's EHCP.
- 4.5.3 If robust contract arrangements are not put in place with institutions in receipt of element 3 funding in line with the recommendations of this report 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.
- 4.5.4 In making their final decision, the Director of Children & Families 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

- 4.61 Invoking all the extensions up to 2019/20 for Post 16 SEN contracts with ISPs has minimal risks because the contract does not commit us to spending with that provider. The contracts are only utilised where the learning institution is named in a young person's EHCP and individual learners placed there. There is flexibility built in to respond to changing need and costs. Any changes to the package of support which impacts on current payments are negotiated between the Council and the learning institution through the annual review process.
- 4.62 Varying existing contracts has minimal risks because the changes are unlikely to be significant enough to fundamentally alter the nature of the contract in relation to either the specified requirements or the way they are funded. Variations tend to be minor changes to reflect developments within the Council such as in assessment processes.
- 4.63 If this decision is not approved, learners will still access these institutions but we will not have a contract in place by which we can hold them to account. The decision is needed in early June so that we can process the extensions and variations for institutions to consider before the summer break.

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 & Families is recommended to approve the:
- a. Extension of existing contracts with Independent Specialist Providers (ISPs) for the remaining three x 12 month extension periods, taking these contracts to 31st August 2020 and
 - b. Variation of existing contracts with both ISPs and mainstream providers to ensure they continue to be fit for purpose.

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7 Background documents¹

7.1 N/A

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.