

**Report of Head of Complex Needs**

**Report to Director of Children and Families**

**Date: 26<sup>th</sup> July 2017**

**Subject: Request to award cooperation agreements to East SILC under the exempt contracts clause (d) and clause 1.5.2 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. The purpose of this report is to seek approval to award cooperation agreements to East SILC (specialist inclusive learning centre) for the delivery of the Medical Needs Teaching Service (MNTS) and the Physical Difficulties and Medical (PD & Med) service.
2. East SILC has been delivering MNTS and the PD & Med service for a number of years within the terms of service level agreements (SLAs). The value of these services is £1,246,960 and £94,185 respectively for 2017-18. The MNTS SLA is due to expire on 31<sup>st</sup> March 2019 and the PD & Med SLA is due to expire on 30<sup>th</sup> September 2017, with the option to extend by a further 6 months.
3. East SILC is due to convert to an academy at a date to be determined, which will be after 1<sup>st</sup> September 2017. This will mean the SLAs are no longer legally valid and for the continued delivery of the services, it will be necessary to award cooperation agreements.
4. The decision to award a cooperation agreement falls within Clause 1.5.2 of the Contract Procedure Rules as it is a cooperation between two public bodies and falls outside of the Public Contract Regulations pursuant to Regulation 12(7). Therefore it is not a procurement exercise for the purpose of the Contract Procedure Rules.

5. The decision to award a cooperation agreement for MNTS is key because the value of the contract is over £250k per annum. The decision is on the forward plan and can be taken after 26<sup>th</sup> July 2017.

## **Recommendations**

1. The Director of Children and Families is recommended to award cooperation agreements to East SILC academy, or whatever name the academy is given on conversion, for the delivery of MNTS and the PD & Med Service as follows:
  - a. MNTS: The agreement shall commence when East SILC converts to an academy and expire three years later, with a value of approximately £1,246,960 per annum. This decision falls within Clause 1.5.2 of the Contract Procedure Rules as it is a cooperation between two public bodies and falls outside of the Public Contract Regulations pursuant to Regulation 12(7). Therefore it is not a procurement exercise for the purpose of the Contract Procedure Rules. This is a key decision because the value of the cooperation agreement is over £250k per annum.
  - b. PD & Medical service: The agreement shall commence when East SILC converts to an academy and expire 12 months later. The value will be £94,185 for 2017/18 and the value for 2018/19 will be determined by the findings of a review of the service. This decision falls within Clause 1.5.2 of the Contract Procedure Rules as it is a cooperation between two public bodies and falls outside of the Public Contract Regulations pursuant to Regulation 12(7). Therefore it is not a procurement exercise for the purpose of the Contract Procedure Rules. This is a significant operational decision because the value of the cooperation agreement is over £10k per annum.

## 1 Purpose of this report

- 1.1 To seek approval to award cooperation agreements under the exempt contracts clause and clause 1.5.2 of Contract Procedure Rules to East SILC, or whatever name the academy is given on conversion, for the continued delivery of MNTS and the PD & Med service.

## 2 Background information

### MNTS

- 2.1 Section 19 of the 1996 Education Act states that the LA has a duty to make arrangements for the provision of suitable education for those children and young people who are unable to attend school because of health needs (medical/mental health):
- 2.2 *“Each Local Education Authority (LEA) should make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them”.*
- 2.3 Since 2005, the Medical Needs Teaching Service (MNTS) (originally referred to as Hospital & Home Teaching Service) has been commissioned by Leeds City Council to provide suitable access to education for children and young people who are unable to attend school provision because of their health/mental health needs.
- 2.4 The service delivered falls into two groups:
- 2.5 **Group 1** - The main purpose of the Group 1 service is to educate and meet the learning needs of children and young people of school age with medical/mental health needs that require admission to Leeds General Infirmary and Little Woodhouse Hall. The Hospital Education funding includes delivery of pre-16 and post-16 education. The service is delivered to children and young people, regardless of which local authority they are permanently resident in. This involves the management of educational provision at the school rooms located at Leeds General Infirmary and Little Woodhouse Hall (CAMHS) and will be provided to the children and young people those hospitals serve.
- 2.6 The current value of this group is £975,000 per year for 293 beds, in line with the number of beds in Children’s Hospital at Leeds General Infirmary and Little Woodhouse Hall. As numbers of children and young people rise the LA is continually seeking further funding from the DfE for this service.
- 2.7 **Group 2** - The main purpose of the Group 2 service is to educate and meet the learning needs of children and young people whose medical/mental health condition, whilst not requiring hospitalisation, does not allow them to attend school. This includes children and young people who are electively home educated. This is for children and young people on roll at a Leeds school (including Academies, Free Schools, independent schools and special schools)

who are not able to access mainstream school provision because of medical needs, including mental health needs. This involves the management of educational provision at the local authority Learning Centre (currently Grafton and moving to Queenswood site in October 2017), and as appropriate, at the homes of children and at any other location suitable.

- 2.8 The current value of this group is £271,960 per year for up to approximately 90 children and young people at any one time.
- 2.9 Prior to April 2005, Education Leeds directly managed the provision of education to hospitalised children. From 1<sup>st</sup> April 2005 responsibility for the management of the Hospital Teaching Service passed to the East SILC - John Jamieson. A two-year SLA was drawn up between Education Leeds and the governing body of this SILC to confirm this arrangement. This SLA ended on 31<sup>st</sup> March 2007.
- 2.10 The East SILC - John Jamieson was subsequently awarded a further, three-year contract with Education Leeds to manage an extended Hospital & Home Teaching Service (HHTS) from 1<sup>st</sup> April 2007 to 31<sup>st</sup> March 2010. The effectiveness of the East SILC's management of the HHTS has been closely monitored and evaluated by a range of quality assurance services in Education Leeds and by OFSTED. Quality assurance reports produced over the years have identified the highly positive influence and impact the service has made on the educational experience and outcomes of children and young people who are either hospitalised or not yet ready to return to mainstream school provision because of medical issues.
- 2.11 MNTS was successfully re-commissioned by Leeds Children's Services from East Leeds SILC in April 2016 and this arrangement runs until March 2019.

#### PD & Med

- 2.12 The main purpose of the PD & Med service is, 'to provide support, advice and training to practitioners in education settings and thus build their capacity in meeting the needs of children and young people with physical and medical difficulties' across Leeds.
- 2.13 The service is commissioned to deliver a number of different activities including moving and handling training and ICT assessments. The target group for the service is Leeds schools (and other education settings) and teachers working with children and young people with physical and medical difficulties. Referrals are currently made in relation to children and young people with physical and medical needs Tier 2 and upwards. These children receive funding via the High Needs Block Funding For Inclusion (FFI) to support them in their educational setting. These children and young people have quite high levels of additional needs.
- 2.14 The main outputs of the service in 2016/17 were 128 staff fully trained in moving and handling in 24 different settings and 17 ICT assessments completed. 66 staff members were also given intimate care advice.
- 2.15 The PD & Medical Service was set up when there was a change of delivery arrangements for special educational provision in Leeds. The creation of the Specialist Inclusive Learning Centres (SILCs) meant other changes were required

to ensure an inclusive approach to the education of children with complex needs across Leeds schools. The change from John Jamieson as a special school for children with physical disabilities and medical needs to a SILC for a range of needs in the East of the city was aligned with the ambition to ensure physical disabilities and medical needs could be accommodated in mainstream provision. The PD & Med service was created to sit alongside the East SILC to utilise the expertise that were in the SILC around meeting physical disabilities and medical needs across Leeds schools. The Head of East SILC was appointed with a remit to develop a city-wide Physical Disabilities and Medical Service.

- 2.16 CLST approved the award of an SLA to East SILC from 1<sup>st</sup> April 2015 following a review, which updated the SLA in line with new requirements of the Children and Families Act and Statutory Guidance and realised savings of £43,815. It also established clear, outcome based performance measures and monitoring arrangements and improved links between staff in the service and relevant teams within the Complex Needs Service.
- 2.17 The review recommended a short-term SLA whilst a further review was undertaken on performance before decision making for the longer-term. This review is currently underway, taking into account further changes in the arrangements for education of children and young people with physical disabilities and medical needs and potential for duplication with other existing services. The bulk of this review has been completed but there is still some further work to undertake. The current SLA for the delivery of the PD & Med Service started on 1<sup>st</sup> April 2017 and is for a period of six months with the option to extend by a further six months.

### **3 Main issues**

- 3.1 East SILC is due to convert to an academy at a date to be determined, which will be after 1<sup>st</sup> September 2017. When East SILC converts to an academy, the existing SLAs will no longer be adequate and cooperation agreements will need to be awarded.

#### MNTS

- 3.2 East SILC is a proven provider of this service and there is no other provider who could deliver at this time. Although the existing SLA is due to expire on 31<sup>st</sup> March 2019, it is recommended that the Cooperation Agreement is awarded for three years to ensure staff members feel protected at the point of conversion. During the life of the agreement, future commissioning options will be considered, one of which may involve competitive procurement.

#### PD & Med

- 3.3 The PD & Med service is currently being reviewed and there is unlikely to be sufficient time to conclude the review and implement the recommendations before East SILC converts to an academy. This review is essential to determine longer-term commissioning of the service. Given staffing implications for East SILC, the need for stability around conversion to academy status and potential for TUPE any change would need to be planned carefully to manage transition.

3.4 It is therefore recommended that a 12 month cooperation agreement be awarded from date of conversion. It is proposed that funding for 2017-18 remain at the current £94k per annum but that funding for 2018-19 is determined by the outcome of the review. It will be important to ensure East SILC is given six months' notice for any reduction that may result from the review. The maximum value for 2018-19 will be £94k. The service specification will reflect these arrangements. Should the review be concluded prior to conversion, the service specification will be amended to reflect any changes before the cooperation agreement is awarded.

3.5 Cooperation agreements will ensure that there are robust performance management processes in place.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 Consultation has taken place with East SILC about our intention to award cooperation agreements, including their length and value.

4.1.2 Legal (procurement) has been consulted to gain the legal expertise around the agreements. See Clause 4.5 below.

4.1.3 The Lead Member for Children and Families was consulted on 6<sup>th</sup> February and gave approval for the decision relating to MNTS to be published on the Forward Plan. A briefing was provided about the PD & Med review in June 2017.

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

4.2.1 The equality, diversity, cohesion and integration screening form is attached as Appendix 1. 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 awarding of these cooperation agreements 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 This decision will ensure continuation of both services under robust contractual requirements.

#### MNTS

4.4.2 The MNTS service currently represents good value for money. The LA requests and receives regular termly reports on the progress of the service in line with the SLA, including both quantitative and qualitative information with focus on the

progress and engagement in learning. The Lead officer for Children & Families with support from Commissioning are content that the MNTS is providing evidence of good quality education as commissioned in the SLA, flexible to support the complex needs of children and young people with a range of medical and/or mental health needs. The pressure on the service due to changes in medical processes leading to more pupils requiring home tuition is noted by the LA and further funding for the increase in the hospital beds has been sought.

- 4.4.3 During the life of the three year cooperation agreement, the future commissioning of the service will be determined. This may involve competitive procurement should it be evidenced this will secure best value for money.
- 4.4.4 The funding of the MNTS budget for the commissioned service is met by a specific Hospital Education grant and High Needs Block Dedicated Schools Grant which may change in accordance with the funding allocations and eligibility criteria received each financial year from the DfE/Education and Skills Funding Agency (ESFA). The budget for the service was originally set at £1,229,460 for the financial year 2017/18, however, Leeds received notification from the DfE/ ESFA in Spring 2017 that there would be an uplift of £17,500 in respect to 2017/18, which increases this to £1,246,960. The value of the agreement is agreed annually for the financial year (rather than academic year) which takes into account DfE funding allocations from the ESFA and the value for 2017/18 will be pro-rata from the start date to 31 March 2018.

#### PD & Med

- 4.4.5 The PD & Med service is currently being reviewed to ensure it aligns effectively to other provision and represents value for money. A key benefit of the service is the expertise and knowledge held by staff of the needs of children and young people with physical difficulties and medical needs within an educational context. However, there have been many changes in legislation and developments within the Children & Families directorate in recent months and years and it is clear some activity the service is commissioned to deliver are no longer relevant. The aim is to complete the review and implement commissioning recommendations by April 2018.
- 4.4.6 Funding for the PD & Med Service comes from a top slice of the High Needs Block of Dedicated Schools Grant. This is possible due to the local authority's ability to hold back money in order to promote inclusion for children within mainstream settings. This is currently 94,185 per annum.

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

- 4.5.1 The annual value of MNTS in 2017/18 is £1,246,960; we therefore deem that this decision is key and subject to call-in. This decision is on the forward plan and can be taken after 26<sup>th</sup> July. The annual value of the PD & Med service is £94,185, which is below the threshold for a key decision and therefore not subject to call-in.
- 4.5.2 The decision to award these cooperation agreements falls under the exempt contracts clause and clause 1.5.2 - joint services arrangement with another public body - of Contract Procedure Rules. It falls outside of the Public Contract

Regulations pursuant to Regulation 12(7). Therefore it is not a procurement exercise for the purpose of the Contract Procedure Rules.

- 4.5.3 In making their final decision, the Director of Children and Families should be satisfied that the course of action chosen represents best value and ensures the local authority meets its obligations under the Special Educational Needs and Disability Act 2001, which gives the right to a mainstream education for children with SENs, and ensures that education is covered by the DDA 1995 (now the Equality Act).

## **4.6 Risk Management**

- 4.6.1 If this decision is not approved, the delivery of these services will be at risk because the existing service level agreements with East SILC will no longer be valid. A legally binding contractual agreement is needed once East SILC converts to an academy.

- 4.6.2 The risk of challenge is minimal given that these are cooperation agreements between two public bodies and falls outside of the Public Contract Regulations pursuant to Regulation 12(7), and are therefore it is not a procurement exercise for the purpose of the Contract Procedure Rules. There is no other provider who could deliver MNTS at this time and there is significant evidence the service is providing value for money. The PD & Med service is currently under review to determine value for money and this is reflected by a desire to award a short-term cooperation agreement.

- 4.6.3 Without confirmation of funding by way of a legal agreement, it is likely service delivery will be disrupted, meaning that:

- Approximately 350 children and young people with medical/mental health needs will not receive education per week (MNTS)
- Children and young people with physical difficulties/medical needs would be at risk of having less access to mainstream education
- The LA will be unable to fulfil its statutory duty (MNTS)
- The staff currently employed to deliver the service will be at risk of redundancy

- 4.6.4 These risks are increased given that there is no identified alternative provider who could pick up delivery in the short-term.

## **5 Conclusions**

- 5.1 Awarding these cooperation agreements under the exempt contracts clause of Contract Procedure Rules will ensure:

- The Local Authorities meets its obligations under the Special Educational Needs and Disability Act 2001.
- Funding is spent wisely.
- Learners with health needs (medical, mental health, physical) are supported to achieve good outcomes either in mainstream settings, home or hospital.



## **6 Recommendations**

- 6.1 The Director of Children and Families is recommended to award cooperation agreements to East SILC academy, or whatever name the academy is given on conversion, for the delivery of MNTS and the PD & Med Service as follows:
- 6.1.1 MNTS: The agreement shall commence when East SILC converts to an academy and expire three years later, with a value of approximately £1,246,960 per annum. This decision falls within Clause 1.5.2 of the Contract Procedure Rules as it is a cooperation between two public bodies and falls outside of the Public Contract Regulations pursuant to Regulation 12(7). Therefore it is not a procurement exercise for the purpose of the Contract Procedure Rules. This is a key decision because the value of the cooperation agreement is over £250k per annum.
- 6.1.2 PD & Medical service: The agreement shall commence when East SILC converts to an academy and expire 12 months later. The value will be £94,185 for 2017/18 and the value for 2018/19 will be determined by the findings of a review of the service. This decision falls within Clause 1.5.2 of the Contract Procedure Rules as it is a cooperation between two public bodies and falls outside of the Public Contract Regulations pursuant to Regulation 12(7). Therefore it is not a procurement exercise for the purpose of the Contract Procedure Rules. This is a significant operational decision because the value of the cooperation agreement is over £10k per annum.

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

None

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<sup>1</sup> 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.