

## **Appendix A: Further essential background / detail on the proposal**

### **Special Educational Needs (SEN) Procurement**

#### **Background:**

Where a child or young person has a statement of special educational needs or an education, health and care plan and is unable to access a maintained mainstream or special school, a placement in independent, non-maintained provision may be required.

The current arrangements for procuring individual placements in independent, non-maintained education provision for Bristol children are based on a sub-regional framework administered by Gloucestershire Country Council. Gloucestershire County Council, acting as the Lead Authority for itself and on behalf of the participating Local Authorities of Bristol City Council, South Gloucestershire District Council, North Somerset Council, Bath & North East Somerset Council and Wiltshire Council, ("the Local Authorities"), tenders regularly for applications for inclusion in a 'Flexible Framework' for providers of Special Educational Needs, (SEN), placements, support and services for disabled children and those with a statement of special educational needs. Bristol City Council pays to be able to use this framework. This framework ends on the 31st July 2017.

Providers who meet the criteria are included on a South West sub regional flexible framework as a provider of special educational needs as part of a multi supplier list. In this instance, a Flexible Framework means that a tender opportunity is periodically (6 monthly) advertised on the Pro-Contract website. The Tender process and evaluation criteria remain the same for the duration of the Flexible Framework. New organisations can apply to join this framework and existing organisations can apply to add further provision.

#### **Weaknesses of current arrangements:**

- The current framework will end in July 2017. There are currently no plans in place to re-commission the framework, and no regional capacity has been identified to lead the process
- The existing framework covers education placements for children up to 16 years of age. However, since the implementation of the Children and Families Act and SEND code of practice, there is now a requirement to support children up to the age of 25. There is currently no formal procurement process in place to secure placements for 17-25 year olds.
- There are currently 44 providers listed on the sub-regional framework. Only 7 of these are located within the South west region, and 2 of these have been judged as inadequate by OFSTED. As a result, only 8 of those providers listed on the framework have been used by Bristol's SEN team. In the majority of cases, the provision listed on the Framework does not meet the needs of the individual child or young person and it is therefore necessary to identify and secure provision outside the framework. The implications of this are that the necessary quality checks have not been carried out in advance, negotiation on cost is very difficult, and the process is not fully compliant with procurement regulations.

This proposal does not relate to the number of placements made, or where placements are made as this is dependent on the emerging needs of children, and the availability of provision to meet these needs. This proposal relates only to the way in which these placements are arranged and purchased in order to ensure that we are legally compliant, achieve best value for money, and ensure suitable quality provision.

#### **Current placements and expenditure:**

Over the last 3 years, Bristol City Council has spent the following on placements for children with SEN in independent, non-maintained provision:

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	2016/17	2015/16	2014/15
Independent non-maintained Post 16	£2,168,529	£2,167,027	£1,354,543
Independent non-maintained Pre 16	£2,259,621	£1,837,140	£1,772,363
Independent Specialist Provision	£837,406	£1,084,264	£1,537,992
<b>Total:</b>	<b>£5,265,556</b>	<b>£5,088,431</b>	<b>£4,664,898</b>

During 2016-17, the lowest costing placement was £10,000 and the highest costing was £163,000 (plus an additional £33,000 social care costs)

The average cost of individual placements during this year was:

Independent non-maintained Post 16	£77,447pa
Independent non-maintained Pre 16	£56,491pa
Independent Specialist Provision	£83,741pa

During 2016-17, 78 education placements were made. Due to the weaknesses of the existing framework, the majority (50) of these were arranged off-framework and therefore required procurement waivers:

	Total number of placements	Number on social care framework	Number on SEN framework	Number off-framework
Independent non-maintained Post 16	28	3	8	17
Independent non-maintained Pre 16	40	12	5	23
Independent Specialist Provision	10	0	0	10
<b>Total</b>	<b>78</b>	<b>15</b>	<b>13</b>	<b>50</b>

The sub regional partners in the current contract arrangements are aware that the current contract ends at the end of July 2017. They have been working together for some months to consider the options and agree a way forward. A potential solution has been found in sub regional partners joining the West Sussex County Council DPS arrangements. The sub regional partners have arranged to see the documents from West Sussex and have had several meetings with the West Sussex lead officer for the contract to explore and understand the ramifications of pursuing this option. This has taken time to consult with other colleagues such as legal and procurement as well as for each local authority to follow its own decision pathway to get approval.

Kent County Council joined the West Sussex DPS 3 years ago, so there is a precedent for the DPS to take on new partners.

West Sussex' Legal colleagues are comfortable with the proposal that up to a further 6 local authorities in the South West region are now going to join. West Sussex is going to publish a voluntary notice to OJEU to publicise that more local authorities are joining and that the new potential value of the contract for the remaining months to 31<sup>st</sup> March 2018.

A DPS is 'open' and therefore any new provider can apply to join it at any time. This lowers the risk of challenge as our action in joining West Sussex DPS will not 'close' the market or limit the business opportunities of any provider and this arrangement is only for the period to 31<sup>st</sup> March 2018, by

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which point the new DPS, which we want to sign up to from the start as a longer term solution, will come into force.

Technically BCC legal advice is that joining the contract at this stage is not properly compliant with the procurement regulations however West Sussex Legal colleagues are comfortable with the proposal, the other South West Local Authorities have also identified that the risk of challenge is low and the benefits make it worthwhile.

### Business case:

- There is a pressing need to ensure that procurement activity aligns with procurement regulations. While a regional framework is currently in place it will end in July 2017, and currently does not cover placements for young people over 16
- The existing framework is not fit for purpose and does not ensure quality of provision as demonstrated by the fact that several providers on the existing framework are not local, and some have been judged inadequate by Ofsted
- There is potential to achieve considerably better value for money by implementing a more robust procurement process. Based on West Sussex's experience, it may be possible to make in the region of 7% savings on current placements costs by implementing a more transparent purchasing system and managing uplift requests
- There is further potential to develop the market and increase local service provision through the implementation of a robust procurement process
- Reviewing existing processes will enable us to develop a more diverse and resilient market, reducing reliance on a small number of providers

### Options:

1. Extending the existing framework is not considered a viable option as it does not meet our needs:
  - the majority of placements have to be purchased off-framework due to an unsuitable list of providers, which does not meet new EU procurement regulations and leaves us open to challenge
  - spot purchasing in this way does not allow us to effectively manage quality or outcomes, or negotiate fees – this is not an effective use of public funds
  - the system does not include a formal procurement process to secure placements for 17-25 year olds
  - Bristol City Council currently pays Gloucestershire County Council to access this framework
2. In the **short term**, the following options are available to us:
  - a. Do nothing and continue to make placements without a procurement system in place, by seeking waivers for each individual placement
  - b. join an existing Dynamic Purchasing System (DPS) led by West Sussex at no cost to Bristol City Council. *This is our preferred option (and the preferred option of our sub-regional partners) - we have assessed the risk of the various options and feel that this option is the least risky.*
3. In the **long term**, we believe that the following options are available to us:
  - c. Do nothing and continue to make placements without a procurement system in place, by seeking waivers for each individual placement
  - d. Procure a South West sub-regional DPS which could take up to 18 months and would

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require additional resources, particularly as Bristol City Council would be expected to lead this process.

- e. Join West Sussex when they procure a new DPS in 2017/18 which would enable us to be involved in the development process and ensure that it fully meets our needs. *This is our preferred option (and the preferred option of our sub-regional partners) - we have assessed the risk of the various options and feel that this option is the least risky and provides the most benefit.*
4. This will ensure that the Council is procuring in a legally compliant way, and that best value for money is achieved.

### Recommendations:

It is recommended that Cabinet approves the identification of a procurement solution to secure independent Special Educational Needs placements which ensures that placements are made in line with procurement regulations as outlined above. Both short term and long term solutions must be sought:

1. In the **short term**, steer is sought from Cabinet in relation to the options outlined above. **Option b.** is the preferred option (and the preferred option of our sub-regional partners) - we have assessed the risk of the various options and feel that this option is the least risky.
2. In the **long term**, steer is sought from Cabinet in relation to the options outlined above. **Option e.** is the preferred option (and the preferred option of our sub-regional partners) - we have assessed the risk of the various options and feel that this option is the least risky.

Whatever action is taken moving forwards, it will not impact on placements that are already in place. These will continue on the existing contractual arrangements. However longer term it will be a valuable exercise to review current costs against anticipated costs on the new DPS to see whether placement costs could be negotiated or moved onto the new DPS terms to secure better value for money. Systems will be put in place to track costs and any savings that the new contractual arrangements may deliver.

In addition, the option to spot purchase placements remains open to the Council. This option is required for the occasions when a child or young person has such complex needs or requires such a specialist placement that commissioners need to approach the market directly to negotiate provision.