

Decision Pathway – Report

PURPOSE: Key decision

MEETING: Cabinet

DATE: 13 July 2021

TITLE	Children’s Social Care and Special Education Spot Purchase Placements		
Ward(s)	All		
Author: Gail Rogers	Job title: Head of Service Children’s Commissioning		
Cabinet lead: Cllr Godwin - Cabinet Member for Families, Education and Women	Executive Director lead: Hugh Evans		
Proposal origin: BCC Staff			
Decision maker: Cabinet Member Decision forum: Cabinet			
Purpose of Report:			
<ol style="list-style-type: none"> To delegate authority to the Director for Children, Families and Safer Communities (interim DCS) and Director for Education and Skills, in consultation with the Cabinet Member for Families, Education and Women, to approve spot purchasing of Residential Care, Independent Foster Agency and Independent Special School and College placements for children and young people, where the total committed funding for placements is above the key decision threshold value and when existing framework contracts are unable to meet requirements. For the purposes of Financial Governance, officers propose to report to cabinet annually, outlining each decision above threshold that was approved. 			
Evidence Base:			
<ol style="list-style-type: none"> Bristol City Council has a number of statutory requirements in relation to children’s placements. Section 17 Children Act 1989 sets out the statutory duties upon local authorities for the provision of services for children in need. Section 22 (A-G) of the Children Act 1989 sets out the statutory duties upon local authorities to provide children in their care with accommodation. Section 22G of the Children Act 1989 imposes a duty upon to local authorities to secure, so far as reasonably practicable, sufficient accommodation that (a) is within the authority’s area; and (b) meets the needs of those children. Independently provided children’s residential and foster care are key means by which Bristol City Council complies with its duties to provide high quality care to looked after children. Nationally, the number of children in care has grown by 12.4% over the last five years. As the number of children in care continues to rise, the market takes time to respond. Bristol commissions residential care from the independent sector using framework arrangements. When a framework approved provider is not able to offer a suitable placement match for a child, the council seeks a suitable match from a non-framework provider on a spot purchase basis. These are often care and/or education placements for children with the most complex needs, with costs reflecting this and at times, being above the threshold value for a key decision. The Strategic Commissioning and Children’s Placement teams are working together to develop Bristol’s placement sufficiency and consider approaches to improve market management, including developing cost effective, local options. Whilst work is being undertaken to build our placement sufficiency, it is inevitable that a level of spot purchasing will still be required. In addition to children’s social care placements, we also have a duty under the Children and Families Act 2014 to always consider how children and young people can be supported to facilitate their development and to help them achieve the best possible educational outcomes. If a child with an Education, Health and Care plan’s needs cannot be met within a mainstream or maintained special school, we will need to arrange an education placement in an Independent or non-maintained special school. The SEND Code of Practice 2014 states that if a child’s parent or a young person makes a request for a particular school or post-16 institution, the local authority must comply with that preference and name the school or college in the EHC plan, unless the provision there is considered to not meet their needs or would negatively impact on the education of others. 			

5. An Independent / Non Maintained Special School framework contract has been established with a consortium of 10 Local Authorities, through which price and quality is controlled. However, similar to social care placements, due to increased levels of demand, the specialist nature of provision required and legislation around parental preference, further work is required to improve the number of providers on this compliant framework. The Department for Education have published in the High Needs Funding Operational Guide that “The department’s position is that the commissioning by local authorities of special educational needs and alternative provision (AP) placements, funded from the high needs block of the DSG, is not regarded as a public service contract for the purposes of the Public Contracts Regulations 2015”. This has created a barrier to encouraging providers to join the contract meaning that a level of spot purchasing will be required. However, we are working hard to engage providers, to incentivise them onto the framework by promoting the benefits of joining our contract. Doing so will enable us to honour parental choice and ensure we commission to high quality and value for money standards, via compliant procurement routes.
6. The spot purchasing of placements, where no compliant route is possible, is permitted by the Public Contracts Regulations 2015 and Bristol City Council’s procurement rules as a compliant exception agreed through a waiver. Due to the length of placements, particularly education placements which are often up to five years or more, the total funding commitment for children’s placements can exceed the key decision value threshold, meaning a cabinet report as well as a waiver form would have to be submitted for each child placed in such a setting.
7. The time taken to submit Cabinet reports through the decision pathway often does not fit with the children’s timescales as well as legal requirements; this is because social care placements often need to be made at short notice and Independent Special School placements are bound by timeframes as set out in the SEND Code of Practice. As both a waiver form and cabinet decision must currently be completed and approved for each spot purchase above key decision threshold value, the volume of work required for sign off is high which can further slow processes.
8. Decisions relating to individual children must be taken in a timely way and it is therefore proposed that authority is delegated to the Director for Children, Families and Safer Communities (interim DCS), and Director for Education and Skills, in consultation with the Cabinet Member for Families, Education and Women, to approve the spot purchasing of Residential Care, Independent Foster Agency and Independent Special School and College placements for children and young people, where the total committed funding for placements is above the key decision threshold value and when existing framework contracts are unable to meet requirements. For the purposes of Financial Governance, a procurement waiver form will still be completed for each placement, and officers propose a report is submitted to cabinet annually, outlining how many decisions were made above threshold, the total and average costs and the reason each placement was required.
9. To date this year, there have been two social care placements and three Independent Special School placements made where the total contract value exceeded the key decision threshold. This paper is also bringing to Cabinet’s attention for noting, two residential social care placements that have awarded at a total cost of £1.32m where the regional framework that Bristol City Council is part of was unable to meet the requirements of the placements. In both cases, Placement Panel approved the placement with the providers following a full commissioning process to both on and off-framework providers.
10. The recommendations in this report will ensure that the governance procedure for future direct awards of children’s placements which are greater than £500k, is delegated to the relevant Directors without requiring Cabinet approval each time. In all cases, the relevant framework contracts must be exhausted first before spot contract awards are made. Whilst recognising that children’s placements often need to be made at short notice, Strategic Procurement are working with the placements service to ensure that advance procurement approval is sought in all cases going forward.

Cabinet Member / Officer Recommendations:

That Cabinet:

1. Authorise the Director for Children, Families and Safer Communities (interim DCS) and Director Education and Skills, in consultation with Cabinet member for Families, Education and Women to undertake the spot purchasing of Residential Care, Independent Foster Agency and Independent Special School and College placements for children and young people which are above the key decision threshold value, when existing framework contracts are unable to meet requirements, until 31st March 2025 to align with the expiry of the Independent/Non Maintained Special School and Children’s Residential Care Frameworks.
2. Note two spot purchase contracts for residential social care placements have already been awarded to a total value of £1.32m.
3. Note an annual report will be brought to Cabinet outlining each decision approved above key decision threshold value.

Corporate Strategy alignment: <ol style="list-style-type: none"> 1. Give our children the best start in life by protecting and developing children's centre services, being great corporate parents and protecting children from exploitation or harm.
City Benefits: <ol style="list-style-type: none"> 1. Meet the needs of children in care and children with special educational needs and disabilities, in line with the Children Act 1989, the SEND code of Practice, the Children and Families Act and the Equalities Act 2010.
Consultation Details: <ol style="list-style-type: none"> 1. Consultation has been undertaken with relevant internal staff members, including Procurement and Children's Placement Team and the SEND Business Unit.
Background Documents: High Needs Funding: 2021 to 2022 Operational Guide SEND Code of Practice 2014

Revenue Cost	£1.32m	Source of Revenue Funding	General Fund
Capital Cost	N/A	Source of Capital Funding	e.g. grant/ prudential borrowing etc.
One off cost <input type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input type="checkbox"/>	Income generation proposal <input type="checkbox"/>

Required information to be completed by Financial/Legal/ICT/ HR partners:
<p>1. Finance Advice: This report seeks to delegate authority to the Director for Children, Families and Safer Communities (interim DCS) and Director Education and Skills, in consultation with Cabinet Member for Families, Education and Women, to approve the spot purchasing of Residential Care, Independent Foster Agency and Independent Special School and College placements for children and young people, where the total committed funding for placements is above the key decision threshold value of £0.5m and when existing framework contracts are unable to meet requirements. These decisions being reported to cabinet annually.</p> <p>As the report identifies there are a number of placements which exceed the key decision threshold. The complexity of the young people is such that they can't be placed elsewhere, and this often needs to be done at speed but through the correct panels and with professional oversight both in terms of practice and budget responsibilities. This will continue.</p> <p>The current requirement to take these placements to Cabinet is causing significant delay in paying providers and puts the current and future placements at risk. Finance therefore support this proposal, subject to the continuation of the rigorous measures being in place to agree these placements and that they are authorised by the Director who has budget responsibilities.</p> <p>The report also seeks retrospective approval in relation to two placements and these will be funded from within existing resources.</p>
Finance Business Partner: Denise Hunt 24 June 2021
<p>2. Legal Advice: It is recognised that the spot purchasing arrangement has placed the Council in a situation where it may have breached the procurement regulations. The fact that the arrangement is required to ensure the Council meets its statutory requirement in relation to social care placements and allow time for the Council to review its placement sufficiency and put in place a fully compliant procurement process, will help mitigate the risk of challenge. Legal services will advise and assist officers with regard to the conduct of the proposed procurement process and the resulting contractual arrangements.</p>
Legal Team Leader: Husinara Jones, Team Leader/Solicitor 29 June 2021
<p>3. Implications on IT: No anticipated impact on IT Services</p>
IT Team Leader: Simon Oliver 07/05/2021
<p>4. HR Advice: The report is seeking delegated authority for the Director; Children, Families and Safer Communities and Director; Education and Skills to approve spot purchasing of certain services when existing framework contracts are unable to meet requirements. All decisions will be reported retrospectively to cabinet annually, outlining each decision above threshold that was approved. This does not have any HR implications for Bristol City Council employees.</p>
HR Partner: Lorna Laing 12/05/2021.

EDM Sign-off	Hugh Evans	19/05/2021
Cabinet Member sign-off	Cllr. Godwin	24/05/2021
For Key Decisions - Mayor's Office sign-off	Mayor's Office	14/06/2021

Appendix A – Further essential background / detail on the proposal	NO
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	NO
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	NO
Appendix G – Financial Advice	NO
Appendix H – Legal Advice	NO
Appendix I – Exempt Information	No
Appendix J – HR advice	NO
Appendix K – ICT	NO
Appendix L – Procurement	NO