

**SURREY COUNTY COUNCIL**

**CABINET**

**DATE: 16 JULY 2019**

**REPORT OF: MS JULIE ILES, CABINET MEMBER FOR ALL-AGE LEARNING**



**LEAD OFFICER: SHEILA NORRIS, STRATEGIC LEAD COMMISSIONING**

**SUBJECT: COMMISSIONING OF DAY AND RESIDENTIAL SPECIAL EDUCATIONAL NEED OR DISABILITY PLACEMENTS FROM SCHOOLS AND COLLEGES IN THE NON MAINTAINED INDEPENDENT SECTOR**

#### **SUMMARY OF ISSUE:**

In Surrey, we are working towards meeting the majority of educational needs for children with a Special Educational Need or Disability (SEND) in one of Surrey's mainstream settings. However even with the pursuance of an inclusive approach there are still children who may be identified as needing support in a specialist setting, such as a Maintained Special School or a Non-Maintained or Independent School (NMI).

This report sets out recommendations arising from work on options for the commissioning arrangements for placement of learners with special education at NMIs. These placements are currently spot purchased. The proposals in this report do not apply to maintained schools in Surrey.

The report outlines the approach the Council is taking to work regionally with other local authorities to develop more cost effective ways of placing children in specialist placements. In 2019/20 the High Needs Block Funding is £148m, but there is significant pressure on the budget, as the overall spend in 2018/19 was £162.1m. NMI spend in 2018/19 was £49m. Working with West Sussex County Council the procurement process will help select quality providers in a way that offers Surrey Council transparency around costs and the ability to negotiate further on tailoring packages of care to individual children and young people.

The report sets out the benefits of the approach in the context of the wider programme of work we are undertaking to manage providers and costs in this sector. While a worthwhile step forward the new commissioning arrangements proposed will not on their own solve the challenges faced by the Council in having high numbers of children placed in NMI settings. This commissioning approach will support wider transformation approach for SEND to promote inclusion and build capacity in maintained educational settings to offer specialist places for children with SEND.

The procurement process will help us to select good quality providers in a way that gives Surrey County Council greater transparency on provider costs and the ability to negotiate packages of care tailored to meet the needs of individual children and young people.

The new procurement vehicle is at the stage where Cabinet approval is required in order to commence using the Children's Placements and Other Support Services (CPOSS) Dynamic Purchasing System (DPS) established by West Sussex County Council (WSCC), which will offer specialist educational day and residential places for children with SEND at non-maintained or independent schools and colleges.

#### **RECOMMENDATIONS:**

It is recommended that:

1. Cabinet approves Surrey County Council joining with WSCC to implement the CPOSS DPS contract for the provision of the placement of day and residential learners in independent schools and colleges from July 2019 until 31<sup>st</sup> March 2026.
2. The providers as listed in the Part 2 of this report are awarded a place on the new DPS as they have passed the Invitation to Tender (ITT) evaluation process, whilst recognising that further organisations will be able to join throughout the duration of the DPS if they pass the ITT.
3. Cabinet delegates its authority to implement the DPS and award all contracts, where a mini-competition tender procedure has been followed under the new DPS, to the Director of Education, Lifelong Learning & Culture.

#### **REASON FOR RECOMMENDATIONS:**

Working regionally with WSCC and using a DPS will achieve the following benefits:

- By increasing market share, it will enhance Surrey's position to influence and negotiate; share information around specialist educational placements; address gaps in support and improve value for money
- Provide a framework where there is transparency around price and service offer which support value for money commissioning within Surrey's new Gateway for Resources team.
- Support better quality of education and outcomes for children through collaborative contract management and monitoring.
- Build up cost knowledge of the sector in a joined-up way with other local authorities so that Surrey achieves best value and is charged at a similar rate as neighbouring authorities.
- Joint working with suppliers to ensure compliance with regulations and laws.
- A better understanding of suppliers' processes, which may foster collaboration and working together to reduce costs.
- Standard templates for contracting thus reducing supplier time working out variances between forms and contracts when placing children.

#### **DETAILS:**

##### **Background**

1. A DPS is essentially a list of providers who meet set criteria and standards defined in a tendering process. Surrey County Council does not currently have a framework or DPS in place for SEND education placements, instead

we have been spot purchasing these placements from NMI schools and colleges with insufficient information captured on fee breakdown or provision.

2. Establishing Frameworks/ DPSs for residential and day educational places has been met with some reluctance from the sector. Some educational settings prefer to negotiate on a pupil by pupil basis and/or want to use their own terms and conditions. Issues linked to transparency of costs and Council's ability to pick elements they need from the support the setting offers is a challenge, as settings say that costs are often not negotiable and come as part of the holistic service they offer. Due to parental preference and demand for school places being able to meet SEND need, local authorities often have limited options when accessing NMIs or Specialist Post-16 Institutions (SPIs) for day and residential places. As a result Councils are often in a weakened position to negotiate. Working together regionally, Councils are attempting to use their collective purchasing power to influence the sector more effectively.
3. At the SEN2 return in January 2019, 12% of Surrey children with Education Health and Care Plans (EHCPs) were in NMI schools (934 students) or SPIs (75 students); this is about double the national average (6%) with the largest proportion of placements being for those with ASD. In Surrey, maintained special schools for those with ASD are at capacity, which partly explains why there is a high use of NMIs. Maintained provision near to other local authority borders often goes to children in these areas due to the geographical distance from their homes, which often results in Surrey children being placed in NMIs. A Sufficiency Programme of work is underway to develop Surrey's maintained capacity but use of NMIs will likely remain high for a considerable time.
4. With no DPS in place there is little transparency as to how fees have been calculated by providers. Some providers have been able to put their fees up considerably year on year with little information on what baseline prices are or how fees have been calculated. This has been a significant barrier to the Council's negotiations with providers.
5. Most NMIs have the majority of their revenue from 2 or 3 local authorities, mainly from Local Authority SEND Education placements: however we have little regional knowledge of provider outcomes, costs or risks; or use of regional buying power. Indeed costs for places are often negotiated on a place by place basis which can result in Local Authorities being charged differently based on market share and/or on strength of relationship.
6. Surrey has worked closely with WSCC to shape and define this DPS. The DPS remains continuously open to new joiners throughout the term of operation thus making it agile and able to respond to changing demand. There is no guarantee of business for any provider on the DPS and placements would be made in line with the admissions process, prioritising Good and Outstanding providers on the DPS.
7. WSCC were the first local authority to introduce a DPS for education and social care services five years ago and this is now their primary mechanism for commissioning SEND placements. The development was supported by DfE innovation funding to help develop a regional approach. As well as WSCC this DPS was used by Bristol City Council, South Gloucestershire Council, North Somerset Council, Bath & North East Somerset Council and Wiltshire Council. LAs saw the benefit of decreased spot purchases, greater transparency of funding and being able to regionally shape the market. The DPS expired at the end of February 2019.

8. WSCC joined together with SCC and other local authorities in the region (including Bath & North East Somerset Council, Brighton & Hove City Council, Bristol City Council, Portsmouth City Council, Gloucestershire County Council, South Gloucestershire Council, Wiltshire County Council and Southampton City Council) to develop the new CPOSS. Surrey County Council worked with our local authority partners to help shape this DPS with the following objectives:
  - a. Better protection for children by ensuring adequate contract terms are in place for every placement, and protection for the Council from provider disputes due to consistent contract terms, outcomes and service standards.
  - b. Provide Councils and Commissioners with a strategic procurement solution that supports the Council's aim to ensure children and young people with SEND achieve their full potential through the right interventions at the right time, with a capable market of providers.
  - c. Clarity for placement panel decision makers and SEND placement teams regarding supplier pricing, discounts, performance and risk.
  - d. One central dynamic preferred supplier list of NMI schools within Surrey and other areas where placements can be made.
  - e. A competitive and transparent process to ensure better value for money by ensuring all suitable providers are invited to bid, and being able to compare offers.
  - f. Information sharing on safeguarding and monitoring with WSCC and other authorities to get early sight of issues, avoid duplication and wasted time.
  - g. Ongoing partnership relationship developed to problem-solve together and approach the market jointly, with a consistent message. SCC currently share at least 42 common providers with WSCC.
9. Using a DPS in this sector is still in its infancy and whilst Surrey is committed to working with NMIs to gain their increased buy in to working transparently, at the time of going live the providers on the DPS constituted about 10% of its current spend. New providers are being added to the DPS and as a priority, Surrey Commissioners are planning to hold a range of engagement activities with its providers in order to significantly increase the number of providers on the DPS.
10. This DPS requires providers to be open and transparent on their costs. It clearly defines what services are included in a 'core' fee and the fee charged for any additions above this 'core' provision.
11. Any proposed fees submitted to the DPS represent a maximum and therefore provide a starting point for negotiations.
12. This DPS also ensures that the County Council purchases these placements in compliance with The Public Contract Regulations 2015 and the County Councils' Procurement standing Orders.

13. **The Model**

The DPS consist of 4 Lots. The Lots have sub-categories as follows.

DPS Category	DPS Sub-Category
1. Schools	a) Residential schools b) Day schools c) Children’s Homes with education (settings dual registered as schools and children’s homes) d) Residential short breaks for SEND  *Sub categories (a) and (d) will cover placements for children SEND and Children with Disabilities (CWD)
2. Specialist Provision Institutions (Colleges)	None
3. Independent Fostering Agencies (IFA)	None
4. Children’s Residential	None  (Children’s Homes covering placements for LAC and CWD)

**Overview of the Procurement Strategy**

14. Based on feedback on current purchases of SEND provisions it was necessary to identify appropriate procurement approach.

The following route to market options were considered:

- Option 1: Become a named partner and commit to working with WSCC on developing a new DPS for SEND placements
- Option 2: Do nothing / continue as is
- Option 3: Set up a Surrey-only DPS for SEND placements
- Option 4: Collaborate with SCC Adult Social Care and Public Health directorate on a joint DPS
- Option 5: Become a named partner on another Local Authority’s DPS

Option 1 has been identified as the best approach for this area of commissioning based on the analysis of the information available and on the recommendation of the Sourcing Governance Board for the reasons outlined below:

- It enables robust control of the quality and cost of SEND Placements.

- It provides flexibility: this approach attracts a larger range of suppliers and allows providers to enter / exit from the list without having to re-open frameworks, which can be legally challenging and bureaucratic.
  - Collaborating with WSCC and other DPS partner LAs would provide an opportunity to develop an ongoing regional partnership.
  - Supports collaboration on provider inspections, safeguarding and performance with DPS partner LAs (we have approximately 40 shared providers with WSCC, significantly larger than overlap with SCC ASC).
  - SCC will have more leverage in the market and be part of a process that has consistency in terms, outcomes and standards. As a DPS doesn't guarantee volume, this allows flexibility to meet changing demand.
15. WSCC ran a full, open tender process from 16 November 2018. This was run under the Light Touch Regime and was compliant with Public Contract Regulations 2015 and the Council's Procurement Standing Orders. The approach was endorsed by Surrey County Council's Sourcing Government Board on 3 July 2018. The contract opportunity was advertised in the Official Journal of the European Journal (OJEU). The opportunity was also advertised on Contracts Finder and the SE Shared Services portal.
  16. During the procurement process WSCC received 15 bids to deliver SEND Placements. Interest was expressed for each of the available lots. It is recommended that all 15 Providers are awarded a place on the DPS as they passed the Invitation to Tender evaluation. Full details of the results of the bid evaluation process are included in the Part 2 report.
  17. Tender evaluations were carried out by a panel from WSCC. In consultation with West Sussex, SCC Commissioning and Procurement reviewed the pricing submissions of their existing schools to ensure compliance and value for money.
  18. The DPS has now been established and shall continue for an initial period of 3 years commencing 1st April 2019 and include an option to extend such term by a further period of not more than 4 years (expiring no later than 31st March 2026). The Council will keep the DPS open to allow new providers to join at any time, including those that were unsuccessful the first time around.
  19. For local authorities to use the DPS, local authorities are required to enter into a partnership agreement with WSCC which sets out the contractual relationship between the LAs. The Agreement states that each partner local authority will enter into their own Service Contracts for individual placements with the selected provider and that the Agreement is not a contract for the supply of goods and services.
  20. Following Organisational process and structure changes, the Service is now in a position to make full use of the DPS from August 2019.
  21. Responsibility to award contracts for individual placements made by calling-off from the DPS will be given to respective budget holders.
  22. Implementation of the DPS will be aligned to the creation and establishment of a new Gateway to Resources team responsible for identifying Children's placements. The new team is part of plans to strengthen our commissioning arrangements including, review and authorisation of any spot purchasing, to ensure this represents good value for money.

## **CONSULTATION:**

23. Consultation has been undertaken with:

- Other Local Authorities expecting to access the DPS.
- Discussions on the DPS have been held with our largest providers
- All NMI providers have been invited to engagement events (last held in May 2018) to seek views on joining a DPS.

## **RISK MANAGEMENT AND IMPLICATIONS:**

24. One of the risks of a DPS is that providers choose not to join and continue to operate on a spot purchase arrangement as they are aware that due to demand and/or parental preference they will still be needed by local authorities to provide day and residential places. This will be mitigated by regional conversations with the sector to convey the importance of transparency around providing high quality, cost effective places for children. Councils will also have a role in liaising with parents to assure them that we have robust processes in place to reflect this. Where specialist educational need can be met via the DPS the Council would work with parents to state this as the placing preference on the Education Health and Care Plan. This will also provide a compelling narrative for providers to join the DPS.

25. Another risk is that some providers might see it as an opportunity to submit higher pricing than SCC currently pay them. This was mitigated in the development of the DPSs through a number of measures, including a detailed breakdown of fees, data integrity checks, comparisons of current fees versus new fees, and freedom for each LA to negotiate its own discounts with providers independently. Each Authority will also pursue its own fee management process (in terms of managing annual inflationary uplifts). This means that cost control will continue in Surrey as it does now and we will not be constrained by the DPS in relation to any plans to negotiate with providers for improved deals. Furthermore before taking the decision to ask for Cabinet's approval to join the DPS some cost analysis work has been undertaken to ensure that commissioners have a level of assurance around it delivering value for money.

26. The DPS Agreement includes a termination clause whereby either party may terminate the agreement for convenience with 3 months' notice without penalty.

27. All recommended tenderers successfully completed satisfactory financial checks as well as checks on competency in delivery of similar contracts at the pre-qualification stage.

28. The following key risks associated with the contract have been identified, along with mitigation activities:

<b>Risk Description</b>	<b>Mitigation Activity</b>
Demand may grow for services resulting in increased costs for SCC	There has been an annual increase in demand for services. The DPS established maximum process for provision to help control the unit cost.
Poor quality of service and service does not deliver required outcomes.	Strong contract management and quarterly contract review meetings will mitigate the risk of a poor quality service.  Failure to meet the service outcomes and objectives will enable Surrey County Council to

	restrict payment based on performance and ultimately terminate the contract if performance does not improve.
Current placements -	Spend on existing placements will be maintained with the current Provider. However if this Provider is successful in joining the DPS, they will automatically transfer on to the DPS's T&C's excluding costs.
Prices submitted to the DPS increases cost of new placements	<p>The fees for new placements under spot purchase arrangements are already trending upwards. Work has already been done though setting market expectations and requiring greater fee transparency to mitigate the risk of higher fees.</p> <p>The fees submitted to the DPS represent maximum prices. Baseline fees that are transparent and comparable between providers will support ongoing market engagement with providers to negotiate and provide better value for money.</p>

#### **Financial and Value for Money Implications**

29. There is no fee for Surrey County Council to join the DPS.
30. The overall value of the call off contracts Surrey may award under the CPOSS DPS over seven years is £315,000,000
31. Spend on existing packages will continue and existing packages will be maintained with the current provider. It should be noted that if a provider who currently provides spot placements bids to be part of the DPS and is successful, the DPS terms and conditions set out that all of their existing placements will transfer on to the new DPS terms and conditions excluding costs; existing placement fees will stay the same for the duration of the placement. Thus, the annual spend that goes through the DPS may be lower than the estimated baseline cost for SEND placements at NMI schools.
32. Demand pressures in future years could also cause this estimated baseline cost to increase and so too could inflationary increases. With regards to inflationary increases, SCC has agreed with WSCC that it will reserve the right to follow its own process for fee management during the life of the DPS (and this included reserving the right to maintain 0% uplift). Within the contract, Schedule 7 – Fee Management Process will state that each authority will maintain its own fee management process and that any annual uplifts will be subject to decision at an authority level, not collective level.
33. At present there is a lot of pressure on SEND budgets in 2019/2020 and significant savings need to be delivered. The SCC Transformation for SEND indicates an ambition to implement commissioning changes to reduce placement costs further. This DPS approach, with no commitment of spend or volumes, offers the greatest degree of flexibility and may allow us to facilitate these budget pressures. If during the life of the DPS, SCC determines that this model is not supporting us to meet budget pressures, SCC can cease to be a partner and put a new model in place, if that is determined to be a preferred course of action in the future.



34. This DPS will not prevent SCC from having discount agreements in place with providers, which would support us in meeting some of the expected cost savings. It is expected that the DPS pricing schedule would support establishing these agreements. There is also potential scope to re-negotiate fees with NMIs following the tender for the existing packages we have in place which could also bring annual spend down and contribute to meeting savings targets for SCC. This fee review sits out of scope of this project, but is being addressed by colleagues in CSF Commissioning with support from Procurement.
35. We are working with the sector to ensure that a greater number of providers join the DPS. We will undertake a programme of market engagement with other local authorities using the DPS to have our providers join. At present those who have joined the DPS represent just over 10% of our current spend on these placements. As a result joining the DPS will not mean that spot purchasing will cease as a result of entering this contracting arrangement. Parental choice also impacts on the Council's ability to solely commission via this procurement vehicle.

#### **Section 151 Officer Commentary**

36. The Council is facing a very serious financial situation, whereby there are substantial savings to be achieved to establish a balanced budget with regard to expenditure funded from the High Needs Block of the Dedicated Schools Grant. Children, Families, Lifelong Learning and Culture is on a major transformation journey to improve services for children and families. This is a high priority service and is a key part of the improvement programme.
37. The Section 151 Officer (Chief Finance Officer) supports the initiative to place more structure and control over the procurement of places for learners with special education needs in independent, Non Maintained Independent Sector (NMIs), schools and colleges. However it is of some concern that the number of providers in this second generation DPS is still limited. Around 10% of the current placements are with providers appointed to the framework.
38. Subject to the needs of the child the development of the framework to include a larger number of cost-effective placements from settings providing Good or Outstanding provision will enable the Council to ensure it can meet parental preference subject to the efficient use of resources.
39. Until such time as the framework is fully developed, Children, Families, Lifelong Learning and Culture will need to put in place appropriate controls to ensure that the spot-purchasing of placements is commissioned in a manner consistent with best practice and contract managed appropriately. Consideration needs to be given to regularising current spot-purchasing arrangements.

#### **Legal Implications – Monitoring Officer**

40. The Council must have a robust, transparent and legally compliant procurement process in place to commission day and residential education placements at independent or non-maintained schools and colleges for children and young people up to the age of 25. Orbis Public Law has been consulted throughout the establishment of the DPS to ensure it is legally compliant.

## **Equalities and Diversity**

41. The DPS is a procurement vehicle that will adjust the procurement process, but no direct impact on delivered service provision is expected. Therefore there are no expected EIA implications.
42. TUPE will not apply at any part of this Procurement as our approach is to honour all existing placements made through the current spot purchasing method (i.e. current placements will remain with their current provider per the agreed rates and length).

## **WHAT HAPPENS NEXT:**

43. The timetable for implementation is as follows:

<b>Action</b>	<b>Date</b>
West Sussex DPS Commencement Date	Monday 1 <sup>st</sup> April 2019
Surrey Cabinet decision to join West Sussex DPS	Tuesday 16 <sup>th</sup> July

### **Contact Officer:**

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### **Consulted:**

Details of who has been consulted on the issue (including officers, members, public, stakeholders, partners, etc).

### **Annexes:**

Confidential Part 2

### **Sources/background papers:**

All background papers used in the writing of the report should be listed, as required by the Local Government (Access to Information) Act 1985.