



Executive Director/Director Non-Key Executive Decision Report

Author/Lead Officer of Report: Lucy Hagan,
Commissioning Officer

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Report to: Andrew Jones, Director of Education and Skills
Date of Decision: February 2021
Subject: SEND Mediation and Disagreement Resolution Service

Which Cabinet Member Portfolio does this relate to? People - Children, Young People & Families

Which Scrutiny and Policy Development Committee does this relate to? Children, Young People & Family Support

Has an Equality Impact Assessment (EIA) been undertaken? Yes No

If YES, what EIA reference number has it been given? 884

Does the report contain confidential or exempt information? Yes No

If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-

"The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended)."

Purpose of Report:

The current contract for the SEND Mediation and Disagreement Resolution service is due to expire on 31st March 2021. In order to prevent a gap in service and meet the Local Authority's statutory duty to provide the provision, we seek approval for the following:

- To conduct a Request for Quote/tender exercise through the Sourcing Desk (Procurement) to find a service provider
- Award a 2 year Sheffield City Council contract, with a 1 year break clause to the successful bidder

Recommendations:

1. Approve the proposed services as set out in this report and to procure such services in line with this report.
2. Approve the contract award following such procurement exercise, in consultation with the Director of Finance and Commercial Services and thereafter to take such other necessary steps not covered by existing delegations to achieve the outcomes and objectives of this report.

Background Papers:

(Insert details of any background papers used in the compilation of the report.)

Lead Officer to complete:-	
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.
	Finance: Karen Hesketh
	Legal: Henry Watmough-Cownie Commercial Services: Gerard Higgins Equalities: Bashir Khan
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	Lead Officer Name: Lucy Hagan
	Job Title: Commissioning Officer
Date: 05/02/2021	

1. PROPOSAL

- 1.1 The SEND Mediation and Disagreement Resolution service is currently provided by Collis Mediation Ltd, but this contract is due to expire on 31st March 2021, with no further options to extend the contract.
- 1.2 The Council has a statutory duty to provide SEND independent mediation and dispute resolution. In addition the Local Authority is required to follow procurement regulations to award a new contact.
- 1.3 No significant changes to the service model are planned. However the Council will seek continuous service improvement and improved links with key stakeholders by the service provider.
- 1.4 Alternative service delivery/contract options have been considered, but these have been discounted – please see section 5.

2. HOW DOES THIS DECISION CONTRIBUTE ?

- 2.1 The service helps contribute to the following Corporate objectives: Thriving neighbourhoods and communities, Tackling inequalities and Better health and wellbeing.

The service supports parent/carers/families to undertake mediation with the Council, as part the Tribunal and Dispute Resolution process for EHCPs. This service helps mediate discussions on SEND education and assist with EHCP discussions. The aim of the service is to help parent/carers/families achieve agreeable outcomes with the Council in regards to the child/young person's EHCP.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 The current contract is due to expire shortly and a new contract will replace it to prevent a gap in service, there have been no service specification or service delivery changes to consult on, or introduced.
- 3.2 As part of their contractual obligations the current provider regularly conducts and collects feedback from service users, and collates the findings for the Council. No service improvements were identified during this process. This will be an ongoing requirement in the new contract, and the Council will continue to monitor consultation feedback.
- 3.3 The Council has consulted with key stakeholders - Parent Carer Forum and SENDIASS. The Parent Carer Forum have drafted a question for bidders in the tender/RFQ and will be scoring the responses to this.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

4.1.1 An EIA has been completed, reference 884. No implications have been identified.

4.2 Financial and Commercial Implications

4.2.1 No Financial or Commercial Implications have been identified.

4.2.2 Based on the potential contract value and duration, a RFQ will be undertaken with the Sourcing Desk in the Procurement Team. Following this procurement process should allow us to identify a successful bidder and award a contract for 1st April 2021, ensuring there is no gap in service. To use a full procurement process would delay that start date and also require a waiver process to be approved to ensure SCC remain legally compliant and in line with Standing Orders.

4.2.3 Spend on this contract for 2020/21 up to December was £12k. In 2019/20 this was £59,961, as utilisation in this year (pre-Covid) was a lot higher. This contract introduced a new pricing structure, which replaced a high single rate structure. This has allowed rates to reduce the more the service is utilised. It is the intention to keep this structure, as it has proven more cost effective for the council.

4.2.4 Forecasting service utilisation for 2021/22 onwards is difficult, as the service continues to operate in the global pandemic, which is affecting utilisation. The average spend is £35.5k p.a. based on previous four years. However there have been some fluctuations during this time and in 2019/20 spend reached nearly £60k, so an estimated spend of approx. £50k p.a. on the 2 year call off contract, is being considered. Funding for the this mediation service will be included within the overall SEN/Inclusion business case.

4.3 Legal Implications

4.3.1 The Children and Families Act 2014, Part 3, specifies at section 52 that there is a right to mediation where a decision against which an appeal may be brought under section 51 of the same Act is made in respect of a child or young person, or an EHC plan for a child or young person is made, amended or replaced. There is a statutory obligation, where a parent or young person informs the local authority under section 52 that he or she wishes to pursue mediation, the local authority must:-

‘(a) arrange for mediation between it and the parent or young person,
(b) ensure that the mediation is conducted by an independent person, and
(c) participate in the mediation.’

- 4.3.2 A person is not considered independent if he or she is employed by a local authority in England. Arrangements within this section of the Act must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of the disagreements to which the arrangements apply.
- 4.3.3 Accordingly, the Council has an ongoing statutory duty to provide SEND mediation and dispute resolution services that are independent to avoid any conflicts of interest.
- 4.3.4 It is intended that the Sourcing Desk can be utilised for this procurement exercise and thus a gap in the provision of the Service is not anticipated. If however, it subsequently becomes apparent that a replacement provider cannot be procured in the timescales required the current Service Provider has given assurances that it will continue to provide the Services for such additional period as required. This would require a waiver for a short defined period to deal with any such extension / additional transition plan to the new provider.

4.4 Other Implications

- 4.4.1 TUPE implications are not expected to apply, but should it become apparent that TUPE applies it would inevitably extend the procurement period necessitating a waiver as detailed above. Should it apply, the necessary processes and consultation will be adhered.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 A Framework agreement – Due to the short time frame in which a new contract is required, this option was discounted. However the new contract will be short term, so a Framework option could be considered in the future.
- 5.2 Joint commissioning – previous contract was a joint contract with Bradford MBC. But there were no commercial or financial benefits in jointly commissioning this contract. No joint working or best practice was shared, and as such a different approach has since been adopted by each Council. For this short term contract, in order to achieve local service improvements, we propose to have a sole Sheffield City Council contract.
- 5.3 Extend existing contract – There are no express options to extend within the provisions of the contract and the Council anticipate being able to carry out the RFQ between the date of this decision and the termination date of the current contract. In the unlikely event of a delay in the procurement process.

6. REASONS FOR RECOMMENDATIONS

6.1 2 year Sheffield City Council contract, with a 1 year break clause included:

- This can be completed in a shorter time frame through Request For Quote, prior to contract expiry
- Allows a competitive market exercise to be completed with which possible financial efficiencies may be achieved
- The contract length is suitable to attract bids and long enough to implement service improvements

The break clause option provides some assurance if the provider's performance is not to standard or there are budget changes