

Report to:	Cabinet	Date of Meeting:	3 September 2020
Subject:	North West Flexible Purchasing System for Children & Young People with SEND		
Report of:	Head of Communities	Wards Affected:	(All Wards);
Portfolio:	Cabinet Member – John Joseph Kelly – Children’s, Schools and Safeguarding		
Is this a Key Decision:	Yes	Included in Forward Plan:	Yes
Exempt / Confidential Report:	No		

Summary:

The purpose of this report is to seek approval to join and progress the procurement of a flexible Purchasing System (FPS) for purchasing services for Children & Young People with Special Educational Needs and Disabilities (SEND) as part of a North West regional collaboration of 23 local authorities. The procurement is being undertaken by Cheshire East Council under the ‘light touch regime’ for social and other services as listed at Schedule 3 of the Public Contracts Regulations 2015 and will result in a Flexible Purchasing System being available.

Recommendation(s):

- (1) Approve the commencement of a procurement exercise, to be led by North West Placements and Cheshire East Council as part of regional joint working arrangements, which will encompass a Flexible Purchasing System (FPS) being implemented for the provision of services for children and young people with SEND;
- (2) Delegate decisions regarding the FPS procurement evaluation criteria, service specification and contractual terms to the Head of Communities in consultation with the Cabinet Member for Children, Schools and Safeguarding. Such decisions will be made in advance of any procurement exercises commencing and will be collective decisions by all participating authorities;
- (3) Following its establishment, authorise use of the FPS for the future procurement of services for children and young people with SEND, where an options appraisal, as described in this report, has determined it to be the most appropriate approach;
- (4) Delegate the awarding of any contracts called off the FPS to the Head of Communities and nominated Service Managers

Reasons for the Recommendation(s):

The Joint Commissioning Strategy for SEND 2020 – 2023 was agreed by the Health and Wellbeing Board in March 2020. The purpose of the Strategy and associated Action Plan being to deliver improved outcomes for children and young people with SEND across the local area. It identified a number of needs which included:

- a. Ensure that we jointly commission services with a clear assessment of local needs, delivering personalised integrated support that delivers outcomes and brings support together across the system
- b. Improves our local offer so that the experiences of children and young people with SEND and their families and carers receive joined up services that are easy to navigate, accessible and available to our children and young people and their families.
- c. The Strategy will inform the development of robust priorities and effective joint working which will inform commissioning intentions and meet local needs more effectively.

If approved the recommendations in this report will enable the Council to source placements for children and young people aged 0 – 25 years that have an Education, Health and Care plan (EHCP), using the Flexible Purchasing System (FPS) at Independent and non-maintained special schools and post 16 institutions.

The anticipated benefits of a regional contract include, consistency in the services and outcomes required by placing local authorities, streamlined processes for commissioning placements and an improved route to market, increased transparency and clarity on the marketplace in the region (in relation to services/placements, outcomes and costs), regional approach to engaging with providers and shaping/ developing the market.

Outcomes for children and young people would be met through ensuring that the most appropriate selection of a placement is made to meet needs.

Alternative Options Considered and Rejected: (including any Risk Implications)

1. **Maintaining the status quo** – this was not considered a viable option as currently there is no coherent model for Local Authorities to transparently procure SEND placements and to ensure that there is an evidence base regarding decisions made as to why a placement was secured.
2. There are increasing cost pressures and taking a regional approach to the procurement of placements will enable the collation of data/intelligence on placements which can be used to develop a regional commissioner -provider relationship.

What will it cost and how will it be financed?

(A) Revenue Costs

There are no identified additional costs to join and progress the procurement of the flexible purchasing system. It is possible that through use of the new purchasing system, there may be opportunity to either reduce weekly placement costs or avoid higher placement costs by finding care provision within the region. However this may be circumstantial and costs or savings cannot be estimated at this time.

(B) Capital Costs

There are no capital costs associated with this report.

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets):
No additional resource is required to join and progress the procurement of the flexible purchasing system.
Legal Implications:
Equality Implications:
The equality implications will be assessed as the procurement progresses and any changes are made to provision. Cabinet Member Communities and Housing will be kept informed of all equality implications, risks and mitigations.

Contribution to the Council's Core Purpose:

Protect the most vulnerable: Stable placements improve the life chances of children and young people
Facilitate confident and resilient communities: Stable placements provide effective social and education support
Commission, broker and provide core services: Sufficient capacity within the market which will offer Value for Money and good quality. The Council needs services to shift their emphasis to being outcome focused and supportive of flexibility around the child's needs to <ul style="list-style-type: none">• prevent break down in placements• to prevent escalation to more complex service provision and• to ensure that placements are child-centred and localised where appropriate and possible.
Place – leadership and influencer: This work aims to encourage more diverse provider markets in order to stimulate quality, choice and greater value for money. The Council is seeking to work with others to develop services, and to be in a position where placements are prioritised with good or outstanding providers.
Drivers of change and reform:

The Council will be looking for innovation and flexibility within the market place in order to improve sustainability of placements, increase maintenance of children's networks and reduce dependency on models of care in later life.
Facilitate sustainable economic prosperity:
Greater income for social investment:
Cleaner Greener

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Executive Director Corporate Resources and Customer Services (FD6084/20) and the Chief Legal and Democratic Officer (LD4268/20) have been consulted and any comments have been incorporated into the report.

(B) External Consultations

Consultation with a range of stakeholders has been undertaken which was led by North West Placements and Cheshire East to develop the SEND FPS, including Parent Carers / Parent Carer Forums, young people, SEND Leads, Commissioners and Providers

Consultation has included: -

- All 23 local authorities named on the FPS.
- All 23 Parent Carer Forums.
- The NW Parent Carer Forum

Various consultation methods were used including events, meetings and surveys

A survey was co-produced with parent-carers and distributed to all 23 Parent Carer Forums in the North West and the NW Parent Carer Forum. 24 individual survey responses were received. All 23 Parent Carer Forums were also offered the opportunity to have a presentation and question / answer session. Of these 12 received individual presentations.

The main themes from the parent carer forum feedback related to ensuring there is good communication flow and information sharing between schools and parents (timely, frequent, and an on-going); that schools should operate an 'open door' ethos/ policy; and work to meet the outcomes for the children / young people.

A Young People's Survey was developed. All commissioning managers in the region were requested to liaise with the Participation Leads in their local authority to distribute the survey. The survey was also sent directly to 13 Participation Leads in the region (10 Local Authorities did not supply contact details for Participation Leads)

Three local authorities actively undertook the survey with children and young people and provided responses (Bolton, Warrington and Cheshire East Councils). Feedback from the young people was mixed and where themes can be identified, they mainly related to the need for better communication and information. Young people said participation was lacking; many didn't like attending meetings and wanted to contribute views in creative ways (video etc.); some were not aware of their EHC Plans or targets / goals, and some said they didn't have annual reviews.

A provider survey was published on the North West Procurement Portal the CHEST and sent directly to the providers that had submitted an expression of interest in joining the purchasing system (to date 128 providers have submitted an expression of interest in the contract). All Commissioning managers were also asked to distribute the survey to the providers they commissioned from.

13 providers responded to the survey. The majority said they were intending to join the framework (8 gave an unequivocal 'yes'. 4 said yes, subject to certain conditions – all of which are being addressed).

The majority of providers (12 out of 13) can provide information on price (core costs and additional services).

Representatives from North West Placements attended the Sefton SEND Continuous Improvement Board Co-production sub group on the 11th Dec 2019 and provided a presentation around the FPS and its aims.

Consultation with families, children and young people will continue to be undertaken throughout the duration of the FPS to ensure that it continues to meet the specification.

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Appendices:

There are no appendices to this report

Background Papers:

Background

- 1.1 The Council needs to have arrangements in place to secure placements which are sustainable, qualitative, cost effective and meet the needs of children and young people with Special Educational Needs and Disabilities. The process of securing a placement is often complex and families and commissioners often find the selection of provision is limited with little understanding of the particular strengths of each provider in managing the needs of the child and young person. Families may also be influenced by a particular provider without this broader knowledge and insight into what other provision can offer.
- 1.2 The use of the FPS will enable a greater understanding of the provider market, through the collation of data and intelligence and will provide qualitative and quantitative information providing insight into performance, patterns and trends, which will enhance the ability to support sustainable choices for the needs of the child and young person. Both families and SEND Officers will be able to receive transparent information from the provider to enable informed placement finding and decisions. This will reduce the potential for the placement to break down and lead to a more sustainable position.

Most providers in the market are already being commissioned by other regional authorities and so the collaborative regional approach, if approved will support a more sustainable market and build provider relationships.

here is a need to ensure that the Council are also sourcing placements via a process which is compliant to its Contract Procedure rules. The SEND Flexible Purchasing System (FPS) will comply with legislation / the SEND Code of Practice. It will not remove parental preference.

The Health and Wellbeing Board endorsed the Joint Commissioning Strategy and Action Plan for SEND 2020-2023 in March 2020.

- 1.3 The SEND Improvement Plan and SEND Continuous Improvement Board recognised the concerns of families and partners in relation to improvements required to support the needs of children and young people around provision, accessibility and consistency.
- 1.4 The use of the FPS would provide a resource of data and intelligence to enable, improved access to the right service to meet needs. This would also provide consistency by enabling all authorities to be able to share experience and knowledge of provision and manage any inconsistencies as part of a regional provider relationship. This approach will also impact on quality by enabling a wider understanding of the performance of services shared across authorities and therefore lead to improvements through the broader commissioner focus.

- 1.5 All authorities are experiencing pressures with regards to cost around placements and therefore access to these purchasing arrangements will enable a broader understanding of costs and the ability to assess these regionally leading to a greater opportunity to secure value for money.
- 1.6 The Council is currently named on the following regional purchasing systems with the intention of maximising our buying power and shaping the market in our region:
- North West Foster Flexible Purchasing System
 - North West Residential Flexible Purchasing System
 - North West Leaving Care Dynamic Purchasing System
 - North West Care and Support Dynamic Purchasing System
- 1.7 Sefton will not be obliged to use the FPS however it is anticipated that use of it will provide a more structured and sustainable route to the market which will benefit the sourcing of placements for children and young people with SEND.
- 1.8 In 2019 Cheshire East came forward to develop a purchasing system for SEND commissioned placements, it was agreed to ask the region whether this would be wanted. Following consultation with providers and Local Authorities, it was found that this would be helpful.

2 Progressing the Procurement

- 2.1 In 2009 Placements North West was established to support collaborative commissioning and sufficiency of children's social care provision. It is currently hosted by Bolton Council and is funded by the 23 local authorities in the North West region. The lead Council for this FPS is Cheshire East.
- 2.2 North West Placements currently supports three regional contracts:
- Residential Flexible Purchasing system (children's homes)
 - Fostering Flexible Purchasing System
 - SaLLS Flexible Purchasing System (supported and independent living services)
- 2.3 The procurement is being conducted under the Official Journal of the European Union (OJEU) light-touch procurement arrangements and the Purchasing System will be in operation for a period of 10 years from when it is set up. The FPS will close for evaluation as a minimum twice in year one and for subsequent years and for the duration of the FPS once annually to allow new entrants to join.
- 2.4 Timeframes are currently being revised due to the circumstances related to COVID19 pandemic and the resulting impact on Local Authorities and providers, which has caused delays. The following are indicative and subject to confirmation:

- Oct- November 2020: Publication on The Chest
- Dec 2020- February 2021: Contract signing / go live

2.5 Contracts awarded using the FPS will be awarded in accordance with the terms and conditions aligned to the FPS. Where the contract values exceed the OJEU threshold decisions with regards to the award will be made by Cabinet.

2.6 Cabinet is asked to approve the use of the FPS in Sefton for the placements of children and young people with SEND.

3 Contractual Processes

3.1 Commissioners will be able to use the FPS to make individual placements and block purchases (via call -off/ mini competition), or direct awards.

3.2 The initial lots (services) that will be included in the purchasing system are: -

- 52 week placements
- 38 week placements
- Day placements

3.3 Provision has been made to add lots (services) onto the contract over the lifetime of the FPS.

3.4 A referral spreadsheet has been developed for SEND Teams / Commissioners to support placement finding, which will be completed via emails. Officers will be able to filter the spreadsheet by:

- Placement type (day placement, 38 week placement, 52 week placement, innovation)
- Specialism (cognition and learning, sensory and physical, communication and interaction, Social Emotional Mental Health)
- Geography
- Age
- Gender
- Cost

3.5 Individual local authorities **will retain**:

- Their decision-making processes
- Their own paperwork
- Control on pricing – local authorities will agree their own prices for placements

(providers will supply an indicative weekly cost in order to be accepted onto the contract; this will be used as a benchmark when local authorities negotiate costs).

- 3.6 Both parents and SEND Officers will be able to receive transparent information from the provider to enable informed placements finding.
- 3.7 Providers will have to apply to get onto the SEND FPS and meet minimum criteria to be accepted.
- 3.8 Tenders will be evaluated on a pass /fail basis (there will be no quality scoring). The requirements will include:
- Ofsted rating (pass requires: outstanding/ good / requires improvement) or Estyn equivalent
 - Submission of last full inspection report
 - Submission of Statement of Purpose
 - Overview of provision/ services, including and outline of how the provider will work with parents and ensure the voice of Learners is heard
- 3.9 The providers will be asked at point of tender to submit a weekly indicative price which contains the activity within the core cost specification and the costs of all additional services (i.e. hourly rate). This information will be collated into a spreadsheet for Commissioners / SEND Teams. Local Authorities will be able to use the indicative price to negotiate the price of placements with providers on an individual basis.

Before an Order can be placed by the Placing Authority the Placing Authority must either:

- administer a mini- competition between all Providers in the relevant lot from which they want to place an Order; or
- in exceptionally urgent circumstances a direct Order may be placed with a particular Provider by the Placing Authority, or
- administer a mini competition, between Providers who have been preselected based on information submitted in their Provider Response. This may include, but shall not be limited to, circumstances involving emergency placements, Provider size, location, capacity, gender, and educational needs based on the needs of the Service User.

The Authority will issue the successful Provider with an Order which makes clear that the requirement is procured under this FPS Agreement.

Mini Competition

The Placing Authority will set out the Service required in a referral document. The referral document will contain sufficient detail to allow Providers to submit a fully costed proposal to the Placing Authority for consideration. The Placing Authority will expect the price submitted by the Provider, in response to a service request, to be in-line with their indicative prices. Where variations from indicative prices exist, the Providers will need to evidence the reasons for variation.

Where a mini competition is used all Providers, or Providers preselected will be notified and invited to submit a proposal.

The Placing Authority will set its own technical criteria at the point of mini competition.

This may include 'pass /fail criteria and / or scored criteria. Examples of the criteria may include the following (this is not an exhaustive list).

- Location
- Best match
- Compatibility
- Quality
- Price
- Service offer

The Provider offering best value for money will be notified and the Placing Authority will issue the successful Provider with an Order which makes clear that the requirement is procured under this FPS Agreement. *Unsuccessful Providers will be notified by the Placing Authority together with the reasons why they were unsuccessful as required in the public contract regulations.*

Direct Award:

Where an Order needs to be placed quickly and a placement identified in an extreme emergency or at very short notice then the Placing Authority may make a direct award to a Provider best able to meet the needs identified by the Placing Authority.

The Placing Authority may at a later date review the Order and open the requirement to further competition or the Order may remain with the same Provider subject to review

Additional Lots

In addition to the Lots 1-4 described in the Specification hereto, the Lead Authority may extend the number and range of Lots under the FPS during the FPS Term. The additional lots may include but shall not be limited to the following:

- Fixed price
- New or Emergent need
- Innovation

- Urgent short stay
- Extended radius
- Any other Requirements within the Scope of this FPS
- Cohort Purchases

The Order Process for any additional Lots will be published as and when such additional Lots are established by the Lead Authority.

Additional Lots will be subject to the terms and conditions of the FPS Agreement and subsequently, the Call Off Terms and Conditions.

Individual Placement Agreement (IPA)

- 3.10 The IPA is the individual Contract when a child or young person is placed in a care or education placement and forms part of the Contract made between the Provider and the Authority
- 3.11 The IPA will include the agreed details with regards to: parties to the agreement, types of provision included, purposes of the parties included, dates of provision start and end, key contacts, costs and payments including those for the child and young person, variation template, list of documents in place as part of the overall contract and specification, signatories to the contract/agreement for the Council and provider.
- 3.12 Cabinet is asked to approve the use of the North West Flexible Framework for children and young people with SEND.