

Report to Mrs Jacquie Russell, Cabinet Member for Children and Young People

October 2022

Procurement of residential provision for children with complex needs

Report by Ms Lucy Butler, Director of Children, Young People and Learning

Electoral divisions: All

Summary

The County Council has a duty to take steps to secure, so far as reasonably practicable, sufficient accommodation within its area which meets the needs of children within its care. Sourcing stable placements which adequately meet the requirements of children with complex needs is a particular challenge, and this picture is reflected nationally.

The County Council has been working with other local authorities, as well as providers of residential care, to identify potential solutions to these issues, the culmination of which will be the procurement of a new service. The procurement will be conducted in partnership with other authorities in the region – Kent, Portsmouth and Southampton – with the aim of developing new and innovative approaches to residential care provision for looked after children with complex needs, to better support sufficiency within the region. Each authority will contract individually with the successful provider for their area, but with the flexibility to transfer unused residential places between partners, and even to sell to authorities outside the partnership if appropriate. The partnership will also continue to work together throughout the life of the contract to collaboratively develop services.

Recommendations

The Cabinet Member for Children and Young People is asked to approve;

- (1) Entering into an inter-authority agreement with Kent County Council, Portsmouth City Council and Southampton City Council governing all aspects of the procurement and management of the contract(s) for residential provision for children with complex needs.
- (2) The delegation of authority to the Director of Children, Young People and Learning to enter into the inter-authority agreement as set out above.
- (3) The commencement of a procurement process for a block contract of 20 residential places for children with complex needs in West Sussex for a period of 10 years with an estimated total value of £104m. This is for the West

Sussex lot only – a further 30 places will be procured in separate lots by the other 3 authorities, creating 50 places in total across the partnership.

- (4) The delegation of authority to the Director of Children, Young People and Learning to award the service contract(s) to the successful bidder(s).
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1 Background and context

- 1.1. The children with complex lives project started in 2019 as part of the South East Sector Led Improvement Programme ([SESLIP](#)). Leadership of the project later transferred to the 4 partner authorities listed in recommendation 1 above, with West Sussex as the lead authority. The project was funded by the Department for Education (DfE) to undertake strategic sufficiency analysis focused on the availability of placements for all children. The analysis identified that the placement market was not serving children well, with small numbers needing to be placed in unregistered care, many being placed at distance from their local area for no good reason, a lack of choice and that there were few good options to support children to either return to their own family or succeed with foster carers. This led to a focus on children with more complex needs who were likely to face more of a challenge in terms of locating and sustaining suitable placements.
- 1.2. The second stage of the project was set up to explore how these challenges could be addressed. Working initially with 3 local authorities (West Sussex, Kent and Portsmouth) who were later joined by Southampton, the project developed a partnership with the Independent Children's Homes Association (ICHA) and the Nationwide Association of Fostering Providers (NAFP) to explore new ways of working with the placement market. Market engagement in the earlier stages of the project indicated that the primary group of providers were most likely to be residential providers, leading to a focus on residential provision in subsequent stages.
- 1.3. Since the original analysis was completed, the situation has worsened significantly with most authorities struggling to find registered placements for some children. The issues highlighted in the project's original report have also been picked up by other national bodies/reviews, including the [Competition and Markets Authority](#) (CMA), the [Care Review](#) and the [What Works Centre](#).
- 1.4. The Council currently places children requiring residential care through a variety of means;
- The majority of placements are made through the existing Children's Placements and Other Support Services (CPOSS) framework
 - Where a placement cannot be found through CPOSS, spot purchasing outside of the framework with registered providers of residential care is considered
 - In the most challenging cases where there is no other registered alternative, bespoke unregistered placements are made
- 1.5. The particular challenges faced by local authorities in meeting the accommodation and care needs of those children with the most complex level of

need (termed 'children with complex lives' by the project) can be broken down into 3 areas;

- Quality – Unregistered placements are unplanned, they are often put together quickly and do not address children's real needs; they focus on containing children, rather than really helping them
- Legal – The inability to place children in placements in Ofsted-registered provision creates an unacceptable and unsustainable position for all authorities – placing children in unregistered placements exposes Directors of Children's Service to legal sanctions, opens up local authorities to Ofsted intervention (and the ensuing financial consequences, potentially costing millions) and can cause irreparable damage to the reputation of authorities
- Value for money – Unregistered placements are extremely costly (most authorities in the region have such placements costing £20-30k per week, with some costing up to £60k per week)

1.6. In order to understand more about this cohort of children within West Sussex, analysis has been undertaken of all placements for children we care for over the past 3 years that are designated as high cost (i.e. cost £5,000 per week or more) and demonstrate one or more of the following identified risk factors;

- Requiring secure care (even if secure care was not where they were eventually placed)
- Complex mental health needs (e.g. placing a child who is being stepped down from a Tier 4 mental health facility)
- Risk relating to criminal exploitation
- Risk relating to sexual exploitation
- Aggressive behaviour towards adults

1.7. The analysis showed that demand for placements of this nature is rising in West Sussex, as is the average cost of placements;

- The size of the cohort has increased from 6 in Apr 2018 to 20 in Oct 2021
- Current children we care for (CWCF) population projections indicate a 16% increase (based on Oct 2021 levels) out to March 2026
- Applying this rate of growth to the children with complex lives cohort, demand for this group is projected to rise to 23 by March 2026
- The total spend per year on this cohort has risen from £2.2m in 2018/19 to £7.0m in 2021/22

1.8. The data for this analysis ended in March 2022. Since this date, WSCC has placed multiple further children in unregistered placements, with the most expensive costing £28k per week, demonstrating that the problems in this area are worsening, that current arrangements are not sufficient to meet the needs of this cohort of children and that a new relationship and way of working is required with the residential sector in order to start to resolve these issues.

1.9. Through further market engagement and partnership working between the 4 local authorities involved, the project has now reached the stage where a procurement is required to enable the sourcing of residential provision for children with complex needs to better meet the challenges and rising demand.

2 Proposal details

- 2.1 The Council will enter into an inter-authority partnership agreement with Kent County Council, Portsmouth City Council and Southampton City Council, governing the roles and responsibilities of the parties in relation to the procurement of the project and the management of the subsequent contract. The partnership will work together to commission residential services for children with complex needs within the Southeast. West Sussex will act as the lead authority and undertake the procurement exercise, with the tender being published on the Council's electronic procurement portal and the procurement being managed by Council officers. Contracts will then be awarded separately by each authority.
- 2.2 Contracts will be block in nature (i.e. purchasing a defined number of places for a set time period) and will be for a period of 10 years. The total estimated value of the West Sussex contract is £104m. It should be noted that this is based on cost data for a cohort of children that the Council already has a statutory duty to accommodate, and who are currently placed through a broad range of arrangements (e.g. external children's home providers, unregistered placements etc.). This is therefore not new, additional expenditure that is proposed, but rather a more effective way of working within existing budgets to ensure that the most vulnerable children receive the care that they need.
- 2.3 The contracts will operate via a lot system with each local authority's places being the subject of a separate lot. Local authorities will contract separately with the provider to whom they award the contract for their lot. The contracts will also include the ability for each local authority within the partnership to transfer any voids (i.e. vacant places) to another authority within the partnership if needed, and even to sell vacant beds to authorities outside of the partnership. This partnership approach (termed 'soft block' by the project) will improve the purchasing power of the participating authorities and provide a more flexible and efficient way of collectively managing resources across the region.
- 2.4 Placements will ideally be within small homes of between 2 to 4 places in size, as best suits this cohort of children. The total number of placements that each local authority is seeking is as follows (although contracts will include the facility for this number to be flexed on agreement between the contracting authority and the provider). Bids will only be accepted from providers for all of the places in an authority's lot (although bids will also be accepted from consortia of providers, and a provider may bid for more than 1 lot);
- West Sussex – 20 places
 - Kent – 15 places
 - Portsmouth – 10 places
 - Southampton – 5 places
 - Total – 50 places
- 2.5 The expectation is that some, if not most, of these placements will come from providers creating additional placements by establishing new homes for children with complex needs, although some may also come from providers repurposing existing provision. This will require the providers to commit to an investment of finance and other resources to create these additional places. The long duration of the contract is therefore essential to provide both the certainty of places for

the local authorities involved and to enable the providers to justify this financial commitment.

- 2.6 A sufficient mobilisation period (likely c. 2-3 years) will be allowed from award of contract (planned for early 2023) in order for providers to properly establish and develop services up to full capacity. There will also be an initial 'no termination' element to the contract for the first 3 years. Thereafter, either party may terminate with 12 months' notice.

3 Other options considered (and reasons for not proposing)

- 3.1 **Do nothing.** This would mean continuing to spot purchase placements at high cost and/or place vulnerable children in unregistered and sometimes detrimental settings and often with insufficient terms and conditions in place. The ongoing negative impact to children with complex needs of being placed in unsuitable and unstable arrangements, in addition to the legal and financial risk to the Council, make this option unviable.
- 3.2 **Procure services through existing arrangements.** There are existing procurement arrangements within the region – for example, the South-Central Residential Framework – through which such services could be sourced. This was considered in some detail by the project during the design stages, but was discounted, primarily because using an existing framework would not provide the best basis for establishing the new relationship with the market that is required in order for this proposal to succeed.
- 3.3 **Provide services in-house.** The Council is also seeking to develop its own services for children with complex needs, as part of a mixed model of both in house and externally sourced provision that will provide flexibility and resilience for this cohort of children for whom sourcing suitable placements can so often be a challenge.

4 Consultation, engagement and advice

- 4.1 This project has undertaken significant engagement with the care sector since its inception in order to inform the development of proposals;
- March 2021 – the 1st market consultation, including the communication networks of the Independent Children's Homes Association and the National Association of Fostering Providers
 - June 2021 – a 2nd consultation via workshops, with 11 providers participating
 - April 2022 – a 3rd market engagement event with 11 providers participating
 - May 2022 – a 4th market engagement event with 10 providers participating
- 4.2 Care experienced young people will be involved in the design of elements of the tender process, as well as the evaluation of any bidders.
- 4.3 The Council's legal services have led on the development of the inter-authority agreement, in consultation with the legal services of the 3 partner authorities.
- 4.4 Procurement Board (the Council's internal governance process for procurement projects) has considered and supports the proposal.

5 Finance

5.1 Revenue consequences

The focus of this project is developing a prototype for a different way of working with the placements market, which if successful, will contribute significantly to addressing the sufficiency challenge for each of the participating local authorities. This proposal is focussed on solving underlying issues with the relationship with the residential care sector, which if successful will result in other changes relating to the quality and sufficiency of care, for example the stability and locality of placements.

As the children who will be supported by this proposal already fall within the cohort of those whom the Council has a statutory duty to provide care and accommodation for, this is not new, additional expenditure that is proposed. Rather, this is a more effective way of working within existing budgets to ensure that the most vulnerable children receive the care and support that they need. Although some revenue savings/efficiencies may be possible (see section 5.2), this will very much be dependent on tender returns, which will become evident at the award stage.

The inter-authority agreement commits each participating authority to a small contribution of £10k to support the project phase of this proposal, prior to the contracts going live (for West Sussex, the contribution has been made on an 'in kind' basis, based on the officer time committed to the project as lead authority). There will be no requirement for further contributions once live, and the new contract will be managed within the Council's existing commissioning and contract management resource within the Children, Young People and Learning Directorate.

5.2 The effect of the proposal:

(a) **How the cost represents good value**

This proposal will address each of the key challenges that the placements market currently experiences for this cohort of children;

- Quality – through establishing agreed standards and ways of working with providers across the partnership, in a sector where current services for children with complex needs can differ hugely
- Legal – through reducing/removing instances of unregistered placements being made; most importantly, this will reduce risks relating to the safety and wellbeing of children, as well as the regulatory and legal risk that unregistered placements expose the Council to
- Value for money - current weekly costs at the time of writing range from £5k to £27k per child, whilst market engagement for this proposal has been conducted based on placements costs in the region of £6-10k per week per child

(b) **Future savings/efficiencies being delivered**

Economies of scale are likely through working with an individual or small number of providers across a larger geographical area, in partnership with other local authorities, to deliver these services. Any financial benefits will become evident at the contract award stage and will depend on where the winning bid sits between the minimum and maximum prices specified as part of the procurement (this will vary for the different participating authorities, but for West Sussex this will be £6,000 and £10,000 per placement per week respectively). Financial modelling has been conducted to compare projected total annual costs for the following two scenarios for the 20 places that West Sussex intends to procure;

- A 'do nothing' scenario based on the current trend in placement costs from the 3 years' worth of historical data collected from the 4 participating authorities, projected over the following 10 years
- A proposed scenario for the 10 years of the contract, based on a conservative estimate of a winning bid of £9,000 per week, and accounting for other contributing factors such as inflation

Year	Do nothing	Proposal
Year 1	£9,219,287	£9,416,484
Year 2	£9,573,507	£9,793,143
Year 3	£9,927,727	£9,940,041
Year 4	£10,281,947	£10,128,901
Year 5	£10,636,167	£10,331,479
Year 6	£10,990,387	£10,538,109
Year 7	£11,344,607	£10,748,871
Year 8	£11,698,827	£10,963,848
Year 9	£12,053,047	£11,183,125
Year 10	£12,407,267	£11,406,788
Total	£108,132,772	£104,450,790
Difference	£3,681,981	

Comparing these two scenarios indicates a that a total of £3.7m less will be spent over the life of the contract as a result of this proposal (this figure is indicative only and dependent on the outcome of the tendering process).

(c) **Human Resources, IT and Assets Impact**

No local authority owned properties will form a part of this proposal. There will also be no human resources impacts – each partner local authority will undertake contract management within their existing contract management/commissioning teams.

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
Staffing. There are significant recruitment challenges in the care sector at the moment,	A significant mobilisation period (c. 2-3 years) has been allowed for within the proposal in order to give providers a realistic

Risk	Mitigating Action (in place or planned)
which may impact mobilisation timelines for providers.	timeframe in which to establish entirely new services, including recruitment.
Securing property. Sourcing sufficient and appropriate property in the desired location could also potentially extend timelines for providers, in particular as planning permission (either for a change of use and/or for work to the property) is usually required.	Where possible, partner local authorities will assist providers and each other with explaining the planning process, dependent on who the planning authority is. The long mobilisation period will also allow for all activities relating to securing sufficient property.
Registration. Registering a new children's home with Ofsted can add further to timelines and can take c. 3-6 months.	The extended mobilisation period will support this. Ofsted also offer a faster, local authority sponsored route to registration for providers who are registering homes as part of local authority contracts such as this. There will also be a point of contact within participating authorities to assist providers with matters such as registration.
Insufficient market interest. The tender may not generate sufficient interest in the residential care sector.	Market engagement undertaken throughout the project indicates that there is sufficient interest to deliver this proposal. There are other similar successful models that have been adopted by authorities around the country, including Somerset . Should an authority not receive a successful bid for their lot, they will have the option to direct award, as a competitive procurement process will have already been undertaken.
Relationship with the market. The proposal may not change the relationship with the residential care market in the way that is intended, resulting in 'more of the same' rather than a new way of working.	Informed by the extensive market engagement undertaken during the project, this proposal seeks to address key areas of concern for both providers and authorities, thereby changing the basis of the relationship, including areas such as the length of the contract.
Places are not utilised. As this is a block contract, voids may result in participating authorities paying for empty beds.	The 'soft block' arrangements will allow void places to be utilised across the partnership or sold to other authorities. The number of places commissioned also matches the anticipated increase in demand for this cohort of children.
Length of contract. This proposal would commit the Council to an initial contract period of 10 years, which is significant for a new way of working, given the financial commitment involved.	Based on market engagement, this sort of length of contract is required in order to give stability to providers and provide sufficient time, space and certainty for a more strategic partnership to address underlying problems. Contracts will also include break clauses.
Other planned national changes. This proposal is	The direction of national policy, evident through recent reports (see section 1.3), is in line with this proposal; for example the

Risk	Mitigating Action (in place or planned)
overtaken by other national changes.	recommendation in the final report of the Care Review to create Regional Care Cooperatives (RCCs) that will increase commissioning at a regional level.

7 Policy alignment and compliance

7.1 Our Council Plan

Through improving the sufficiency and quality of in county accommodation for children with complex lives, this proposal will support;

- The [Our Council Plan](#) priority of keeping people safe from vulnerable situations and providing support to people when they need it, and the KPI of stability of CWCF placements
- The Children Young People and Learning department's Key Performance Indicator of only having 15% or less of the CWCF population placed outside the WSCC boundary and more than 20 miles from where they used to live

7.2 **Legal implications.** The Council is a Contracting Authority as defined in the Public Contract Regulations 2015 ("PCR") and as such is governed by those regulations. The value of the proposed contract will be above the relevant UK Thresholds as referred to in the PCR of £663,540 for Social and other specific Services ("Light Touch Services"). As such the Council will competitively tender these services in accordance with the procedures set out in PCR.

West Sussex County Council are acting as the lead Council and providing legal support. The Council will enter into a services contract using terms and conditions, approved by Commercial Legal Services and compliant with section 10 of the Council's Standing Orders on Procurement and Contracts. The Council will also enter into an Inter-Authority Agreement with the other three authorities which has also been drafted by Commercial Legal Services.

There is no risk that this contract will be considered illegal state subsidy within the subsidy control requirements because the contract will be subject to a competitive tender thereby ensuring that the Council is not selectively granting an advantage to one particular economic operator over another.

7.3 **Equality duty and human rights assessment.** All services aim to treat children with respect and dignity and provide the same level of support regardless of any protected characteristics. The specification for this proposal will require providers to evidence how they will ensure that their service specifically meets the need of children and young people who may otherwise be disadvantaged. For example, this could include children with mental health conditions or children with education, health and care plans (EHCPs) as a result of neurological conditions.

7.4 **Climate change.** The creation of more placements in county will reduce travel times for staff to visit children in residential placements (some of whom are currently placed as far away as Scotland), resulting in lower emissions from staff travel.

- 7.5 **Crime and disorder.** Many of the children and young people who will be supported by this proposal are also likely to have had contact with the police, either as a victim or an offender. This proposal will result in better support for vulnerable children. Providers will work with children in a therapeutic way which will reduce the risk of offending and/or exploitation.
- 7.6 **Public health** – N/A
- 7.7 **Social value.** Social value considerations, in line with each participating authority's social value policy, will form a part of the tendering process and will be built into the contract with successful providers.

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Background papers – none