

Forward Plan reference number: FP/146/06/23

Report title: Procurement of block contract for residential places	
Report to: Cabinet	
Report author: Councillor Beverley Egan, Cabinet Member for Childrens Services and Early Years	
Date: 12 September 2023	For: Decision
Enquiries to: Clare Burrell - Head of Strategic Commissioning, email clare.burrell@essex.gov.uk Tracey Curtis, Commissioning Manager - Tracey.curtis@essex.gov.uk	
County Divisions affected: All Essex	

1. Everyone's Essex

- 1.1 Everyone's Essex sets out four strategic aims and 20 commitments to residents with specific commitments to improve outcomes for the most vulnerable and disadvantaged groups including Children in Care, Care Leavers and Children with SEND working with partners across the system.
- 1.2 The system refers to: organisations both commercial, public sector and voluntary sector; children, young people and their families, schools and communities and other partners who support young people to achieve their full potential which is fundamental to the work of the Council as Corporate Parents.
- 1.3 In June we were once again recognised by Ofsted, as being outstanding in the care that we provide, however that does not mean that we should be complacent or ignore the challenges that some children and young people with additional support needs face.
- 1.4 Some of the children and young people in our care have very specific needs which mainstream accommodation cannot meet appropriately. The cost of these placements can be very high as we often have to 'spot' purchase placements because of the very specific needs these children. Because of the high costs for these placements and the unpredictability, one or two more children over the anticipated numbers during the year, causes significant financial impacts which we cannot predict or mitigate as effectively as we would like. Poor availability in the market means that we sometimes have to use places which are not registered with Ofsted.
- 1.5 This decision aims to reduce the costs for these specialised placements through block booking around young people's specific needs rather than spot purchasing to reduce costs, increase availability and through better partnership work with the market reduce the financial risks to the council.

- 1.6 This decision supports our Sufficiency Duty and is part of the wider workstreams which will contribute to our revised approach to residential accommodation to better support our young people.
- 1.7 The recommendations have no adverse impacts on the Council's climate objectives. By securing access to local placements, having enhanced access to local capacity, there will be a reduction travel associated with out of county placements.

2 Recommendations

- 2.1 Agree to undertake a single stage open procurement to secure block contracts of up to nine places in Ofsted registered children's home for those children and young people in unregistered placements, who may not be able reside in multi-occupancy homes.
- 2.2 Agree that each contract will be for an initial period of one year, but with the possibility of extension for up to three years in total with a potential total cost of £20.6m.
- 2.3 Agree that each contract will contain a clause entitling the Council and provider to terminate on 6 months' notice clause to reduce the financial liability and risk to the Council and to providers entering the arrangement.
- 2.4 Agree the Executive Director, Children's, Families and Education, in consultation with the Monitoring Officer, is authorised to
 - (a) Determine the procurement procedure to be followed including lots, geography and ranges of needs; and
 - (b) award the contracts to successful bidders.

3 Background and Proposal

- 3.1 The Children Act 1989 requires the Council to secure accommodation for children in their care. Accommodation needs to be appropriate, and it is recognised that placement within 20 miles of home and within local authority boundaries is best if possible and appropriate.
- 3.2 The Council's Sufficiency Strategy for Children in Care and Care Leavers (2023-2026) sets out how the Council plans to fulfil its duty to meet the needs of the children and young people in our care, and care leavers. The Council has an ambition (aligned to the Co-parenting Strategy) that children and young people who come into care are placed in high-quality provision; access the right homes at the right time and are in placements where they feel safe.
- 3.3 As part of the reforms to improve the standards in children's social care, the Department for Education changed the law in September 2021 to require Local Authorities to only use residential accommodation which is registered with

Ofsted. 'Unregistered placements' arise when we place someone in residential care which is not registered.

- 3.4 This change in the law did not take account of the fact that local authorities were not using unregistered placements through choice, but because there was no suitable registered accommodation. The Council has had no choice but to continue to use unregistered placements. The number of young people in such placements has moved between six and thirteen, although the average is nine. The current average length of stay in unregistered placements is 86 days, with a range of 4 – 301 days. We do everything possible to minimise the length of stay.
- 3.5 Covid had a significant impact on the ability of providers of residential placements to develop their services and respond to the needs of Children in Care. It is clear from Ofsted registered national data that new homes opening within the years 2020-2022 slowed significantly. The cost of living crisis continues to have an impact on providers' ability to secure funding, capital, and open new homes in Essex, where property is more expensive than in some other places.
- 3.6 Further, the residential workforce capacity has diminished, and it is challenging to recruit well-trained, expert staff to support children who have experienced trauma and neglect.
- 3.7 As a result, it has become increasingly difficult to tackle the need to grow the number of places for children and young people in mainstream registered placements. Particularly as the needs of some young people mean that it can necessary to have a provision which only accommodates one child or young person, whereas most registered placements take a number of young people.
- 3.8 Where the Council has no alternative other than to place within an unregistered setting it adopts robust quality assurance processes to ensure the provider is appropriately and safely supporting the child or young person. Regular checks and visits are made.
- 3.9 Local and stable placements lead to better outcomes for most Children and Young People by building on existing networks and enhancing access to services. Registered placements provide assurance that standards are being met, although the Council believes that its own checks provide similar assurance.
- 3.10 As of May 2023, there were 315 registered children's home placements in Essex, Southend on Sea and Thurrock. The placements within the Council's boundary are in high demand from neighbouring Councils. The Council does not have any block arrangements meaning that it is competing for places with other local authorities.
- 3.11 The Council has previously attempted to canvas interest in from providers in meeting the needs of this cohort in registered provision for very small numbers of children who are not able to live in larger groups. This took place in June 2022 but we got a very limited response from the market and concluded that there was little interest at that time.

- 3.12 Significant work has also been undertaken to improve relations with the local Essex residential market which has gained traction. Notably the well-received Commitment statement (rated 4.5 out of 5 by the market) and a clear, transparent fee uplift process.
- 3.13 It is clearly sub-optimal to use unregistered placements so in January 2023 a Prior Information Notice (PIN) was again placed to see if what interest was now there from providers to provide solo children's homes, with the aim to reduce the Council's use of unregistered placements.
- 3.14 This attracted a much more positive response from the market with more than 30 providers expressing an interest, six of whom are local, have Ofsted registered settings already and have a track record of good performance. That's not to say that the others won't be viable.
- 3.15 Many of the providers who responded to this PIN have accommodation in Essex but have not taken active referrals from the Council into their existing provision (under either the framework or spot arrangements). It appears this is probably due to the Council not offering a guaranteed term, making it difficult to justify investing in new provision, given that placements for this cohort are likely to have no more than two places. The creation of places requires acquiring premises, making them fit for use, recruiting, and training staff and securing an Ofsted registration. This is a significant undertaking when the Council provides is no guarantee of use.
- 3.16 In addition, Officers have undertaken significant market engagement work with the local providers to increase their willingness to work with the Council.
- 3.17 Following this engagement Officers are now confident that a different approach, output specifications and block contracts, will result in a positive market response. The purpose of this report is to secure agreement to capitalise on this promptly.

Proposed new approach.

- 3.18 It is proposed to procure up to nine block bookings of places, initially of a year, with the possibility of extension for a further two years, with the Council and provider being able to terminate on six months' notice. This reduces the financial liability and risk to the Council and to providers entering the arrangement. Giving providers more financial security means that they are more likely to be able to justify the investment. They also have more autonomy and freedom on how to best meet the needs of children and young people.
- 3.19 We are also reminding the market of our recently launched 'Commitment statement' and the implementation of care cubed – a consistent, transparent approach to fee uplift requests.
- 3.20 We are also intending to be more flexible with the market. Engagement with the residential sector has established that providers wish to have full autonomy over their own services whereas the Council has previously sought to impose a rigid service specification.

- 3.21 It is proposed to support a localised agenda, preferring relationship and partnership approaches. This commissioning would be at a child specific level as opposed the usual cohort approach, using output specifications.
- 3.22 An output specification steps back from the detail of how the Council expects a supplier to achieve our goals and provides them instead with what the output is expected to be, leaving the provider to propose how it will be delivered. This gives providers the freedom to develop the best approach to the specified result for the young person. Output specifications do not need to be any less informative or detailed, they simply take a different approach.
- 3.23 Output specifications are individually focused and are a much more innovative approach. Providers will also be basing their proposed package of care on a specific child, and therefore it will likely be a better match for their individual needs.
- 3.24 The evaluation criteria will be 70% price and 30% quality. Providers will be required to meet a robust service specification and submit method statements to enable us to evaluate the quality weighting effectively.
- 3.25 Officers would look to mobilise a residential experienced care leaver panel to support the evaluation process to ensure services are contracted with are that which children and young people endorse.
- 3.26 This proposal is complementary to the decisions for mainstream residential placements which are set out elsewhere on the Cabinet agenda.
- 3.27 Officers anticipate this approach will reduce the Council's use of unregistered placements and we may eventually, considering the developments under the wider long-term strategy, avoid the need to regularly use short term placements. That said, it is unlikely that we will ever be able to entirely rule out using unregistered placements
- 3.28 The need for residential care can arise quickly. Therefore, it is necessary for the Council to have direct access to a range of reliable and effective residential care options to deliver safe, local, registered placements for children and young people. Providers report hundreds of referrals per vacancy. This report proposes we block purchase beds from a range of providers. A block bed can only be occupied by someone referred by the Council, which guarantees its availability for an Essex child in need.
- 3.29 Each contract will be awarded for a duration of one year with the possibility of extension for up to a further two years in total. Provision will be made in the contract to allow for a young person, placed near the end of the contract, to stay beyond the duration of the contract if appropriate and in accordance with their care plan.
- 3.30 We will aim to have places in the geographical area of current unregistered placements, representing a spread of beds across Essex. As the unregistered

cohort changes daily, this would be instigated upon authorisation with social care determining the specifics.

- 3.31 Our experience is not dissimilar to that of other local authorities. Local Authorities are exploring a mixed economy of inhouse services and purchased services via block arrangements or partnerships. Suffolk, Hertfordshire, Norfolk, Oxfordshire and West Sussex have each moved to block purchased placements to some extent.

Risk

- 3.32 Block beds result in a financial liability as the Council is responsible for paying for beds even if vacant. This can be mitigated against operationally by planning early, having active early vacancy discussions, and supporting high occupancy levels as well as seeking to ensure that provision is flexible enough to meet a range of needs.
- 3.33 Whilst increasing the use of block beds is a financial liability, it also gives more financial certainty as the cost is known at the point of entering the contract with the provider. The cost of spot purchasing unregistered placements, as we are currently, is difficult to accurately forecast and is predicated to increase.
- 3.34 To further mitigate this risk the Council's placement team will operate under a service level agreement (SLA) with external providers to ensure best use of places bought under the block contract. This will include performance indicators such as the placements team referral timescales and the providers assessments timescales.
- 3.35 In addition, the Council will ensure that the placements team is trained, supported and managed effectively to make the best use of the placements and there will be an identified liaison worker to manage all block placements.
- 3.36 This approach reduces the risk of ECC not meeting its Sufficiency Duty, by moving children and young people from unregistered to registered placements and keeping them in Essex.

Size of block

- 3.37 The Council's average number of non-Ofsted registered placements has risen since 2021 and is on average nine young people at any one time. The average length of stay in unregistered placements is 86 days. It is proposed that the optimum size of the block is nine. Officers would recommend awarding to less providers if there were insufficient providers who met the evaluation criteria.
- 3.38 Providers in this instance will need to be able to demonstrate that they can take young people from the start of the contract.
- 3.39 Once providers have been secured, they will be expected to work with social care under a collaborative arrangement whereby if a place becomes available due to the successful move on of a children or young person they will cooperate to

decide between them who is best placed to take the next child or young person. We will need to ensure that as far as possible all places are full.

Longer term strategy

- 3.40 The Council is intending to create a Dynamic Purchasing System which will replace the current framework.
- 3.41 By 2025 it is anticipated that the Council will have started to operate its own in-house provision. It is anticipated that the need for the block contracts of this nature will reduce as we will have better ways of meeting the needs of young people who are currently placed in unregistered placements.
- 3.42 The Council intends to work with the voluntary community sector with the intention of developing a strategic partnership to increase the amount of provision available in Essex.

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision
- Provide an equal foundation for every child
- 4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030 by further reducing the number of out of county placements and the associated travel by visiting social work teams.
- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':
- Health wellbeing and independence for all ages
 - A good place for children and families to grow

5 Options

Current risks around sufficiency, costs, a reduction in providers engaging with procurement and current capacity within the market have been considered for all options, arriving at the recommended option.

Option 1 (Recommended) – To run a full procurement exercise to acquire providers who can support 1 or more of our current unregistered cohort. Directly moving a Child or Young Person out of an unregistered placement, into a registered placement.

This option is recommended after extensive consultation with this sector and other placing Local Authorities. Officers have considered this directly in response to the

unprecedented evidenced market response to the PIN earlier this year. This option has been recommended by the Function Leadership Team.

The intention would be to not only procure these services but create a partnership amongst those providers who commit to support to improve the unregistered position the Council is in. Officers would consider the benefits of creating a similar partnership / group for young people who have been experience of unregistered settings to generate a peer support network.

An output specification methodology would be used to allow experienced providers to detail how they can best meet the needs of a child as opposed to a placing local authority mandating particular of when, how, how much and how often. This will generate several different models, responses and services which can better meet the needs of our Children and Young People as opposed to the traditional one response which would be as per a mandated service specification.

Benefits

- Providers have indicated that they wish to work with The Council in this way.
- Demonstrates the Council is being proactive and responsive to improving the unregistered position in line with the Everyone's Essex intentions.
- Can mobilise before February 2024 (Option 2) to move young people from unregistered placements in to registered placements.
- Increases the number of local residential placements and formalises access to those placements.
- Supports The Council's Sufficiency Duty.
- Provides better stability and safeguarding (Ofsted compliant) for young people and enables KPIs to be used to monitor outcomes.
- Reduces risk of The Council being prosecuted.
- Creates a partnership with Providers to support sufficiency and positive working relationships.
- Output specification gives Providers flexibility over how they meet the needs of young people.
- Formalises existing unregistered spend – budget planning.
- Short contracts, and a 6-month break clause, avoid over committing The Council.
- The Output specification method will be lean to incite a market response and competition
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Disadvantages

- Commits The Council to pay for 'vacancies'- this can be mitigated against with considered move on planning, and the placement team working closely with the Provider. Practice Guidance, the contract and KPIs will also support this.
- Whilst increasing the use of block beds is a financial commitment, it also provides more financial certainty as the cost is known at the point of entering the contract with the provider. The cost of spot purchasing unregistered placements, as we are currently, is difficult to accurately forecast and is predicted to increase. This cost is largely unbudgeted and was £5.3m in 2022/23.

- Costs have been estimated, based on other comparable, recent tenders to provide a good indication of the contract values. We will have certainly once the tender takes place. To mitigate against this 'cost' is 70% of the evaluation criteria.

Option 2 (Not Recommended) – Do nothing and wait for the conclusion of the framework review ('Alternative to the Framework' cabinet paper). The replacement is due to be launched by February 2024.

This option is not recommended owing to the unsatisfactory position of unregistered placements currently – the framework is not due to be replaced until February 2024.

Benefits:

- Does not commit The Council to further budgeted spend on registered placements until at least February 2024, but the existing, unbudgeted, spend on unregistered placements will almost certainly continue. £5.3m in 2022/23.

Disadvantages:

- It removes the autonomy and innovation possible in responses from the procurement activity proposed here from a provider perspective under the Output approach which is unique to the proposal under the 'response to the PIN' and not intended under 'the alternative to the framework blocks.'
- The traditional block is better suited to group care not for unregistered or solo placements.
- Does not support with moving young people from unregistered placements until February 2024 at the earliest if at all.
- Providers are beginning to be prosecuted for providing unregistered placements – the availability of unregistered provision may diminish over time.
- This is not the preferred option of the Functional Leadership Team.

6 Issues for consideration

6.1 Financial implications

6.1.1 The recommended option is to run a procurement exercise in order to identify providers for placements for young people currently in unregistered provision, which has been unlawful since September 2021. There were nine young people in unregistered provision at as 31st July 2023, at an average weekly cost of £11,500. In 2022/23 the Council spent £5.3m on unregistered placements at an average of £14,450 per week.

6.1.2 The exact full volume and cost will not be known until the procurement exercise is run. However, other recent tender exercises provide a good indication of the anticipated costs. For example, a solo placement at Roach Vale (owned by the Council) resulted in a weekly cost of £13,866 per week. A solo placement at River Lodge (owned by a private provider) resulted in a weekly cost of £14,088 per

week. We would expect provider costs to be within this region, although they will vary according to the needs of the individual young people. 70% of the evaluation criteria will be attributed to 'cost' to ensure value for money.

6.1.3 The financial estimate of £20.6m (£3.285m for the remaining six months of 2023/24, or £6.6m per annum at 2023/24 prices) is based on an average cost of **£14,000** per week per placement, on the assumption that they will be solo placements. Expected inflation has been added into future years, and the table below shows the potential commitment over the Medium-Term Resource Strategy (MTRS) period.

6.1.4 The budget for mainstream residential placements in the MTRS is shown below. It is expected that any contracts with providers will be supported through this budget in the first instance.

6.1.5 In 2022/23, £5.3m was spent on unregistered placements. Although the placement of young people in unregistered provision is unlawful, there was an element of the residual placement budget aligned to this where there was no suitable alternative. Alongside the mainstream residential outturn, the final position was a £20.9m spend, which was a £6.0m overspend against the £14.9m budget. The draft budget position in future years is also shown below, although some of this funding has already been assigned to other workstreams, notably the Solo Properties.

Roach Vale, Woodlands and New Farm Road are expected to provide six mainstream residential placements between them. The framework alternative is also based on block bookings, and there is a separate decision paper on this agenda setting out that proposal.

Cost centre	2023/24 Budget £000s	2024/25 Draft Budget £000s	2025/26 Draft Budget £000s	2026/27 Draft Budget £000s
Mainstream Residential North	4,646	4,614	4,415	4,200
Mainstream Residential Mid	2,632	2,614	2,501	2,379
Mainstream Residential West	3,266	3,244	3,104	2,952
Mainstream Residential South	4,780	4,747	4,542	4,321
Total Mainstream Residential	15,323	15,219	14,562	13,852
Unregistered budget	1,280	1,280	1,280	1,280
Total budget	16,603	16,499	15,842	15,132
Roach Vale (approved)	(422)	(723)	(723)	(723)
Woodlands (in governance)	(800)	(800)	(800)	(800)
New Farm Road (at Design Authority)	0	(1,000)	(1,500)	(1,500)
Residential places for young people coming into care (block bookings)	(3,285)	(6,754)	(6,956)	(3,582)
Block contracts for mainstream residential placements (block bookings)	(1,399)	(2,877)	(2,963)	(4,578)
Remaining unallocated budget	10,698	4,346	2,900	3,949

6.1.6 Budgets will continue to be monitored closely for early identification of financial risks. The sufficiency and residential strategies will deliver savings over time by reducing the need for the costliest placements. We will continue to improve operational placement practices and innovate in procurement processes that aim to secure best value when making placements. We continue to strengthen our early help systems to prevent young people coming into care in the first place. There are of course unpredictable pressures, particularly in respect of separated migrant children, but we will continue anticipate and respond to these as they arise.

6.1.7 Option 2 is not recommended and would continue the current position whereby some young people are placed in unregistered accommodation due to the difficulties in sourcing placements. In 2022/23, £5.3m was spent on unregistered placements. The majority of this spend was not budgeted for and contributed to the in-year placement overspend.

6.2 Legal implications

6.2.1 Section 22G of the Children Act 1989 places the council under a general duty to secure, so far as reasonably practicable, that it is able to place children we look after in accommodation in Essex which meets their needs, so far as is consistent with their welfare.

6.2.2 In taking steps we must have regard to the benefit of having

- (a) a number of accommodation providers in their area that is, in their opinion, sufficient to secure that outcome; and
- (b) a range of accommodation in their area capable of meeting different needs that is, in their opinion, sufficient to secure that outcome.

6.2.3 It will be seen from this report that this report is very much focussed on ensuring that there is a number of providers and a range of accommodation which meets the needs of our residents.

6.2.4 As set out in the report the Council sometimes has to place children in accommodation other than with a foster carer or a registered childrens home. Such placements are in breach of the statutory duty. The Council does everything it can to avoid this and puts stringent additional safeguards in place when it does so. This issue has already been identified in the annual governance statement for 2022/23 which was reported to Cabinet in July 2023.

6.2.5 Procurement of a block contract for these services is subject to the 'light touch' regime meaning that the procurement opportunity has to be advertised, competitive, transparent and fair but can otherwise follow a process determined by the council. It is important to ensure that we do comply with these rules especially given the need for geographical spread of places as well as suitability to meet a range of needs.

7 Equality and Diversity Considerations

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 The Equalities Comprehensive Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. After evaluating the impact of the proposal against all groups that could be potential impacted the proposal is expected to have a medium level of a positive impact.

8 List of Appendices

Equalities Comprehensive impact Assessment

9 List of Background papers

Framework Review