

**Forward Plan reference number: FP/238/11/21**

<b>Report title: New Contract for SEND Therapy Services</b>	
<b>Report to: Cabinet.</b>	
<b>Report author:</b> Councillor Tony Ball, Cabinet Member for Education Excellence, Lifelong Learning and Employability.	
<b>Date:</b> 18 January 2022	<b>For:</b> Decision
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<b>County Divisions affected: All Essex</b>	

## **1. Everyone's Essex**

- 1.1 'Everyone's Essex' sets out four strategic aims and 20 commitments. Within the strategic aim of 'a good place for Children and Families to grow' there is a commitment to improve the Outcomes for the most vulnerable and disadvantaged groups including Children in Care, Care Leavers, Children with special educational needs or a disability (SEND) and children from BAME communities, by working with children, young people and partners across the system.
- 1.2 Consistent with achieving these commitments and Essex County Council's statutory duty, this paper sets out a proposal for the re-procurement of a therapy service to children with special educational needs and disabilities (SEND). The current contract expires on the 31 March 2022.

## **2. Recommendations**

- 2.1 Agree to undertake a single stage open competitive tender process to procure a single supplier for each local health delivery area in Essex (Mid and South Essex, North East Essex, and West Essex) to deliver an integrated therapy service for children with special educational needs and disability as set out in paragraph 3.9.
- 2.2 Agree that each contract will be for a four year term commencing on 1 August 2022 with options to break the contract at years two and three.
- 2.3 Agree that the award criteria will be based on 50% Price, 50% Quality, with 20% of the quality marks being for Social Value.
- 2.4 Delegate approval of the detailed evaluation model to the Director, Education.

- 2.5 Agree that Cabinet Member for Education Excellence, Lifelong Learning and Employability may award the contract to the successful bidders.
- 2.6 To extend the current contract with Provide CIC for a further four month period to cover the period 1 April to 31 July 2022 at a cost of £432,000.

### **3. Background and Proposal**

- 3.1 Under the Children and Families Act 2014 and the Special Educational Needs and Disabilities Code of Practice ECC has a statutory obligation to assess children with special educational needs or a disability and where appropriate issue an education, care and health plan (EHCP) which sets out the required 'special education provision'. This can be a wide range of services and the Council is required to ensure that the need for services in the EHCP is met.
- 3.2 One of the ways in which the Council meets these needs is via a contract with Provide CIC which delivers speech and language therapy, occupational therapy and physiotherapy across Essex, and provides expert witness support for the Council in tribunal cases where required (the Current Service). The current provider was commissioned through an open tender in 2016. The original contract expired on 31 March 2019 and since then it has been extended, with the authority of the Cabinet Member and for various different reasons. The most recent extension was because potential providers reported they had insufficient capacity to bid as a result of the pandemic. The current extension expires on 31 March 2022.
- 3.3 The most recent extension was necessary but regrettable, as much of the work had been done to redesign how the services would look following an Ofsted inspection of SEND services in September 2019. The Inspection identified the delivery of Therapy services across Essex as a '*significant weakness*' due to its 'fragmented delivery' resulting in a 'post code lottery'.
- 3.4 Currently the contract delivers 17,698 therapy hours annually across the county, a 40% increase since the commencement of the original contract in 2017. In addition to these hours, the Council commissions a further 1,641 hours annually from the independent sector.
- 3.5 The independent provision is used when the commissioned service is at capacity and the provision needs to be made urgently, or the commissioned service is unable to meet the specific needs or provision set out in the EHCP.
- 3.6 The hours commissioned from the independent sector have also increased by 50% over the last year as demand has increased. This puts additional pressure, on budgets as hourly rates with independent therapists can be up to 67% more than the current contract cost. The increase also exacerbates resource and capacity issues in the market that is currently impacting the Council and its ability to make provision in line with its statutory responsibilities, in a timely way.

3.7 It is proposed that the Council will commission a new service consisting of

- Delivery of direct therapy hours, where they are specified under section F of an EHCP;
- Assessment, report writing and support to statutory processes;
- Assessment, report writing and expert witness attendance at Special Educational Needs and Disability Tribunal (SENDIST) Tribunal Appeals.
- Development of an early intervention and prevention model that works closely with local services, to raise awareness with schools, settings, and families to support development and the achievement of functional outcomes for children and young people. This could be through the provision of training and/or the development of strategies that provide the opportunity for earlier identification and intervention wherever possible, (the New Service).

3.8 The new service will be delivered through three contracts each of which is awarded geographically with one of the new Essex NHS Integrated Care Systems set out in the table below. This is considered important to allow easier and closer working with the Health teams in that area. Bidders will be able to bid for one, two or all three of the available contracts. The successful bidder will be required to work alongside local health teams, to develop a cohesive service that supports the local population. Bidders will also be required to take over the commissioning responsibility for provision made through the independent market for the pupils in their area.

District	Integrated Care Systems
Chelmsford	Mid & South Essex (MSE)
Braintree	
Maldon	
Basildon	
Brentwood	
Castle Point	
Rochford	
Harlow	West Essex & Hertfordshire
Epping	
Uttlesford	
Colchester	East Suffolk & North East Essex
Tendring	

3.9 The identified budget for the procurement takes account of the cost of the current service and the money spent with independent providers, it also contains an element of growth, in line with the current pressure from the demand for EHCPs. The resource envelope for each contract is based on the level of predicted need, identified through initial needs mapping. The formula considers several indicators, taken from national data sets including the 0-18 population, indices of deprivation, numbers of free school meals and schools census data. The formula when applied sets the following financial resource for the delivery of the service for a four period between 1 August 2022 to 31 July 2026.

<b>Integrated Care System Area</b>	<b>Total Service Cost £ (4 years)</b>	<b>% Total Budget</b>
Mid and South Essex	4,595	52.2%
East Suffolk and North East Essex	2,384	27.2%
West Essex and Hertfordshire	1,811	20.6%
<b>Total</b>	<b>8,790</b>	<b>100%</b>

- 3.10 The continued increase in the number and cost of EHCPs across Essex means that there is a significant increase in therapy hours that the Council are required to meet. At the time of writing, the Council supports 10,996 EHCPs, this is a 7.2% annual increase in the number of plans recorded as part of the SEN2 return (Government recording) taken in January 2021 and as set out at Appendix 1, which illustrates that Essex has the fourth highest number of children and young adults with EHCPs in England.
- 3.11 This level of increase is not sustainable for a Therapy workforce that has been severely impacted by the Pandemic. Many of the locums from overseas previously engaged returned home at the peak of the Pandemic. These locum therapists have not yet re-joined the UK workforce, which has caused the UK Government to identify a shortage of speech and language therapists and occupational therapists in all areas of the UK. These pressures, combined with the impact of the national lockdowns on children's development, have created a situation where demand has outstripped supply. The whole therapy sector in Essex is experiencing acute workforce pressures and increasing waiting lists, for public and private provision.
- 3.12 The successful contractors will need to demonstrate innovative solutions to address the combined pressures of rising demand and reduced workforce, as part of their tenders. The development of early intervention and prevention models that work to get support to children and families at an earlier stage, will be key to doing this. The ability of contractors to direct their specialist workforce to link with the local health teams to help build knowledge and skills in local schools and early years settings will help reduce the need for an EHCP to secure provision and reduce the pressure on expensive specialist services where possible.
- 3.13 In Essex services commissioned and delivered by the Essex Clinical Commissioning Groups (ECCGs), and the Council do not join up or align, because they have not been jointly commissioned and they have not been integrated. To some extent this results in duplication of costs, recruitment and resourcing issues and ultimately problems and gaps in the delivery of the Service and outcomes for children and young people in Essex.
- 3.14 The Joint Area SEND Inspection carried out by Ofsted and the Care Quality Commission in 2019, recognised the fragmentation in service delivery and its' impact on Children and Young People as a significant issue. As a response to the inspection report, the Council and the CCGs produced a Joint Written Statement of Action (JWSOA) setting out a plan of how the issues identified in the Inspection would be addressed.

- 3.15 A key outcome of the JWSOA is to have a children's therapy system that is commissioned and works against a common framework that is used by the Council and ECGs to better meet the need of children and young people with SEND within Essex and reduce the post code lottery that they currently experience.
- 3.16 Another outcome of the JWSOA is that the Council and the CCGs are working together to implement the [Balanced System® Framework](#) (the Framework), this is a whole system approach that provides a common framework specifically designed for the joint commissioning of therapy services, in the context of the wider Educational and Care Systems.
- 3.17 Implementation of the Framework will unify the delivery of commissioned therapy services across Essex, identify where additional resource is required and/or services need to be changed or developed, it will also provide a clear and consistent approach to the measurement of impact of services and the achievement outcomes for children and young people – it will tell us how well we are doing.
- 3.18 The Framework directly influences the recommissioning of the New Service; the recommended option enables the therapy services commissioned by the Council to operate cohesively with local NHS Community Teams in the future, to maximise opportunities to provide support, meet need at an earlier stage and align with the long term strategy of the Balanced System.
- 3.19 The change in delivery model to include earlier intervention and prevention is needed to:
- a) ensure the Council continues to meet the needs of children and young people with SEND and achieves their outcome;
  - b) reduce the pressure on budgets; and
  - c) reduce the pressure in the specialist workforce in commissioned services and the independent sector.
  - d) align with the long term strategy
- 3.20 Feedback from the market indicates a recognition of the importance of early intervention and prevention and while all expressed an interest in delivering the contract, they acknowledged the current workforce pressures. This highlights the need to focus on the recruitment and retention of therapists to enable a sustainable contract.
- 3.21 The increasing demand and workforce pressures presents an immediate risk to service delivery, and mobilisation. As part of the tender process bidders will be required to submit contingency plans advising of their approach to resourcing the new service for the initial part of the contract, as a short-term mitigation. The development of the early intervention models and the implementation of the Balanced System will help mitigate the risk in the medium and longer term.
- 3.22 The evaluation methodology has been set 50% price, 50% quality (with 20% of the total quality marks being set for social value. This is because quality is a driving factor. Providers will be asked to provide innovative early intervention

models to mitigate the combined risks of significant increases in demand and acute workforce pressures. Large variations in price are not expected, however due to the continued and significant drive in demand from EHCPs there remains a need for robust budget control.

- 3.23 There is insufficient time to procure and implement a new service before the expiry of the current contract on 31 March 2022. We aim to have the new service in place for 1 September 2022. To ensure continuity of service, a further four month extension is proposed, to maintain the service with Provide CIC until the end of the academic year at a cost of £432,000 (£108,000 per month),
- 3.24 Provide have indicated that they would be willing and able to continue to provide services if an extension is sought. To recommission services for a short term interim period would not be achievable, due to the size of the caseload and the current workforce pressures.

#### **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 through the delivery of the New Service and the implementation of the Balanced System. The Council will improve school readiness and support the ability of schools to identify and recognise when to intervene sooner ensuring that every child can go to a great school, that is able to meet their need.
- Enjoy life long into old age through the delivery of the New Service and the implementation of the Balanced System, children and young people will be provided with the functional strategies, both physical and communication to support their development into adulthood and old age, helping them to remain independent with good physical and mental health.

4.2 The recommendations in this report do not have any direct environmental or climate change implications.

4.3 This report links to the following strategic priorities in the emerging 'Everyone's Essex':

- Health wellbeing and independence for all ages
- A good place for children and families to grow

The recommissioning of the New Service and the implementation of the Balanced System help the Council achieve its priorities by ensuring that Children and Young people have their needs met earlier in the setting most appropriate to them, helping to support their independence.

## 5. Options

**Option 1:** Do not commission a new contract.

- 5.1 The current contract is due to expire and there is no further scope to extend. The Council has a statutory duty to provide services of this nature. In the absence of a new contract, The Council would have to spot purchase from the market, with an increased reliance on independent therapists, at greater costs, reduced transparency in delivery.

**Option 2:** Commission three area-based single provider contracts to meet the needs – *Preferred Option*.

- 5.2 Three contracts will be offered that align with local Health delivery areas and support the future implementation of the Balanced System. Contracts will be offered for four years with options to break at years three and four, to provide The Council with sufficient flexibility to join future service models, developed through the Balance System Framework.

### Pros

- Enables the Council to continue to meet its statutory obligations in relation to children and young people with SEND
- Supports the implementation of the Balanced System with Health Partners.
- Provides the opportunity to align service to local services delivered in Integrated Care Systems (ICS) areas, creating more localised services to support the creation of the early intervention models.
- Allows for multiple providers thus potentially increasing resilience and diversity of provision.
- The funding for each area is proportionate to the level of need,
- Mitigates the risk of single provider failure, as providers from the other areas would be able to support any gaps in service as an interim position while the Council reprocured if necessary.
- Provides a clear link between universal health commissioned services in the local area, the provision set out in pupils EHCP's and the support for The Council at Tribunal.

### Cons

- Securing multiple contracts disaggregates the spend, risking the loss of economies of scale. However, the impact of travel time and costs would be reduced.
- Service will be split into three, arguably increasing risk of inequality of service provision. However, the implementation of the Balanced System will mitigate this and the vision is for all three contracts to be integrated with the health providers
- Creates complexities in contract management, requiring more resource to manage than a single contract with one provider and involve increased

investment in management costs for both the successful bidder(s) and the Council.

- Smaller contracts may not generate enough interest from the providers of sufficiently good quality operating in the within the marketplace, resulting in a failed procurement and the Council having to spot purchase and increasing the risk that we would fail to fulfil our statutory duties in relation to children and young people with SEND.

**Option 3:** Commission a single Provider to meet the needs (current model)

- 5.3 This would see the procurement of a new contract on similar lines to the current contract, though we would seek an early intervention model.

Pros

- Maximum economies of scale achieved as spend is not disaggregated.
- Allows for clear straightforward monitoring and quality assurance with a single supplier and will form a strong and consistent relationship for contract management.
- Maintains current ways of working for the Council operational teams.

Cons

- Reliance on a single provider
- Makes it more difficult to align with NHS.
- Makes it harder to support the implementation of the Balanced System as this requires closer working with the ICS areas, to enable working on a local area footprint.

**5.4 Option 4** Meet needs via Direct Payments

The Council could seek to provide direct payments to parents for the delivery of therapies in EHCPs. However, we cannot force parents to take direct payments and direct payments can fail, meaning that we would still need to make some provision ourselves

Pros

- Enables the Council to continue to meet its statutory obligations in relation to children and young people with SEND
- Supports personalisation
- Provides consistency of therapist to pupils where provision is being made prior to any award of an EHCP
- Removes the need for contract management

Cons

- The Council will not be able to benefit from the economies of scale that can be secured from a procured contract. The market rate for independent therapists is an average of £104ph. This is approx. 67% more than rates secured in the current agreement.



- A lack of transparency in recommendations from some independent therapists can result in over provision, and the creation of dependency for some young people and their families.
- Absence of quality monitoring or safeguarding for the provision for pupils.
- Multiple arrangements for schools with supporting therapists, visiting individual pupils, and not providing support on a whole school basis.
- Current workforce pressures mean parents are likely to struggle to source therapists, resulting in arrangements falling back to the Council and with no commissioned service in place the Council would need to spot purchase provision.

## 6. Issues for consideration

### 6.1 Financial implications

6.1.1 The cost of SEND Therapy provision is met through the High Needs Block (HNB) Dedicated Schools Grant (DSG) allocation. The Council's HNB funding allocation in total for 2022/23 is £202.9m and this represents a £22m increase from 2021/22. The improved funding position through the HNB is in response to the increase in demand across many SEND services to support children and young people. The continued increase in cost and demand for SEND therapy provision adds to the funding burden placed upon the HNB.

6.1.2 The following table sets out the forecast cost of providing SEND therapies where a need for therapy is written into a child's EHCP. This forecast is based on the existing known caseload and a forecast growth of EHCP volumes. The table comprises two sections including:  
the cost of extending the contract with Provide CIC for 4 months between 1 April and 31 July 2022 (**£432,000**)  
the estimated cost of the New Service for a 4 year period commencing 1 August 2022 (**£8.79m**).

Financial Year	Contract Year		Period	Service Cost £000
2022/23	Year 0	<i>Extension with Provide CIC</i>	April 21- July 21 (4 months)	432
2022/23	Year 1	<i>New Procurement</i>	August 21 - March 21 (8 months)	1,217
<b>2022/23</b>			<b>subtotal</b>	<b>1,649</b>
2023/24	Year 1/2	<i>New Procurement</i>	April 22- March 23	1,995
2024/25	Year 2/3	<i>New Procurement</i>	April 23 - March 24	2,260
2025/26	Year 3/4	<i>New Procurement</i>	April 24 - March 25	2,473
2026/27	Year 4	<i>New Procurement</i>	April 25 - July 26 (4 months)	845
<b>4 Year Contract Period</b>			<b>Subtotal</b>	<b>8,790</b>
			<b>Total</b>	<b>9,222</b>

6.1.3 Total forecast expenditure across the period is £9.2m and will be met from the HNB. The HNB is forecast to remain in a deficit position in 2021/22 and is funded annually through a one year funding settlement. Budgets within the HNB including SEN Therapy services are determined through an annual zero based budgeting exercise. As demand and costs for therapy services grow it increases the difficulty in achieving a balanced budget position.

6.1.4 The table below is a summary of the HNB forecast over the Medium Term Resources Strategy (MTRS) to 2025/26.

High Needs Block	Financial Year		
	2022/23	2023/24	2024/25
	£000	£000	£000
Total Funding Requirement	188,107	195,975	200,466
HNB Funding Settlement	202,900	202,900	202,900
<b>In Year Variance</b> + Deficit / (Surplus)	<b>(14,793)</b>	<b>(6,925)</b>	<b>(2,434)</b>
Opening balance + Deficit / (Surplus)	1,389	(13,404)	(20,329)
<b>Closing balance</b> + Deficit / (Surplus)	<b>(13,404)</b>	<b>(20,329)</b>	<b>(22,763)</b>

6.1.5 The opening balance for 2022/23 is a **deficit** position of **£1.389m** however, following the recent funding settlement the HNB returns to a surplus position due to in year surpluses forecast through to 2024/25. The overall costs in the HNB forecast in 2024/25 are £12.3m higher than in 2022/23 and if this rate of cost increases continues beyond 2024/25 an in year deficit is anticipated in 2025/26.

## Financial Risk

6.1.6 The supply of therapists with the right skills will impact on the ability of new service providers to deliver the required therapy needs written into EHCP's without sub-contracting to the Independent market which, at current rates are significantly higher than current rates charged through the Provide CIC contract. Furthermore, EHCP volumes which are a lead indicator for the likely demand for therapy provision continues to grow. There is a risk that growth in EHCP's that require a therapy intervention will exceed assumptions included within the financial forecast. This poses financial risk to the HNB budget and limits the capacity of the HNB budget to invest in other services and early intervention strategies.

6.1.6 No savings are included against the SEN Therapy budget or anticipated through any new delivery model in the short term however, it is expected that new providers embed early intervention approaches to deliver therapy at the right level of need and with the expectation that early intervention will reduce or limit the demand for Therapists to deliver specialist support and realise cost avoidance benefits.

## **6.2 Legal implications**

6.2.1 Under the Children and Families Act 2014 and the Special Educational Needs and Disabilities Code of Practice the Council has a statutory obligation to provide these services.

6.2.2 The Council is a contracting authority for the purposes of the Public Contract Regulations 2015 (the PCR 2015). The value of the proposed contract is above the financial threshold (currently set at £663 540) and the nature of the service is one that falls under Schedule 3 of the PCR 2015. The procurement of these services must be undertaken in accordance with the light touch regime as set out in regulations 74 to 76 of the PCR 2015.

6.2.3 The PCR 2015 will apply to any modification of the current contract. It is intended to extend the current contract under Regulation 72 (1)(b) of the PCR 2015 which allows for modifications where additional services by the original contractor have become necessary and were not included in the initial procurement, where a change of contractor:

- cannot be made for economic or technical reasons such as interchangeability or interoperability with existing equipment, services or installation procured under the initial procurement; and
- would cause significant inconvenience or substantial duplication of costs for the contracting authority,

provided that any increase in price does not exceed 50% of the value of the original contract.

6.2.4 For the reasons set out in this report and the value of the proposed contract extension, it is likely that the variation will fall within Regulation 72(1)(b) of the PCR 2015.

## **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, gender, 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 equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **8. List of Appendices**

1. SEND Therapies Cabinet Report 2021 – SEN2 Data 2017-21
2. Equality Impact Assessment
3. Joint Written Statement of Action

## **9. List of Background papers**

None

## Appendix 1

### SEN2 Data Return Jan 2017 -2021

Number of EHCPs per Local Authority Area – indicates that Essex currently has the fourth highest number of children with EHC plans in England. This number is a 32.8% increase since the start of the SEND Therapies Contract in 2017.

<b>Local Authority Area</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2017 -21 % change</b>
Kent	8,199	9,862	11,763	13,499	15,281	86.4
Surrey	6,843	7,710	8,732	9,783	10,757	57.2
Hampshire	6,553	7,422	8,271	9,094	10,507	60.3
Essex	7,723	8,286	8,948	9,361	10,254	32.8