

Forward Plan reference number: FP/601/01/20

Report title: SEND Integrated Therapy Service	
Report to: Councillor Ray Gooding - Cabinet Member for Education and Skills	
Report author: Clare Kershaw, Director, Education	
Date: 9 th January 2020	For: Decision
Enquiries to: Ralph Holloway Head of Strategy & Innovation / Kate Martin – SEND Provision Lead – for Contracting & Commissioning	
County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 The Council has a statutory duty to meet needs for children with special educational needs and disabilities (“SEND”).
- 1.2 This report relates to the extension of the SEND Integrated Therapy Service contract with Provide CIC (“the Contract”). The Contract currently expires on 31 March 2020.

2. Recommendations

- 2.1 To extend the Contract with Provide CIC for a further 17 months from 1 April 2020 to 31 August 2021 with a total anticipated value of £2,000,000.

3. Summary of issue

- 3.1 Under the Children and Families Act 2014 and the Special Educational Needs and Disabilities Code of Practice (“the SEND Reforms”) ECC has a statutory obligation to assess children with special educational needs or a disability and where appropriate issue a plan, called an education, care and health plan (ECHP) setting out the required “special education provision”. This can be a wide range of services and ECC has a statutory duty to ensure that the special education provision identified in the plan is met.
- 3.2 As part of the provision ECC has a contract with Provide CIC (“the Supplier”) to provide speech and language therapy, occupational therapy and physiotherapy (“the Service”). The current provider was commissioned through an open tender in 2016 to deliver the Service across Essex in order to meet ECC’s statutory requirements and the strategic priorities of:
 - a. Helping people in Essex prosper by increasing their skills;
 - b. Helping keep vulnerable children safer and enable them to fulfil their potential;
 - c. Enabling more vulnerable adults to live independent of social care;

d. Improving the health of people in Essex;

- 3.3 The Contract was awarded to deliver the Service for an initial term of 12 months with an option to extend for a further 12 month period. The total value of the Contract was based on a block volume of £600,000 per annum with the option to buy additional hours if needed. The Service commenced on 1 April 2017 and ECC exercised its option to extend for a further 12 month period in April 2018. A further 12 month extension at a cost of £600,000 was authorised by an Executive Decision in December 2018 to ensure the consistency and stability of the Service pending re-procurement in 2019. The current contract extension is due to end on the 31 March 2020.
- 3.4 The Contract initially commissioned 12,631 hours of support for 870 individual pupils and whole school support for 6 Enhanced Provisions set within Mainstream Schools and 5 Special Schools. Over the last two years demand has increased, and the Service now supports circa 1,251 pupils with 18,760 hours of direct therapy, in addition 1,428 hours were purchased at the same rate for assessment, report writing and expert witness support for ECC at Special Educational Needs and Disability Tribunals (“SENDIST”). This growth represents a 29% increase in pupil numbers and 46% increase in the number of hours from the commencement of the Contract to date.
- 3.5 This increase in demand is expected to continue by approximately 3000 hours each term as set out in the table at 3.10. The ongoing increase in demand places pressure on the provider to meet the requirement within the original funding envelope, in effect reducing the original tendered hourly rate by 42%. As a result, it is anticipated that the spend for the proposed extension period will need to increase to approximately £2,000,000 to maintain the sustainability of the service. This will be funded through the High Needs block of the Dedicated Schools Grant (“DSG”).
- 3.6 In Essex, the delivery of the Service is not fit for purpose. It is fragmented, with access and pathway dictated by postcode. Demand outweighs capacity across the county. There is not enough capacity or resource to deliver consistent training to schools and early years settings on a Countywide footing. The models that are currently commissioned separately by ECC, Mid Essex, North East Essex, Basildon, Brentwood, Castlepoint, Rochford and West Essex Clinical Commissioning do not join up or align across Essex. This has resulted in duplication of costs, recruitment and resourcing issues and ultimately problems and gaps in the delivery of the Service services and outcomes for children and young people in Essex.
- 3.7 This inconsistency and the gaps in the Service have been highlighted as a significant area of concern in the recent SEND joint area inspection, and will now come under increasing scrutiny from Ofsted, the Department for Education (DfE) and the Care Quality Commission (CQC). As a result all Children’s Commissioners, Directors and Accountable Officers across Education, Care and Health are working to develop a joint pathway for the delivery of a therapy service that ensures that children receive the appropriate therapeutic support and intervention in the right setting at the right time, delivered by the most

appropriate member of the workforce (“the Project”). The new model will focus on earlier intervention and training for the wider workforce in schools and settings enabling earlier identification of need and delivery of strategies reducing the need for an EHCP to secure provision and the drive for expensive specialist services wherever possible. This project is underway with full options for the new service expected to be ready by July 2020 and delivery programmed for the summer term 2021.

- 3.8 The extension of the Contract will secure the continuation of the Service currently commissioned by ECC to meet its statutory duties while the Project is undertaken.
- 3.9 The extension will continue to be priced against a single hourly rate, and costs will be capped at £2,000,000 for the extension period.
- 3.10 The table below sets out the forecast growth in the number of pupils supported by the Service across Essex. This is currently 14% of the total number of EHCPs issued by ECC and demonstrates an increase of approximately 1% in the last year.

	ECHP No's	Growth in ECHPs	Contract Caseload	Caseload as % of ECHPs	No. of Therapy hrs
2017	7,723		953	12%	
2018	8,279	7.2%	1066	13%	15,855
2019	8,933	7.9%	1251	14%	18,760
2020	9,683	8.4%	1453	15%	21,788
2021	10,565	9.1%	1690	16%	25,355
2022	11,600	9.8%	1972	17%	29,580

*based on average 15 hours therapy time per pupil per annum.

4. Options

4.1 Option 1: Do Nothing

The Contract will expire on the 31st March 2020. ECC has a statutory duty to provide the Service. In the absence of a contract, ECC would have to spot purchase from the market, with an increased reliance on independent therapists and at greater costs, and reduced transparency in delivery.

4.2 Option 2: Procure a New Contract

Pros

- Meets ECC’s responsibilities under the Public Contract Regulations 2015 (“PCR 2015”) and avoids risk of challenge from the market.
- Creates competition and the potential to make savings against budget.

- Allows the opportunity to rescope the specification, to meet increasing need.

Cons

- The short contract term may not be considered attractive by the market, resulting in a bid that is not cost effective for ECC, increasing the cost of the procurement beyond the budget available.
- The short term nature of the contract will not generate enough interest from providers operating in the market, resulting in ECC failing to fulfil its statutory duties in relation to children and young people with SEND. This would expose ECC to litigious and reputational risk.
- There is not enough capacity and resource to support a procurement, and service mobilisation for such a small contract and undertake the wider work needed to meet the identified requirements of the SEND Inspection. Failure to deliver the required changes identified by Ofsted and the CQC, will result in ongoing intensive intervention and scrutiny from Ofsted, DfE and CQC coupled with wide ranging reputational damage for ECC whilst failing to meet the needs of the Essex Children and Young People with SEND.
- A procurement risks disruption in the provision of Service to the current and future caseload, exposing ECC to challenge from parents and the Local Government Ombudsman for non-delivery of its statutory obligations, under the Children and Families Act.
- Destabilisation of support given to an already stretched tribunal team, by introducing the risk of a change of supplier during the course of individual tribunal processes. Risking the outcome of the tribunal process and increasing costs for ECC.

4.3 **Option 3** Extend the existing contract for a further 17 months to align with the academic year 2020. **Preferred Option.**

Extending the Contract will ensure the continued delivery of the Service while the wider work continues to meet the requirements of the SEND inspection.

Pros

- Mitigates the risk of challenge from parents, and the Local Government Ombudsman for lack of or missed delivery.
- Maintains consistent provision for existing pupils with the Supplier at agreed rates.
- Secures the support and expert advice of the Supplier and their therapists as subject matter experts in the design and creation of the wider system redesign.
- Allows ECC resource and capacity to be directed to transformational system redesign rather than any re procurement and mobilisation of a short term contract from another provider.
- A further agreed contract with the Supplier provides ECC with security of provision and mitigates against the sudden increase in price for the existing cohort of children – protecting rates for the duration of the contract.

- Provides continuity of service for the Essex Tribunal Team and those litigations that are underway.

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

ECC could opt to provide direct payments to parents and families for the delivery of therapies in EHCPs.

Pros

- This would meet ECC statutory responsibilities to make provision.
- Supports personalisation
- Provides consistency of therapist to pupils where provision is being made prior to any award of an ECHP

Cons

- ECC will not be able to benefit from the economies of scale that can be secured from a negotiated contract. The market rate for independent therapists is an average of £90ph. This is approx. 55% more than rates secured in the current agreement.
- There is a lack of transparency in recommendations from some independent therapists, that can result in over provision, and the creation of dependency for some young people.
- Lack of quality monitoring or safeguarding for the provision for pupils.
- Multiple arrangements for schools with supporting therapists.
- There may be insufficient resource with the market to support the size of cohort, parents could struggle to source therapists.
- Not all parents may be able to make suitable arrangements easily meaning that arrangements may fall back on ECC.

Issues for consideration

5.1 Financial implications

5.1.1 The preferred option is to extend the Contract with the current supplier by 17 months from 1st April 2020 to 31st August 2021. The likely cost of £2,000,000 which compared to current cost is an increase of £400,000. However, this is within the resources identified in the Medium Term Resource Strategy for 2020/21 to 2021/22.

5.1.2 Upon cessation of the extended contract a new model of provision aimed at earlier intervention will be introduced from September 2021 aligned across all partners across Essex.

5.1.3 The Contract is funded by the High Needs Block within the DSG which will remain in a deficit balance for 2020/21. The DfE have indicated further increases in funding for 2021/22 and 2022/23 but until the amounts are

announced it is not known if this will be sufficient to return to a balanced position.

6.2 Legal implications

6.2.1 Under the Children and Families Act 2014 and the SEND Reforms ECC has a statutory obligation to provide the Service.

6.2.2 ECC is a contracting authority for the purposes of the PCR 2015. The nature of the Service is one that falls under Schedule 3 in the Public Contracts Regulations 2015 (“the PCR 2015”). The value of the Contract is above the financial threshold (currently set at £615,278) and the PCR 2015 will apply to any modification of the Contract. The proposed extension of the Contract term is likely to fall within the provisions of regulation 72(1)(e) of the PCR 2015 because none of the modifications are likely to be considered to be substantial.

7. Equality and Diversity implications

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

Equality Impact Assessment

9. List of Background papers

Send area Joint inspection letter

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Ray Gooding, Cabinet Member for Education and Skills	30 th March 2020

In consultation with:

Role	Date
Clare Kershaw, Director, Education	19 th March 2020
Executive Director for Finance and Technology (S151 Officer) Nicole Woods	9 th March 2020
Director, Legal and Assurance (Monitoring Officer) Paul Turner	24 February 2020