

INDEPENDENT EDUCATION PROVISION COMMISSIONING AND PROCUREMENT STRATEGY

Report of the Director of Children & Young People's Futures

Please note that the following recommendations are subject to consideration and determination by the Cabinet (and confirmation under the provisions of the Council's Constitution) before taking effect.

Recommendation:

That the Cabinet be asked to:

- (a) Agree the Commissioning and Procurement Strategy set out in this Paper.
- (b) Agree to the principle of an open, competitive process to procure a multi supplier framework, or equivalent, for individual packages of education support.
- (c) Following completion of a full procurement options appraisal give delegated authority to the Director of Children & Young People's Futures and Director of Finance and Public Value, in consultation with the Cabinet Member for Children's SEND Improvement Services, to approve the final route to market.

1. Background

As part of the work programme for the SEND Transformation Programme and the Department for Education (DfE) Safety Valve, a significant workstream is around the future commissioning and procurement strategy for Independent Special Schools and Alternative Education Providers.

Other workstreams within the Programme are focussed on increasing capacity in the maintained state sector, to help educate children in their own community, but there will remain a need to commission from the independent sector.

The County Council is currently purchasing places from the independent sector for children and young people with an Education, Health and Care Plan (EHCP) via a spot purchase mechanism. Operational teams have adapted a national contract which details the arrangements for each individual child or young person. Except for the annual review of the EHCP, there has been no ongoing contract management with providers.

DCC has also been purchasing packages of Alternative Education Provision (AEP), the majority of which is delivered by external providers

who are unregistered. At this point in time there are no national quality standards or registration processes for AEP providers. This is being reviewed by the DfE. For AEP different teams have been operating in different ways which needs to be standardised.

2. Proposal

The principle of the commissioning and procurement strategy is to achieve safe and effective commissioning that:

- Is legally compliant with procurement rules,
- Is cost effective,
- Has clear contracting,
- Has defined outcomes,
- Has performance metrics to support contract monitoring and Quality Assurance.

Independent Special School Placements (ISS):

The strategy for ISS is to improve the commissioning of ISS placements, including alignment of the commissioning processes for independent school placements with:

- Wider education commissioning.
- Wider Council commissioning and procurement practice.
- Post 16 settings, linked with Transition and Preparing for Adulthood

Alternative Education Provision (AEP):

The strategy for AEP is to put in place an appropriate commissioning, approach, and mechanism where the County Council is using AEP to support the education of children and young people for a period of time.

This can include:

- Those children with an EHCP, predominately identified as Education Other than at School (EOTAS),
- Those children who fall under Section 19 of the Education Act 1996. This duty states that “local authorities shall make arrangements for the provision of suitable... education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.
- Children in care,
- Children missing from education (CME) for a period of time.

3. Work undertaken so far:

From April 2024 additional resources within the Children’s Commissioning team have been focussed on achieving priorities for both the short and long-term commissioning need.

This includes phase one of the ISS transformation to meet the Safety Valve savings targets for the 2024/25 financial year. Work undertaken includes:

- Reviewing the contractual arrangements with independent providers.
- Meeting with 17 providers to discuss short term block contracting arrangements to reduce the overall price paid.
- Designing a block contract to agree with providers including service specification, terms and conditions and individual placement agreements.

Phase 1 of the AEP transformation has been launched with the implementation and piloting of a new commissioning process for an interim period (2024/25). The purpose of the interim commissioning process is to manage any risk from current practice. Work undertaken includes:

- Mapping and understanding current activity of teams and using this for the shaping and standardising of practice across teams as part of an interim commissioning process.
- Greater understanding who the providers are across teams and who we paid for services in 2023/24.
- Identifying the top providers to start short term negotiations to achieve savings for 2024/25 through the agreement of block contracts of between £0.2m and £0.6m per annum.
- Designing and implementation of an AEP information request survey with the aim of obtaining up to date information and assurances for DCC on safety and welfare practices of the providers we are using.
- A new joint Teams page as a central and shared space for a range of teams and colleagues to document, share, record and monitor all education packages for children and young people.
- A range of guidance notes, process map, and a series of templates have been developed to support teams to implement the new process going forward. This includes the introduction of an approval process for all AEP packages.
- Designing an individual placement and Terms and Conditions document to be used by all teams ahead of a longer-term Framework being in place.
- Developing a master provider list to support the process.
- Organising drop-in sessions for teams to work through guidance and navigation of the Teams page and process during July 2024.

The work so far for both the ISS and AEP sectors puts greater assurance in place whilst longer term formal frameworks and approaches are developed and implemented.

4. Future work on the strategy:

The aim is to have an overall commissioning and procurement mechanism in place for both ISS and AEP by January 2026, earlier if possible. This will be one of the first procurement processes to be implemented by the County Council under the Procurement Act 2023. This is a new mandatory

legal structure for all public sector which will come into force on 28 October 2024.

The new Act will require additional notices and documentation for the process which will require additional time to be allowed for within the procurement timetable. As this is a significant, complex, and sensitive project, and the first procurement for DCC under the new Act, it will require increased scrutiny from procurement and legal teams. To ensure strict compliance with the new legal structure, additional review and quality assurance will be included within the process which will also require consideration within the procurement timetable.

By the time this paper is considered by Cabinet the following will have been worked on:

- A Needs Analysis for both workstreams
- A Prior Information Notice (PIN) and soft market questionnaire
- An agreed Engagement and Communication Plan
- Benchmarking with other Local Education Authorities

If Cabinet decide to proceed:

- The PIN and a Market testing questionnaire will be launched.
- A procurement options appraisal will be completed to identify the best route to market.
- Provider engagement will commence from September 2024.
- Service specifications will be developed.
- An Impact Assessment will be completed linked to the development of the Service Specification and engagement set out in Appendix A.
- Wider Stakeholder engagement will also commence.

This work will all be completed by February 2025 when work will start on a tender pack with a final review and agreement on an Invitation to Tender (ITT).

The graphs in Appendix A set out the current timeline.

5. **Options**

The current way of working needs to change to reflect updated County Council Governance arrangements, to achieve the best outcomes for young people and to ensure best value.

The procurement options appraisal will set out the possible routes to market. Examples include a Dynamic Purchasing System (DPS), successfully used for passenger transport, through to a preferred partner model or an alliance strategic partnership. The final option chosen will reflect the diverse nature of the providers and allow for flexibility in the market taking into account the wide range of needs to be met.

6. Consultations and Representations

The proposals in this paper were included in the High Needs Block Management plan as submitted and agreed with the Department for Education. There has been an ongoing dialogue with Devon Education Forum and Devon Schools' Leadership Services.

Progress on the proposals have been reported through to the SEND Transformation Programme Board

Within the timeline set out in Appendix A the following line of engagement and consultation will commence from September 2024 including:

- Engagement with the market with an initial event provisionally planned for 30 September.
- Consultation with families and young people who are placed within the Independent Sector and with Alternative Education Providers.
- Linked with the SEND Transformation Programme explore opportunities for Co-production.
- Further engagement and training for staff with the aim of improving systems and processes to free more officer time up to work directly with parents/carers and providers.

7. Strategic Plan

The work of this project, together with the wider SEND Transformation Programme, is a key priority for being ambitious for children and young people. Listening to the voice of all within the system including improving our working relationship with providers will help achieve better outcomes building on the partnership approach set out in the Strategic Plan.

8. Financial Considerations

Through better financial management and placement value savings can be achieved without reducing a level of service. In fact, the strategy should contribute towards improving quality through proper contract management and defined quality standards.

In the 2023/24 financial year the County Council spent £54million on ISS settings and £8.6million with independent AEP providers.

The financial management, placement value and AEP commissioning workstream within the DfE Safety Valve is key to achieving savings with a target of £2.4million for the 2024/25 financial year.

9. Legal Considerations

As set out above, the Procurement Act 2023 will be taken into account with this work. The County Council's legal team are contributing to work on

short-term block contracting agreements and the longer-term framework options.

All provision, through this strategy, will conform with our statutory duties as Local Education Authority.

10. Environmental Impact Considerations (Including Climate Change)

This work will not have a direct Environmental Impact. However, with this work linking with the aim of children and young people being educated in their local community, there should be a positive impact on distances travelled. This will help reduce greenhouse gas emissions from home to school transport.

11. Equality Considerations

Where relevant to the decision, the Equality Act 2010 Public Sector Equality Duty requires decision makers to give due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct.
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs.
- foster good relations between people by tackling prejudice and promoting understanding.
- take account of protected characteristics in coming to a decision.

The development of service specifications will include input from engagement with providers, Parents and Carers and Young People. This will help inform the Impact Assessment and the ultimate decision for the procurement option.

12. Risk Management Considerations

This project forms part of the SEND Transformation Programme which has a risk register which is regularly updated. This commissioning and procurement strategy will help mitigate the following risks highlighted in the Programme:

- The risk that the High Needs Block spend does not return a balanced budget.
- The continued growth, in recent years, of EHCP with no facility to reduce external demand.
- The high cost of educating pupils with complex educational and physical needs. This includes the students remaining in post-16 education.

13. Summary/Conclusions/Reasons for Recommendations

The proposals in this paper will ensure the County Council is able to fulfil its statutory responsibilities in respect of commissioning appropriate provision for Children and Young People, in particular those identified with special or additional educational/medical needs. Proposals are directly linked to the High Needs Block Management Plan, as submitted, and approved by the DfE as well as the wider SEND Transformation plan.

Proposals will establish a better way of working/commissioning that ensures compliance, value for money, performance monitoring and improved outcomes for Children and Young people.

Linked with the wider SEND Transformation Programme this strategy gives the opportunity to lead on establishing a better way of working.

Stuart Collins
Director of Children & Young People's Futures

[Electoral Divisions: All]

Cabinet Member for Children's SEND Improvement Services: Councillor Lois Samuel

Director, Stuart Collins, Director of Children & Young People's Futures

LOCAL GOVERNMENT ACT 1972: LIST OF BACKGROUND PAPERS

Contact for Enquiries: [Damien Jones, Deputy Director for Transport Operations, Environment & Waste](#)

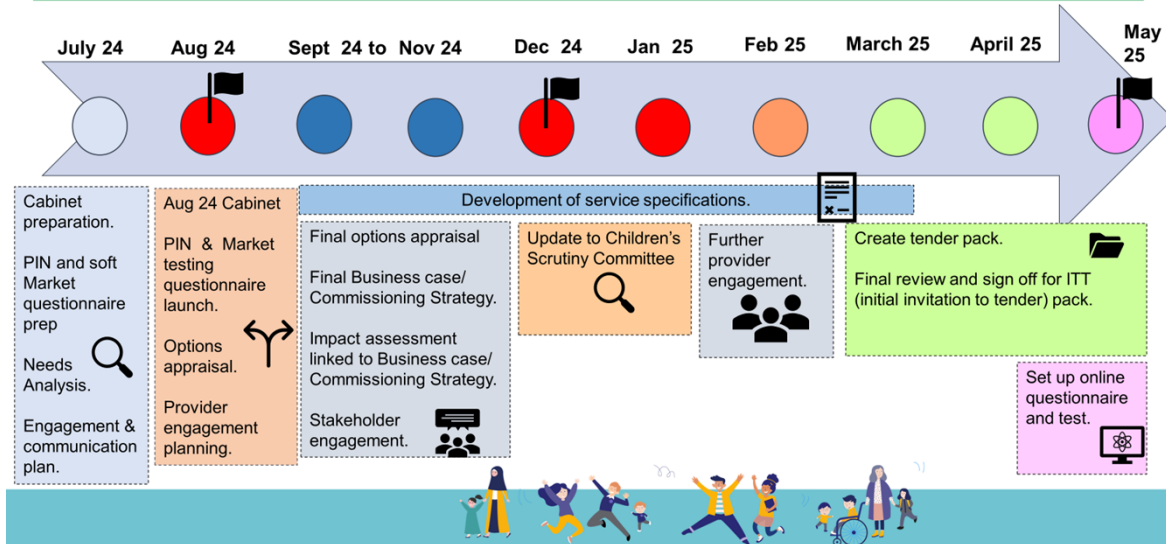
Tel No: 01392 383244 Room: G121

Appendix A – Timeline

Graph 1 – Commissioning and Procurement timeline from July 2024 to May 2025

Part 1 Longer term AEP and ISS

Commissioning & Procurement activity timeline.



Graph 2: Commissioning and Procurement timeline from June 2025 to March 2026

Part 2 Longer term AEP and ISS

Commissioning & Procurement activity timeline.

