



DECISION FOR LEAD CABINET MEMBER FOR CHILDREN, YOUNG PEOPLE AND SCHOOLS

Report from the Corporate Director, Children and Young People

Date of Decision: 28 June 2023

Approval to waive Contract Standing Orders for the procurement of a contract for provision of Occupational Therapy for pupils in mainstream Brent Schools through direct award

Wards Affected:	All
Key or Non-Key Decision:	Non-Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	One Appendix 1 - Equalities Impact Assessment
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	Sharon Buckby Head of Inclusion and Brent Virtual School sharon.buckby@brent.gov.uk Shazia Akram Head of Forward Planning, Performance and Partnerships shazia.akram@brent.gov.uk

1. Purpose of the Report

- 1.1. This report concerns the procurement of a Contract for the provision of Occupational Therapy (OT) for pupils in mainstream Brent schools from 1 July 2023 to 31 March 2025 in the sum of £464,366.36.
- 1.2. The purpose of this report is to seek member approval to waive Contract Standing Orders to enable a direct award of a contract for provision of Occupational Therapy for pupils in mainstream Brent schools to the Central London Community Health NHS Trust (CLCH). The case for direct award, as opposed to a full tender process, is set out in the detail below.

2.0 Recommendation(s)

That the Cabinet Member for Children, Young People and Schools having consulted with the Leader:

- 2.1. Approves an exemption pursuant to Contract Standing Order 84(a) of the requirement to tender a contract for provision of OT for pupils in mainstream Brent schools for a period from 1 July 2023 to 31 March 2025 in accordance with paragraph 13 of Part 3 of the Constitution.

3.0 Detail

- 3.1 Section 26 of the Children and Families Act 2014 places a duty on local authorities to implement joint commissioning arrangements with health partners to deliver support in the Education, Health and Care Plans (EHCP) of children and young people with Special Education and/or Disabilities (SEND).
- 3.2 On 1 December 2018, Brent Council entered into a Section 75 under the National Health Service Act 2006 ("S75 Agreement") with NHS Brent Clinical Commissioning Group (Brent CCG) for the provision of OT for pupils in mainstream Brent schools for an Initial term commencing 1 December 2018 and ending on the 31 August 2020. The Operational Director at the time subsequently approved an extension to the S75 to September 2022 with Brent CCG. On 1 April 2021, the NHS North West London Clinical Commissioning Group (NWL CCG) was created and as a result Brent CCG ceased to exist. This meant that all community-based section 75 arrangements were transferred to NWL CCG's provider, the Central London Community Health NHS Trust (CLCH), including the provision of OT for pupils in mainstream Brent schools. On 30 March 2022, the Operational Director granted a further extension to August 2023 with NWL CCG.
- 3.3 The Health and Care Act 2022, abolished Clinical Commissioning Groups and accordingly on 1 July 2022, the NWL CCG transitioned to the North West London Integrated Care Board (ICB), known as NHS NW London. Officers have been working with local health partners on the arrangements for provision of OT for pupils in mainstream Brent schools as well as the development of the long-term approach to the provision of these services. However, the NHS NW London has advised the Council they are not able to keep arranging the provision of OT for pupils in mainstream Brent schools. This means that the current contract arrangements will cease on 30 June 2023.
- 3.4 Therefore, for the local authority to continue to meet its statutory responsibility, there is a need to provide for an interim arrangement to ensure continuity of provision of OT for pupils in mainstream Brent schools. There is very little time to make alternative arrangements and insufficient time to competitively procure an alternative provider (particularly as the number of providers capable of providing the service are extremely low on capacity). Under these circumstances, officers recommend putting contractual arrangements in place with the current provider. Officers are recommending a Contract for the period from 1 July 2023 to 31 March 2025. If the NHS NW London ICP is scheduled to commence at any period between 1 July 2023 and 31 March 2025, the contract with CLCH will be terminated and NHS NW London will become the supplier of this service through its Contractor.
- 3.5 The primary target group of this service is Reception and Key Stage 1-4 pupils who attend mainstream Brent schools. The total number of Education Health Care Plans Needs Assessments (EHCNA) completed for the 2022/2023 financial year was 155. This is an increase of 27% from the number of EHCNA's completed in the previous

financial year 2021-22. At the end of the reporting period covering 1st January 2023 to 31st March 2023:

- 223 children and young people with an EHCP which included OT targets, accessed
- OT provision through this arrangement.
- 37 EHCNAs were completed.
- 12 children were successfully discharged and moved off the EHCP caseload.

3.6 The service adheres to all aspects of the SEND Code of Practice 2015 (updated October 2020). The Service supports delivery of the priorities identified in the Brent SEND strategy 2021 – 2025:

- Education, employment and training
- To live a healthy lifestyle
- To be fully active citizens of Brent.
- To live independently
- My Brent - The voice of young people to be heard in shaping the Brent of the future.

3.7 The Service ensures the council meets its statutory responsibility to provide the level of care specified in Section F of a child's EHCP with regards to OT and an equitable service across all Key Stages taking into account the needs of children and young people requiring the service. The service is expected to achieve the following outcomes:

- a) An improvement in the educational attainment and ability to participate in the curriculum of children and young people with OT needs listed in Section F of their EHCP.
- b) Children and young people who are aware of and, where possible, able to independently use strategies to support their therapeutic difficulties in everyday situations.
- c) Children and families receiving a seamless service when transferring between primary, secondary and independent providers of occupational therapy, and are aware of the on-going support available.

The Service is also expected to contribute towards achieving the following outcomes:

- a) The rate of improvement and progress for any under achieving groups is accelerated.
- b) All children and young people with SEND are able to access the same wide educational opportunities and life chances as others.

3.8 A waiver of the Contract Standing Order ("CSO") requirement to tender is recommended as:

- There is very limited time to make alternative arrangements and not sufficient time to competitively procure an alternative provider, particularly as the number of providers capable of providing the service are extremely limited.
- Subject to approval of a waiver of CSOs, the intention is to seek direct award of a short contract. This will provide sufficient time for officers to review procurement and delivery arrangements and service models to inform the future service delivery to include potential joint delivery options with health partners as the preferred long-term.

- CLCH is delivering a good service and has established positive links with the Children and Young People’s department. CLCH has also developed a positive working relationship with schools in Brent and the award of this contract will support continuation of high-quality services which are in the best interest for children and young people whilst longer term options are explored.
- Procurement have reviewed and agree with the approach set out in this report.

4.0 Financial Implications

4.1 The overall contract value of £0.464m over 21 months from 1 July 2023 to 31 March 2025 will be funded from the from the High Needs Block (HNB) of the DSG. The funding required for 2023/24 will be £0.199m, and for 2024/25, it will be £0.265m. Compared to the previous contract, the new contract value reflects an inflationary increase of 1% which will be contained within the growth allocation for the HNB.

5.0 Legal Implications

5.1 In accordance with paragraph 13 of Part 3 of Brent’s Constitution, the Leader has delegated certain functions to Cabinet members to be exercised within their portfolio area in consultation with the Leader. This delegation includes agreement of waivers of Contract Standing Orders for Medium and High Value Contracts.

5.2 The services officers are proposing to procure are valued at circa 464k over the contract term and the proposed contract is thus classified as a Medium Value Contract under Contract Standing Orders. Contract Standing Orders provide that a Medium Value Contract should be procured by way of a tender process but for the reasons detailed in the body of the report, officers do not consider it is possible to procure the contract by way of a tender process.

5.3 The value of the services that Officers are proposing to procure is below the Public Contracts Regulations 2015 threshold of £663,540 for Schedule 3 services. In these circumstances, should the Council award a contract directly, it is not considered to be a breach of domestic law or the Council’s own procedures

5.4 In reaching any decision to waive Contract Standing Orders, the Cabinet Member in consultation with the Leader should have regard to the reasons Officers have set out in Section 3 of the report.

6.0 Equality Implications

6.1 Pursuant to s149 Equality Act 2010 (the “Public Sector Equality Duty”), the Council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

6.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 6.3 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 6.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.
- 6.5 The proposals in this report have been subject to screening as set out in Appendix 1 and officers believe that there are no adverse equality implications.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 Relevant Heads of Service and CYP service area managers have been consulted to help inform the development of the approach.

8.0 Human Resources/Property Implications (if appropriate)

- 8.1 This service is currently provided by an external contractor and there are no implications for council staff arising from the procurement of the Contract.

9.0 Public Services (Social Value) Act 2012

- 9.1 The Council is under duty pursuant to the Public Services (Social Value) Act 2012 ("the Social Value Act") to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake consultation. Officers have had regard to considerations contained in the Social Value Act in relation to the procurement.

Report sign off:

Nigel Chapman

Corporate Director, Children and Young People