



Cabinet
27 June 2016

**Report from the Strategic Director of
Children and Young People**

Wards Affected:
[ALL]

Contracting for the provision of Special Educational Needs (SEN) for independent non maintained special school (INMSS) placements and additional resourced provision (ARP) in academies.

1.0 Summary

1.1 This report:

- Seeks approval to set up a Dynamic Purchasing System (DPS) for the placements of Children and Young People with Special Educational Needs in Independent Non Maintained Special Schools (INMSS) as required by Contract Standing Orders 88 and 89. Brent will be acting as the lead borough on behalf of the West London Alliance (WLA) in the procurement exercise for the DPS. The DPS will be utilised by the following WLA members: Barnet, Ealing, Hammersmith & Fulham, Harrow, Hillingdon, Hounslow, Royal Borough of Kensington & Chelsea and City of Westminster.
- Seeks approval for the continuation of the block contract with Centre Academy for special education placements for the academic year 2016/17.
- Considers the placement arrangements of Children and Young People requiring Additional Resourced Provisions (ARP) in maintained schools and Academies.

It should be noted that all placements of children with Special Educational Needs and Disability (SEND) are fully funded by the High Needs block of the Dedicated Schools Grant (DSG).

2.0 Recommendations:

It is recommended that Cabinet:

- 2.1 Approves the setting up of a Dynamic Purchasing System (“DPS”) for placements of Children and Young People with Special Educational Needs who have been assessed for an Education, Health and Care (EHC) plan and require a placement in INMSS based on the tender considerations set out in paragraph 3.8 of the report.
- 2.2 Gives its approval for the Council to act as Lead authority and to jointly procure the DPS for and on behalf of the participating West London Alliance (WLA) authorities.
- 2.3 Delegates authority to the Strategic Director of Children and Young People to admit any new service provider(s) onto the DPS subsequent to them meeting their admittance criteria as stated by the Council in the DPS documentation.
- 2.4 Delegates authority to the Strategic Director of Children and Young People to award High Value Contracts for educational placements procured through the DPS.
- 2.5 Agrees an exemption from the procurement requirements of the Council’s Contract Standing Order 96 to enable the Strategic Director of Children and Young People, in consultation with the Chief Finance Officer and the Chief Legal Officer, to continue the block contract with Centre Academy for the provision of 15 special education placements for the academic year 2016/17. This will allow officers time to put in place the DPS to which Centre Academy will be invited to submit a tender for inclusion onto the DPS.
- 2.6 To note that all placements of children with SEND are fully funded by the High Needs block of the Dedicated Schools Grant (DSG).
- 2.7 To note the placement and funding arrangements for the provision of Additionally Resourced Provision places in maintained schools and Academies.

3.0 Detail

- 3.1 The Council has a statutory duty to provide full time education for all children and young people between the ages of 5 and 16. The Raising Participation Age (RPA) places a duty on all young people to participate in education or training until their 18th birthday. The Council has a duty to assess, identify and

make appropriate provision for those with Special Educational Needs and Disabilities (SEND) ages 0-25 years as set out in the new SEN (Special Educational Needs) Code of Practice 2014 (Children and Families Act 2014 – SEND Reforms). The Council therefore has a responsibility to commission a range of specialist provision to meet these needs.

- 3.2 The majority of children and young people who have an Education Health and Care plan with SEND are placed in Brent or out of borough maintained mainstream special schools and Academies. In a minority of cases where needs are very high and complex and suitable provision is not available within the borough, pupils may be placed in an independent non maintained special school.
- 3.3 Children and young people identified with an EHC plan who have a learning difficulty such as speech and language and communication need, autism or hearing or visual impairment needs, may in some cases require Additionally Resourced Provision (ARPs). ARPs support the educational development through additional specialist provision and resources. These are units in maintained schools and those that have converted to Academies. The Council commissions these specialist places and admissions into these units are determined by the Council.
- 3.4 The specialist ARP places in Brent mainstream schools/Academies commissioned by the Council for Children and Young people with EHC plan cater for the following special education needs;
- Moderate Learning Difficulties (MLD)
 - Hearing Impairment (HI)
 - Autistic Spectrum Disorder (ASD)
 - Social, Language and Communication Needs (SLCN)
- 3.5 **MAINTAINED SCHOOLS** Where the Council has commissioned a number of specialist ARP places, the Council pays the top up fees according to the agreed banding amounts dependent on the child's needs. These are agreed by the Schools Forum and all costs are met from the Dedicated Schools Grant (DSG), high needs block funding stream. All the ARPs operate through a service level agreement that sets out the required provision and the Council's expectation of the school. The table below provides information on the ARPs in maintained schools for the academic year 15/16.

Primary School	Special Need	No of places	Top up per place
Kingsbury Green	HI	18	£10,014

- 3.6 **ACADEMIES** – The Council also commissions an agreed number of ARP places in Academies. The Council pays the top up fees based on the agreed banding to reflect the needs of the child/young person. These are agreed by the Schools Forum and all costs are met from the (DSG), high needs block funding stream. For Academies, the ARPs operate through a contractual agreement that sets out the required provision and the Council's expectation of the academy. All Children and Young people will have an Education, Health and Care Plan (EHC plan). Decisions about ARP placements are made through the Council's SEN Panel. The table below provides information on the ARPs in Academies for the academic year 15/16.

School	Special Need	No of places	Top up per place
Secondary ARPs			
Alperton	MLD ARP	20 places	£9,837 per place
Kingsbury High	HI ARP	7 places	£10,014 per place
Preston Manor	SLCN ARP	12 places-	£6,276 per place
Preston Manor	ASD ARP	12 places	£12,673 per place
Primary ARPs			
Oakington Manor	SLCN ARP	25 places	£2,403 per place
Oakington Manor	ASD ARP	10 places	£8,635 per place

- 3.7 **INDEPENDENT NON MAINTAINED SPECIAL SCHOOLS** – When appropriate SEND and ARP places are not available within maintained schools and Academies, due to (a) not enough places to meet the particular need, or (b) the need cannot be met within maintained schools / Academies, these SEND places are sourced from independent non maintained special schools. These could be within or outside the Borough dependent on the needs of the child / young person.

- 3.7.1 Currently the SEND educational places in independent non maintained special schools are procured via spot purchase agreements on an individual child or young person basis. This is facilitated by the exemption in the Council's Standing Orders 86(f)(iii) which enables individual packages of education and care to be procured for children who cannot be catered for within maintained schools.

However, where the Council has significant numbers of placements in any one INMSS, it has proved to be more cost efficient to jointly contract (block placement) for these placements rather than separately. However as these independent schools are not maintained by the Council, each time a block placement is required, officers have had to seek Cabinet approval for an

exemption from the procurement requirements of the Council's Contract Standing Order 96.

- 3.7.2 To have a more efficient process for procuring future SEN placements from INMSS in compliance with Council standing orders and EU regulations, officers in Brent, working in collaboration with the West London Alliance (WLA) Children's Programme recommend putting in place a DPS.
- 3.7.3 A DPS is a completely electronic procurement procedure used for setting up and maintaining a list of providers from which commonly used goods, services and works can be procured. The DPS provides the ability of including new suppliers onto it during its period of operation.

The benefits of using the DPS for procuring SEN placement from INMSS are:

- The ability to include suppliers onto the DPS during its validity period:
 - potentially increases the supply base for the service provision.
 - ensures that the Council is not limited to certain suppliers which allows for far greater competition and drive savings.
 - allows the Council to develop and grow the supplier base via including new and more local sources of supply where available.
- Once established the DPS would provide an efficient process for procuring SEN placements within a shorter timescale
- The DPS process allows for admitting only suppliers who have met the Council admittance criteria. The admittance criteria will assess each organisation's knowledge, experience, and expertise in providing the required services. Please see 3.8(vi) for further information. This will ensure commissioning of quality SEN places to achieve the best outcomes for children and young people.

Furthermore, the DPS would provide a single agreed process for SEN procurement across the WLA authorities. This will reduce process duplication across the WLA authorities. It would also enable the WLA authorities to use its purchasing power to develop and influence an already challenging market which cannot be done by Brent alone.

- 3.7.4 Brent and the WLA have also consulted with the South London SEN Commissioning Programme which is made up of 10 South London Boroughs who have put in place a similar DPS system. This procurement exercise will incorporate the lessons learnt from the South London process, such as:
- Use of the National Association of Special Schools (NASS) Contract which the market is familiar with. The Council will modify this to ensure it meets the Council's requirements.

- Simplifying and modifying the procurement process in line with market capacity. This approach encouraged providers to work with the South London SEN Commissioning Programme.
- Incorporating an agreed quality assurance approach to ensure outcomes are linked to Education, Health and Care plans.

3.7.5 It is the intention for the DPS to be the main route used by Children & Young People (C&YP) for procuring SEN places from INMSS. However it should be noted that in response to parental choice and tribunal direction there will be rare occasions when procurement of SEN places will need to be made outside the DPS.

3.7.6 It is anticipated that the DPS will become operational in April 2017(provided there are enough organisations placed onto the DPS that would allow the Councils to procure from the DPS).

3.7.7 The Council will offer unrestricted, direct and full access to the DPS documentation by electronic means (via the London Tenders Portal) from the date of publication of the contract notice until 12 months to the date when the DPS ceases to operate.

3.7.8 As the Council will give any organisation the opportunity of joining the DPS within the period as stated in 3.7.7 above, officers have recommended that the Strategic Director for Children and Young People be given authority to appoint Service providers onto the Dynamic Purchasing System as and when required to prevent officers from returning to Cabinet to obtain approval each time a Service Provider is required to be appointed onto the DPS.

3.7.9 The number of organisations that can be admitted on to the DPS will not be limited, but it should be noted that only organisations who can demonstrate that they can meet the Council's set selection criteria will be admitted onto the DPS. The Council would also set out in the DPS documentation the circumstances upon which an organisation will be removed from the DPS including poor performance.

3.7.10 Please see **Appendix 1** for details on how:

- the DPS will be established
- organisations will be admitted onto the DPS
- SEN places will be procured via the DPS

3.7.11 The Children and Young People service currently has one block contract with Centre Academy (this is with an independent non maintained special school) for the provision of 15 places. It is recommended that Cabinet grants an exemption from the procurement requirements of the Council's Contract Standing Order 96 to enable the Strategic Director of Children and Young People, in consultation with the Lead Member for Children and Young People, Chief Finance Officer and the Chief Legal Officer, to continue the contract with

Centre Academy for the academic year 2016/17 for 15 places at a cost of £576,000. This cost is lower than the current spot purchase placement fee of £645,000 charged by the school. This represents a saving of £69,000. The extension of the Centre Academy block contract is necessary for 1 year to ensure the continued education of pupils as the DPS cannot be put in place for 16-17 academic year. Once the DPS is live Centre Academy will be invited to submit a tender for inclusion onto the DPS.

- 3.8 In accordance with Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the Cabinet.

Ref.	Requirement	Response
(i)	The nature of the service.	A dynamic purchasing system for the provision of SEND placements in Independent Schools.
(ii)	The estimated value.	The estimated spend for 2015/16 in Brent for independent placements was £7.07 million (independent non maintained day and residential schools). This is funded via the high needs block of the Dedicated Schools Grant (DSG). The spend across the West London Alliance is circa £60 million (including Brent).
(iii)	The contract term.	3 years with the option to extend for up to 3 years
(iv)	The tender procedure to be adopted.	Open Procedure
v)	The procurement timetable.	Dates are:
		<p>Adverts / issue invitation for inclusion onto the DPS September 2016.</p> <p>Supplier Event - at the launch of the procurement.</p> <p>Evaluate Initial Responses – November 2016</p> <p>Seek approval from the Strategic Director of Children and Young People to appoint initial suppliers onto DPS December - 2016</p> <p>DPS mobilisation period - January – March 2017</p> <p>DPS becomes operational - 1 April 2017</p> <p>Expressions of interest for the DPS will open to Organisation up until 12 months to the date when the DPS ceases to operate</p>

Ref.	Requirement	Response
		Once the DPS becomes operational, officers will evaluate any applications from additional organisations by assessing their returned DPS documentation within a stipulated period and admit any organisation that meets the stipulated admittance criteria unto the DPS
(vi)	The evaluation criteria and process.	<p>The admittance criteria are to be drawn up in accordance with the Council's Contract Procurement and Management Guidelines namely the pre qualification questionnaire and thereby meeting the Council's minimum requirements in relation to Financial standing requirements, technical capacity, technical expertise and compliance with statutory requirements such as safeguarding, health and safety.</p> <p>The technical section will assess the organisations experience, knowledge and expertise on</p> <ul style="list-style-type: none"> • Preparing children / young people for adulthood • Monitoring pupil progress and attainment against the outcome set out in the EHC plan • Involving children/young people, parent and carers in decision making • Creating a safe environment for children/ young people <p>Organisations will be required to provide a price at the admittance stage to which will give a baseline of costs.</p> <p>As part of the DPS setup, officers in Brent and the WLA are working on a pricing strategy based on different options and a cost model to aid in controlling cost.</p> <p>During the call off process organisation's ability to meet the educational needs of the child / young person (based on their EHC plan) will be assessed along with organisations submitted price to deliver the individual needs of a specific child. This will enable the Council to tailor each call off to the specific need of the child / young person. Organisations will not be able to submit a price that is in excess of that provided at the admittance stage.</p>
(vii)	Any business risks associated	No specific business risk associated with setting up the DPS.

Ref.	Requirement	Response
	with entering the contract.	
(viii)	The Council's Best Value duties.	Procuring via the DPS will ensure that the council achieves best value for money
(ix)	Consideration of Public Services (Social Value) Act 2012	The DPS will enable the Council to fulfil its statutory duty to provide full time education for all children and young people between the ages of 5 and 18 requiring special educational needs and achieving the preparation for adulthood outcomes of employment, participating and living a fulfilling life in the community.
(x)	Any staffing implications, including TUPE and pensions.	See section 7 below.
(xi)	The relevant financial, legal and other considerations.	See sections 4.0 and 5.0 below.

3.9 The Cabinet is asked to approve these proposals as set out in the recommendations above and in accordance with Standing Order 89.

4.0 Financial Implications

4.1 The estimated spend for 2015/16 in Brent for independent placements was £7.07 million (independent non maintained day and residential schools) with costs met from the DSG High Needs Block. Across the West London Alliance the spend for independent placements is circa £60 million (including Brent).

4.2 There is a cost to transport to Children and Young people to and from these schools from the general fund. The School Place Strategy 2015 recommended creating additional 140 SEN places to reduce reliance on out of borough provision. Therefore, it is not envisaged that current cost will increase as a result of the DPS.

4.3 There are no costs associated in setting up a DPS. Officers in Brent and the WLA boroughs are exploring the feasibility of having a central function for evaluation and contract management. If this is agreed to go ahead there are associated operational potential costs which will to be shared between the WLA boroughs.

5.0 Legal Implications

5.1 A DPS is akin to an electronic framework agreement but unlike a framework agreement, it allows for new providers in the market to apply for admittance onto the DPS throughout the life of the system. The requirements as to the

establishment and operation of the DPS are set out in Regulation 34 of the Public Contracts Regulations 2015 (PCR 2015). The PCR 2015 details that a DPS is a completely electronic system which may be established to procure commonly used purchases generally available to the market. Officers have confirmed that the SEN Placement service meets this requirement.

- 5.2 Regulation 38 of the PCR 2015 permits contracting authorities such as the council to jointly procure services in its own right and on behalf of other named contracting authorities such as the member authorities of the WLA. It is understood that Brent will act as lead authority for the purposes of the DPS Agreement procurement.
- 5.3 The estimated value of Brent Council's proposed placements over the full term of the DPS (including the option to extend) is circa £42,000,000+ and as such, the DPS itself will be deemed a High Value Contract arrangement under the Council's Contract Standing Orders (CSOs) and Financial Regulations and thus Cabinet approval is required to approve the pre-tender considerations in **table 3.8** and is ordinarily required to appoint the initial potential providers to the DPS in accordance with CSO 88(c). However, officers are recommending Members to approve a delegation to the Strategic Director for Children and Young People to appoint the initial providers and any subsequent new providers that meet the minimum requirements onto the DPS. Thereafter, should Members be minded to approve the recommendation in this report, officers further require the Strategic Director for Children and Young People be given delegated authority to award High Value individual contracts.
- 5.4 Moreover, officers are seeking an exemption/waiver from CSOs permitting a direct award of a block contract to Centre Academy. Members have the power to approve such exemption/waiver provided there are good and/or operational reasons for doing so and such action will not place the council in breach of the PCR 2015. Education services are classed under the PCR 2015 as a Schedule 3 service and as such are not subject to the full application of the PCR 2015 provided the value of the proposed award is not in excess of the current threshold of £589,148.
- 5.5 Officers must follow regulation 54 of the PCR 2015 when inviting providers from the relevant Lot under the DPS. There is no requirement to submit any form of award notice in the OJEU following the setting up of the DPS, or when new suppliers are added to the DPS. There is however, a requirement to publish contract award notices (which must be sent to the Publications Office within 30 days of award) for specific individual contracts awarded under the DPS. However, authorities can choose to group DPS contract award notices on a quarterly basis, which must be sent within 30 days (after) the end of each quarter. Officers should also abide by the requirements for publication on Contracts Finder with regards to contracts awarded.

6.0 Diversity Implications

- 6.1 The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 There are no direct staffing or accommodation implications for the Council.

8.0 Background Papers

- 8.1 None.

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Appendix 1

1 DPS AIMS

1.1 The aim of the DPS is -;

- To have a list of pre-qualified schools/groups of schools that can be utilised by WLA members via a single electronic brokerage system (CarePlace).
- To have common specification and T's & C's with a more streamlined contracting process across WLA boroughs.
- To consolidate and share supplier monitoring activities within a robust consistent contract management framework.
- To build choice of providers into the market to stimulate competition.
- To have an arrangement in place to provide for a range of SEN educational placements and where possible to have these placements more locally
- To enable WLA boroughs have an improved understanding of the SEN Independent non maintained special school (INMSS) market to aid in commissioning quality SEN places to achieve the best outcomes for children and young people
- To influence costs of placements in INMS schools through collaborative strength of the collective WLA spend.
- To have a transparent, reasonable and consistent pricing structure with less add-on's across WLA boroughs
- For WLA boroughs to use the understanding gained of our SEN placement needs to secure efficiencies with placements
- To ensure educational placements in INMSS are in Compliance with the Public Contract Regulations 2015 and the Children and Families Act 2014

2 SAVINGS

2.1 The DPS will be used by the following WLA members Barnet, Ealing, Hammersmith & Fulham, Harrow, Hillingdon, Hounslow, Royal Borough of Kensington & Chelsea and City of Westminster including Brent. The approximate spend on SEN placement in independent schools by these boroughs is about £60 million per annum. A saving target of 2% - 5% on current cost has been earmarked to be achieved through the use of the DPS over its duration.

1 DPS STRUCTURE

1.1 The DPS will be split into 2 main lots - Residential and Day educational placements. Under each main lot will be distinct sub lots for Speech, language and Communication Needs (SLCN), Autistic Spectrum Disorder (ASD), Specific Learning Difficulty (SpLD), Moderate Learning Difficulty (MLD), Severe Learning Difficulty (SLD), Profound and Multiple Learning Difficulty (PMLD), Social, Emotional and Mental Health (SEMH), Visual Impairment (VI), Hearing Impairment (HI), Multi-Sensory Impairment (MSI) and Physical Disability (PD)

This will ensure the Council's requirements are met and organisations admitted onto the DPS are grouped according to their areas of specialist provision.

2 ESTABLISHING THE DPS

2.1 The DPS will be established in accordance with EU regulations. However the procedure will be varied to ensure its flexibility of meeting the needs of the Councils, children and parent preference, as well as meeting the tendering capacity of the SEN independent market. As the services to be procured via the DPS falls under schedule 3 of the Public Contract Regulations 2015, paragraph 76 (7) allows for such variation. Establishing the DPS will encompass –

- Advertising the opportunity based on the open procedure in the Official Journal of European Union (OJEU) and other appropriate advertising medium.
- Making the DPS documentation available via the Councils (Brent) e-tendering system - London Tenders Portal. The DPS documentation will set out the criteria organisations will have to meet in order to be admitted onto the DPS.

2.2 The tendering exercise for the DPS will done via Brent's e-tendering system but any call off will be done via the WLA CarePlace system.

3 ADMITTING ORGANISATIONS ONTO THE DPS

3.1 The following process below will be used to admit organisations onto the DPS-;

- Organisations will be required to submit the necessary DPS documentation electronically to demonstrate how they meet the admittance criteria.
- A panel made up of WLA representatives will evaluate the returned documents in accordance with the evaluation methodology within a stipulated period.
- On completion of the panel assessment, organisations will be notified if they have been admitted onto the DPS.

- Details of organisations admitted onto the DPS will be loaded onto Care Place. This will enable organisations to participate in future call off processes.
- DPS agreements will be sent to the admitted organisations for sign off. Given the anticipated numbers of schools (going from similar DPS arrangements put in place by other authorities) it is intended for the DPS agreements to be signed off electronically. Officers are consulting with Legal Services on the possibilities of this been done

4 PROCURING EDUCATIONAL PLACEMENT VIA THE DPS

4.1 In procuring from the DPS-;

- officers may directly procure (direct award) an educational placement from an organisation -;
 - where there is only one organisation within a particular lot providing the required educational place
 - based on parental preference
 - tribunal decision
- Officers may carry out a mini competition exercise where there is more than one organisation on a particular lot providing the services required.

4.2 In any of the procuring procedures in 4.1 above, where appropriate officers may enter into negotiations with organisations to ensure they secure best value for the placement.

4.3 Once the Council has opted for an organisation following any of the procedure mentioned in 4.1 above, the Council and the organisation would enter into a placement agreement for the provision of educational services to the child / young person.

5 It is envisaged having more flexibility in the way placement are procured via the DPS will provide officers the opportunity to ensure best value and cost effectiveness.

6 The number of organisations that can be admitted on to the DPS will not be limited, but it should be noted that only organisations who can demonstrate that they can meet the Council's set selection criteria will be admitted onto the DPS. The Council would also set out the circumstances upon which an organisation will be removed from the DPS i.e. continuous poor performance

7 The Council will give any organisation the opportunity of joining the DPS until the one year from the date the DPS ceases to operate.

8 The DPS will be monitored by the Forward Planning, Performance and Partnership service within the Children & Young People's Directorate, in conjunction with the WLA.