



Cabinet
24 July 2017

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

Wards Affected: All

**Contracts with Academies for Additionally Resourced
Provision and the Choice, Advice and Fair Access Service**

1. Summary

1.1 This report seeks an exemption from the procurement requirements of the Council's Contract Standing Orders and approval to award contracts for the placement of children and young people in:

- Additionally Resourced Provision (ARP) provided by academies for the academic year 2017/18.
- the Choice, Advice and Fair Access Interview (CAFAI) Service and related specialist English as an Additional Language (EAL) provisions provided by academies for the academic year 2017/18.

1.2 The costs of the proposed contracts referred to in this report are fully met from the Dedicated Schools Grant.

1.3 This report covers only Additionally Resourced Provision (ARP) in academies. It does not include ARPs in maintained primary and nursery settings that are managed through Service Level Agreements.

2. Recommendations:

That Cabinet:

2.1 agrees an exemption from the procurement requirements of the Council's Contract Standing Order No 96 in respect of contracts for the provision of:

- Additionally Resourced Provision (ARP) for the academic year 2017/18.
- The Choice, Advice and Fair Access Interview Service and specialist English as an Additional Language (EAL) provisions for the academic year 2017/18.

- 2.2 Approves the award of the contracts referred to in Recommendation 2.1 above for the academic year 2017/18 to the schools listed in Tables 1 and 2 of this report.
- 2.3 Notes that the costs of the proposed contracts referred to in Recommendation 2.2 are fully met from the DSG.

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.
- 3.2 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).
- 3.3 It is important that provision allows for the needs of children to be met in local schools (thus meeting Equality duties and the requirements of the Children & Families Act 2014 and related guidance) and avoids higher-cost services in independent provision. 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 (EHCP) with SEND are placed in Brent or out-of-borough maintained mainstream or 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 (ARP). ARPs support the educational development through additional specialist provision and resources. The Council commissions ARPs from a number of maintained schools and Academies. They provide:
- Teaching staff with additional skills and expertise in a particular area of SEN.
 - Specialist environments which support the learning needs of each pupil.
 - Systems to track small-step progress.
 - Additional specialist staff input as necessary.

3.4 The specialist ARP places in Brent schools are commissioned by the Council for Children and Young people with an EHC plan with the following special education needs:

- Moderate Learning Difficulties (MLD)
- Hearing Impairment (HI)
- Autistic Spectrum Disorder (ASD)
- Social, Language and Communication Needs (SLCN)

3.5 **ARPs in Academies:** Funding for the ARPs in academies is based on a national formula (£10,000 per place). In addition, top up fees are paid to each academy for individual children who are placed in the provision, based on bandings that are agreed by the Schools Forum. All costs are met from the high needs block funding stream of the DSG. ARPs in academies operate through a contractual agreement that sets out the required provision and the Council's expectation of the academy. All Children and Young people placed in these provisions have an EHC plan and decisions about ARP placements are made through the Council's SEND Panel.

3.6 The table below provides information on the ARPs in Academies for the academic year 17/18. Each school employs specialist staff to work in ARPs and the Council has previously invested capital funding in the ARPs to provide an appropriate learning environment.

Table 1: ARPs in Academies

School	Special Need	No of places commissioned	Block Place Funding	Top up per individual child placed
Secondary ARPs				
Alperton	MLD ARP	16 places	£160,000	£9,837
Kingsbury High	HI ARP	7 places	£70,000	£10,014
Preston Manor	SLCN ARP	12 places-	£120,000	£6,276
Preston Manor	ASD ARP	12 places	£120,000	£12,673
Primary ARPs				
Oakington Manor	SLCN ARP	20 places	£200,000	£2,403
Oakington Manor	ASD ARP	15 places	£150,000	£8,635

MLD - Moderate Learning Difficulties, HI - Hearing Impairment, ASD - Autistic Spectrum Disorder, SLCN - Speech and Language Communication Needs

3.7 **Choice, Advice and Fair Access Interview Service (CAFAl) and EAL provisions:** The Council commissions targeted support for the needs of vulnerable new arrivals, including unaccompanied asylum seekers/looked after children. The CAFAl process is used to assess the needs of Year 10 and Year 11 new arrivals who do not speak English or have significant special needs (around 250 children a year). The CAFAl process involves a base-line assessment in Maths and English and interviews to ascertain the best placements for individual students to achieve positive outcomes. Without this provision, there is a risk that the number of young people who are NEET would increase.

3.8 Table 2 sets out the contracts that are the subject of this report. Claremont High School manages the CAFAI service. Students can be referred to one of four educational provisions delivered by Queens Park Community School (QPCS) and Claremont High School that are funded through de-delegated DSG (known as the Pupil Growth Fund). For information a further provision is delivered by Newman Catholic College and is funded directly through the school's DSG allocation.

Table 2: CAFAI and EAL Contracts

School	Special Need	No of places commissioned	Top up per place/Funding per place DSG	Total Contract Funding from DSG
CAFAI Administration and Co-ordination				
Claremont High (including supply assessment teachers)				£69,250
Provisions				
Queens Park	EAL	35	£4,792	£167,720
Queens Park	Reduced GCSE	30	£4,792	£143,760
Claremont High	EAL	35	£4,792	£167,720
Claremont High	Reduced GCSE	30	£5,000	£150,000

3.9 Outcomes as a result of this provision are positive. In a recent thematic Ofsted visit, the current system was praised for the short time that it takes for young people to access education provision. The expertise of staff in the centres and their work with young people was commended. Students accessing EAL projects demonstrate good progress. 100% of former Year 11 students accessing EAL Projects have remained in Education, Employment or Training (EET) and access Post 16 provision. End of year reports provided by the EAL Projects document that young people have significantly enhanced their English skills and students have provided very positive feedback.

3.10 The market for schools or academies providing ARP, CAFAI and EAL for children is a highly specialised market with growing demand across the country. Officers are committed to seeking more innovative and collaborative arrangements that secure both immediate and long-term savings plus efficiencies and at the current time it is considered that block contracts are the most appropriate way of trying to secure such savings and efficiencies. Officers recommend that the most appropriate way forward for the academic year 2017/18 is to award block contracts to the school providers detailed in Tables 1 and 2 whilst longer term commissioning arrangements are considered to maintain service continuity.

4.0 Financial Implications

4.1 The Dedicated Schools Grant (DSG) funds both the ARPs and the CAFAI and EAL contracts.

Place funding for ARPs is included in local authorities' initial DSG allocation and then deducted by the Education Funding Agency (EFA). The EFA pays the place funding direct to academies. The local authority pays the top-up funding to academies.

The budgets for top-up funding for maintained schools and academies is within the Inclusion service. There is sufficient budget to fund the top-ups detailed in the table above.

The budget for the CAFAI and EAL contracts is within the Partnership, Planning and Performance service. There is sufficient budget to fund the contracts detailed in the table above.

5.0 Legal Implications

- 5.1 Under the Education Act 1996, as amended by the Education and Inspections Act 2006 and regulations subsequently issued under it, the council has a duty to identify, assess and make provision to meet the special educational needs of children within its area by ensuring that sufficient primary, secondary and further education is available to meet their needs. Local authorities are to ensure that their education functions are exercised with a view to promoting high standards ensuring fair access to opportunity for education and learning, promote the fulfilment of learning potential; and ensure that sufficient schools providing primary and secondary education are available for their area. SEND and Alternative Provision are also referenced in the Academies Act 2010 and the Education Act 2011.
- 5.2 Contracts for provision of education fall within Schedule 3 of the Public Contract Regulations 2015 ("EU Procurement Regulations"). All of the proposed contracts detailed in Tables 1 and 2 are valued at less than the threshold for Schedule 3 contracts of £589,148. As a result the procurement of such services are not subject to full requirement of the EU Procurement Regulations. Nevertheless, the general EU requirements for transparency, non-discrimination and equal treatment will normally require advertising and some form of competitive process before contract award, even for below threshold procurements, especially if the contract is likely to be of interest to overseas EU providers. Given the current limited market in the type of services provided by the schools and the short duration of the proposed contracts, it can be maintained that the direct award of the contracts does not contravene these general duties.
- 5.3 Contract Standing Order 96(a) provides that for contracts with an estimated value below the EU Procurement Regulations threshold, tenders shall be invited for Medium and High Value Contracts and quotes sought in relation to a Low Value Contracts. However, Contract Standing Order 84(a) provides that subject to compliance with domestic and European legislation, the Cabinet may agree an exemption from the requirement to procure in accordance with Contract Standing Orders where there are "good operational and/or financial reasons". For the reasons detailed in paragraph 5.2 it is not considered there is a breach of domestic or EU legislation. Further, Officers consider that there are good operational and financial reasons for awarding the contracts with the

schools set out in Tables 1 and Table 2 rather than carrying out a formal tendering (or quote) process. These reasons are set out in Section 3.10 of the report.

- 5.4 The estimated value of the proposed contracts as set out in Tables 1 and 2 are such that they are classed as either Medium Value or Low Value Contracts for the purposes of the Council's Contract Standing Orders.

6.0 Diversity Implications

- 6.1 The Council is required under section 149 of the Equality Act 2010 when exercising its functions, to have due regard to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who have a protected characteristic and those who do not share that protected characteristic. The protected characteristics covered under the Act are age, disability, gender reassignment, marriage and civil partnership (only in respect of eliminating unlawful discrimination) pregnancy, maternity, race (this includes ethnic or national origins), religion or belief (this includes lack of belief) sex and sexual orientation. Due regard means giving relevant and proportionate consideration to the duty, in that whenever significant decisions are being made or policies developed consideration must be given to the impact/affect that implementing a particular policy or decision will have in relation to equality before making that decision or change.

- 6.2 The provisions in this report have been subject to screening. These provisions aim to raise the education standards for all and address inequality due to disability (including multiple complex needs), social disadvantage and/or other protected characteristics, and contribute to the delivery of the council's equality duties.

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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