

 Brent	Cabinet 13 August 2018
	Report from the Strategic Director of Children and Young People
Contracts with Academies for Additionally Resourced Provisions and the Choice, Advice and Fair Access Service	

Wards Affected:	All
Key or Non-Key Decision:	Key
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:	n/a
Background Papers:	n/a
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Brian Grady, Operational Director, Safeguarding, Partnerships and Strategy Brian.Grady@brent.gov.uk Tel. 020 8937 4713

1.0 Purpose of the Report

1.1 This report seeks Cabinet agreement to 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
- the Choice, Advice and Fair Access Interview Service and related specialist English as an Additional Language provisions provided by academies.

2.0 Recommendation(s)

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 years 2018/19 to 2020/21
- The Choice, Advice and Fair Access Interview Service (CAFAI) and specialist English as an Additional Language (EAL) provisions for the academic years 2018/19 to 2020/21.

- 2.2 Approves the award of the contracts referred to in Recommendation 2.1 above for the academic year 2018/19 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. As set out in the SEN (Special Educational Needs) Code of Practice 2014 (Children and Families Act 2014 – SEND Reforms), the Council has a duty to assess, identify and make appropriate provision for children and young people with Special Educational Needs and Disabilities (SEND) aged 0-25.
- 3.2 The Council, therefore, has a responsibility to commission a range of specialist provision to meet these needs and aims to do so to allow 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).
- 3.3 The majority of children and young people with SEND who have an Education Health and Care Plan (EHCP) 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.
- 3.4 **ARPs in Schools / Academies:**
For some children and young people identified with an EHCP who have a speech and language or communication need, autism or a hearing or visual impairment need, the most appropriate placement is in an Additionally Resourced Provision (ARP). ARPs support their educational development through additional specialist provision and resources. The Council commissions ARPs from a number of maintained schools and Academies to meet the following special education needs:

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

3.5 ARPs provide:

- Teaching staff with additional skills and expertise in a particular area of SEND
- Specialist environments which support the learning needs of each pupil;
- Systems to track small-step progress;
- Additional specialist staff input as necessary.

The SEND Specialist Services Manager from the Local Authority has a quality assurance role and annually monitors the contracts with Brent's Additionally

Resourced Provisions. The monitoring involves the effectiveness of the provision in achieving positive outcomes for Brent learners. This takes into consideration leadership and management, skills and experience of the teacher in charge, staffing and training of staff, quality of teaching and learning, pupil outcomes and progress and parental involvement.

- 3.6 Funding for 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. Decisions about ARP placements are made through the Council's SEN Panel and all children and young people placed in these provisions have an EHCP.
- 3.7 The table below provides information on the ARPs in Academies for the academic year 18/19. 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	6 places	£60,000	£10,033
Kingsbury High	HI ARP	7 places	£70,000	£10,214
Preston Manor	SLCN ARP	12 places-	£120,000	£ 6,402
Preston Manor	ASD ARP	12 places	£120,000	£12,926
Primary ARPs				
Oakington Manor	SLCN ARP	25 places	£250,000	£2,451
Oakington Manor	ASD ARP	10 places	£100,000	£8,808
Sudbury Primary	ASD ARP	7 places	£70,000	£12,487

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

- 3.8 **Choice, Advice and Fair Access Interview Service (CAFAL) and EAL provisions:** The Council commissions targeted support to meet 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 a year), 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.
- 3.9 Table 2 sets out the planned commissioned provision for 2018/19. Students are referred to one of five educational provisions delivered by Queens Park Community School (QPCS), Claremont High School and Newman Catholic College that are funded through centralised DSG (known as the Pupil Growth Fund).

Table 2: CAFAI and EAL Contracts

School	Special Need	No of places commissioned	Funding per place DSG	Total Contract Funding from DSG
Queens Park	EAL	30	£5,200	£156,000
Queens Park	Reduced GCSE	30	£5,200	£156,000
Claremont High	EAL	30	£5,200	£156,000
Claremont High	Reduced GCSE	30	£5,200	£156,000
Newman Catholic College	EAL	30	£5,200	£156,000

- 3.10 In previous years, Claremont High School has been commissioned to oversee administration of the CAFAI process. For 2018/19 it is planned to bring this function in-house. This will increase the efficiency and timeliness of the process.
- 3.11 Outcomes of the commissioned provision are positive. The CAFAI process ensures expertise of staff in the centres and 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.
- 3.12 The market for schools or academies providing ARP, CAFAI and EAL for children is highly specialised with growing demand across the country. Within this context, it is considered that block contracts with the school providers detailed in Tables 1 and 2 are the most appropriate way of securing high quality provision for the academic year 2018/19. This will also ensure continuity for children and young people currently in the provisions who will remain there in the next academic year.
- 3.13 As funding for the provision of ARP, CAFAI and EAL is from the DSG, there is a need for officers to procure contracts on an annual rather than a longer term basis given the possibility of funding changes. In view of the highly specialised market for the provision of ARP, CAFAI and EAL, officers do not consider that there is a market to competitively procure annual contracts for such services in the short term. In the circumstances, officers recommend that Members agree an exemption from the procurement requirements of the Council's Contract Standing Order No 96 in respect of such contracts for a period of 3 years. This will obviate a need to seek Cabinet approval to an exemption to the procurement requirements on an annual basis during this limited period.

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 are within the Inclusion service. There is sufficient budget to fund the top-ups detailed in the table above.

- 4.2 The budget for the CAFAI and EAL contracts is within the Partnership, Planning and Performance service and is also funded by DSG. 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 efficient primary, secondary and further education is available to meet their needs. They 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 secure that sufficient schools for providing primary and secondary education are available for their area. The SEN and Alternative Resources 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 £615,278. 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, as detailed in paragraph 3.13, Officers consider that there are good operational reasons for not tendering or seeking quotes for such contracts for the financial years 2018/19 – 2020/21.
- 5.4 The estimated value of the proposed contracts as set out in Tables 1 and 2 are such that they are classed either Medium Value or Low Value Contracts for the purposes of the Council's Contract Standing Orders.

6.0 Equality Implications

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

7.0 Consultation with Ward Members and Stakeholders

- 7.1 Schools have fed back positively on the provision of ARP, CAFAI and EAL services under these contracts.

8.0 Human Resources/Property Implications (if appropriate)

- 8.1 These services are currently provided by academies on their premises and there are no human resources implications for Council staff or property implications for the Council.

Report sign off:

GAIL TOLLEY

Strategic Director of Children and Young People