



Officer Key Decision

Report to Strategic Director Children and Young People

Authority to award conditional grants for the placement of children and young people in Additionally Resourced Provisions in academies and the The Pears Family Charitable Foundation School London for the academic year 2021/22.

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| Wards Affected: | All |
| Key or Non-Key Decision: | Key Decision |
| Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act) | Open |
| No. of Appendices: | None |
| Background Papers: | None |
| Contact Officer(s): (Name, Title, Contact Details) | <p>Sharon Buckby Head of Inclusion Service and Virtual School Headteacher sharon.buckby@brent.gov.uk</p> <p>Nigel Chapman Operational Director, Integration and Improved Outcomes, Children and Young People: nigel.chapman@brent.gov.uk</p> |

1.0 Purpose of the Report

- 1.1 This report seeks approval from the Strategic Director, Children and Young People, to award conditional grants for the placement of children and young people in Additionally Resourced Provisions in academies and The Pears Family Charitable Foundation School London for the academic year 2021/22.
- 1.2 This proposal supports the Dedicated Schools Grant Management Plan 2021 priorities to achieve better value for money for placements and to support pupils

to remain in mainstream education reducing the demand for special schools places, in particular independent non maintained special school provision.

2. Recommendation(s)

That the Strategic Director for Children and Young People:

- 2.1 Approves the award of the conditional grants for the Additionally Resourced Provisions to the schools and in the sums listed in Table 1 of this report for the academic year 2021/22.
- 2.2 Approves the award of a conditional grant to the The Pears Family Charitable Foundation School London for the academic year 2021/22 in the sum detailed in paragraph 5.5.

3. Background

- 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 Equally the Council has a duty to make arrangements for Alternative Provision (AP) under Section 19 of the Education Act 1996. Occasions when a child has to be placed in an alternative setting for a period of time could be as a result of a fixed term or permanent exclusion or where a child has health-related needs that mean they are unable to attend a mainstream school full-time. Many schools make use of Alternative Provision services before the need for fixed term or permanent exclusion arises. In the majority of cases the intention is for these children to return to their mainstream school and the length of the placement should be determined by the needs of the pupil. Local authorities make arrangements for AP (including hospital education), and this is normally funded from the High Needs Block (HNB) of the Dedicated School Grant (DSG).
- 3.3 The Council, therefore, has a responsibility to commission a range of specialist provisions 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 and Families Act 2014 and related guidance).
- 3.4 Previously the Children and Young People's Department has sought approval from Cabinet to exempt the award of contracts to Academies for the retention of places in additionally resourced provision from the procurement requirements of the Council's Contract Standing Order No 96. In August 2018, Cabinet agreed an exemption from the procurement requirements of the Council's Contract Standing Order No 96 in respect of contracts with academies for ARPs for a period of 3 years for the academic years 2018/19 to 2020/21. This obviated the need to seek Cabinet approval to an exemption to the procurement requirements on an annual basis during this period and allowed

the Strategic Director, Children and Young People to approve the awards of such contracts as Officer Key Decisions.

- 3.5 However, the Department for Education's position is that the commissioning by local authorities of special educational needs and alternative provision placements, funded from the high needs block of the DSG, is not regarded as a public service contract for the purposes of the Public Contracts Regulations 2015 ("PCR 2015"). <https://www.gov.uk/government/publications/high-needs-funding-arrangements-2020-to-2021>. As such arrangements with schools and settings operating under the Department's regulations can be regarded as not subject to the PCR 2015 although as contracts would be subject to the Council's Contract Standing Orders and Financial Regulations.
- 3.6 The current agreements for Additionally Resourced Provisions and The Pears Family Charitable Foundation School London are established under contractual arrangements within the public service contract framework. Whilst the DfE guidance referenced in paragraph 3.5 reflects funding arrangements, a school or setting can be directed by any Local Authority to admit a child to their school, places permitting. Recognising that Brent's Children and Young People's Department is commissioning academies and an independent non maintained special school for specific services via the HNB that are retained solely for pupils resident in Brent known to the Inclusion Service, it is considered that an alternative model for such commissioning is the use of conditional grant agreements.
- 3.7 The use of a conditional grant agreement assures the Council that places are secured and assures the provider that the financial security will not be undermined. The use of conditional grants will provide the same assurance to the Council with the added assurance that funding is used for the activity specified. It also allows for the flexible application of top up funding based on the levels of need of a child. Operating through a retention arrangement funding through Elements 1 and 2 (<https://www.gov.uk/government/publications/high-needs-funding-arrangements-2020-to-2021>) are guaranteed for ARPs. Element 3 (top up) is added once pupils are placed. Brent Council has not yet been in the position of having spare places in ARPs. There is currently an insufficient number of places in ARPs and the Children and Young People's Department is currently in consultation with Brent schools for the expansion of ARP places. There is a similar gap in sufficiency for young people with additional needs requiring a respite or transitional school place with therapeutic interventions to prevent exclusions. For the Pears Family Charitable Foundation School London the £21k per place is used as the retainer. Whilst this appears to be a high risk option the Brent Inclusion Service utilises the six places retained annually and as identified in paragraph 5.5. Where pupils are dual registered, arrangements are made with the school for joint funding.
- 3.8 The internal DSG Management Plan 2021 identifies the development of Additionally Resourced Provision and improved access to Alternative Provision as three key actions in meeting the objective of reducing demand on special schools and in particular independent non-maintained special schools, achieving better value for money by improved commissioning and in supporting

pupils to remain in mainstream education. Remaining in mainstream education supports pupils who are able to access the national curriculum to achieve better educational outcomes. It also drives forward inclusion whereby children from a range of backgrounds and abilities are able to learn and play together.

4.0 ARPs in Academies

4.1 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.

4.2 For some children and young people with an EHCP who have an identified 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 (SLCN)

4.3 ARPs are placed within mainstream schools and 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 opportunity to socialise with and/or have some lessons alongside mainstream pupils – where appropriate

4.4 Table 1 provides information on the ARPs in academies for the academic year 2021/22. Each school employs specialist staff to work in its ARP 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 | Num. of places commissioned | Estimated Occupied Place Numbers | Place Funding £ | Top up per individual child placed £ | Total Top-up Funding £ | Total Place and Top-up funding £ |
|-----------------|--------------|-----------------------------|----------------------------------|-----------------|--------------------------------------|------------------------|----------------------------------|
| Oakington Manor | SLCN | 25 | 25 | 150,000 | 2,485 | 62,125 | 212,125 |
| Oakington Manor | ASD | 10 | 4 | 84,000 | 8,931 | 35,724 | 119,724 |
| Preston Manor | ASD | 12 | 12 | 72,000 | 13,108 | 157,296 | 229,296 |
| Preston Manor | SLCN | 13 | 12 | 78,000 | 6,492 | 77,904 | 155,904 |
| Kingsbury High | HI | 7 | 5 | 50,000 | 10,357 | 51,785 | 101,785 |

NOTES

1. Place Funding is based on planned place numbers for 2021/22 and is allocated directly by the ESFA to the academies.
2. Top-Up Funding is based on actual pupil numbers as at 31st December 2020. Top-Up Funding for changes in actual pupil numbers from 1st January 2021 onwards, will be paid termly in arrears.
3. Sudbury Primary School did withdraw from the ARP programme at the end of the 2019/20 academic year. The Headteacher and Executive Headteacher are meeting with the Trust Board in May to confirm if they are offering an ASD ARP for seven pupils in the forthcoming academic year, 2021/22, or in the academic year 2022/23. Subject to confirmation of the date of re-opening of the ARP in 2021/22 Table 1 above will need to be revised to include Sudbury. Otherwise the submission for Sudbury will be in the Approval for a Key Decision 2022/23.

4.5 A review of top-up rates for placements in community and academy ARPs is to be implemented in financial year 2021/22. Whilst there are clear social and educational benefits from all children being able to attend a mainstream school, there is a significant financial saving by supporting children to stay in mainstream education in Brent as opposed to attending an out of borough school or special school.

4.6 The market for schools or academies providing ARPs for children is highly specialised. Within this context, it is considered that block conditional grants with the school providers detailed in Table 1 are the most appropriate way of securing high quality provision for the academic year 2021/22. This will also ensure continuity for children and young people currently in the provisions, who will remain there in the next academic year.

5.0 The Pears Family Charitable Foundation School London

- 5.1 The Pears Family Charitable Foundation School London is a specialist provision. It is a publicly funded free school, run by the Anna Freud Centre. It is a full time education provision committed to providing educational opportunities for children (Key Stage 1- 3) with complex psychological, family and mental health problems.
- 5.2 These places are in high demand and there is competition from other London Boroughs (e.g. Islington, Camden and Westminster) as there is not another provision providing this high level of support within London. The proposal to move to a Key Decision will enable the service to review the arrangements with The Pears Family Charitable Foundation School London on an annual basis, ensuring that value for money is retained.
- 5.3 The Pears Family Charitable Foundation School has been used by the Inclusion Support Team jointly with the Special Educational Needs Assessment Service (SENAS) since September 2014, and more recently for pupils with SEND in order to prevent exclusion, providing transitional arrangements whilst a new school placement is secured. Funding is via the High Needs Block of the Designated School Grant. Originally this was based on a spot purchase arrangement. Since 2017/18 academic year the service level agreement with The Pears Family Charitable Foundation School London was agreed under a Chief Officer agreement for a block contract arrangement. From 2020/21 this agreement has been for 6 places and charged at £21k per placement as opposed to £42k per spot purchased placement and £45,000-£65,000 for comparative placements. Brent Council currently has five pupils placed, with one pupil in a consultation process.
- 5.4 The contract not only provides flexibility for full time equivalent places to be used in blocks of 1 half term or part time placements but can also be agreed if the pupil is on dual roll. A high proportion of pupils are reintegrated into mainstream school within four terms and the vast majority of these pupils keep their places in mainstream school.
- 5.5 Comparison of Pears Family Charitable Foundation School London Spot Purchase cost with similar independent provision in paragraph 6.2 below shows that the block contract arrangement of £21,000 per place is value for money. The cost includes 190 days of teaching per year and all transport costs for pupils to the school, access to psychological support and additional summer programmes/extended days. It is therefore proposed to award a conditional grant for 6 places for the academic year 2021/22 to the sum of £126,000.

6.0 Financial Implications

- 6.1 The Dedicated Schools Grant (DSG) High Needs Block funds both the place funding and the top up funding for the ARPs. The place funding for ARPs in academies are deducted by the Education and Skills Funding Agency (ESFA). The ESFA then transfers the place funding directly to academies while the local

authority pays the top-up funding from the DSG High Needs Block 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.

- 6.2 Renewing the contract with the Pears Family Charitable Foundation will cost £0.126m and also lead to a cost avoidance of £0.126m based on the agreement to fund 6 places at £21,000 instead of the spot purchase price of £42,000 per place.

7.0 Legal Implications

- 7.1 The Council has a statutory duty under the Education Act 1996, as amended by the Education and Inspections Act 2006, and regulations subsequently issued under it, 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. The SEN and Alternative Resources Provision are also referenced in the Academies Act 2010 and the Education Act 2011.
- 7.2 The general power of competence in Section 1 of the Localism Act 2011 may be utilised to give grants to external bodies including schools where there is good reason to do so.
- 7.3 In accordance with Section 9(b) of the table at paragraph 9.5 of Part 3 of the Council's Constitution, Chief Officers have delegated authority to make grants provided that where the grant involves the distributions of funds received from a third party, the grant complies with the conditions under which the funds have been received by the Council.
- 7.4 Officers have recommended the award of conditional grants to schools. Schools would be required to provide specified places for students and provide appropriate support. Should a school fail to observe these requirements, the Council would be able to terminate the grant agreement and seek repayment of any sums not distributed.
- 7.5 In accordance with Standing Order 71(d), agreements should be in writing and signed in accordance with the Financial Regulations and therefore, a conditional grant agreement will be entered into and signed by both parties. The Strategic Director, Children and Young People has delegated authority to award and enter into the proposed grant agreements.

8.0 Equality Implications

- 8.1 Under Section 149 of the Equality Act 2010, the Council has a duty when exercising its public functions to have 'due regard' to the need to eliminate discrimination harassment and victimisation and other conduct prohibited under the Act; advance equality of opportunity, and foster good relations between those who share a "protected characteristic" and those who do not. This duty is known as the public sector equality duty (PSED).

- 8.2 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.
- 8.3 In the provision of these range of services and in commissioning secure additional places for primary pupils with SEND the Council is working toward meeting its responsibilities under the Equality Act.
- 8.4 As detailed above the Council is has a range of responsibilities it must meet under part 3 of the Children and Families Act 2014 in relation to SEND and this report is identifying some of the mechanisms that the Council has put in place to meet some of those needs under the 2014 Act and associated guidance.

9.0 Consultation with Ward Members and Stakeholders

- 9.1 The Lead Member for Children’s Safeguarding, Early Help and Social Care has been briefed about the proposed award of conditional grants to ARPs and the planned approach regarding The Pears Family Charitable Foundation School London.

10.0 Human Resources/Property Implications (if appropriate)

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

Related Documents:

Cabinet report: Contracts with Academies for ARPs and CAFAI provisions, August 2018

Report sign off:

NIGEL CHAPMAN
Operational Director, Integration and Improved Outcomes.