

	Officer Key Decision
	Report to Corporate Director Children and Young People
<p>Authority to award conditional grants for the placement of children and young people in Additionally Resourced Provisions in academies for the academic year 2022/23 and to award a contract for such placements to the The Pears Family Charitable Foundation School London.</p>	

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>Shirley Parks Interim Director, Safeguarding, Partnerships and Strategy Children and Young People: shirley.parks@brent.gov.uk</p>

1.0 Purpose of the Report

- 1.1 This report seeks approval from the Corporate Director Children and Young People, to award conditional grants for the placement of children and young people in Additionally Resourced Provisions in academies for the academic year 2022/23 and to award a three year contract to The Pears Family Charitable Foundation School London for such payments.

- 1.2 This proposal supports the Dedicated Schools Grant (DSG) Management Plan 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 Corporate Director for Children and Young People:

- 2.1 Approves the award of 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 2022/23.
- 2.2 Approves the award of a contract for the placement of children and young people in Additionally Resourced Provisions with The Pears Family Charitable Foundation School London for a period of three years commencing the academic year 2022/23 in the sum of £378,000 subject to the Cabinet Member waiving the requirement to tender.

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 by way of an Officer Key Decision.

- 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 DSG Deficit Management Plan 2022 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 2022/23. 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	No of places commissioned	Block Place Funding	Top up per individual child placed
Fryent Primary	ASD	36 places	£168,000	£12,413
Kingsbury Green	HI	18 places	£112,000	£10,357
Oakington Manor*	SLCN	25 places	£174,000	£2,485
Oakington Manor*	ASD	10 places	£60,000	£8,931
Preston Manor	ASD	12 places	£72,000	£13,108
Preston Manor	SLCN	12 places	£76,000	£6,492
Kingsbury High	HI	7 places	£54,000	£10,357

**Places will be reduced from academic year 22-23 as follows: ASD 10 places, SLCN 25 places
ASD - Autistic Spectrum Disorder, HI - Hearing Impairment, SLCN - Speech and Language Communication Needs*

NOTES

1. Place Funding is based on planned place numbers for 2022/23 and is allocated directly by the ESFA to the academies.
2. Top-Up Funding is based on actual pupil numbers as at 19 July 2022. Top-Up Funding for changes in actual pupil numbers from 1st January 2022 onwards, will be paid termly in arrears.

4.5 A review of top-up rates for placements in community and academy ARP will be undertaken as part of the national funding review for SEND places. 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 2022/23. This will also ensure continuity for children and young people currently in the provisions, who will remain there in the next academic year.

4.7 Pupil outcomes and progress

Table 2: progress and attendance data for current ARPs

Provision and area of need	Commissioned places 21-22	No. of pupils attending the provision 21-22* *May 22	% of pupils making expected progress or better (against personal targets)	% attendance for the cohort
Fryent –ASD Opal Centre	36	42	R – 60% W – 73% M- 80%	95%
Kingsbury Green - HI	18	19	RWM - 99%	92.95%
Oakington Manor – SCLN/ASD	35	26	R - 78% W - 75% M - 84%	95%
Preston Manor SLCN/ASD	24	24	RWM - 72%	SLCN 91.01% ASD 93.03%
Kingsbury High	7	4	* data not provided	* data not provided

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 is to seek Cabinet Member approval to waive the requirement to tender and thereafter a 3 year contract to The Pears Family Charitable Foundation School London to ensure continuity of service and best value.
- 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 DSG. Originally, this was based on a spot purchase arrangement. Since 2017/18 academic year, placements at The Pears Family Charitable Foundation School London have been made using for a block contract arrangement. From 2020/21 this agreement has been for 6 places and charged at £21,000 per placement as opposed to £42,000 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. Following discussions with The Pears Family Charitable Foundation School London, the School has indicated that it would be prepared to enter into a 3 year contract with Brent Council at the current rate of £21,000 per placement. Given the savings that the Council is currently achieving over the spot purchase rate and the ongoing need for the service, Officer recommend the direct award of a three year contract. The move to a three-year contract would also be in line with DfE expectations for APs once the white paper on the SEND and AP review has been completed. The contract would contain a break clause and potential for virement. As no tender process will be operated, Cabinet member approval to waiving the requirement to tender will be required.

- 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 recommended to award a three year contract for 6 places commencing for the academic year 2022/23 in the sum of £126,000 per annum.

6.0 Financial Implications

- 6.1 The 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 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 Awarding a contract to the Pears Family Charitable Foundation School London will cost £126,000 per annum and lead to a cost avoidance of £0.126m per annum based on the agreement to fund 6 places at £21,000 instead of the spot purchase price of £42,000 per place. The cost avoidance will be included in the DSG Management Plan.

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 As detailed at paragraph 3.5, 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"). As such arrangements with schools and settings operating under the Department's regulations can be regarded as not subject to the PCR 2015. As a result, Officers recommend the award of conditional grants.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.
- 7.7 Recommendation 2.2 is for the award of a contract for the placement of children and young people in Additionally Resourced Provisions with The Pears Family Charitable Foundation School London for a period of three years commencing in the academic year 2022/23 in the sum of £378,000. This is classed as Medium Value Contract under the Council's Contract Standing Orders and Financial Regulations. Medium Value Contract are required to be tendered however, provided there is no breach of procurement legislation, the Cabinet Member for Children and Young People may waive the requirement to tender.
- 7.8 The services to be provided under the proposed contract with The Pears Family Charitable Foundation School London fall within Schedule 3 of the Public Contracts Regulations 2015 (PCR 2015). The threshold for application of the PCR 2015 for Schedule 3 services is £663,540 including VAT and therefore the proposed contract falls below this threshold. In the circumstances, the Cabinet Member has agreed to waive the requirement to tender thus enabling direct

award of a three year contract to The Pears Family Charitable Foundation School London.

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 Cabinet Member for Children and Young People has been consulted on and approved 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:

Officer Key Decision: 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

Report sign off:

Shirley Parks

Interim Director, Safeguarding,
Partnerships and Strategy

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