



Cabinet
14 April 2015

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

For Action

Wards Affected:
ALL

**Contracts with Academy Schools and Independent Special Schools
for Special Education Places and Additionally Resourced
Provisions**

1. Summary

- 1.1 This report seeks delegated authority to negotiate contracts between the council and schools listed in Table 3.1 and Table 3.2 in this report for the provision of Additionally Resourced Provisions (ARP), independent schools, and English as an Additional Language (EAL) education placements for the academic year 2015/16. The report also considers future arrangement for placement of new students/pupils in subsequent academic years.
- 1.2 All costs covered in this report fall within the Schools Budget, which is funded, via the ring-fenced Dedicated Schools Grant (DSG). There is therefore no financial impact on the Council's general fund resources from the proposals in this report.
- 1.3 In order to negotiate the contracts referred to in paragraph 1.1, this report seeks exemption from the usual procurement requirements of the Council's Contract Standing Orders.

2. Recommendations

- 2.1 That the Cabinet notes that the costs of the proposed contracts referred to in Recommendation 2.2 are fully met from the DSG.
- 2.2 That the Cabinet delegate to the Strategic Director of Children and Young People, in consultation with the Chief Finance Officer and the Chief Legal Officer, authority to negotiate contracts for the provision of special education placements for the academic year 2015/16 to the schools listed in Table 3.1 and Table 3.2.

- 2.3 That the Cabinet agree an exemption from the procurement requirements of the council's Contract Standing Order No 96 to enable the council to negotiate the contracts referred to in Recommendation 2.2.
- 2.4 That Cabinet note that Officers will report to Members on the outcome of the negotiations referred to in Recommendation 2.2 and if negotiations are successful, seek Cabinet approval to the award of such contracts.
- 2.5 That the Cabinet note the ongoing work detailed in paragraphs 3.6 and 3.7 to secure longer term more sustainable contractual arrangements for the provision of Additional Resource Provisions for special education and alternative education placements for the academic years following the academic year 2015/16.

3. 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. This includes a duty to assess, identify and make appropriate provision for those with Special Educational Needs and Disabilities (SEND) as set out in the new SEN Code of Practice 2014 (Children and Families Act 2014 – SEND Reforms). Children and young people identified with SEND who have learning, mental health difficulties and/ or autism and other significant special needs i.e. sensory may in some cases require provision in the Additionally Resourced Provision (ARPs) which are units in mainstream schools. In addition, in a minority of cases where needs are very high or unusual and suitable provision is not available within the borough; pupils may need to be placed in independent special schools. Brent has reduced its dependence on independent provision through increasing the number of places in-borough, but like all local authorities, a minority of independent placements are inevitable.
- 3.2 The council's contractual arrangements for placement of individual pupils with the following schools listed below will expire on 30 August 2015:
 - Centre Academy (Independent)
 - TCES North West London (Independent)
 - Claremont (Academy)
 - Alperton (Academy)
 - Kingsbury High (Academy)
 - Queens Park (Academy)
 - Preston Manor (Academy)
- 3.3 For the academies, the rates at which the places in the ARPs are funded is generally agreed by the Schools Forum on the advice of its SEN Funding Sub-Group. For the two academies which offer alternative provision for Year 10 and 11 children new to the country who require additional EAL support, this funding rate too is generally agreed by the Schools Forum. Officers are content that this has represented value for money and provided good quality provision within the borough.
- 3.4 With regard to the two independent schools, in 2013 the council negotiated 'block' rates for places which reflected current usage and which generated savings at the time of at least £70,000.

- 3.5 SEN provision is regularly reviewed by the council and is inspected as part of Ofsted inspections. For all provision, the SENAS Team checks that young people have settled in and (through annual review) are making good progress. For the establishments listed in this report, placement breakdown is low, and the current provider schools have developed and sustained an effective collaborative partnership with the council.
- 3.6 The market for schools providing education for children with ASD and SEBD is a highly specialised market with growing demand across the country. Brent is working as part of the West London Alliance to work strategically with the key suppliers (increasingly companies running chains of special schools) and also to plan maintained sector and free-school provision across the West London area.
- 3.7 Officers are committed to seeking more innovative and collaborative arrangements that secure both immediate and long-term savings plus efficiencies but the work outlined in paragraph 3.6 is ongoing and will not have come to fruition prior to the expiry of the existing contracts in August 2015. In the circumstances, and given officers' satisfaction with the current arrangements, officers consider that the most appropriate way forward in the short term is to negotiate with the current school providers detailed in Tables 3.1 and 3.2, and subject to successful negotiation, seek Cabinet approval to award contracts to these providers for the academic year 2015/16.
- 3.8 Officers anticipate continuing the current rate of placements at these schools, in which case the continuation of the current block contract with only an inflationary uplift still represents good value for money. The places cost £37.3k (Centre Academy) and £41.4k (North West London Independent) which compares well with an average of £50k on spot purchase.
- 3.9 Table 3.1 describes the previous contractual agreements and block purchase agreements the Council has with the Academy Schools and outlines the costs of a one year contract. Table 3.2 describes the agreements with independent schools and also outlines the costs of a one year contract.
- 3.10 The schools and ARPs meet the needs of the following groups of students/pupils:
- Centre Academy (independent) – Autism (ASD)
 - North West London Independent School – Emotional, Behavioural and Mental Health (SEBD)
 - Alperton ARP – Moderate Learning Difficulties (MLD)
 - Preston Manor ARP – Autism (ASD)
 - Preston Manor ARP – Social, Language and Communication (SLCN)
 - Kingsbury High ARP – Hearing Impairment (HI)
 - Claremont and Queens Park – EAL provision for Year 10 and 11 students new to the country and with additional EAL needs

Table 3.1

School	Details	2013/14 Contract Value	One-year extension (Sept 2015 to August 2016) "Council Starting Offer"	Savings/ Issues
Alperton (MLD ARP)	20 students @ £18,852 per place	£205,710	£205,710	Nil savings
Queens Park (EAL)	35 students @ £4,792 per place	£167,720	£167,720	Nil savings
Claremont (EAL)	35 students @ £4,792 per place	£167,000	£167,720	Nil savings
Claremont 2(EAL)	15 students @ £5,000 per place	£75,000	£75,000	Nil savings
Kingsbury High (HI ARP)	7 students @ £10,000 per place	£70,000	£70,000	Nil savings
Preston Manor (ASD and SLCN ARPs)	12 -S&L @£6276 12-ASD @ £12,673	£227,388	£227,388	Nil savings

Table 3.2

School	Details	2013/14 Contract Value	One-year extension (Sept 2015 to August 2016) "Provider Starting Proposals"	Savings/ Issues
Centre Academy (Independent – ASD)	Block 15 places @ £35,000, same rate for additional places up to 25	£525,000	£560,000	Nil savings; No inflationary increase for over 5 years, rates frozen. 6.5% increase per place
North West London Independent School TCES (NWLIS) (Independent – SEBD)	Block 15 places @ £38,850 per place the same rate for additional places up to 25.	£582,750 (2.5 year term)	£621,000	Nil savings; No inflationary increase for over 5 years, rates frozen. 6.5% increase per place.

- 3.11 Officers recommend extending the contract term of the current contracts on the basis that this will allow the council time to assess longer-term strategic options aimed at ensuring that competitive, quality provision is sustained, whilst not disrupting or impairing the education of young people already in these establishments.

- 3.12 The cohorts of KS3 and KS4 students within the schools listed in Tables 3.1 and 3.2 are currently midway through their school education. The arrangements proposed in this report enable continuity of provision for those children.
- 3.13 Officers are committed to seeking more innovative and collaborative arrangements that secure both immediate and long-term savings plus efficiencies. They are of the opinion that the recommendations made in this report to negotiate with current providers represent the best quality and financial arrangement for the council and the young people in Brent in the short term. Following negotiations, the intention is to report to Members the outcome of the negotiations and if these have been successful, to seek Cabinet approval to award contracts.

4. Financial Implications

- 4.1 All costs covered in this report fall within the Schools Budget, which is funded, via the ring-fenced Dedicated Schools Grant (DSG). There is therefore no financial impact on the Council's general fund resources from the proposals in this report.
- 4.2 The contract negotiations will commence on the basis that savings and efficiencies can be made. However the provider independent schools have already strongly indicated that they are seeking an increase in fees citing the fact that their fees have been frozen for five years with no inflationary increase during this period and increasing revenue costs i.e. teacher salaries, inspections etc. These independent school providers have quoted figures of 6.5 per cent increase in rates.
- 4.3 The 2015/16 budget (agreed by the Schools Forum) used to pay for these education placements is £5.2m and is funded by the Dedicated Schools Grant (DSG). The cost of the one-year contract will be funded from this budget, with the aim of minimising any further premium; 'spot' purchase arrangements with these schools.

5. Staffing Implications

- 5.1 These services are currently provided by various external contractors and there are no direct staffing implications for council staff arising from the negotiations or the extensions of the contracts by way of the interim block purchases/contract.

6. Legal Implications

- 6.1 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 ("SEN") 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.
- 6.2 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 3.1 and 3.2 are valued at less than the threshold for Schedule 3 contracts of £625,050. 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 negotiation and direct award of the contracts does not contravene these general duties.

- 6.3 The estimated value of the proposed contracts with Centre Academy and North West London Independent School as set out in Table 3.2 are such that they are classed as High Value Contracts for the purposes of the Council's Contract Standing Orders. The estimated value of the proposed contracts with the academies detailed in Table 3.1 is such that the contracts are subject to the Council's own Standing Orders in respect of Low, and Medium Value Contracts.
- 6.4 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 (or 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 6.2 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 negotiating and awarding the contracts with the schools set out in Tables 3.1 and Table 3.2 rather than carrying out a formal tendering (or quote) process. These reasons are set out in Section 3 of the report.

7. Diversity Implications

- 7.1 There are no direct diversity implications associated with the letting of a one-year term contract to these academies and independent special schools.

8. Public Services (Social Value) Act 2012

- 8.1 Since 31 January 2013, the council, in common with all public authorities subject to the EU Procurement Regulations, has been under duty to consider the economic, social and environmental well-being of their area when undertaking public procurements. This is set out in the Public Services (Social Value) Act 2012. This duty applies to the proposed award of these contracts until such time as a contract is entered into. The duty requires authorities to consider how what is procured might improve economic, social and environmental well-being of their area, and how it might act in procuring the service to secure that improvement.
- 9.2 This service is required for the purpose of meeting individual SEN and EAL needs. The ability to take into account the improvement of the economic, social and environmental well-being of the area are limited although the relevant schools detailed in Tables 3.1 and 3.2 are local to Brent and therefore the procurement of

contracts as proposed is likely to lead to improvements to the economic, social and environmental wellbeing of the local area.

9. Background Papers

- 9.1 There are no background papers associated with this report, however committee is directed to the previous Cabinet Reports (February 2013) for details about the original contracts with schools mentioned in this report.

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