

LONDON BOROUGH OF CROYDON

To: all Members of the Council (via e-mail)
Access Croydon, Town Hall Reception

PUBLIC NOTICE OF KEY DECISIONS MADE BY THE CABINET MEMBER FOR CHILDREN, YOUNG PEOPLE & LEARNING ON 25 MARCH 2019 UNDER GENERAL EXCEPTION

In accordance with Regulation 10(3) of the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 the following key decision has been taken on behalf of the London Borough of Croydon under General Exception. The decision could not be reasonably deferred because:

- Beckmead Family of Schools (currently maintained Special School/s) are due to academise on the 1st April 2019.
- As an Academy school is considered a separate legal entity, it is necessary to undertake a Direct Award to the Beckmead Family of Schools, from the 1st April 2019, to adhere with procurement regulations. A Direct Award is considered appropriate as no other provider in the borough would have the necessary technical skills or capacity. It is also deemed that the risk of challenge from other providers is minimal.

In accordance with the Scrutiny and Overview Procedure Rules, the following decisions may be implemented from **1300 hours on 2 April 2019** unless referred to the Scrutiny and Overview Committee.

The following apply to each decision listed below

Reasons for these decisions: are contained in the attached Part A report

Other options considered and rejected: are contained in the attached Part A report

Details of conflicts of Interest declared by the decision maker: none

KEY DECISION REFERENCE NO.: 0919CYPL

Decision Title: Commissioning of School Places for Pupils with SEN – Beckmead Family of Schools

Having carefully read and considered the Part A report, and the requirements of the Council's public sector equality duty in relation to the issues detailed in the body of the reports, the Cabinet Member for Children, Young People & Learning in consultation with the Cabinet Member for Finance & Resources

RESOLVED: To

1. Note that the use of Regulation 18a of the Council's Tenders & Contracts regulations to waive Regulation 17 has been approved by the Chair of the Contracts & Commissioning Board.
2. Approve the Direct Award of school places for pupils with SEN to the Beckmead (Academy) Family of Special Schools, for a contract term of five (5) months, at a maximum contract value of £3,212,000.

Scrutiny Referral/Call-in Procedure

1. The decisions may be implemented **1300 hours on 2 April 2019** (5 working days after the decisions were made) unless referred to the Scrutiny and Overview Committee.
2. The Council Solicitor shall refer the matter to the Scrutiny and Overview Committee if so requested by:-
 - i) the Chair or Deputy Chair of the Scrutiny and Overview Committee and 4 members of that Committee; or
 - ii) 20% of Council Members (14)
3. The referral shall be made on the approved pro-forma (*attached*) which should be submitted electronically or on paper to Victoria Lower by the deadline stated in this notice. Verification of signatures may be by individual e-mail, fax or by post. A decision may only be subject to the referral process once.
4. The Call-In referral shall be completed giving:
 - i) The grounds for the referral
 - ii) The outcome desired
 - iii) Information required to assist the Scrutiny and Overview Committee to consider the referral
 - iv) The date and the signatures of the Councillors requesting the Call-In
5. The decision taker and the relevant Chief Officer(s) shall be notified of the referral who shall suspend implementation of the decision.
6. The referral shall be considered at the next scheduled meeting of the Scrutiny & Overview Committee unless, in view of the Council Solicitor, this would cause undue delay. In such cases the Council Solicitor will consult with the decision taker and the Chair of Scrutiny and Overview to agree a date for an additional meeting. The Scrutiny & Overview Committee may only decide to consider a maximum of 3 referrals at any one meeting.
7. At the Scrutiny & Overview Committee meeting the referral will be considered by the Committee which shall determine how much time the Committee will give to the call in and how the item will be dealt with including whether or not it wishes to review the decision. If having considered the decision there are still concerns about the decision then the Committee may refer it back to the decision taker for reconsideration, setting out in writing the nature of the concerns.
8. The Scrutiny and Overview Committee may refer the decision to Full Council if it considers that the decision is outside of the budget and policy framework of the Council.
9. If the Scrutiny and Overview Committee decides that no further action is necessary then the decision may be implemented.

10. The Full Council may decide to take no further action in which case the decision may be implemented.
11. If the Council objects to the decision it can nullify the decision if it is outside of the policy framework and/or inconsistent with the budget.
12. If the decision is within the policy framework and consistent with the budget, the Council will refer any decision to which it objects together with its views on the decision. The decision taker shall choose whether to either amend / withdraw or implement the original decision within 10 working days or at the next meeting of the Cabinet of the referral from the Council.
13. The response shall be notified to all Members of the Scrutiny and Overview Committee
14. If either the Council or the Scrutiny and Overview Committee fails to meet in accordance with the Council calendar or in accordance with paragraph 6 above, then the decision may be implemented on the next working day after the meeting was scheduled or arranged to take place.
15. URGENCY: The referral procedure shall not apply in respect of urgent decisions. A decision will be urgent if any delay likely to be caused by the referral process would seriously prejudice the Council's or the public's interests. The record of the decision and the notice by which it is made public shall state if the decision is urgent and therefore not subject to the referral process.

Signed: Council Solicitor and Monitoring Officer

Date: 26 March 2019

Contact Officers: victoria.lower@croydon.gov.uk and cliona.may@croydon.gov.uk

PROFORMA

**REFERRAL OF A KEY DECISION TO THE
SCRUTINY AND OVERVIEW COMMITTEE**

For the attention of: Victoria Lower, Democratic Services & Scrutiny
e-mail to
Victoria.lower@croydon.gov.uk and cliona.may@croydon.gov.uk

Meeting:
Meeting Date:
Agenda Item No:

Reasons for referral:

- i) The decision is outside of the Policy Framework
- ii) The decision is inconsistent with the budget
- iii) The decision is inconsistent with another Council Policy
- iv) Other: Please specify:

The outcome desired:

**Information required to assist the Scrutiny and Overview Committee to consider
the referral:**

Signed:

Date:

Member of _____ Committee

For General Release

REPORT TO:	Cabinet Member for Children, Young People & Learning
SUBJECT:	Commissioning of School Places for Pupils with SEN – Beckmead Family of Schools
LEAD OFFICER:	Robert Henderson, Executive Director of Children, Families & Education Shelley Davies, Interim Director of Education & Youth Engagement
CABINET MEMBER:	Cllr Alisa Flemming, Lead member for Children, Young People & Learning In consultation with Cllr Simon Hall, Lead Member for Finance & Resources
WARDS:	‘All’
CORPORATE PRIORITY/POLICY CONTEXT/ AMBITIOUS FOR CROYDON The Council’s Corporate Plan 2018-2022 includes the following priority: Priority 12: Our children and young people thrive and reach their full potential The Direct Award to Beckmead (Academy) Family of Special Schools is directly linked to the realisation of this priority.	

FINANCIAL IMPACT

This Direct Award is for a short term period of five (5) months, from 1st April 2019 to the 31st August 2019.

The Direct Award for the full term of the contract, from the 1st September 2019 onwards, will be the subject of a future Cabinet paper, which will deal more fully with the Council’s position in relation to commissioning arrangements with Academies.

It is likely that the value of this Direct Award from the 1st April 2019, to the 31st August 2019 will be in the region of £3,212,000. This represents five months (summer term). Financial commitments are based on the current 287 commissioned places and the current actual pupils in place in 2018/2019 financial year.

This will be funded from the Dedicated School Grant (DSG) High Needs DSG Block.

This allocation is made in the context of well documented High Needs Block funding pressures, experienced both nationally and locally. There will be a potential £228k overspend on the block. This is due to historical funding shortfall from the Education and Skills Funding Agency (ESFA) towards the High Needs block.

Funding is calculated through a combination of

- 1) Core place (base) funding of £10,000 per pupil place.

2) A 'Top-up' element from the High Needs Block. There are a range of different Top-Up rates depending on the classification of needs.

FORWARD PLAN KEY DECISION REFERENCE NO.: 0919CYPL This is a Key Decision as defined in the Council's Constitution. The decision may be implemented from 1300 hours on the expiry of 5 working days after it is made, unless the decision is referred to the Scrutiny & Overview Committee by the requisite number of Councillors.

A Key Decision is required under General Exception– as the making of the decision is urgent and cannot reasonably be deferred.

The making of this decision is urgent due to the timetable for the Academisation of Beckmead Family of Schools. Academy conversion is due to take place on the 1st April 2019. The commissioning agreement/ contract is required in the week commencing 1st April 2019, in order to adhere the Council's statutory education duties to provide sufficient school places.

The Leader of the Council has delegated to Cabinet Member for Children, Young People and Learning, the power to make the decisions set out in the recommendations below:

1. RECOMMENDATIONS

- 1.1 The Cabinet Member for Children, Young People and Learning to note that the use of Regulation 18a of the Council's Tenders & Contracts regulations to waiver Regulation 17 has been approved by the Chair of the Contracts & Commissioning Board.
- 1.2 The Cabinet Member for Children, Young People and Learning, in consultation with the Cabinet Member for Finance and Resources, is recommended to approve the Direct Award of school places for pupils with SEN to the Beckmead (Academy) Family of Special Schools, for a contract term of five (5) months, at a maximum contract value of £3,212,000.

2. EXECUTIVE SUMMARY

- 2.1 The purpose of this report is to advise of the intention to make a Direct Award to the Beckmead Family of Special Schools, for the commissioning of places for pupils with SEN, upon their conversion to Academy status.
- 2.2 Beckmead are currently a Local Authority maintained school.
- 2.3 Academy conversion is due to take place on the 1st April 2019.
- 2.4 The Council has very recently received definitive external legal advice on the Council's commissioning relationships with Academy schools. Academy

schools are considered separate legal entities and, as such, procurement regulations apply.

- 2.5 The content of this report has been endorsed by the Contracts and Commissioning Board.

CCB Approval Date	CCB ref. number
15/03/2019	CCB1461/18-19

3. DETAIL

- 3.1 In this instance, a Direct Award is deemed as justifiable, as Beckmead Family of Special Schools are the only providers with the necessary technical expertise, capacity, highly specialised premises and quality rating (outstanding OFSTED rating).
- 3.2 Additionally, there is a very minimal risk of challenge from other providers. The only route for another provider to come into the market would be to set up as a free school. It is highly unlikely that the DfE would permit this, as one of the key tests setting up a free school is whether need is already met, within the borough. Beckmead Family of Special Schools are meeting this need.
- 3.3 Without this Direct Award, the Council would not be meeting its statutory obligations. The Council has a statutory duty to provide suitable education, which is an efficient use of public resource, for those children with Education, Health & Care Plans (EHCPs). The Council's new SEND strategy also details the Council's aims to place local children in local provision, in schools that are judged as good or outstanding by Ofsted. Placing pupils at Beckmead enables us to meet these statutory requirements.
- 3.4 A short term Direct Award for a period of five (5) months is requested, as the broader subject of the Council's commissioning arrangements with Academies will be addressed through a wider Cabinet paper, via appropriate governance routes, prior to the start of the next academic year on the 1st September 2019.
- 3.5 This five (5) month period also gives the Council the chance to put a temporary contract in place and utilise the remaining academic Summer term to finalise the longer term contract from the 1st September 2019.
- 3.6 The anticipated cost of a contract with Beckmead Family of Special Schools is five (5) months is £3,212,000.
- 3.7 The deployment of Croydon's DSG, High Needs Block Funding is subject to Schools Forum approval and, as such, may vary in the future.

4. CONSULTATION

- 4.1 Relevant processes have been followed as part of the Academy Conversion process.
- 4.2 In-depth consultation has been undertaken as part of the development of the Council's new strategy for SEN, 2018 – 2022. Further consultation is taking place in 18/19 on the five (5) key strands of the implementation plan for the strategy.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1

2019/20
April to
August
2019

£'000

DSG High Needs Budget

Expenditure	£3,212
Income	£3,212

0

1 Revenue and Capital consequences of report recommendations

2 The effect of the decision

The value of a five (5) month contract with Beckmead Family of Special Schools will be approximately £3,212,000 based on the 2018/19 current level of commissioned places. This allocation is made in the context of well documented High Needs Block funding pressures, experienced both nationally and locally. Croydon's accumulated High Needs DSG overspend of £13,176,000 as at the end of December 2018.

Funding is agreed by Schools Forum and a budget currently exists for the period of this contract. Deployment of Croydon's DSG, High Needs Block Funding is subject to Schools Forum approval and, as such may vary in the future.

Beckmead Family of Special Schools work in partnership with the Local Authority to fill places. Top up payments are paid on the basis of the number of children on roll.

There may, infrequently and by exception, be a child for whom funding is agreed at a rate that is variant from the above, either through a small transition funding arrangement or through one child being allocated funding for two places and/or by a bespoke arrangement.

3 Risks

There are no risks associated with this award. Funding has been agreed by Schools Forum for this period.

4 Options

The Council has a statutory duty to ensure sufficient education placements for all pupils. If the Council did not make this award, statutory duties would not be fulfilled.

5 Future savings/efficiencies

Future savings/efficiencies in this area are linked to the realisation of the aims and objectives of the Council's new SEND strategy 2019-2022.

Approved by: Kate Bingham, Department Head of Finance

- 5.2 Budgetary provision for this contract exists but deployment of Croydon's Dedicated Schools Grant, High Needs Block Funding is subject to Schools Forum approval and, as such may vary in the future.

6. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

- 6.1 On behalf of the Director of Law and Governance it is commented that the legal considerations are as set out in this report.
- 6.2 Approved by: Sean Murphy, Director of Law and Governance and Deputy Monitoring Officer.

7. HUMAN RESOURCES IMPACT

- 7.1 This report recommends a direct award to the Beckmead Family of Special Schools. This means the service provisions would remain as they are currently and there would be no direct HR considerations arising from this report for Croydon Council.

However, if there are any changes in the future that result in a service provision, this may invoke the effects of the Transfer of Undertakings (Protection of Employment) 2006 Legislation (amended 2014). It is therefore important to seek HR advice at an early stage.

- 7.2 Approved by: Nadine Maloney on behalf of the Director of Human Resources

8. EQUALITIES IMPACT

- 8.1 There is no change to service provision and the commissioning of high quality school places for pupils with SEN, helps the Council meet the public sector equality duty and advance equality of opportunity across all protected groups.
- 8.2 An Equality Analysis was undertaken as part of the Council's new strategy for SEND 2018-2022 to ascertain the impact of the proposed change on groups that share a protected characteristic. The SEND strategy sets out to improve the outcomes and life chances for children and young people with Special Educational Needs and Disabilities. The strategy addresses Croydon's need for long-term provision for children with SEND ensuring an efficient use of public resources, sustainable and effective.
- 8.3 The overall aim of the SEND strategy and the supporting criteria and policies is to improve and make enhancements to the service for all children and young adults with SEND in Croydon through effective identification, assessment, planning and review of children and young people's progress. The goal is for children and young people and their families to be actively involved in planning a future independent life in Croydon. For children and young people to be safe, healthy, and happy and aspire to be the best they can be.
- 8.4 The analysis identified the proposed changes as being low risk.

9. ENVIRONMENTAL IMPACT

- 9.1 N/A

10. CRIME AND DISORDER REDUCTION IMPACT

- 10.1 N/A

11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

A Direct Award is considered justified for the following reasons:

- Beckmead Family of Special Schools are the only providers with the necessary technical expertise, capacity, highly specialised premises and quality rating (outstanding OFSTED rating).
- Minimal risk of challenge from other providers. The only route for another provider to come into the market would be to set up as a free school. It is highly unlikely that the DfE would permit this, as one of the key tests setting up a free school is whether need is already met, within the borough. Beckmead Family of Special Schools are meeting this need.
- The Council has a statutory duty to provide suitable education, which is an efficient use of public resource, for those children with EHCPs. The Council's new SEND strategy also details the Council's aims to place local children in local provision, in schools that are judged as good or outstanding by Ofsted. Placing pupils at Beckmead enables us to meet these statutory requirements.

12. OPTIONS CONSIDERED AND REJECTED

- a) **Do Nothing:** Without this Direct Award, the Council would not be meeting its statutory obligations in relation to ensuring appropriate education placements for all pupils.
- b) **Run a competitive procurement exercise:** This is not appropriate as there are currently no other providers in the market place and it is highly unlikely there would be competitors in the future, however, this will need to be kept under review.

CONTACT OFFICER: Alison Farmer, Head of SEN.