

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 AND LEARNING ON 11 JULY 2016

In accordance with the Scrutiny and Overview Procedure Rules, the following decisions may be implemented from **1300 hours on 19 July 2016** 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 any Cabinet Member: none

The Leader of the Council has delegated to the Cabinet Member the power to make the decisions set out below:

CABINET MEMBER'S EXECUTIVE DECISION REFERENCE NO. : 39/16/CYPL
Decision Title Commissioning Alternative Education Provision

Having carefully read and considered the attached Part A report and the associated Part B 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 and Learning in consultation with the Cabinet Member for Finance and Treasury.

RESOLVED to:

- 1.1 Approve the establishment of a framework agreement ("the Framework") along with the appointment of the organisations listed in section 2 of the associated Part B report to a framework for the commissioning of alternative education provision for learners of compulsory school age upon the terms detailed in the associated report. The Framework will be for an initial term of three (3) years with the option to extend for a further one (1) year to deliver the provision of alternative education services ("the Services").
- 1.2 Note that the names of the successful providers will be released once the appointments to the framework have been agreed and implemented.

Scrutiny Referral/Call-in Procedure

1. The decisions may be implemented **1300 hours on 19 July 2016** (5 working days after the decisions were made) unless referred to the Scrutiny and Overview Committee.
2. The Borough Solicitor, Director of Legal and Democratic Services 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 Solomon Agutu and Jim Simpson by **1300 hours on 19 July 2016**. 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 Borough Solicitor, Director of Legal and Democratic Services, this would cause undue delay. In such cases The Borough Solicitor, Director of Legal and Democratic Services 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: Borough Solicitor & Monitoring Officer, Director of Legal and Democratic Services

Date: 13 July 2016

Contact Officers: Solomon.Agutu@croydon.gov.uk;
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PROFORMA

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

For the attention of: Solomon Agutu & Jim Simpson,
Legal & Democratic Services Division

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

REPORT TO:	Councillor Alisa Flemming Cabinet Member for Children, Young People & Learning
AGENDA ITEM:	Public background paper to agenda item 15.1 – Cabinet 20.06.16
SUBJECT:	Commissioning Alternative Education Provision
LEAD OFFICER:	Paul Greenhalgh, Executive Director of People
CABINET MEMBER:	Councillor Alisa Flemming Cabinet Member for Children, Young People & Learning and Councillor Simon Hall Cabinet Member for Finance and Treasury
WARDS:	All

CORPORATE PRIORITY/POLICY CONTEXT

The framework supports Croydon Council's Corporate Plan 2013-15. It is linked to, but limited to, outcome 'A3: *A place that meets physical and social infrastructure needs*' as set out in objective A3.2 of the plan, which states we will:

'ensure sufficient school places to meet rapidly growing demand by continuing the timely delivery of the education programme including additional short-term provisions, primary, secondary, academies and special educational needs (SEN) provisions.'

This framework will ensure the Council can access additional short term and alternative provision.

The framework also contributes to meeting meeting the Council's equality objectives :

'To achieve better learning outcomes for children and young people by narrowing the attainment gap for those who are vulnerable (we will continue to improve provision for children and young people with complex needs)'

'To improve the economic outcomes of young people and adults by increasing opportunities to be in education, employment or training.'

AMBITIOUS FOR CROYDON & WHY ARE WE DOING THIS:

'Croydon is in desperate need of new schools and ... [we] will put in place plans to deliver the additional school places required.'

- As the demand mainstream school places grows so does the demand for alternative provision. This framework will supplement our existing pupil referral unit provision and ensure sufficient capacity to meet statutory requirements.

'We will work with schools, businesses and the voluntary sector to ensure young people and those learning new skills can access high quality education and learn a range of skills which will equip them for employment, whatever the sector.'

- The framework enables the Council to access a wider range of academic and vocational education providers and allows us to diversify the curriculum offer

available to young people.

FINANCIAL IMPACT:

Funding will be secured from the Dedicated Schools Grant (DSG) and will be cost neutral to the Council.

The anticipated total contract value for the lifetime of the agreement, including the one (1) year extension option is £1.572m, based on an annual cost of £393k. There will be appropriate mechanisms in place for an annual review and also break clauses to allow for changes to the national legislative and funding picture.

This framework supplements the Council's available provision for this cohort of learners. Provision for the majority of this cohort of learners is delivered through the Saffron Valley PRU Federation. A restructuring of the PRU Federation will increase the capacity of our pupil referral units, which will in turn reduce demand for alternative provision placements.

KEY DECISION REFERENCE NO.: 39/16/CYPL

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 & Strategic Overview Committee by the requisite number of Councillors.

The Leader of the Council has delegated to the nominated Cabinet Member 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 in consultation with the Cabinet Member for Finance and Treasury is recommended to approve the establishment of a framework agreement ("the Framework") along with the appointment of the following organisations to a framework for the commissioning of alternative education provision for learners of compulsory school age upon the terms detailed in the associated report. The Framework will be for an initial term of three (3) years with the option to extend for a further one (1) year to deliver the provision of alternative education services ("the Services").
- 1.2 The Cabinet Member is asked to note that the names of the successful providers will be released once the appointments to the framework have been agreed and implemented.

2. EXECUTIVE SUMMARY

- 2.1 The Local Authority is under a duty to ensure suitable education is available to all learners of statutory school age who reside in the borough. The proposal seeks to support the Local Authority's fulfilment of this function by ensuring that

a wide range of alternative educational provision is available for a variety of learners with different learning needs that require differentiated support to access and remain in education.

- 2.2 The nature of provision required is determined by the needs of the individual learner. Therefore there are external variables which may result in the actual cost of provision falling above or below the £393k stated in the financial impact summary.
- 2.3 Representations will be made to Schools' Forum for additional funding from the DSG in circumstances where actual costs exceed estimated cost. Call offs will be reviewed annually and therefore there may be opportunities to accommodate changes in the schools funding regime
- 2.4 The Council supplements its pupil referral unit (PRU) provision by commissioning places in alternative education provision. Demand for alternative education provision placements has grown steadily since 2012. In 2014/15 academic year a total of 88 young people were referred by the Council to alternative providers. This has placed pressure on the available funding and other steps are being taken to manage demand and increase the number and flexibility of places available in our PRU provision.
- 2.5 This drive towards the procurement of good quality, needs led provision at competitive rates will strengthen the Council's position to meet the educational needs of some of its most vulnerable learners in an appropriate and timely manner.
- 2.6 All providers appointed to the list and awarded contracts will be required to;
 - Assess the educational needs of each individual learner with learner involvement
 - Set SMART, (Specific, Measurable, Achievable, Realistic, Timed), progression targets for and with each individual learner, periodically reviewing and reassessing the same.
 - Deliver a suitable curriculum that accommodates growth in terms of progression and breadth
 - Support the safety and wellbeing of learners
 - Support positive, appropriate progression i.e. integration or reintegration into school, post 16 positive destination
- 2.7 Monitoring and evaluation of contract compliance will be aligned to agreed payment schedules.

CCB Approval Date	CCB ref. number
09/06/2016	CCB1145/16-17

3. DETAIL

- 3.1 Local authorities have a duty to provide *“suitable education at school, or otherwise than at school, for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them”*.
- 3.2 This duty is enshrined in section 19 of the Education Act 1996:
- 3.3 Suitable education is defined as “efficient education suitable to the age, ability, aptitude and to any special educational needs”, the child (or young person) may have.
- 3.4 Local authorities must decide, in consultation with parents, what is suitable education out of school (out of school provision) for a particular child, whilst having regard to the efficient use of resources and Department for Education guidance.
- 3.5 It is not an option for local authorities to refuse to make arrangements to provide suitable education for pupils out of school who are resident within the local authority area.
- 3.6 The Council has a statutory duty, as described above, to provide a suitable full time education locally for pupils who are out of school. Croydon’s Fair Access Process has reduced the number of exclusions but demand for alternative education provision placements has continued to rise, with a increasing number of placements made as an alternative to permanent exclusion. This means that there are periods of time when the placements in our maintained PRU provision is full and it is necessary to make educational provision through private alternative providers of education.
- 3.7 In addition there are occasions when the maintained provision may itself prove unsuitable. There are various reasons why it may be necessary to refer a pupil to a private provider: these include pupils who may prove high risk to other pupils e.g. sexual offenders; pupils who may be very active in gangs and are not safe to attend our local pupil referral provision and pupils who have been extremely violent in our own pupil referral units and have put staff and other pupils at risk.
- 3.8 Where the educational needs of a child cannot be met other than by out of school provision this is secured with an alternative provider.
- 3.9 It was agreed by CCB on 13th December 2016, reference CCB1093/15-16 that, via a tendering process, providers would be invited to evidence how they satisfy prescribed criteria in order to be placed on an approved providers list.
- 3.10 Implementation of this project will significantly reduce the need to enter into rounds of resource intensive ad-hoc quality assurance and the disparity in fees between providers for comparable provision.
- 3.11 The learners access the provision delivered under this Framework can be described as harder to place due to prevalent factors in their educational history such as exclusion or concerns around the managing the risk associated with their behaviour and/or associations. It is difficult to project the number of learners that will require the provision delivered under the framework and therefore call off will more likely be sought on a more reactive basis.

- 3.12 The service will ensure financial probity through the contracts and commissioning board and sign off of contract awards through the contracts and commissioning board, or a decision by the relevant officer under the Children, Families and Learning scheme of authorisation subject to contract value, and will make certain that measures are in place that ensure:
- a) adherence with the Council financial regulations;
 - b) procurement of the Services is undertaken in a fair, competitive and transparent way; and
 - c) follows the agreed call-off mechanism specified below.

4 TENDERING

- 4.1 The tendering process was developed to enable the selection of the best suppliers available in the market, with the ability to offer a local service provision which meets the diverse needs of the Councils learners of compulsory school age. The evaluation criteria for selection were agreed at ratio of 60:40 in relation to price and quality.
- 4.2 The Invitation to Tender (ITT) document was designed to allow tenderers to demonstrate their capability to deliver the expected service to the design. Providers were required to have achieved a grade of satisfactory or above following their last quality assurance inspection by Ofsted and/or under the Council's own quality assurance framework. Providers new to the borough, or who intend to secure sites after a call-off contract has been negotiated, will be subject to an inspection under our quality assurance framework prior to any call-off contract award.
- 4.3 The project and evaluation team were made up of multi-disciplinary, inter-department colleagues including:
- Head teacher, Coningsby PRU
 - Head of Learning Access
 - Strategic Manager, School Improvement
 - Commissioning & Quality Assurance Officer (Alternative Education Provision)
 - Category Manager, Children, Young People and Learning
- 4.4 This approach enabled inter -departmental working by engaging teams that refer young people to alternative provision to be actively involved in assessing quality and the development of service design, reinforcing the one team approach to service development. It also ensured that the needs of more vulnerable learners were adequately represented.
- 4.5 The Service Specification was also designed to require the delivery of educational provision and access to support services that meet the individual needs and required outcomes of young people, in preparation for progression to positive destinations post 16. This enables the Council to fulfil its statutory function as an admissions authority, to increase the prospect of our learners achieving positive outcomes and to meet corporate targets on reducing the

number of children without at school place and who are at risk of becoming not in education, employment or training, (NEET).

- 4.6 The delivery of this Framework is compliant with the corporate framework for project and programme management including, regular review of identified risks and progress tracking.
- 4.7 At the Invitation to Tender (ITT) stage, tender documents were received back from 17 organisations. Following evaluation of the ITT submissions received, 12 providers met the minimum written submission quality criteria.

Evaluation Section	Criteria	Weighting
ITT : Qualitative	Tender Response	40%
Commercial	Pricing Schedule	60%
Total		100%

5 AWARD PROCEDURE

6

The Council will source alternative education provision through the Framework.

Providers will be selected in one of the following ways:

For a 'block call off' where the Council will be looking to appoint a provider to provide Services in respect of a number of service users officers will follow the Framework terms and conditions. The commissioning officer will determine the educational needs of the learners. A provider will then be selected from those providers considered able to meet those educational needs with the highest scoring provider, using the 60:40 cost/quality ratio, awarded the contract.

For a 'spot call off' where the Council needs to place an individual learner the following will occur:

- a) The commissioning officer will determine the educational needs of the learner(s)
- b) If only one provider is identified as suitable, a contract will be awarded.
- c) Where more than one provider is considered suitable the criteria of 60:40 cost/quality will be applied and then the highest scoring provider will be selected to award the contract.
- d) If more than one provider is considered suitable after the above criteria are applied, then (wherever possible) the preference of the parent/carer and child will be sought or the decision will be based on journey time.
- e) If none of the providers on the Framework are identified as suitable the

allocated officer, in consultation with strategic lead, will invite providers outside of the framework, (who have achieved a rating of satisfactory or above following a quality assurance inspections by the Learning Access team and/or Ofsted), to evidence their capacity to meet identified need in the required time and to provide a quote for their service. To procure and award any such contracts the service will follow the council procurement governance and thresholds as appropriate.

- 6.3 Awards of up to £100k will be authorised by the Director responsible for this area of work. Awards in excess of £100k will be approved by Contract & Commissioning Board.
- 6.4 No individual provider will be awarded contracts in excess of £150k. Once a provider has reached this cap further contracts will be awarded to the next suitable provider applying the 60:40 cost/quality criteria.

7 CONTRACT MANAGEMENT

- 6.1 To ensure effective contract management and monitoring of deliverable outcomes, the contract will be monitored through regular review meetings, termly returns of statistics, and half termly face to face meetings with each provider. In addition providers will be expected to maintain morning and afternoon attendance registers and provide half termly attainment reports on the progress each learner has made since enrolment.
- 6.2 Through Contract Management administration, providers' performance will be monitored through submissions of termly performance monitoring reports. Providers will be required to submit management information based on performance indicators, in an agreed format on a termly basis which is already included as a requirement in the Condition of Contract. The council contract management methodology will be applied to support contract monitoring process.

6 CONSULTATION

- 6.1 Tenderers have been informed of the service specification, staffing levels and key performance indicators. These were notified to all tenderers through the Terms and Conditions (T&C). A further review of Key Performance Indicators (KPI) will be carried out and this will be agreed with providers from the start of the Contract and monitored through identified contract management process.
- 6.2 The Learning Access team will work with providers to ensure the success of the contract and the delivery of outcomes.

8 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 7.1 To meet sustained demand the gross cost of this service over three years is estimated to be £1.179 million and £1.572m for four years. This estimate has been calculated using 2015/2016 budget of £393k for Alternative Provision. Funding is to be secured from the High Needs Block of the DSG and will be cost

neutral to the Council. The amount available for this budget has not been increased 2012.

- 7.2 The nature of provision required is determined by the needs of the individual learner. Therefore there are external variables which may result in the actual cost of provision falling above or below the estimate above.
- 7.3 Representations will be made for additional funding from the DSG in circumstances where actual costs exceed estimates.
- 7.4 The Department of Education recently consulted on implementing a National Funding Formula for schools and changes to the High Needs Block. The outcome of that consultation is not yet know and may affect available funding in the future.
- 7.5 The Department for Education's White Paper '*Educational Excellence Everywhere*' proposed that commissioning arrangements for alternative provision for pupils excluded from school would transfer from local authorities to schools. This will will require a change to legislation but if implemented may affect future available funding.
- 7.5 Expenditure will be monitored against budget and reviewed in line with Croydon Councils financial strategy.
- 7.6 Contracts will have penalty and exit clauses to ensure compliance from providers on the process of service delivery, billing and invoicing.

1 Revenue and Capital consequences of report recommendations

	Current year	Medium Term Financial Strategy – 3 year forecast		
	2015/16 £'000	2016/17 £'000	2017/18 £'000	2018/19 £'000
DSG Budget available	393	393	393	393
Expenditure	393	393	393	393
Income				
Effect of decision from report				
Expenditure	393	393	393	393
Income				
Remaining budget	0	0	0	0

2 The effect of the decision

Approving the recommendation in this report will award contracts to the organisations outlined

3 Risks

The Council has a statutory responsibility to make education arrangements for learners who have been excluded from school or who would otherwise not have access to education. Not having a framework risks the Council not being able to comply with this statutory requirement or only being able to do so at greater cost.

4 Options

The alternative option to provision of this service will be to deliver through the current route of spot purchasing. This will significantly reduce our ability to accommodate learners' needs in a timely fashion, increasing the risk to the learner of negative outcomes and decreasing our ability to secure best value for money.

5 Future savings/efficiencies

Alternative provision supplements the Council's available provision for this cohort of learners. Provision for the majority of learners is delivered through the Saffron Valley PRU Federation. A restructuring of the PRU Federation will increase the capacity of the PRU, which will in turn reduce demand for alternative provision placements.

Nationally possible future changes by the Department of Education to the legislative and financial paradigm for schools and local authorities may lead to future savings to DSG as funding is aligned with responsibilities.

Approved by: Maria Organ on behalf of the Director of Finance

6. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

The Borough Solicitor comments that the procurement process as detailed in this report is in accordance with the Council's Tenders and Contracts Regulations and seeks to support the Council's duty to achieve Best Value pursuant to the Local Government Act 1999.

Approved for and behalf of Gabriel Macgregor Acting Council Solicitor & Acting Monitoring Officer

7. HUMAN RESOURCES IMPACT

7.1

Approved by: Michael Pichmanthu on behalf of the Director of Human Resources

8. EQUALITIES IMPACT

8.1 The equality impact assessment is being updated and will be available on 2nd June 2016.

9. OPTIONS CONSIDERED AND REJECTED

- 9.1 It was consider whether we should commission alternative education provision without a framework. This was rejected as placement often need to be commissioned in a timely manner on a spot-purchase basis. A framework enables us to have access to a range of alternative education provision of a known quality at previously agreed costs.
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Telephone number:	Ext. 47268

BACKGROUND PAPERS - LOCAL GOVERNMENT ACT 1972