

Brighton & Hove City Council

Children Young People & Skills Committee

Agenda Item 8

Subject: Foster Care Placements

Date of meeting: 12 September 2022

Report of: Executive Director Families, Children & Learning

Contact Officer: Name: Steve Dillow
Tel: 07395 282757
Email: steve.dillow@brighton-hove.gov.uk

Ward(s) affected: All

For general release

1. Purpose of the report and policy context

1.1 This report seeks approval for the procurement of a hybrid framework agreement (as defined in paragraph 3.9) and the award of the hybrid framework agreement and individual placement agreements, for foster care placements in the independent sector.

1.2 Children Young People & Skills Committee has the appropriate authority to agree to the recommendations. Further authorisation from Policy & Resources Committee is not required as the cost of the proposed services fall within the agreed directorate budgets.

2. Recommendations

2.1 That the Children Young People & Skills Committee grants delegated authority to the Executive Director of Families, Children & Learning to:

- (i) take all necessary steps to procure and award a hybrid framework agreement jointly with East Sussex County Council (ESCC), but led by ESCC, for the provision of foster care placements in the independent sector for an initial term of four (4) years commencing on 1 April 2023 with an option to extend for up to a further two (2) years and providing for the re-opening of the agreement to new applications on the second and fourth anniversary of the term commencement i.e. on 1 April 2025 and 1 April 2027, and
- (ii) procure and award call off contracts and individual placement agreements from the hybrid framework agreement outlined at 2.1(i) above.

3. Context and background information

Summary of the current service provision

- 3.1 Legislation requires local authorities to secure sufficient accommodation for Looked After Children (LAC), that meets their needs, and is within the local area wherever this is reasonably practicable. The Council acts as the corporate parent for LAC and has strong controls for safeguarding to manage the welfare of vulnerable children.
- 3.2 The current number of foster care placements in the independent sector and those directly controlled by the Council are shown below:

Figures at March 2022: (excluding children's disability placements)

Independent Sector Placements		Council Placements	
Independent Fostering Agencies	66	In-house Foster Care	155

- 3.3 There continues to be a need to make foster care placements in the independent sector and a compliant means of procuring these services is required.
- 3.4 The Council's budgets for 2022-23 for external foster care placements with Independent Fostering Agencies, including disability placements, total £3.217m.

Current procurement arrangements

- 3.5 The Council has a joint framework agreement with ESCC for the provision of independent foster care placements which commenced on 1 April 2017 and expires on 31 March 2023. This is a hybrid framework agreement and re-opened for new applications after two years in 2019 and then again after four years in 2021. The Council is not currently charged by ESCC for access to the framework (i.e. for procurement, legal support or contract management), but the Council does provide some resource from our Children's Placements Team to support the tender design and evaluation of providers.
- 3.6 The Council is also a named contracting authority on the West Sussex County Council (WSCC) Dynamic Purchasing System for social care placements and on the Southampton City Council framework for foster care placements. The latter is a consortium of 16 local authorities and the framework can only be accessed by signing a Partnership Agreement and paying appropriate access and contract management costs.

Department for Education (DfE) Innovation Programme

- 3.7 WSCC received project funding from the DfE Innovation Programme in 2015-16. The project, which the Council participated in, included developing a new Outcomes Framework for social care placements.

- 3.8 The Outcomes Framework was developed by the New Economic Foundation (NEF) and drafted through co-production with local authorities, providers, parent/carer representatives and Children in Care Council representatives. This Outcomes Framework sets out outcomes for children/young people in care and is now used by a number of local authorities across the country, including the Council.

Tender process for new hybrid framework agreement

- 3.9 In order to comply with the Public Contracts Regulations 2015 and the Council's internal Contract Standing Orders, a formal tendering process must take place to procure the new hybrid framework agreement. In this report 'hybrid framework agreement' is used to describe an agreement between one or more contracting authorities and one or more economic operators which has been procured under the Light Touch Regime of the Public Contracts Regulations 2015, the purpose of which is to establish the terms governing contracts to be awarded during a given period. This is similar to a framework agreement under the Public Contracts Regulations 2015 but would reopen for new applications on its second and fourth anniversary and have an optional extension period of two further years.
- 3.10 Using a hybrid framework agreement has a number of benefits as the Council has the ability to 'call-off' contracts at short notice without the need to undertake a time-consuming comprehensive contract award process, which therefore reduces administrative effort and costs. Using a hybrid framework also takes advantage of the Light Touch Regime under the Public Contracts Regulations 2015 so that the term length can be varied and that there can be multiple opening periods during the life of the hybrid framework. Hybrid frameworks are currently used successfully by the Council for foster care, residential child care and supported accommodation for young people placements.
- 3.11 In order to meet the deadline for contract commencement on the cessation of the current hybrid framework agreement, a procurement timetable has been drawn up. A comprehensive specification is being drafted to accompany the Invitation to Tender. This will be based on the National Contract, which is a set of default standard terms used by providers and local authorities, and varied according to local need, including using the NEF Outcomes Framework and adding requirements on sustainability and social value.

Risk

- 3.12 The Competition and Markets Authority (CMA) undertook a study into the Children's Social Care market in 2021 and outlined concerns in relation to placement availability and price and with provider profit and risk. There has been a consolidation of providers in the foster care market with private equity playing an increasingly significant role.

3.13 Inflation is high and is expected to remain high for some time to come. This, along with the control of pricing over the last six years of the current ESCC foster care framework, is likely to lead to pressures on pricing when the services are re-tendered.

4. National Care Review

4.1 The Independent Review of Children's Social Care by Josh MacAlister was published in May 2022. The review includes a recommendation to establish of up to 20 Regional Care Cooperatives, owned and managed by local authorities, which would be responsible for the commissioning and management of all children's placements.

4.2 It is not clear at this stage whether this recommendation will be taken forward, and if so, in what timescale. However, most local authorities are already part of joint commissioning arrangements for procuring children's social care placements but retain their own brokerage (placement finding) teams.

5. Analysis and consideration of alternative options

5.1 An alternative to a regional framework would be for the Council to procure these services on its own. Tendering as a sole local authority reduces the potential for sharing costs and exercising leverage and influence in the provider market.

5.2 The Institute of Public Care (IPC), Oxford Brookes University published a research report in July 2015 titled 'The efficacy and sustainability of consortia commissioning of looked after children's services'. This included a recommendation to promote continuing development and greater effectiveness of consortia commissioning.

5.3 Joining a local authority partnership outside of the Southeast region would not likely achieve the same level of benefits as the contract management and quality assurance function would not operate as efficiently. Many Independent Fostering Agencies are regionally based with different Ofsted registrations for different regions.

5.4 Managing demand for LAC placements has the greatest impact on value for money but this needs to be managed safely through care planning. Early Help interventions and planned step-down arrangements contribute to these plans.

5.5 Increasing the proportion of in-house foster care placements will lead to better value for money. Good progress has been made on this and strategies are in place to further increase the number of In-house foster carers.

6. Community engagement and consultation

- 6.1 The Outcomes Framework was developed through co-production as outlined in 3.8 above.

7. Conclusion

- 7.1 It is necessary to re-tender these services as the current hybrid framework agreement with ESCC for foster care placements will expire on 31 March 2023. In order to benefit from collaborative working with regional partners, and to build in sufficient time to carry out a fair and transparent procurement process, the process must commence as soon as possible.
- 7.2 Regional joint commissioning and procurement is considered to provide the best placement choice and value for money for these services. This is further supported by WSCC asking to be named as a contracting authority on the hybrid framework.

8. Financial implications

- 8.1 The award of a hybrid framework itself has no financial value. However the total current value of the contracts that would be called off by the Council under a hybrid framework is approximately £3.100 million per year.
- 8.2 It is important throughout the procurement process that the Council achieves value for money as well as having secure arrangements in place for those children requiring placements. A sound, robust purchasing and contract management system would enable the Council to pro-actively manage the market and ensure best value for money is achieved.

Name of finance officer consulted: David Ellis Date consulted: 26/7/22

9. Legal implications

- 9.1 The Council must comply with the Public Contracts Regulations 2015 in relation to the procurement and award of contracts above the relevant financial threshold. The services outlined in this report fall within Schedule 3 of the Public Contracts Regulations 2015 and exceed the relevant financial threshold for light touch regime services (£663,540 inclusive of VAT). The procurement process for the light touch regime is not unduly prescribed but must accord with the fundamental principles of transparency and equal treatment of economic operators.
- 9.2 The contract must comply with the Council's Social Care Services, Public Health Services and Other Light Touch Regime Services and in order to comply with Contract Standing Order 3.1, authority to enter into agreements in excess of £500,000 must be obtained from the relevant Committee.

Name of lawyer consulted: Sara Zadeh Date consulted: 5/8/22

10. Equalities implications

- 10.1 ESCC is conducting an Equality Impact Assessment on behalf of both Councils however there is no change to either policy or budget in relation to this commissioning.
- 10.2 The Council has a responsibility to promote access to appropriate educational provision for all in accordance with legislation including the Equality Act 2010.

11. Sustainability implications

- 11.1 Subject to placement availability, placements for Looked After Children will be made as closely to networks of family and friends and the child/young person's current school, where this is safe to do so, and in the child/young person's best interests.
- 11.2 A question on providers' sustainability policies and initiatives will be included in the Selection Questionnaire as part of the tender. A key performance indicator in the contract will monitor performance against providers' stated actions on an annual basis.

12. Other Implications

Social Value and procurement implications

- 12.1 The Public Services (Social Value) Act 2012 requires that public bodies tendering for services above the threshold to consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area. Social Value will form part of the tender evaluation process in accordance with council policy.
- 12.2 To reflect the importance of Social Value, on a proportionate and practicable basis, all providers will be required to submit a response to a Social Value Method Statement Question.
- 12.3 A key performance indicator in the contract will monitor performance against providers' stated actions on an annual basis. The Social Value Method Statement Question will be evaluated on a PASS / FAIL basis. Any bidder that obtains a FAIL for their response to the Social Value Method Statement Question will receive a FAIL for their tender and will not be approved for entry onto the Foster Care Placements hybrid framework (Approved List).

Crime & disorder implications:

- 12.4 The Outcomes Framework has a number of measures under basic needs (safety and health), functioning (control, relationships and achievement), personal resources (resilience, self-esteem and emotional intelligence) and preparation for adulthood (participation, independence, inclusion and wellbeing) that contribute to the prevention of crime and disorder.

Public health implications:

- 12.5 Improving health and wellbeing are two of the key objectives within the Outcomes Framework.

Supporting Documentation

1. Background documents

CMA) study into the Children's Social Care Market report. The final report published in March 2022 can be found at: [Children's social care market study final report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/111111/childrens-social-care-market-study-final-report.pdf).

'The Independent Review of Children's Social Care' by Josh Macalister was published in May 2022 and can be found at: [Final Report - The Independent Review of Children's Social Care \(childrensocialcare.independent-review.uk\)](https://childrensocialcare.independent-review.uk/)

Institute of Public Care (IPC), Oxford Brookes University 'The efficacy and sustainability of consortia commissioning of looked after children's services' Research report July 2015. The published report can be found at: [The Efficacy and Sustainability of Consortia... | IPC Brookes](#).

