



**West Sussex County Council
East Sussex County Council
Surrey County Council
Kent County Council
Brighton & Hove City Council
Medway Council
Essex County Council**

DRAFT

**BUSINESS CASE AND PROCUREMENT STRATEGY
FOR A DYNAMIC PURCHASING SYSTEM AND A
STRATEGIC CONTRACT MANAGEMENT FUNCTION**

Executive Summary

To be completed

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1. Purpose (What has been agreed and what this business case is designed to illustrate).

- 1.1. Following the completion of stage 1 of the South East Together Project (SET) (see background) an options paper was presented to the Project Board on 22nd January 2016. This options paper recommended a way forward for a regional approach to the method of procuring placements with independent providers in the market sectors of SEN, Fostercare and Social Care for Looked After Children. The options paper narrowed down to a preferred solution and introduced further options for Contract Management, Quality Assurance and IT solutions.
- 1.2. Due to the breadth of potential partners and range of current practices in these areas, the options paper only sought to provide an overview of the construct of the preferred solution and identify the benefits which could be realised but not the full and exact scale.
- 1.3. In order to test the preferred solution and evidence its benefits to each partner, it was recommended that partner authorities confirm their participation in the development of a full and detailed business case which outlined exactly how the preferred solution would operate, the cost to each authority and individual return on investment.
- 1.4. The principal advantages and reasons for working together have been agreed by all remaining partners and two additional partners who joined the group in April 2016, and form the basis for developing the solutions described herein.
 - Providers have an expectation that local authorities will work together to deliver a common way of working for making referrals to independent providers, monitoring placements and quality of service and managing overarching contract arrangements.
 - The revised National Contracts should be embedded consistently across the region, and nationally.
 - The Outcomes Framework and Measurement Approach developed in phase 1 should be embedded consistently across the region.
 - Children, Parents and Carers expect a good standard of service/care regardless of geography and demography.
 - All partners face similar pressures of doing more with less.

Note: The BC tries to address the different positions that each partner is currently in as the benefits and ROI will be different depending on the current arrangements and purchasing practices in place for each of the services. For example spot purchasing vs block contracts vs frameworks vs DPS.

- 1.5. The Business Case also recommends the responsible authority (or collaboration of authorities) for each element of the solution, this includes recommending that West Sussex County Council (WSSCC) is the Lead

Contracting Authority for the purposes of procuring, establishing and managing the DPS across all services.

- 1.6. Finally, but most importantly, the business cases priority is to provide Councils and commissioners with a strategic procurement solution with which children and young people with SEN, needing care or fostering can achieve their full potential through the right interventions at the right time, with a capable market of providers. The success of these solutions will be measured by more young people feeling safe, secure, in further education, training, apprenticeships or work, feeling that their contribution to society matters and is valued.

2. Background

- 2.1. The SET project was established by WSCC in April 2015 following discussions with the Department for Education (DfE) and a successful application to the DfE's Children's Social Care Innovation Programme to look at the possibilities of developing a regional (and potentially a blue-print for a national) DPS.
- 2.2. WSCC was the first Local Authority to introduce a DPS for education/social care type services and this is now established within WSCC and Kent County Council (Kent CC) as the prime mechanism for commissioning SEN services.
- 2.3. The current WSCC and Kent CC DPS is held up as a model of good practice and enjoys the full support of the National Association of Non-maintained and Independent Special Schools (NASS), a highly regarded and influential body with strong links to the DfE and central government policy advisors. In an unprecedentedly difficult financial context, WSCC has not only been able to retain services for children, but improve outcomes, develop healthier relationships with providers and increase value for money.
- 2.4. This led to an approach by representatives from the DfE Innovation Programme to WSCC encouraging them to consider forming a regional DPS that would extend its remit to include social care placements. This resulted in the development of the SET project with regional partners from Surrey, East Sussex, Kent, Brighton and Hove City Council and the South London SEN Commissioning Partnership. Each expressed a genuine, in-principle, interest in participating in the project and a commitment to working towards a regional model.
- 2.5. WSCC submitted a bid to the DfE for funding which it could use to create staff capacity to allow the partners to explore, in greater detail, the option for developing a regional DPS. The bid was successful and a sum of £349,839 was awarded to WSCC to initiate a programme of work between the periods 1 April 2015 – 31 March 2016.
- 2.6. The programme of work delivered a number of outputs:

- Reviewed and established new national contract schedules and terms and conditions.
- Developed with New Economics Foundation (NEF) a Common Outcomes Framework and Measurement Approach aimed at improving the services provided and the outcomes achieved for individual children by facilitating an outcomes-based commissioning model.
- Spend and market analysis undertaken by Cordis Bright, procurement practice appraisal undertaken by the Project Team.

2.7. The project now moves into phase 2, the development and approval of the business case, and includes the following partners:

- Brighton & Hove City Council
- East Sussex County Council
- Essex County Council*
- Kent County Council
- Medway Council*
- Surrey County Council
- West Sussex County Council

* Essex and Medway Councils were not part of Phase 1 of the South East Together project but have since expressed an interest in progressing with being part of a DPS and / or Contract Management function subject to business case approval and have agreed to provide information and support to the development of this business case.

The SL SEN Commissioning Partnership exited the project at the end of phase 1 to procure a DPS on behalf of its members for INMSS only.

3. Why Do This Now?

The Regulatory Need

- 3.1. The authorities will need to establish a compliant, commercially intelligent, outcome based purchasing model. The options appraisal recommended the establishment of a regional Dynamic Purchasing System.
- 3.2. In February 2015, the Public Contracts Regulations 2015 were passed into UK law. These regulations govern all public procurement, and most significantly introduced a regulatory framework for social and health services known as the "Light Touch Regime" where previously these services were known as "part B" and essentially exempt from the regulations.
- 3.3. Part B services such as SEN, Foster care and Residential Care were not previously fully regulated and whilst the Local Authorities statutory best value duty applied, compliant procurement and purchasing was not necessarily required.

- 3.4. The Public Contracts Regulations 2015 now mean that spot purchasing, non-compliant frameworks, and approved supplier lists will not be acceptable forms of procurement.
- 3.5. The Children and Families Act 2014 replaces the Statements of Special Education Needs which were primarily “input” driven to an outcomes based Education, Health and Care Plan (EHCP). The SET project has co-produced with young people, families and other stakeholders the Outcomes Framework to be embedded in any procurement. This will require Councils to work with providers to be more innovative and open in the way in which services are created and delivered.
- 3.6. In addition, the following legislation and regulatory requirements support the need to secure high quality placements for children and young people.

Legislation/regulation	Relevance	What this means in practice
Section 22G of the Children Act 1989	Sufficiency duty	Requirement for local authorities to ensure there are enough placements available locally to meet the needs of children and young people.
Ofsted inspections and regulation of children’s homes, special schools, fostering agencies and parent and child residential assessment centres.	Regulatory and inspection framework	Clear standards for delivery of service for placement providers. Local authority specifications for placements will use the national regulations as a key point of reference. Ofsted inspections of individual providers are used as part of performance management by placing authorities.
Southwark Judgement 2009	Duty to take vulnerable young people aged 16+ into the care of the local authority	Housing and Children’s Social Care must assess vulnerable homeless young people to ensure they are offered the most appropriate service to meet their needs. If they are assessed as vulnerable they will be accommodated – the local authority should have placements available to meet need.
Children and Families Act 2014	Duty to support Staying Put placements	Introduced a legal duty for local authorities to support young people “staying put” with their former foster carer after the age of 18, as long as the local authority decides this is in the best interest of the young person.
Children and Families Act 2014	Duty to jointly work with key partners in assessment and planning	Education, health and social care professionals should work together to assess and make a plan for children and young people with a disability or special educational needs, which can be in place until the age of 25.

Children Act 1989, updated January 2015 (planning transition to adulthood for care leavers volume 3) Children (Leaving Care) Act 2000	Duty to support staying put placements	Local authorities must consider a more graduated transition to adulthood for young people in care.
Adoption and Children Act 2002/Special Guardianship Regulations 2005	Provides the legal framework for Special Guardianship Orders for children in care	The local authority has greater choice over permanence options for children in care if adoption is not the plan, as an alternative to long term care. This has an impact if the child is in an external foster placement and requires negotiation with the fostering agency.

The Needs of Children and Young People

- 3.7. Children and Young People need to feel safe and secure and that they have the support and opportunities to maximise their potential for growth and ease their transition into adulthood. They should be able to engage with their local communities and contribute to society.
- 3.8. In Foster care and Residential Care for Looked after Children, permanency of placement is a strong building block for achieving quality outcomes. Therefore identifying the right provider is important as is ensuring the market has the environment to work with authorities to create new approaches to provision or increasing capacity based on transparency of information relating to referrals made.
- 3.9. Good quality placements are needed in all cases, children, young people, parents and carers want to be involved in the outcomes identified for them and contribute to their Care and Education plans. They also want to feel that the organisations they work with involve them in the production of services.
- 3.10. Whilst a procurement route is only a tool to select a placement, the strategy for selecting provider and placement is key to meeting the child's needs without retrospective intervention or more costly solutions later on. Embedding the outcomes framework with the supply chain and within individual placement agreements (IPA) as well as a referral process criteria which prioritises the child's needs is seen as critical to this procurement and business case.

The Needs of the Market

- 3.11. Understanding the historic approach and the positive and negative effects Councils actions have had on the market was an important first step in developing a solution which would be acceptable to all stakeholders.

- 3.12. The Nationwide Association of Fostering Providers (NAFP), Independent Children's Home Association (ICHA) and the National Association of Independent Schools and Non-Maintained Special Schools (NASS) undertook a survey in 2012, exploring experiences among their members of Local Government Procurement.
- 3.13. This looked to measure and report on the amount of time and cost providers incurred when responding to referrals or undertaking a procurement exercise. The main findings describe:
- 43% of providers have spent more than one month of staff time on procurement activity.
 - One provider estimated staff cost on procurement equivalent to 365 days.
 - Only 9% of providers feel that procurement reduces the number of placements they receive.
 - 45% of providers felt that procurement increases the number of placements they receive.
- 3.14. The report also highlights the positive and negative impacts of local authorities procurement practices:
- (+)Better relationships with Local Authorities
 - (+)Increased understanding of Local Authority partners and their needs
 - (+)Better understanding of contractual documentation
 - (+)Greater transparency in costs and processes
 - (-)Driving down costs below a level where high quality services cannot be sustained and organisations are under threat
 - (-)The time and effort spent on paper-based activities rather than on direct work with children
 - (-)Increased costs through increased staff time spent on activity
 - (-)Emphasis on price rather than quality of service provided
 - (-)Duplication of effort on activities which are similar but not identical
 - (-)Decreasing contact with frontline professionals in Local Authorities as part of the referral and placement process
 - (+)Feeling as if an open and honest relationship had been established between provider and placing authority
 - (+)Meeting more regularly with Local Authorities
 - (+)Satisfaction in being able to provide a service which the Local Authority had been unable to provide
 - (+)Good communication between both parties – particularly in respect of the needs of the child
 - (+)Access to high quality information about the needs of the child and the service required
 - (-)Lack of face-to-face contact with commissioners
 - (-)Lack of information or poor quality information provided by the Local Authority

- (-)Receiving every single referral from the Local Authority – even if these are clearly not appropriate to the service
- (-)Lack of feedback about the outcomes of tenders
- (-)Providers signing up to framework agreements which are not honoured by the Local Authority e.g. on fees

3.15. Finally, respondents were asked to note what they thought Local Authorities could do to make the procurement process easier for providers and more effective in meeting the needs for children and young people. The responses are as follows:

- Create a national procurement framework that could be followed by all Local Authorities. This would reduce paperwork for providers who work with multiple authorities.
- Be open and transparent about the process and assessment criteria to be used.
- Build and maintain relationships with providers – this enables us to better understand your needs and ensure that we meet the needs of the children and young people that you place with us.
- Try to develop the market, rather than control it, by focusing on issues such as innovation and price flexibility rather than price fixing.
- Simplify and reduce the amount of information asked for.
- Develop two tier processes with minimal information provided at stage 1. Providers who meet the criteria for selection can then be asked to provide more detail at stage 2. This would ensure that providers who are unsuccessful have not had to invest the same amount of time as in a single stage process.
- Create more opportunities to meet with providers on a regular basis. This helps develop trusting relationships. Involve in-house providers in these events to create a “level playing field”.

3.16. Throughout the SET project and whilst developing this business case, partners have looked to address these areas, provide efficiencies for both sides and foster and maintain a good working relationship with the industry.

The Need of Local Authorities

3.17. There is a clear need for Councils to purchase placements from independent sector providers. The number of independent placements made over the past 3+ years has at least remained stable and in some categories increased.

3.18. There are general quality and sufficiency issues in the current provider market, particularly affecting children’s homes where the changes to the national regulations and Ofsted inspection framework have proved to be a challenge. Demand in fostering has shown in some areas that in the push to meet capacity is skewing ability to make placements available for complex teenagers, thus pushing complex teenagers into residential placements.

- 3.19. The SET Partner authorities across the country are experiencing a number of competing challenges with all three services. Demand is increasing, whilst addressing more complex needs for children and young people, capacity in some parts of the market is reducing or reached critical mass. There is of course less money to cope with demand, in some parts of the country this has meant the threshold for services being provided has been increased meaning less children or young people receiving the care they would have previously got.
- 3.20. Two significant pieces of legislation have also been introduced, see 3.1-3.4 above, which create an almost contradictory environment for making placements.
- 3.21. Councils have a desire, and in some cases, an obligation to outcomes based commissioning. Old practices of spot purchasing, block contracts and the distance created between commissioner and provider due to reduced resources make this harder, when all combined almost impossible. Spot purchasing is also not an effective way to get value for money and the different approaches and negotiations required with providers is inefficient.
- 3.22. It has become increasingly clear that capability and capacity within the market is decreasing, small providers are not benefitting from a relational approach from Councils to delivering to outcomes or developing their business to meet needs. Larger organisations are becoming dominant in some services, through acquisitions or remote ownership, and leverage at Council level is reduced. The SET project has so far demonstrated that influence on a regional level can be more effectively gained by working together.
- 3.23. There is more focus on the need for Councils to show value for money from these services, both to budget holders, members and the tax-payer. Spot purchasing or outdated procurement methods are less likely to be able to demonstrate that they have shown economy, efficiency, effectiveness and equity; the principles of Value for Money.
- 3.24. Table 1 shows the scale of spend and placements across the SET partnership.

What is a Dynamic Purchasing System (DPS)?

4. Dynamic Purchasing Systems (DPS) are electronic systems used for the purchase of commonly used goods, services or works.
- 4.1. As a procurement tool, they have aspects that are similar to a framework agreement, except that during their lifespans, any supplier may, if they meet the published criteria, join the system and submit a tender. However it has its own specific set of requirements. It is the most effective, compliant, way of working with and across a whole market sector.
- 4.2. The use of a DPS is regulated by the Public Contracts Regulations 2015 ("**PCR 2015**") (Regulation 34). It should be established using a restricted "two

stage” tendering procedure and run through an electronic process, including competition of individual requirements.

- 4.3. A Contracting Authority is also able to set up a DPS on behalf of a number of other Authorities, as long as the participating authorities are identified in advance and the categories of goods, works or services are included in the requirement. Different categories of goods, works or services can be included in the same DPS by being divided into “Categories” or “Categorys”.
- 4.4. The Contracting Authority cannot impose a limit on the number of suppliers that may join a DPS, but may set a qualifying threshold which suppliers must meet before being granted a place on the DPS and then be able to bid for a specific contract.
- 4.5. A DPS can therefore act as a ‘revolving door’ for the Council. Suppliers are able to join the system, but may also have to leave if they fail to maintain the minimum quality standards required. This ensures that only ‘accredited’ suppliers are validated to tender through the DPS at any one time, generating a dynamically ‘approved list’.
- 4.6. The services to be purchased by the local authorities are deemed to be health, social and related services (Schedule 3 – Social and Other Specific Services) for the purposes of the PCR 2015 Regulations and, as the value of the services will exceed the relevant EU threshold of €750,000 (£589,148), the “light touch regime” set out in Chapter 3 Section 7 of the PCR 2015 will apply for the purpose of procuring the services. Under the light touch regime, contracting authorities are able to determine the procedures that are to be applied in connection with the award of contracts subject to the light touch regime, provided that the procedures are at least sufficient to ensure compliance with the principles of transparency and equal treatment. A contracting authority may apply procedures which correspond (with or without variations) to procedures, techniques or other features provided for in Chapter 2 of the PCR 2015 (such as the establishment and use of a DPS under Regulation 34), as well as procedures which do not. A contracting authority therefore has significant flexibility over the type of process that can be used to procure these services. There are also no specific procedural rules in PCR 2015 that cover the awarding of call-off contracts from a pseudo-DPS used for services covered by the light touch regime, and again there is therefore significant flexibility available to contracting authorities in awarding such call-off contracts. This will be useful here, where for certain categories of services, an element of parent choice may be required at the call-off stage.
- 4.7. As such, the partners are likely to want to use certain features of the DPS as detailed in Regulation 34 of the PCR 2015 but will want to make certain variations to the processes and procedures to reflect the fact that this will be a pseudo DPS for light touch services.
- 4.8. Regulation 59 of the PCR 2015 allows an authority to not have to request documents it already holds unless there has been a substantive change (or

documents have expired) which would affect a provider's qualification onto the DPS. *(Note: Not sure how as a procurement lead WSCC could verify this on behalf of other Councils, apart from for common providers, which means we would need to procure afresh).*

- 4.9. It has been suggested that to make things easier for the market that existing providers could be passported to a new DPS without a full application being completed. This has been considered but does not seem to be viable or, in the case of trying to introduce new ways of working, desirable for the following reasons:
- The lead contracting authority would not be able to rely on information held by another authority.
 - Just "passporting" lead contracting authority providers may be perceived as favourable treatment and would not meet the requirements of equal treatment under the PCR 2015.
 - The introduction of new requirements under the PCRs 2015 will require reassessment in various areas, so the benefit of a reduced application would be fairly minimal.
 - It is important that all providers are assessed on their ability to deliver services aligned with the new outcomes framework and performance measurement approach.
- 4.10. The traditional framework of commissioning services had a restricted supply base and reduced the negotiating leverage of authorities. Dynamic purchasing allows for an open market so more suppliers could participate, including more niche and new providers that previously found more complex contracting arrangements restrictive.
- 4.11. WSCC established a DPS for SEN in 2012. Over the 4 year+ period the DPS has shown itself to be a more effective purchasing tool than previous models of spot-purchasing for the following reasons:
- It has allowed the Council more control over providers, cost and outcomes. There is complete visibility over the procurement process, with a full audit trail.
 - It generates greater competition and as a result reduces prices. The DPS provides a level playing field where all bids are shortlisted against agreed criteria.
 - It removes reliance on spot purchasing and inconsistent negotiation. Providers are treated equally and value for money is established through the embedded procedure for competition.
 - It helps improve quality. WSCC specifies the Ofsted and credit ratings it requires from its providers before they are allowed access to system. This helped raised quality and consistency in the service, one of the crucial elements of working to improve outcomes across the board. Additionally, the potential to suspend under-performing services from the DPS has introduced a willingness amongst providers to work constructively with the Council to address matters

of concern and provides a more effective early warning system to the Council.

- Parents are provided with a transparent choice. They can select their preference from the top shortlisted bidders.
- Providers are offered more opportunities to bid and the costs of procurement and bidding are effectively reduced.
- The system provides more options to consider for an individual child's placement.

4.12. The West Sussex DPS was established under the old Part B regime, and in effect works as an open framework rather than a DPS as set out in the new regulations, the DPS being proposed here uses the experience of the current way of working and takes advantage of the benefits within the new requirements of a DPS, particularly around electronic operations and efficient supplier management.

5. Benefits and Objectives

5.1. A well run DPS should allow more bespoke choice for the customer and enable the customer's requirements to be broadcasted to a greater number of, accredited suppliers operating on an open footing. The commercial aspects of placements should be established with a view to gaining the best possible value for money for each placement.

5.2. It is important to view the system as a tool to drive quality rather than purely attract savings at the outset; savings could be achieved as part of this process but it is very much dependent on the approach the partners wish to take. The business case makes recommendations devised to most effectively drive out cost and establish the best value for each referral.

5.3. Providing the right packages with clearly defined and expected outcomes will be effective in driving down cost if coupled with monitoring arrangements; the DPS should be seen as a tool for establishing the right placement at the right price at the right time.

5.4. The "State of the Nation" report 2016 by SENDirect suggests that "when providing services and support for a disabled child, a micro-commissioning approach is more practical than block contracts for ensuring that need is met".

5.5. It should be particularly noted at this point that the opportunity for savings will be different for each partner. Immediate savings are more likely to be achieved for authorities with less mature purchasing arrangements, for example those currently procuring only on a spot basis or those with arrangements which were established a number of years ago.

5.6. There are a number of key advantages of procuring services through a DPS:

- Potential cost savings (see appendix A: Cost and ROI). Dynamic purchasing creates a level playing field where even the smallest

local providers can submit bids. This high level of competition has the potential to drive down prices and reduce local authority spend. The open nature of the DPS allows local authorities to address competitiveness and capacity without having to restart costly procurement exercises.

- Quality control. Suppliers must first be 'accredited' against a set of quality criteria dictated by the partners before being granted entry to the DPS. This can ensure that only high quality suppliers, aligned to the outcomes framework, with strong financial checks, are permitted to submit bids.
- Outcome based. Service outcomes can be specified by the partners when procuring through the DPS. In the case of a placement, providers would have to detail how and when they would deliver the desired outcomes for the child or young person. All subjective responses would be assessed by the Council. The Outcomes Framework has been established for this very purpose.
- Transparency. The partners would have complete visibility over the end-to-end process of procuring its services, a full transparent audit trail. The open, transparent nature of a DPS can also build trust and certainty for suppliers.
- Increased flexibility. Unlike a Framework, a DPS can respond quickly to sudden demand or supply changes in the market, e.g. a school or home closing or losing the required Ofsted rating.
- Individual Placement Agreements can be added, issued, and awarded faster, reducing risk and decreasing uncertainty for the partners. Additionally, desired Contracts at the point of application and acceptance can also be completed electronically and efficiently.
- Value for money. With the DPS ranking bids in terms of both cost and quality, the relevant partner is able to demonstrate that all services procured represent maximum value for money.
- Admin consolidation. The electronic, automated nature of a DPS means that suppliers can tender without having to invest hours of time completing forms; it's easier and less time-consuming for them to bid. Invoices could also be electronically consolidated onto a managed DPS, saving officer hours.
- Straightforward implementation. The PCR 2015 has simplified the way a DPS can be implemented. There are fewer advertising requirements; only the DPS itself needs to be advertised within the Office Journal of the European Union (OJEU) and not subsequent refreshes.
- The ending of the practice (now non-compliant with legislation) of spot purchasing placements. This would also be compliant with PCRs 2015 and the partners Best Value Duty.
- No time limit. A DPS can remain 'open' to new suppliers at all times. They have no set time limits regarding how long they can run for, unlike a Framework. A "period of validity" must be stated in the original OJEU notice and the partners will need to make a decision on this balancing the fact that a longer-running DPS will reduce the

need to re-compete these services, but if it is too long the DPS may become obsolete if the partners' circumstances or market changes. The PCR 2015 indicates that the period stated in the notice can be later amended (extended, shortened, terminated) subject to a relevant notification being made and any changes to the period of validity complying with relevant EU Treaty principles. This therefore, provides a useful flexibility should circumstances change.

- SME Access. DPS is the most effective, compliant way of engaging with SMEs, VCSOs etc.
- Multiple Services, one application. Providers may be allowed to bid once to offer more than one category of services on a DPS, reducing evaluation and bidding time and costs for all parties.

5.7. There are, however, drawbacks and possible risks to a DPS:

- Supplier disengagement. For the DPS to work effectively suppliers must be engaged to participate. If only a handful opt to join (or are accepted onto) the system, its ability to reduce spend and improve quality standards is diminished. A critical mass of accredited suppliers is therefore required.
- Entirely electronic. The DPS is entirely electronic and commissioners may therefore need to work with their market to ensure it is able to respond. However providers currently working through a variety of paper and electronic methods will now be working through just one.
- Cultural change. The transition away from spot purchase, block contracts or a traditional Framework to a DPS may require a culture shift. Adequate training and engagement would also need to be provided to operational teams' staff of the partners using the DPS to evaluate subjective outcome based tender responses and embed the importance of transparency and consistency to maintain a healthy market.
- Just a system. The DPS will not revolutionise the local market and guarantee improvement; it would not be the panacea to all ills. It would be a new, better way for accredited suppliers to approach the partners for work, and allow the partners a platform upon which to develop market capacity and capability.
- Unlimited time. The unlimited expiry of a DPS may in time lead to a system which is too big, or not in keeping with market trends. This could affect competitiveness and value for money. Ongoing contract and market management will help avoid this, as well as an effective "period of validity".
- Publication of Contracts. There is now a requirement that at a minimum all contract awards made under a DPS must be published once a quarter, these may be grouped. The transparency requirements of the PCR 2015 also require publication of the same on Contracts Finder. An electronic transparent process will make this easier to collate the necessary information and the electronic tendering and referral tool recommended here facilitates this automatically.

- No savings guarantee. A fall in spend is not a certainty through the DPS; the market may not respond to the DPS as forecast. The commercial approach described in the solution below is designed to maximise value and possible savings for all partners.
- External factors. Further legislation and market activity around consolidation or acquisition will not be addressed by a DPS, but the partnership approach combined with a procurement tool open to the entire market makes it easier for us to manage these impacts, and in some instances may allow us to influence them.

5.8. The above are related to a DPS regardless of the number partners who implement it. There are further benefits and arguments to support a collaborative approach to establishing a DPS, one which could lead to common standards and best practice being established at commissioning, placement and provider level. These are:

- Contract Monitoring Information available to all.
- Consistency in terms, outcomes and standards.
- Improved intelligence regarding capacity in the market.
- Reduced competition across borders which can distort value for money achieved by individual partners.
- Benchmarking- quality and cost, outcomes learning.
- Reduced time and cost for suppliers at procurement, referral and contract monitoring stages.
- Information sharing and an ongoing partnership relationship can be developed electronically and more efficiently.
- Early warning across multiple partners of market challenges or supplier issues.
- Reduced time and cost for authorities (including Contracting Authorities) at procurement, contract management and quality assurance levels.
- It is recommended that each authority takes responsibility on behalf of the partnership for provider inspections in their respective geographic boundary – a huge efficiency and cost saving for both the local authority and provider.
- Leverage regionally and nationally with providers and with DfE, OFSTED, NASS, ICHA and NAFFP.
- The valuable partnership and collaborative working that has formed across the region is maintained longer term.

6. Engagement

6.1. The business case acknowledges that parents/ carers, children and young people should have a greater influence over the way in which services are delivered which could reduce incidences of appeals and tribunal challenge to the Councils. It is intended that various stakeholders are consulted over the final design for the DPS, referral process and award criteria. Market representative bodies, who have already given feedback on the future of procuring and placing services, will be consulted further and market

engagement will be undertaken to ensure current and new providers are involved and attracted to the new arrangements. This will take place in late June to mid July (i.e. before the school summer holidays) with possible follow up in early / mid September.

- 6.2. Engagement will also include extensive market engagement with providers across the region, to ensure they are both involved and understand the approach and can easily move to the new ways of working contained in this paper.
- 6.3. The procurement phase will also allow for children and young people to be included. It is proposed that a model answer is designed by children/young people to be used in the qualification of providers. As detailed further the scores for these elements will be weighted and included in all ongoing placements, further embedding a co-production, outcomes based ethos in referrals.
- 6.4. The referral process has been designed to incorporate appropriate parent choice.
- 6.5. A high level timetable related to the business case recommendations can be found at Appendix B.

7. The proposed solution.

- 7.1. It is recommended that WSCC act as lead contracting authority for procuring, establishing and managing a DPS for the placement of SEN, Foster care and Residential Care for Looked after Children in the independent sector. A roles and responsibilities table is included at Appendix C.
- 7.2. Each of the three distinct services will be divided into "Categories".
- 7.3. It has been requested that Alternative Education providers and unregulated accommodation also be included within the DPS. These will require a different qualification process as many providers are not regulated by OFSTED / CQC and are less capable of responding to referrals in the traditional way. The requirement for these "categories" will be included in the OJEU Contract Notice and a suitable qualification process devised. Where possible it is intended to include these within the 3 main categories for referrals, but equally if this is not possible it will be possible to include providers in referrals across multiple categories.
- 7.4. Providers will be able to apply to join any/all of the three categories either at the point of advertising the DPS or at any further point during the lifetime of the DPS, subject to gaining a pass in the following qualifying criteria:

Criteria	Evaluation	Methodology		
Mandatory	/	Pass / Fail	Against	Public Contracts

Discretionary Exclusions for Public Contracts.		Regulations 2015 requirements.
Financial Capability Assessment	Pass / Fail	This will only assess whether there is a suitable level of risk as we cannot examine provider's financial capacity against an unknown volume or value.
Insurances	Pass / Fail.	Set by Category - will need to ensure insurance requirements are reasonable but sufficient so as to not add cost or deter bidders
Compliance with relevant H&S, Equalities and Environmental legislation	Pass / Fail.	Confirm compliance with legislation and no infringements or notices in the last 3 years.
OFSTED or equivalent rating (e.g. ISI)	Pass / Fail.	Must hold and maintain "requires improvement" or above or equivalent
DfE Registrations (if applicable)	Pass / Fail	
Workforce	%	Weighted score set based on particular service category as to approach to any additional standards the authorities wish to set which are above OFSTED requirements.
Business Continuity, Safeguarding and Risk	Pass / Fail	To ensure appropriate arrangements in place for disruption and risk management.
Data Protection	Pass / Fail	Necessary compliance with DPA must be demonstrated.
Ability to work to the outcomes framework and measurement approach	%	Weighted score based on method statement which is based on the 5 components of Outcomes Framework and
Contract Management & Performance Monitoring	%	Weighted score based on method statement to measure level of capability and assurance through performance monitoring.
Commercial	Fixed Cost per placement	See below
Each provider will have established costs which form part of day to day operations and providing client services (reporting etc.) The purpose of		

establishing a commercial fixed cost within the DPS is threefold.

1. To ensure that only the variable costs for each placement i.e., the individual needs of the child are part of the competitive process. This ensures that the value for money is focussed on the individual placement and complexities rather than costs which are common for all placements.
2. It will guard against providers using any particular troughs or throttles in the market, either due to capacity or the needs of the child reducing competition that these costs cannot be loaded at referral stage.
3. It provides a level of cost stability within the market and allows inflationary pressures to be identified and any uplifts agreed only affecting the specific costs associated with that pressure. True cost is therefore more effectively measured.

These core costs are currently set out in the National Contracts Schedules and cover 9 main categories. For SEN these are:

- All costs related to assessment of child or young persons suitability
- All costs related to the premises
- All costs related to vehicles
- All costs related to supplies and services
- All costs related to education / classroom
- All central / organisational costs
- All costs related to establishments core staffing
- Staff related costs
- All general core costs related to children

Additional fixed costs also apply to other certain types of placements (for example residential)

- Additional core service offer for all weekly and termly residential placements
- Additional core service offer for all 42-52 week residential placements
- Additional services offered in relation to specific needs (learning support, occupational therapy, physiotherapy etc)

Different but common core costs will also be required from Fostercare and Residential Care providers.

These core costs provided will be carried forward to all referrals, a provider at the point of referral can and, by increased competition, transparency and provider numbers, will reduce these costs, but cannot increase them.

The commercial element of the qualification process will also establish discounts for cohort or sibling referrals, where more than one child is being referred. (Note this is different to block bookings).

Finally, the partnership acknowledges that a new procurement process offers the chance for providers to revise prices, and there is a risk that this will result in increased costs to the authorities. The following option is therefore recommended for further discussion / development:

1. *That an "affordability cap" be placed on the qualification process whereby a provider cannot apply (or successfully apply) if their core costs exceed a certain amount. This can be set by authorities individually for a whole*

category or a common "affordability cap" based on the benchmarking exercise undertaken can be agreed for each category.

- 7.5. Any selection criteria used and pass mark threshold must be proportionate and objectively justifiable when measured against what is being procured.
- 7.6. **Qualification must be by individual school/residence rather than by provider. The qualification process will allow multiple applications to be made easily.**
- 7.7. A workflow diagram of the qualification process is shown at Appendix D.
- 7.8. All providers will be visible to all of the partners, there will not be "sub Categories" for a County or geographic areas as a Contracting Authority is not allowed to prevent a provider from offering services within a particular geographic area.
- 7.9. However at referral stage the authority will take a selection of providers based on a geographic limit set within the electronic system. This will therefore only alert providers to the referral within that limit. If there is not a suitable number of providers the authority can change the limit to include a larger number of providers.
- 7.10. The qualification stage has scored method statements, these do not prevent a barrier for qualification, but the overall weighted score (out of 100) for the method statements will be taken forward to the referral stage. It is proposed that this element makes up 20% of the weighted referral scores for a placement.
- 7.11. This will provide an initial benefit in that the critical elements of qualification (working to outcomes, monitoring and performance) are brought forward to each referral.
- 7.12. However, it is also proposed that this element is also subject to continuous improvement incentivisation, meaning that the ongoing contract management and provider monitoring that is crucial to development of services and market capability affects these scores positively or negatively in the future. Practically, it is proposed that a provider's scores for methods statements are increased / decreased on a periodic basis (6 monthly/yearly) improving their success rate in referrals and also embedding continuous development and SRM in the market.
- 7.13. A final advantage of this approach is that it will ensure that providers who do not have the necessary capability at the point of qualification (particularly small organisations) are not permanently "shut out" or disadvantaged by the move to outcomes based commissioning and formal performance management.

- 7.14. We are recommending that the procurement and application to the DPS be undertaken through a dedicated electronic DPS platform. A number of providers across the region will be familiar with the system as this is used by various London Boroughs. It will also be familiar to Essex and Brighton as current users.
- 7.15. It is also recommended that the IT solution is used by authorities to tender referrals via mini-competition. This will create a consistent commercial approach to the DPS and allow for information on tendering and referral outcomes to be more easily collated and benchmarked. It will show where the market is performing well and highlight where market development will be necessary. The outcomes framework can be integrated within the system to allow for monitoring to be undertaken easily. This will assist the effectiveness of the contract management function.
- 7.16. However the DPS tool will also allow providers to be qualified and then subsequently migrated to a different platform, such as an e-Tendering tool. This will reduce the level of benefit described above to those partners and to the partnership.
- 7.17. It is not at this stage conceivable that all partners, and potential future users of the DPS, will wish to use one dedicated IT system for referrals under this DPS, however the flexibility offered by the DPS software above makes this a solution which can be used as widely and extensively as desired and also grow with the addition of new partners.
- 7.18. It is considered that this is the most cost effective way of procuring the DPS on behalf of multiple partners. More detail on the preferred IT solution for this is given in section 9.
- 7.19. Referrals cannot be issued until the full evaluation of initial submissions has been completed. Due to the size of the market and number of applications anticipated to be received it is proposed to close entry to the DPS on 1st February 2017, whilst on boarding and mobilisation of systems and new ways of working are completed and then reopen the DPS on the 1st April 2017 for new entrants thereon.
- 7.20. Providers accepted to the DPS must continue to meet the qualifying criteria (pass / fail standards) throughout the life of the DPS. This will require the lead contracting authority to audit providers on an, at least, annual basis to confirm continued registration. If any provider fails to meet the qualification criteria they will be excluded from further tender activity until such time as the point of failure is addressed satisfactorily and the provider can re-apply. Reapplication will not need to be made in full as the system proposed will keep all information relating to the provider they will therefore only need to resubmit information relating to satisfying the nature of the suspension. This exclusion will apply to all authorities using the DPS. Authorities cannot request

that a provider be excluded from the DPS unless the qualification criteria is not met or otherwise allowed within the terms and conditions of contract.

- 7.21. Timetable for procurement of the DPS (which will be done in one phase) is provided at Appendix B. Roles and responsibilities proposed are set out in Appendix C.

8. Tendering Referrals

- 8.1. The process for competitive procedure (mini-competition) will need to be established under the DPS procurement and agreed and adopted by all partner authorities. This will ensure compliance with procurement regulations, but also ensure the use of the DPS remains transparent, proportionate and ensures all partners and authorities are treated equally within the award criteria and assessment of value for money.
- 8.2. The mini-competition award criteria can be, and will be, different for each service category. It should not reassess any areas previously evaluated as part of the qualification process, and must be centred on the needs of the child and desired outcomes. It should not take account of past performance of other referrals and should not discriminate against a particular provider or group of providers.
- 8.3. Providers on the DPS for each category must be given the opportunity to apply for every referral within the selected geographic limits. These are set by each Council at the point of individual referral.
- 8.4. The geographic limit can be extended if a suitable number of providers do not exist or are interested in the referral.
- 8.5. It is recommended that the partner authorities agree to the following high level criteria for each "Category".

	SEN	Foster Care	Social Care (LAC)
Cost of Placement (including any discount applicable to cohorts/siblings)	Per week / Per month / Per annum	Per week / Per month / Per annum	Per week / Per month / Per annum
Ability and approach to meeting desired outcomes.	%	%	%
Ability to meet requirements of EHP / SCP. (E.g. therapies, educational needs, specific safeguarding requirements)	These will be a list of needs which the provider must indicate whether they can provide. Each need will carry a mark which will then add up to a total weighting based on the number of needs which a provider can meet.**		

etc.??)*	
Location**	Whilst not a key criteria in the assessment of the most suitable provider, location can play a key part in the child's wellbeing and resulting outcomes as well as incurring sometimes significant additional costs to placements. The proposal here is that 1 mark is subtracted from a total weighting of 5% for every 10 miles the establishment is away from the child's home. (e.g. 0-10 miles =5%, 10-20 = 4%, 50miles+ =0%.
Specific Features (Must Have and Desirable) (e.g. dietary requirements, EASL, ??)*	These will be a list of features which the provider must indicate whether they can provide. Each need will carry a mark which will then add up to a total weighting based on the number of features which a provider can offer.*
Core Competency	This is a weighted score carried forward from the qualification scores of a provider weighted to maximum of 20%.
Incentivisation (optional criteria)	A referral could contain incentives for early step down for complex or intensive needs, this would be a premium payment made for providers who reach outcomes before a given timeframe or allow the placement to be reviewed and requirements reduced.

* There is very rarely the perfect provider able to meet 100% of every child's needs. The objective of the DPS and mini-competition (referral) process is to identify the provider who is **best placed** to meet as many of the needs and requirements of the child thus meeting the outcomes desired.

8.6. These criteria will be configured to automatically evaluate and score based on populated requirements. For example:

- Specific Features can be listed and each feature which can be met (by a tick) is given a mark (total marks are then weighted automatically).
- Location could be weighted automatically based on distance required to travel.

8.7. The weighting of each criteria can be increased or reduced based on the individual referral requirements, the core weighting for referrals will be based on a combination of 50% quality / 50% price but authorities can vary this weighting 20% either way depending on an individual referral or market demand. This means that the minimum and maximum quality/score weighting can be 30% and 70% respectively.

- 8.8. A final selection or weighting process could be introduced where similar quality bids are received to reflect parent/carer choice. Therefore it is suggested that where less than 5% difference in total scores exists between up to a maximum of 3 bidders, parents can be asked to make a subjective choice on their preferred establishment.
- 8.9. The DPS will also allow block bookings, whereby in some circumstances an authority can secure capacity in advance. This will require separate criteria to be established and the contract terms for blocks to be established (including refusals and void management), and how these blocks can be varied for costs once a placement is referred into the block – it would be sensible to limit this variability to ensure that blocks cater only for common requirements and the individual needs are most effectively met. The OJEU Contract Notice will include this ability and the exact mechanism for competing a block contract will be agreed before issuing the tender documents.
- 8.10. In exceptional and justifiable services direct placements will be allowed. The criteria and circumstances will be agreed with all partners so that consistency is still maintained.
- 8.11. The process described above is an effective method of creating an efficient but competitive referral process, it has a number of criteria which are automatically cored and weighted based on the bidders response, and the bidder only has to spend time completing one written method statement on their ability to meet and monitor the outcomes and price only the needs of the child which will be added to previously submitted fixed costs.

NOTE: All partners must use the referral process in the way prescribed to prevent possible legal challenge (which can happen throughout the life of the DPS) and the DPS being suspended or reducing its period of validity. It will also be the most effective way of gaining quality market information, benchmarking data and ensuring the outcomes framework is successfully embedded. Additionally, this will provide robust evidence to parents that the best possible placement for their child has been sourced and help reduce incidences of appeals and tribunals. It is more likely that matching children with suitable providers is maximised by consistently maintaining the process providers were qualified against.

9. Electronic management of DPS.

- 9.1. As detailed above the recommended route to establishing and running a DPS is to use a new DPS software platform procured by the lead contracting authority (West Sussex). This will allow the most efficient establishment of a DPS and be a straightforward single integrated process for procurement, commissioners, referrers, and providers. It is the most suitable approach to realise the benefits outlined in the business case.

- 9.2. The solution will work on a more holistic basis than traditional e-sourcing tools. Qualification, referrals, issuing of contracts, evaluation and contract management information can all be managed through the proposed system.
- 9.3. The ongoing efficiencies from using this solution are significant particularly in terms of staff resource, but it equally, will provide a secure environment for the exchange of confidential information.
- 9.4. This approach will not however restrict the partners who do not wish to adopt a common platform and wish to onboard providers to an existing e-Tendering or other electronic system. A suitable mobilisation/on-boarding period has been allowed for this situation.
- 9.5. Future migration back to the DPS platform may be possible at a later date.
- 9.6. **The DPS platform has been measured against its ability to meet all of the requirements, aims and benefits outlined in this business case and will be the most effective way of dealing with the procurement, referral, individual monitoring and contract management for SET partners. It is seen as critical to the success of a long term collaborative partnership across the region and with the market.**
- 9.7. **Social Value**
- 9.8. In 2012, the Public Services (Social Value) Act placed a duty for all contract authorities to consider the desirable social, economic and environmental benefits that a procurement could deliver to local communities.
- 9.9. The DPS qualification process will look to examine a providers capability and experience of delivering such benefits, however as a DPS does not provide any commitment of volume or value and contracts with providers are formed only via individual placements, it is not feasible to include definitive requirements with providers to deliver social value. Coupled with the vast differences between types and sizes of providers across each category it will be impossible to create a common requirement. However the DPS will require providers to work with each Council and the partnership to bring community benefits via added value during the contract management and partnership approach described in this business case.
- 9.10. In addition the outcomes framework will provide a mechanism to measure community outcomes which have resulted from placements.

Cost – see Appendix A

10.10. Equally the business case and SET project has always been aimed at facilitating collaboration and knowledge sharing. There is an appetite among the group to continue this. Without an effective strategic contract management function it is less likely this will continue and that partners will compete with each other – this may give an opportunity to the market to exploit partners.

11. The Solution

11.1. The Strategic Contract Management function will offer partners the following functions and benefits:

Function	Benefit
Review and assure qualification of providers on DPS.	Efficiencies and consistency for all partners and providers.
Invite and qualify new applicants to the DPS, Inc. issue of contracts.	Efficiencies and consistency for all partners and providers.
Undertake market engagement to address capacity and demand issues.	This will increase competitiveness and help address gaps in provision, leading to more suitable placements for each child
Supplier relationship management on a regional and national level.	This will maximise the leverage and influence that each partner has and be the most effective way of becoming an “intelligent and preferred” client.
Industry and government engagement and development of policy.	This will maximise the leverage and influence that each partner has to shape policy and practice at a national level.
Benchmarking of costs, activity, competitiveness, outcomes and demand.	Over time this will lead to a picture enabling the partners to take targeted action to improve each specific area and identify best practice. Ultimately this will lead to lower costs and better outcomes for the child.
Service innovation and development.	Every child has different needs and in some cases these are constantly changing. An environment where person centred commissioning is becoming the preferred method of providing services will need a strong and proactive approach to developing new services or adapting current ones to meet

	these needs. A partnership approach will be the most effective method of achieving this and continuing to embed the outcomes framework and measurement approach.
Uplifts & Fee Increases	To maximise leverage the CM function will agree and implement a common approach to annual fee and cost reviews.
Cost & Volume arrangements	With an overarching view and understanding of the use of individual suppliers, the centralised team will be best placed to maximise the financial benefits of a regional DPS by negotiating C&V arrangements for all partners.

11.2. The function will not undertake the following which will be retained responsibilities of each partner:

- Undertake reviews or monitor individual placements.
- Undertake quality assurance inspections / monitoring visits of providers.
- Making placements or referrals or evaluation of referral responses.
- Ensuring compliance with contracts and service levels for individual partners.
- Dealing with appeals or tribunals or any complaints related to individual placements.

11.3. The function will be able to use the recommended DPS platform to gather information from partners on activity and market information and benchmark costs. It will require anonymised information to be provided direct from partners on outcomes and measurement of individual placements.

11.4. Some of the activity related to regional contract management will be part of a partnership agreement where responsibility and resource falls to each of the partner Councils. For instance:

- Premises inspections – each authority makes an inspection on behalf of the partnership, reducing inspections from 7 to 1.
- Sharing of early warning performance information on specific providers.

11.5. The functions related to management of a regional DPS as described above require dedicated resource to deliver the activities and responsibilities

described. Based on current experience of managing a DPS for 4+years for SEN only, it is proposed that this team will consist of 2x Partnership Managers (1 for NMISS and 1 for LAC)and 2 x Contracts Officers Costs are detailed in Appendix A.

- 11.6. The contract management function will also act to promote the use of the DPS, or the practices and processes to other authorities regionally and nationally.
- 11.7. Access by other local authorities to the DPS or practices will be chargeable as a non-SET partner. Whilst the charge will initially be used to cover costs incurred in any DPS onboarding activity, any additional revenue will be returned proportionately to the partners thereby reducing their ongoing annual costs. This ROI at present cannot be estimated or relied upon.
- 11.8. The governance structure and SLA for this function will be developed by all partners and demonstrate that the function will be working for the good of the whole partnership regardless of location.
- 11.9. Hosting – to be discussed.

Cost – see Appendix A

Appendix A – Cost and Cost Benefit Analysis

Cost of Procurement of DPS

	Approx. No of Days	Cost £
Development of ITT, Spec and Commercial Model		£ 40,000.00
Development of Terms.		£ 10,000.00
Development and Implementation of DPS platform*		£ 50,000.00
Market Engagement		£ 2,500.00
Tender Period (inc. clarifications etc.)		£ 2,500.00
Assessment of Providers (Mandatory and Financial Checks)		£ 20,000.00
Evaluation of responses (equal resource to be provided by all partners)		£ 0
Award Notification		£ 1,500.00
Contract Arrangements		£ 10,000.00
		£ 136,500.00
Ongoing management and license of DPS (licence charge is estimated at £25,000 pa)		£ 40,000.00 pa

* Further detailed discussion of exact requirements and variation across categories is required with IT partner and a 10% contingency will be added to overall cost but will only be called upon from partners if required.

Cost per authority.

(based on division of number of placements in year 2015/16 for each category)

	No of Placements			Initial Cost	Ongoing Cost
	INMSS	FCA	LAC		
BHCC					£6,000
ESCC					£6,000
ECC					£6,000
KCC					£6,000
MED					£6,000

SCC					£6,000
WSCC					£6,000

Cost of Contract Management Function.

Include costs of additional training on adam (one session per authority included in above) and transaction fee (1%).

Appendix C – Tasks & Responsibilities.

	What	Who	When
1	Finalise business case and agreement with IT partner	WSCC	June / July 2016
2	Member approval and individual authority report and approvals.	All	July to September
3	Stakeholder engagement (to include children and young people)	All	September to November
4	Market Engagement	IT Partner, WSCC procurement lead and individual authority.	September to November
5	Implementation and configuration of IT system	WSCC plus IT partner	August to November
6	Create referral forms and process	1 lead for each category	September to November
7	Confirm and finalise qualification and referral criteria	All	October / November
8	Procurement Documents for Qualification Stage:		
a	Qualification Questionnaire	WSCC Procurement	August to November
b	Descriptive Document	WSCC	August to November
c	Specification	1 lead for each category	August to November
d	Terms and conditions of DPS	WSCC / Legal	August to November
e	OJEU PIN / Contract Notices	WSCC Procurement	November
9	Clarifications and communications during procurement process	WSCC Procurement	November to January
10	Evaluate Qualification Responses (pass / fail)	IT Partner and WSCC	January 2017
11	Evaluate Qualification Responses (weighted)	All	January / February
12	Evaluate Commercial Responses	WSCC	January / February
13	Due diligence	IT partner and WSCC	February / March

14	Procurement Outcome report	WSCC	February
15	Internal approvals to award	All	February / March
16	Contract award	WSCC Procurement and Legal	From 1 st March 2017
17	Handover to referral process – 1 st April 2017		

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