



Report of: Executive Member for Children, Young People and Families

Meeting of:	Date	Ward(s)
Executive	19 April 2018	All

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## **SUBJECT: Procurement Strategy and Contract Award for the commissioning of regulated placements-foster care and residential care**

### **1. Synopsis**

- 1.1 This report seeks pre-tender approval for a procurement strategy to commission regulated foster care and residential care placements in partnership with the West London Alliance (WLA) in accordance with Rule 2.5 of the Council's Procurement Rules.
- 1.2 Islington Council is intending to collaborate with the West London Alliance (WLA) sub regional commissioning group for the commissioning of care services (regulated foster care and residential care placements). This collaboration will also provide access to Special Education Need and Disability placements (SEND). The arrangement offers access to an electronic brokerage system, Care Place, which will provide an efficient system for managing the purchasing, contracting and the reviewing and monitoring of placements with an emphasis on safeguarding.

This report seeks endorsement of this approach and agreement to proceed with the collaborative arrangement.

### **2. Recommendations**

- 2.1 To approve the procurement strategy to utilise care services and Care Place for the commissioning of regulated placements for three years with the potential to extend for a further three years.
- 2.2 To delegate authority to the Corporate Director of Children, Employment and Skills Services to approve the award of contracts from the DPS.

### **3. Background**

### 3.1 Nature of the service

Islington Council wants to procure regulated placements (foster care, residential care and SEND) through a collaboration with the WLA. This will provide access to the WLA commissioning and procurement service through a three-year licence agreement.

The WLA is a partnership between seven West London local authorities Barnet, Brent, Ealing, Hammersmith & Fulham, Harrow, Hillingdon and Hounslow. A successful outcome of the WLA sub-regional approach has been the investment in sub-regional strategic commissioning and market management capability underpinned by the development of a jointly owned system that supports effective market engagement through economies of scale.

The work to inform this procurement has been collaborative and productive with engagement by providers over a four-year development period.

The procurement is not solely to provide placements covering West London Authorities. All Local Authorities south of Birmingham will be named on the tender documentation in order to ensure that the breadth of provision covers London and the South East.

Local Authorities and sub regions have been invited to join this procurement. The key aim is to encourage wider collaboration across Local Authorities in order to ensure effective market management and control which is essential to achieving sufficiency of placements, increasing buying power and financial sustainability going forward.

The partnership will also support local authorities to become intelligent customers working proactively to map and develop services that meet the diverse needs of their care populations.

The financial commitment required by the WLA, for 3 years, is £166k which covers core and e-brokerage services. Costs are confirmed for the initial three years. Islington Council will conduct a best value review towards the end of the third year to inform decision making about the continuation of the contract. The core and e-brokerage services are outlined below.

#### Strategic Commissioning

- Strategic Commissioning Support to scope new projects to Outline Business Case stage.
- Shared Market Management and Market Shaping Activities.
- Inclusion in West London's strategic commercial negotiations with suppliers to deliver efficiencies.
- The development of future West London shared services, commissioning projects and procurements following Outline Business Case Development (subject to agreed investment by participating local authorities).

#### Procurement Operations

- Development of market leading procurement vehicles, and the on-going day-to-day management of these.

#### Strategic Contract Management

- A Contract Performance Management service in line with our contract management approach.

#### Care Place

In summary Care Place delivers the following:

1. Data Hub – Securely share spend and activity data for children's services placements across multiple local authorities which is used to drive efficiency savings, manage and shape the provider market and inform strategic commissioning.

2. ebrokerage – Electronic purchasing platform used by placements teams and commissioners to purchase placements for Children's Social Care and SEND. Also the electronic platform to purchase from all West London procurement vehicles.
3. Directory – Directory of suppliers providing independent placements for Children's Social Care and SEND as well as public facing area which also contains information, advice and guidance for children and families.
4. Reporting – Integrated reporting suite allowing tailor made reporting of all management information in the system.
5. eContracting – Operational from December 2017, which will enable placements contracts (ICA/IPA's) to be sent electronically to suppliers.
6. eContract Management – Operational from March 2018 and will enable the electronic management of the West London Contract Management Approach for Children's Social Care and SEND Placements.

Islington Council has a statutory duty under Section 23 of the Children Act 1989 to provide care and accommodation services for Children Looked After and Care Leavers. In 2010, Statutory Guidance on the Children Act 1989 and Children and Young Persons Act 2008 placed the 'Sufficiency Duty' upon local authorities to secure, so far as reasonably practicable, sufficient accommodation within the local area.

The need to address the current financial pressures in Children, Employment and Skills Services is one of the key drivers for this approach. Islington Council spends £8.7m per year on external regulated care placements. This reflects a significant pressure against current budget allocations.

The cost of placements in the external placement sector have risen over the last two financial years by 2%. We anticipate that this increase will continue.

As a single agency, Islington Council is in no position to influence the placement sector and control spend through contractual arrangements that would mitigate the impact of inflationary uplifts and secure discounts for placements. The partnership with the WLA therefore offers the potential for cashable and cost avoidance savings. This is difficult to achieve as a single agency and under current partnership arrangements.

The WLA are proposing a series of discounts for foster care and residential placements, which would lead to significant cashable savings based on our analysis of current spend. Our financial analysis shows the potential for long-term cost benefits by utilising the discount framework available on the WLA procurement vehicle.

If the Council were part of the WLA and had access to their discount framework, the Council would have achieved approximately £282k (£141 per annum) of cashable savings on foster care placements based on activity over the last two years. For residential placements, the Council would have achieved approximately £76k of cashable savings based on activity over two years.

The proposed pricing model is designed to be flexible, and drive competition whilst acknowledging that many suppliers have been impacted by holding their fees at 0.4% for the past four years. The pricing framework therefore builds in a ceiling rate of 2% for inflationary uplifts and locks providers into the prices they submit for one year. Inflationary avoidance has been built into this procurement for SEND placements. SEND placements are usually the most expensive packages, with no prior controls on yearly inflationary increases able to be secured at regional and sub-regional level in the past.

The WLA will 'on-board' any suppliers used by member local authorities who join and renegotiate prices for existing placements.

The procurement builds the capacity for customers to negotiate down the cost of placements. However, the procurement will not allow suppliers to increase the cost of placements.

The WLA will seek to mandate the Dynamic Purchasing System (DPS) with a stipulation that where possible, all local authorities and all suppliers use the DPS as the sole procurement vehicle in non-emergency cases. The aim is to focus suppliers and customers to engage with each other in order to achieve the strategic aims.

The emphasis on this procurement is on the quality of services and addressing the issues of supply, which have significantly impacted on customers and suppliers. The evaluation criteria is designed to improve flexibility and address issues of regional and local supply.

Whilst the evaluation and award criteria for safeguarding remains robust the procurement will enable providers with an Ofsted judgement of 'requires improvement' to join the procurement and offer strategic support to these providers to improve their standards aiming for Good or above. An inbuilt safeguarding mechanism will alert local authorities to a change in an Ofsted Judgement and a safeguarding alert system will enable individual local authorities to raise concerns regarding providers. Suspension from the DPS will occur where providers have safeguarding concerns against them.

Over 90 per cent of providers used by the WLA are utilising the proposed DPS. New providers will be invited to join the procurement every three months, which will drive competition. Unlike a framework agreement, a DPS can respond efficiently to sudden demand or supply changes in the sector.

Islington Council currently does not have a procurement vehicle for residential or foster care and current practice is not efficient in terms of cost and worker time. Access to Care Place will ensure compliance with procurement regulations and reduce the resource intensive nature of current commissioning practice (time spent on procurement, contract management and quality assurance) as well as increasing the development of future shared services and commissioning projects and procurement.

Islington Council is a member of the North London Children's Efficiency Programme (NLCEP) sub region. The NLCEP is made up of five London boroughs (Camden, Hackney, Haringey, Enfield and Islington) working together to manage the market and improve services for vulnerable children and young people in need of care placements, with SEND and requiring Alternative Provision. The council pays £17,000 per year towards the cost of NLCEP category management services and associated costs.

The council's engagement in collaborative commissioning as part of the NLCEP aimed to increase the supply of foster care provision available across North London, by 500 beds, and achieve cost avoidance savings in the purchasing of placements.

During 2015/16, Islington Council used 41 Independent foster care providers on this contract, three of which provided 29% of the external foster care placements. Substantial discounts were negotiated through the process of individual commissioning.

Whilst the NLCEP contract increased supply, it has not provided choice of placements. The NLCEP contract has also not met specific requirements for placements for certain groups of children looked after.

The NLCEP sub regional foster care contract ended in 2015. Providers were agreeable to holding the fees agreed, post contract, pending the commissioning of foster care services by the NLCEP. The timescales for commissioning have not been set and is unlikely to take place in the current financial year. Providers have increased their fees thereby increasing the costs of Independent Fostering Agency (IFA) placements of all types.

Any further delays are likely to have a negative financial impact for Islington Council and across the NLCEP as it leaves the council and the sub region exposed to market forces.

NLCEP member authorities are also collectively considering engagement in this procurement as a sub region in light of the above.

Islington Council is a member of London Care Services (LCS) managed under London Councils. We pay an annual subscription of £14,481 to utilise the LCS regional foster care and residential contracts.

Purchasing through the LCS contract offers a safe and efficient way of commissioning services with LCS managing the fee negotiations and contract management and reviewing services on behalf of member local Authorities. Providers signed up to LCS have held their fees at zero percent for the past five years.

Inflationary pressures and the impact of the London Living Wage has resulted in a significant pressure on providers. Requests to LCS for fee increases have been between 2-30% in 2016/17 and 2017/18.

The financial scrutiny applied to the recommissioning of the 2017/18 LCS regional contract has limited the scope for providers to charge fee increases by setting robust terms and conditions with 0% fee increases awarded in 2017/18 for providers. Fee increases have been awarded to providers who have evidenced that they have not made a profit in the past five years and have been awarded an increase at less than 1%. Contract management has unified the financial sustainability to ensure that providers would not make a loss.

Some residential and foster care providers have chosen to withdraw from the LCS contract. This has resulted in a reduction of residential and foster care services under this contract. Where placements cannot be made under the regional framework, Islington Council is forced to spot purchase placements.

The average weekly cost of a spot purchased community residential care placement has increased from £2,300 to £3,000 per week. The cost of a therapeutic residential care placement has risen from an average cost of £4,000 per week to an average cost of £4,500. This does not include the cost of providing 1:1 staffing where required. For the packages where additional staffing is required, fees have increased to in excess of £5,000 per week almost similar to the cost of a welfare secure placement.

With the level of spend and risk associated with the number of providers leaving the regional contract, the council must now consider alternative options for achieving savings (cost avoidance and cashable) including joining procurement vehicles via other sub regions.

### 3.2 Estimated Value

The maximum cost of entering into the arrangement with the WLA will be £166k over three years. This will be funded by 'cashable savings' via the council's placement budget.

Through the discount model, we anticipate placement savings of £179,198 per annum over three years. Refer to 4.1 financial implications section.

The table below shows the projected spend on IFA and residential placements over a six-year period should the council continue to use existing commissioning arrangements.

**Table one**

<b>Area</b>	<b>18/19 Budget</b>	<b>for 3 years</b>	<b>for 6 years</b>
IFA Spend	4,799,200	14,397,600	28,795,200
Residential (non JAP, non secure)	4,224,000	12,672,000	25,344,000
	9,023,200	27,069,600	54,139,200

Projections for 3 and 6 years are based on an analysis of current placement activity and costs. No attempt has been made to forecast any fluctuation in placement type, future need or potential discounts through the WLA.

There is an expectation that moving to the WLA procurement model would achieve resource efficiencies and cashable savings through discounts as reported and a reduction on placement costs.

### **3.3 Timetable**

Islington Council wants to join this arrangement by the beginning of the financial year 2018 in order to achieve its projected financial savings targets against the budget.

This proposal has been discussed with the budget holder for placements, the Service Director and the Head of Strategic Procurement.

### **3.4 Options appraisal**

Islington Council could continue to utilise the LCS contract pending the procurement of foster care services and further commissioning of residential arrangements via the NLCEP. Whilst Islington Council maintains its commitment to the NLCEP, it recognises that the financial benefits of the work undertaken by the sub region will not achieve the savings that we are seeking within the required timescales particularly as timescales for commissioning care placements have not been set.

#### **1. Commissioning regulated placements as a single agency**

Islington Council could engage in a commissioning strategy to purchase services as a single agency. As a single agency, the Council is not in a position to influence the placement sector and control spend through contractual arrangements. In a multi-agency arrangement, the Council could mitigate the impact of inflationary uplifts and secure discounts for placements.

#### **2. Engage in wider collaboration with sub regions as specified in this report**

The numbers of children in care in England was at its highest for 30 years in March 2015. It continues to be a challenge for the placement sector to meet the demand for placements generally and for some parts of the sector to meet the needs of specific groups of the population who require specialist services.

The residential sector continues to report on the impact of a robust regulatory framework on business sustainability and the supply of services that meet local authority requirements.

Wider collaboration with a number of Local Authorities will improve market engagement and assist the council to ensure a sufficient supply of regulated placements for Islington's children and young people that also meet the council's value for money objectives.

The benefits of this arrangement for Islington Council can be summarised as follows

- The potential for further cashable efficiency savings through discounts and cost reductions on external placement packages.
- Supports Islington Council to meet its individual priorities within a wider collaborative framework.
- Reduces competition between local authorities across borders.

- The DPS creates a high level of competition with the potential to drive down prices and reduce local authority spend.
- The opportunity for further cost avoidance savings through better management of the market in partnership with the WLA.
- It is likely to ensure a sufficient supply of placements in London with the associated benefit of access to local statutory services.
- Provide a procurement model for Islington Council to purchase both residential and foster care placements.

This approach protects the council from significant fee increases and inflationary uplifts in the short and medium term.

### 3.5 **Key Considerations**

Market rates are in excess of the London Living Wage LLW for the delivery of these type of services. The procurement mechanism will be held by the West London Alliance and published to ensure transparency. Placements will be drawn based on the ability of providers to meet safeguarding and cost and quality requirements.

This approach will improve community cohesion by providing services to the most vulnerable children and young people within London reducing the number of placements made more than 20 miles away from the authority.

There are no expected TUPE or immediate staffing implications.

### 3.6 **Evaluation**

#### Ranking of Providers into Tiers

Providers offering services within each of the Service Levels will be ranked by their core costs. These are the costs that were submitted by the provider for their services when they joined the DPS or at the annual re-price (whichever is the most recent). The lowest cost provider will be ranked first and the most expensive provider ranked last.

Providers will then be assigned a tier based on their price ranking. The number of tiers may change throughout the period of the DPS but initially there will be three for each Service Level. Providers will be divided proportionally between the tiers. As such, the cheapest third of providers will be assigned to tier one; the second third of providers into tier two and the most expensive third into tier 3. Providers will be ranked by price within each of these tiers.

If a provider offers multiple services that vary in cost, each service will be tiered and ranked separately. For example, a residential care home provider may have their services on multiple tiers if they have multiple homes with different pricing structures.

As new providers join the DPV and/or providers adjust their prices it will mean that existing providers may therefore be moved between the tiers.

#### Local Authority Decision Making

The Authority will carry out an assessment of provider responses to placement requests and ascertain which provider can best meet the needs of the child. This assessment will be based on the Criteria.

When reviewing options, Local Authorities will first review all options that were submitted from within tier 1 (i.e. the cheapest placements). If none of these options fully meet the needs of the child/young person, then options from providers within tier 2 will be considered. If none of these options fully meet the needs of the child/young person then options from tier 3 will be reviewed. This process will continue until all options have been reviewed.

Where the Local Authority determines that more than one placement offer meets its requirement it shall award the contract (where it chooses to award an IPA) to the provider that is highest ranked within the relevant tier.

The evaluation criteria set by the WLA is set out below. Quality / Price ratio = **60%** quality, **40%** price.

*Table 1: Weighting*

<b>Quality</b>	
The ability of the Provider to meet the needs and deliver the outcomes as outlined in the individual child / young person's Education Health & Care Plan and other relevant plans.	
<b>Total</b>	<b>Up to 60% of the total score available</b>
<b>Price</b>	
<b>Total Placement Price</b> – Inclusive of all costs including assessment if necessary	
Best (lowest) price	
<b>Total</b>	<b>Up to 40% of the total score available</b>

### 3.7 Business Risks

There is no guarantee that this approach will meet all of the demand for placements particularly local placements or for emergency placements. The NLCEP authorities will focus their work on engagement with smaller local providers to meet the needs of children and young people locally. We will maintain our membership to the NLCEP at least in year one pending progress made in defining future commissioning and developing procurement models.

The demand for placements may fluctuate thereby reducing the impact of discounts available under this model. All external placement referrals would initially go through this procurement vehicle in order to ensure that it meets the majority of the Council's demand.

Islington Council may be locked into an agreed baseline fee that may be greater than it is able to achieve independently. The contract will renew on an annual basis with new fees set each year thereby driving competition. The WLA will renegotiate the cost of existing placements with providers who engage in this procurement.

We believe that this approach will have a positive impact on service users by ensuring a sufficient supply of placements in London.

### 3.8 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to sign the Council's anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The



Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.

- 3.9 The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.6 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the service	Procurement Strategy – Contract for the Commissioning of regulated placements-foster care and residential care. See 3.1
2 Estimated value	The estimated value to utilise the DPS is £166k over the initial three year agreements.  The agreement is proposed to run for a period of 3 years with an optional extension of 3 years.  See 3.2
3 Timetable	The WLA procurement was launched on the 24 November 2017.Call off contracts are expected to commence 1 April 2018  See 3.3
4 Options appraisal for tender procedure including consideration of collaboration opportunities	The recommended option is to engage in wider collaboration with sub regions by partnering with the WLA to commission regulated placements.  See 3.4
5 Consideration of: Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications	There are no expected TUPE or immediate staffing implications  See 3.5
6 Evaluation criteria	The criteria is as follows The ability of the Provider to meet the needs and deliver the outcomes as outlined in the individual child / young person's Education Health & Care Plan and other relevant plans. Up to 100% of 60% weighting quality Total Placement Price – Inclusive of all costs including assessment if necessary Up to 100% of 40% weighting quality Best (lowest) price
7 Any business risks associated with entering the contract	Business risk assessment concluded that there are limited risk in engaging in this procurement because Islington Council retains the control of spend and allocation of spend.
8 Any other relevant financial, legal or other considerations.	

## 4. Implications

### 4.1 Financial implications:

The maximum cost of entering into this arrangement will be £166k for the initial three years. Costs of extending the contract will be confirmed in year 3.

There is an expectation that moving to the WLA procurement model would achieve resource efficiencies and cashable savings through discounts as reported.

This has been estimated at a cashable saving of £372k over three years (see table below). Islington Council would retain all financial responsibility for the payment and procurement of services. Financial control would remain with Islington; this would mitigate against the risk of financial mismanagement.

Table 2

<b>Cost Benefit Analysis</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>Total</b>
<b>Cost of WLA Procurement Vehicle</b>	67,820	49,126	49,126	166,072
<b>Cashable Savings</b>				
i. Discounts				
Fostering	-140,936	-140,936	-140,936	-422,807
Residential	-38,262	-38,262	-38,262	-114,786
	-179,198	-179,198	-179,198	-537,593
<b>Net cost / (saving)</b>	<b>-111,378</b>	<b>-130,072</b>	<b>-130,072</b>	<b>-371,521</b>

The council's annual subscription to LCS is £14,481 and £17,000 is paid towards the cost of category management services and associated costs under the NLCEP.

If this WLA proves successful there is a possibility that Islington Council could review the above arrangements in year two.

### 4.2 Legal Implications:

The Council has a statutory duty under Section 23 of the Children Act 1989 to provide care and accommodation services for Children Looked After and Care Leavers. In 2010, Statutory Guidance on the Children Act 1989 and Children and Young Persons Act 2008 placed the 'Sufficiency Duty' upon local authorities to secure, so far as reasonably practicable, sufficient accommodation within the local area. The council may join in collaborative procurements with other local authorities under section 111 of the Local Government Act 1972 which provides the power for the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The council may enter into contracts for the provision of regulated placements (foster care, residential care and SEND) under section 1 of the Local Government (Contracts) Act 1997.

The report contains proposals for two separate contractual arrangements:

The first is to enter into an agreement with the West London Association (WLA) for procurement and contract management services conducted on a collaborative basis. The cost of this arrangement would be £166,000 for the first 3 years with the potential to extend the arrangement for a further 3 years. This arrangement is likely to fall outside the scope of the Public Contracts Regulations 2015 since it is likely to be a contract to implement co-operation between contracting authorities under Regulation 12(7). The WLA is a partnership between seven West London local authorities Barnet, Brent, Ealing, Hammersmith & Fulham, Harrow, Hillingdon and Hounslow. The

Executive in approving this proposal should be satisfied that the council is obtaining value for money in entering into this contract.

The second is to award contracts for regulated placements (foster care, residential care and SEND) using the Dynamic Purchase System (DPS) established by the WLA. These services fall under the light regime set out in the Public Contracts Regulations 2015. Given the value of the services to be purchased through the DPS it would need to be advertised in the Official Journal of the European Union (OJEU). Providing this is done, and the tender documents indicate that the DPS will be available for use by all Local Authorities south of Birmingham (as indicated in the report) the DPS should be available for use by the council. In deciding to award contracts to suppliers from the DPS the Corporate Director must be satisfied that the contracts represent value for money.

#### **4.3 Environmental Implications**

There are no environmental implications for this procurement. The WLA has completed its Environmental impact assessment with no implications issues raised.

#### **4.4 Resident Impact Assessment:**

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

The arrangement offers access to an electronic brokerage system, Care Place, which will provide an efficient system for managing the purchasing, contracting and the reviewing and monitoring of placements with an emphasis on safeguarding. The partnership offers the potential for immediate cashable and cost avoidance savings. Our financial analysis shows the potential for long-term cost benefits, a reduction in the resource intensive nature of current commissioning practice and an increase in the development of future shared services and commissioning projects and procurement.

### **5. Reason for recommendations**

- 5.1 The need to address the current financial pressures in Children, Employment and Skills Services is one of the key drivers for this approach. Whilst Islington Council maintains its commitment to the NLCEP it recognises that the financial benefits of the work undertaken by the sub region will not achieve the savings that the council is seeking within the required timescales particularly as timescales for re-procurement have not been set.

Any further delays are likely to have a negative financial impact for Islington Council and across the NCLEP as it leaves us and the sub region exposed to market forces.

Equally, market management and control is essential to achieving sufficiency of placements, increasing buying power and financial sustainability going forward. The partnership with the WLA offers the potential for immediate cashable and cost avoidance savings. This is difficult to achieve as a single agency and under current partnership arrangements.

Our financial analysis shows the potential for long-term cost benefits by utilising the discount framework available on the WLA procurement vehicle.

Access to Care Place will reduce the resource intensive nature of current commissioning practice and increase the development of future shared services and commissioning projects and procurement. Add the reasons why you are recommending this particular course of action and other options considered.

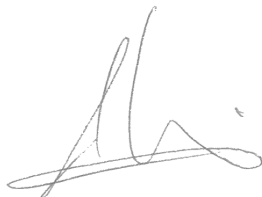
## Appendices

- Resident Impact Assessment.

**Background papers:** None

Final report clearance:

**Signed by:**



Executive Member for Children and Families

Date 3 April 2018

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