

Decision maker:	Cabinet member children and families
Decision date:	Friday, 28 February 2020
Title of report:	West Midlands Regional Foster Care Framework
Report by:	Commissioning officer

Classification

Part Exempt

This report is open but an appendix is exempt by virtue of the paragraph(s) of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A of the Local Government Act 1972, as amended.

- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Appendix 1 Age banding and placement types

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose and summary

To approve the adoption of the West Midlands Regional Foster Care Framework for the provision of foster care services from 1 April 2020 to 31 March 2023; with the option to extend for up to a further year at an estimated spend of up to c.£3.5 million per annum. Actual spend

will depend upon demand from the number of children looked after by the council and the capacity of the council's in-house fostering service to meet that demand.

The current framework agreement expires on 31 March 2020 and there is no option to extend. Sandwell Children's Trust has taken the lead on behalf of the region on a re-procurement exercise for a new framework which is due to go live on 1 April 2020. Joining the framework ensures that Herefordshire can continue to achieve good value and quality when placing looked after children with independent foster care providers. Joining the framework allows access to a pool of regionally approved fostering agencies. It does not commit the council to spend via the framework. The council will search for placements for individual children via the framework, and will purchase from the framework if a suitable match is found for that child. If a suitable match can not be identified, the council would extend its search to, and may purchase from, the wider market of agencies that have not joined the framework.

Recommendation(s)

That:

- (a) the West Midlands Regional Foster Care Framework Agreement until 2023 for the provision of foster care services be adopted to facilitate the purchasing of independent agency foster care;**
- (b) the Director for Children's and Families be authorised to take all necessary operational decisions to implement the above recommendation and utilise the framework agreement;**
- (c) the Director for Children's and Families and relevant Assistant Directors be authorised to take all necessary operational decisions to spot-purchase placements outside the framework should the need arise for individual children.**

Alternative options

1. Do nothing. As there will be no framework or similar arrangements, Herefordshire will spot purchase all independent foster care placements as and when required. Spot purchase costs generally tend to be higher than framework costs and spot purchasing can create an additional administrative pressure as a result of the additional pre-placement checks and contracting preparation. Framework providers will have already been subject to a regional evaluation and the same contractual terms and conditions, which would minimise the need for local checks and contracting arrangements. Also this approach does not comply with the public contract regulations (PCR2015), unless used as an emergency with a compliant route being exhausted beforehand.
2. To place all children and young people with the council's in-house foster carers. This is not an option as, although the number of in-house general foster carer households has increased from 107 to 113 since May 2019, there are insufficient carers available to support all children and young people requiring a foster placement. At the end of 2019, there were over 220 being fostered, excluding those placed in kinship fostering arrangements.
3. Commission a Herefordshire only foster care framework agreement. This is not recommended because Herefordshire is a relatively small local authority with limited purchasing power. Most fostering agencies are unlikely to be willing to undertake a separate tendering process when there are more significant business opportunities with

larger authorities or regional approaches. Previous framework agreements have demonstrated that collaboration with regional partners achieves better placement prices.

4. Participate in a sub-regional fostering framework. As all other West Midlands councils either have, or are in the process of agreeing to join the new framework, this would not be an option.
5. To commission independent foster care placements on a block contract arrangement. This option is not recommended at the current time as it could create direct competition with the in-house fostering service for the recruitment of additional carers. In-house provision generally costs less than the independent sector. Through its placements sufficiency strategy, the council has prioritised the growth of the in-house service as a way to manage costs and deliver placement capacity in Herefordshire. Block contracting with IFAs for local carers could be considered in future if the in-house service is unable to meet the expected capacity levels.

Key considerations

6. Councils have a duty to make arrangements for the accommodation and care of children for whom it has a responsibility, pursuant to Sections 20 - 23 and 31 of the Children Act 1989.
7. Section 22G of the Children Act 1989 ('the 1989 Act') requires local authorities to take steps that secure, so far as reasonably practicable, sufficient accommodation within the authority's area which meets the needs of children that the local authority are looking after, and whose circumstances are such that it would be consistent with their welfare for them to be provided with accommodation that is in the local authority's area ('the sufficiency duty').
8. The sufficiency duty requires local authorities to do more than simply ensure that accommodation be 'sufficient' in terms of the number of beds provided. They must have regard to the benefits of securing a range of accommodation through a number of providers. The accommodation must also meet the needs of children.
9. The council's preference is to place with suitable Herefordshire approved foster carers before considering placement in the independent sector as a way of ensuring children can be placed locally and of managing costs. Where the in-house service is unable to provide a suitable foster carer, the next preference is to place through the framework of regionally approved Independent Fostering Agencies (IFAs).
10. As a result of ongoing projects that are intended to safely reduce Herefordshire's LAC population and increase capacity within the in-house fostering service, it is anticipated the council will become less reliant on purchasing agency foster care placements over the next five to ten years.
11. Herefordshire Council joined the current regional foster care framework (led by Sandwell Children's Trust) in April 2016. The framework expires in March 2020 with no further option to renew. Sandwell Children's Trust has led on developing a new framework, involving all 14 West Midlands councils.
12. Between April 2016 and November 2019, the current regional arrangement has provided 57,500 (74%) of the 77,000 bed nights purchased by Herefordshire. During the period, the average weekly cost of a framework placement has been £770 compared to £970 for

placements on a spot purchase agreement. It is estimated up to £1.6m of spot-purchase cost has been avoided by purchasing through the regional framework.

13. In accordance with Public Procurement Regulations 2015 (Light Touch Regime), a tender notice was published in the Official Journal of the European Union (OJEU) by Sandwell Children's Trust. The OJEU was published on 16 September 2019 and it is intended the award notification will be published on 24 January 2020, with standstill period ending on 5 February 2020. The procurement was undertaken by Sandwell Children's Trust (acting as lead procurement council) on behalf of the partner councils. Officers from Herefordshire Council, as well as the other partner councils, have engaged with Sandwell Children's Trust to design and shape the framework process and tender documentation.
14. Subject to satisfactory completion of final procurement/supplier checks, Sandwell Children's Trust will invite successful providers to join the framework. The intention is to award contracts to 58 foster care agencies (appendix 1), who achieved the required evaluation criteria and standards.
15. The framework is based on age bands and types of placements, details of which are included in Appendix 1. Successful providers will be ranked in descending order based on the total score achieved for each age bands for each placement type. New providers will be able to join the framework on 1 April each year. All providers ranking will be revised annually based on the inclusion of new providers or variations in price and quality of existing providers.
16. All successful providers must be a registered Independent Fostering Agency (IFA) and as such will be governed by the terms of the Fostering Services Regulations 2011 and any subsequent changes, and are subject of inspection by OFSTED or Welsh equivalent.
17. Providers that are successful in joining the framework will not be guaranteed placements, but will have the opportunity to accept individually purchased placements (call-offs). Placements will be made under the framework terms and conditions and be tailored to the child's needs in an individual placement agreement and care plan.
18. Commissioner has analysed Herefordshire placements and there will be no negative financial impact on current placements for at least 2020/21.
19. From April 2021, each placement may be subject to an annual price increase, if requested by the provider. The increase will be capped at 2% or CPIH (Consumer Prices Index Including Owner Occupiers' Housing costs) whichever is lower.
20. Each placement will be approved by children and families head of service for looked after children or assistant director, subject to provider being able to meet the child's individual needs.

Community impact

21. Being part of a regional foster care framework supports the principles outlines in the council's corporate plan, including;
 - i) Keep children and young people safe and give them a great start in life
 - ii) Secure better services, quality of life and value for money

22. Herefordshire's Children and Young People Plan sets out a vision to support children & young people to have a great start in life and grow up healthy, happy and safe within supportive family environments. A key objective within the plan is to protect children from harm and to support children and young people to achieve success in life, learning and future employment.
23. Successful providers include locally, regionally and nationally based agencies. However in line with the council's sufficiency duty, placements for individuals will be sought with providers offering options in or as close to Herefordshire, wherever appropriate. This will help ensure that, where appropriate, looked after children are able to remain in their local community, maintain their education and stay in contact with their family.
24. Joining the framework, will continue to support to ensure that Herefordshire can continue to achieve good value and quality when placing looked after children with independent foster care providers.

Equality duty

25. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
26. The public sector equality duty requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our providers will be made aware of their contractual requirements in regards to equality legislation.
27. The council is subject to a sufficiency duty, which requires it to ensure, as far as reasonably practical, that there is sufficient accommodation and choice to meet the needs of children and young people. In order to meet this duty, due consideration must be given to issues of equality. The framework and the council's placement sufficiency strategy are informed by an analysis of the needs of the relevant population. In addition, before a child or young person is placed, an assessment of their needs is undertaken so that any specific equality issues can be identified. The individual's needs assessment informs the placement choice to ensure the best available placement option is chosen for them
28. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes. Within the contract there is an obligation for providers to monitor equality and diversity. They must have in place (at all times whilst providing any

services and in relation to its activities within the United Kingdom) appropriate policies, procedures, and systems in place to monitor and enforce those procedures, to ensure its compliance with relevant law of the United Kingdom relating to equalities and anti-discrimination.

29. An equality assessment (appendix 2) has been undertaken and no negative impact has been identified. However this will be kept under review.

Resource implications

30. Herefordshire has agreed to the WMADCS (West Midlands Association of Directors of Children Services) request for a £2,500 contribution towards the initial procurement process and £500 annually until the framework ends, for the annual review and ongoing contract management, from each council who joins the framework.
31. No financial commitment is made to purchase placements from successful providers. Placements will be purchased from preferred providers on a needs only basis. Therefore, depending on the council's level of demand for agency foster care placements, the amount of spend can vary.
32. Herefordshire's total spend on IFA placements for 2018/19 was £3.2m. Spend in the current year is forecast to be in the region of £3.5m. Insufficient capacity within the in-house fostering service and growth in the looked after population have been the main contributing factors to the increased spend on independent agency foster care placements.
33. Previous regional arrangements have helped to manage placement costs over several years. However, cost pressures within the provider market mean that opportunities for further cost reductions have decreased. Providers have submitted weekly prices, on average 7.3% higher than previous framework prices. Therefore, it is estimated that new placements made after April 2020 could cost an average of £8 more per night. Assuming that the number of framework bednights purchased for children commencing new placements in 2020/2021 is similar to the previous year at around 4,000 nights, this would equate to an additional cost pressure of £32,000. Any actual cost pressure, however, will be influenced by the size of the LAC population and capacity of the in-house service to meet demand.
34. The cost of existing placements with framework providers will be protected for the first 12-months. They can transfer to the new framework terms and conditions but at the most economically advantageous price, whichever is lower out of the existing price or the newly tendered price. Analysis of existing placements has confirmed that, for those that will transfer to the new framework, there will be no change in price for 2020/2021.
35. The framework makes provision for agencies to make an annual price uplift request capped at 2% or CPIH (Consumer Prices Index Including Owner Occupiers' Housing costs) whichever is lower. If an agency's uplift request is approved by regional commissioners, the first annual price uplift will apply to all placements with that agency from April 2021. Based on current placements, it is projected a maximum 2% uplift would cost £46k per annum. The uplift costs could be offset by a reduction in the number of children in agency foster care placements if LAC demand falls and/or the in-house service grows.

Legal implications

36. The council has a duty to make arrangements for the accommodation and care of children for whom it has a responsibility pursuant to Sections 31 and 20–23 of the Children Act 1989. This framework agreement will help the council to secure, so far as is reasonably practicable, accommodation for looked after children, which is within the council's area and meets the needs of the child/young person as outlined in Section 22 G of the Children Act 1989.
37. Each council participating in the framework agreement will contract separately with the successful tenderers.

Risk management

38. If the recommendations of this report are approved, there is no risk that the framework contract would commit the council to purchasing placements from the approved providers. The council's priority would be to secure the most appropriate placements to meet the needs of the individual child.
39. If the recommendations are not approved, there is a likely risk that placement costs will increase as a result of needing to spot purchase from the provider market. This approach would also increase the administrative burden on the authority. A regional snapshot exercise (Dec 2018) found that on average spot purchase placements were 16% higher per week than framework placements. However during the life time of the current framework to date, for Herefordshire, spot purchase placements have been approx. 26% more expensive on average.
40. The West Midlands councils will monitor and review providers to ensure any changes or issues raised about a provider's ability to maintain a quality service are assessed. If the provider is rated inadequate by Ofsted and/ or a council has concerns about a framework provider, this is communicated to all participating councils so that appropriate action plans can be jointly prepared and monitored.
41. If declined, European procurement legislation will require a comprehensive procurement process, where social care contracts are likely to exceed 778,943 Euros. This means that if a placement is required, where it is anticipated the cost will exceed £663,540 over the lifetime of all placements made with same provider under the same contractual arrangements, it would be subject to a full EU procurement process, which can take in the region of eight weeks to complete. This would be an unacceptable position in order to keep a child safe and be unmanageable if an emergency placement was required on the same day a referral is received.
42. If work to reduce the looked after population and/or increase in-house foster carer capacity is not successful, there is a risk the council will become more reliant on agency foster care providers, which will increase annual spend.

Consultees

43. Independent agency foster care providers have been involved in pre-tender supplier engagement events. Their views and feedback have supported the development of the new framework.
44. Political group consultation has been sought and no objections or comments were received.
- 45.

Appendices

Appendix 1 Age banding and placement types (Exempt)

Appendix 2 Equality Impact Assessment

Background papers

None