

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>26 February 2015</b>
<b>Title of report:</b>	<b>Approval to undertake a procurement exercise in respect of pupil referral services for Herefordshire</b>
<b>Report by:</b>	<b>Head of Additional Needs</b>

## **Classification**

### **Open**

Notice has been served in accordance with Part 2, Section 5 (Procedures Prior to Private Meetings) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (Regulations) 2012.

## **Key Decision**

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 to which the decision relates.

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**

Countywide

## **Purpose**

To obtain Cabinet approval to undertake a procurement exercise utilising a tender procedure in line with section 4.6. of the council's contract procedure rules in order to identify a preferred provider of pupil referral services (includes Herefordshire's pupil referral function, behaviour outreach function and home and hospital education function)

## **Recommendation(s)**

**THAT:**

- (a) That the council undertakes a procurement exercise with a view to identifying a preferred provider of pupil referral services following the recent amalgamation of pupil referral services into a single pupil referral unit (PRU).**

- (b) **Delegated authority is provided to enable the Director of Childrens Wellbeing to conclude the procurement process and authorise award of the resulting contract on the basis it is within the financial envelope described below.**

## **Alternative options**

- 1 Maintain the current arrangements. Seek another short-term partner to line manage the pupil referral services as an executive headteacher. The current line management arrangement is not sustainable as the governing body of the current executive headteacher is not willing to continue the present arrangement. This was set up as a short-term arrangement four years ago. It would be difficult to find another headteacher with the required skill set who would be able to work within the current flexible arrangements.
- 2 Agree that the PRU should convert to academy status and join an academy chain with an executive headteacher. The disadvantage to this is that the academy conversion process is not reversible. PRUs can be very volatile environments, because of the nature of the students that attend, which need to be well managed. The council maintains the direct responsibility for pupils attending the PRU and if the sponsoring academy school was to experience a period of weak leadership and management, as recent experience has shown, the council would have difficulty in ensuring rapid improvement in a setting for which they do not have the direct responsibility. It should be noted that line management under the current line manager has been of high quality but there can be no certainty that this would necessarily be the case if there was a change of headteacher at the academy sponsor.
- 3 Take the responsibility for running pupil referral services back into direct council line management. The pupil referral services have benefitted greatly over the past four years from having a dedicated behaviour specialist as the senior line manager rather than a generic manager. It would be prudent to try to continue to maintain this degree of specialist knowledge and experience. There are also issues of capacity within a reducing council resource.

## **Reasons for recommendations**

- 4 Undertaking a thorough procurement exercise will allow the council to seek a high quality specialist provider for Herefordshire's pupil referral services and for this to be delivered on a sustainable basis through a contract with a detailed service specification. This will allow the contract to be closely monitored and for the council to take rapid action if there are any difficulties in the delivery or quality of services.

## **Key considerations**

- 5 Herefordshire's PRUs have recently been amalgamated into a single PRU on 2 sites (KS4 predominantly at the St David's Centre and KS3 at the Aconbury Centre). The Home and Hospital Teaching Team has been managed as part of the PRU system since 2011 and the behaviour outreach function (Behaviour Support Team) has been line managed on behalf of the council by the executive headteacher since 2012. The purpose has been to bring these complementary functions together into a single seamless behaviour system that addresses the continuum of need in this area of work. It is this group of services that it is recommended that we tender.
- 6 The council has a statutory responsibility for the provision of PRU places for pupils

who are excluded. It also maintains places in the PRU for students where there is a strong likelihood that the pupil's outcomes will be enhanced by placement at a PRU that offers 25 hours of small group provision away from the site of a mainstream school. This falls under the council's duty to ensure the welfare of vulnerable children as set out in S19 (1) Education Act 1996 the council has a duty to make arrangements for the suitable provision of education a school or otherwise that at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them. S19(2) any school established ... and maintained by the council which a) is specially organised to provide education for such children, and b) is not a county school or special school shall be known as a "pupil referral unit". The LA also has a statutory duty to make provision for students who are unable to attend school because of their health needs. This duty is discharged by the Home and Hospital Teaching function. The value of these elements of the tender will have a value representing the number of PRU/Hospital School places maintained by the LA.

- 7 The Behaviour Outreach Function is a fully traded service and the tender value would be zero apart from a small DSG grant (18k) to cover council requests for work such as attendance at CAF meetings for individual children.
- 8 Since 2011, the arrangements for the overall line management of the PRU and the Home and Hospital Teaching Team have been through the appointment of an executive headteacher. This was initially for a two year period as a pilot project. The successful applicant was the headteacher of Brookfield School. The initial appointment was very successful in developing the PRU system and bringing together the whole of the behaviour system, including improving a number of key outcomes for PRU students. The appointment was extended for a further two years with the Behaviour Outreach function being added to the management responsibilities of the executive head.
- 9 Herefordshire's arrangements for young people with behavioural, emotional and social difficulties have been judged to be good or better by Ofsted with the Brookfield School being judged as Outstanding for the third successive time and its Headteacher being appointed as a National Leader in Education, supporting other similar schools nationally. The outcomes for this group of children in Herefordshire have steadily improved with both attendance and attainment for PRU students having improved and with the PRU system being able to offer a much broader curriculum offer including work-based learning. Average GCSE equivalent points scores have risen from 60 points per student in 2011 to more than 200 in 2014. More than 80% of students now take up the 25 hour entitlement with some students having greatly increased attendance once they join the PRU from mainstream. These have been recognised as some of the better outcomes nationally for this group of students. However, even with these successes, there remains much work to do to further improve outcomes for this extremely vulnerable group of young people, particularly in relation to their having the tools to access employment, education and training (EET) when they leave the PRU system. The successful bidder for this contract will be expected to continue this journey of improvement.
- 10 The governors of Brookfield School have asked that current arrangement be put on a longer-term, more formal basis which fully defines the specification for the work. The options to address this requirement have been considered by the council. The preferred option is the recommendation contained within this paper, which will also meet the council's procurement code.

- 11 Suitable TUPE arrangements need to be undertaken for transfer of employment of the staff to the successful provider.
- 12 The contract will be awarded from 1 September 2015 for three years with a possible 2 year extension period.

## **Community impact**

- 13 The procurement exercise is designed to identify a suitable preferred provider that will use the available resource to continue the positive trajectory for Herefordshire's pupil referral services. The aim is that the pupils covered by the specification will have outcomes in the top 25% of council's nationally and that we will not 'turn our back on any pupil'. This ambition is in line with goals of Herefordshire's Children's Well-being Directorate and the Guiding Principles of the Herefordshire Learning Community.

## **Equality duty**

- 14 The procurement exercise will define contractual and financial arrangements to deliver the required pupil referral services. This exercise will not change the nature of the provision, access to services nor the policies governing these services in Herefordshire. The impact on groups with protected characteristics should therefore be unchanged.
- 15 The provision offered by the pupil referral services aims to meet the needs of those who cannot attend school because of their medical (including mental health needs), behavioural, social, emotional difficulties. It meets the requirement to offer an equivalent education to these children and young people compared to those who are in school. Hence it will advance equality of opportunity between persons who share a relevant protected characteristic (long-term health needs fulfil the definition of a disability) and persons who do not share it under Section 149, the "General Duty" on public authorities.

## **Financial implications**

- 16 The value of the PRU element is circa £1.1m per annum. This includes the nationally determined and £10k per place paid at the start of the financial year (£800k guaranteed) together with an estimated 75% occupancy rate for the top-up tariff funding element which averages at £5k per pupil once they are on roll (£300k dependent on number of students taking up places).
- 17 The Hospital School places will give an additional value of £194k per annum. This is a fixed block grant.
- 18 A grant of £18k per annum is provided for the Behaviour Outreach work on behalf of the council. The remainder of the funding for this part of the service needs to be delivered through a traded model.
- 19 The contract will be funded from the Dedicated Schools Grant High Needs Block as is the current PRU provision.
- 20 These figures will be confirmed by the Herefordshire Schools Forum in advance of the tender being written but represents the potential for a contract value in excess of £6.56m over a maximum 5 year term.

## Legal implications

- 21 S19 (1) Education Act 1996 sets out the council's statutory duty to make arrangements for the suitable provision of education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them. Any school established and maintained by the council which is specially organised to provide education for such children and is not a county school or special school is known as a PRU (S19(2) of the Act).
- 22 The duty to make arrangements can include contracting with an external provider. The service being procured is a Part B service (Education) for the purposes of the Public Contracts Regulations 2006 and as such is exempt from the full impact of the regime including publishing the contract notice in the OJEU.
- 23 Nevertheless, there are still minimum requirements arising out of the fundamental principles of the Treaty on the Functioning of the European Union, including those principles of transparency and equal treatment of tenderers.
- 24 The Council's contract procure rules must be complied with and the award of any contract be made by Cabinet once tenders have been received.

## Risk management

- 25 There is a risk in setting out fixed criteria for the contract, i.e. number of commissioned places or the value of each place because it will necessary to vary these over the course of a 5 year contract. This will be mitigated by setting an annual review of the number of places into the contract along with a clause in the contract indicating that the value of the places will change if the national or local funding formula requires this.
- 26 There is a further risk in that there is the potential delay in awarding the contract if there are challenges to the process by one or more potential provider. This will be mitigated by having a clearly described tendering process and should delays occur, clear communication to those bidding for the contract where the delay is explained. A further possibility for delay might come from a delay in the political approval process with an election 'purdah' period operating. The approval route for the decision to hold the procurement exercise will be designed to avoid this if possible. Again, clear communication about this to bidders would be required if it is unavoidable.
- 27 If the proposal to procure is declined, it would lead to one of the options within the 'Alternative Options' section of the paper being implemented (this would also apply if there were no suitable bidders for the tender). The current line management arrangement is not sustainable as the governing body of the current executive headteacher is not willing to continue the present arrangement. The risks of each option are outlined above.

## Consultees

- 28 The staff and management of St David's PRU, Hospital and Home Tuition Team and the Behaviour Support Team. An explanatory letter has been sent to the Headteachers of Secondary Schools as the main users of the service. The Herefordshire Schools Forum will be informed in March because this is funded from

Dedicated Schools Grant although it is the council's responsibility to commission sufficient provision. The Trade Unions have been informed of the proposal.

## **Appendices**

None

## **Background papers**

None identified