

Decision maker:	Cabinet member children and families
Decision date:	Monday, 14 January 2019
Title of report:	Regional Joint Commissioning. Flexible Contractual arrangement for the Provision of Placements in Residential Children's Homes
Report by:	Children's Joint Commissioning Manager

Classification

Open

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.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

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 regional Flexible Contracting Arrangement (FCA) for the provision of placements for looked after children and those with complex needs in residential children's homes from 15 December 2018 to 14 December 2021 with option to extend for up to a further 3 years.

Recommendation(s)

That:

- (a) the Regional Flexible Contracting Arrangement (FCA) for the provision of placements in children's homes be adopted to support the purchasing of residential accommodation up to an annual value of £5.5m ;**
- (b) the Director for Children's and Families and relevant Assistant Directors be authorised to take all necessary operational decisions to implement the above recommendation, including award of placement agreements and mini-block contracts through the FCA;**
- (c) the Director for Children's and Families and relevant Assistant Directors be further authorised to take all necessary operational decisions to spot-purchase placements outside the FCA 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 residential children's home placements as and when required. Although spot purchase costs are higher than framework costs in some parts of the region, the FCA and spot prices expected to be paid by Herefordshire are broadly similar. However, spot purchasing can create an additional administrative pressure as a result of the additional pre-placement checks and contracting preparation. FCA 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
2. Commission a Herefordshire only framework agreement. This is not recommended as Herefordshire has relatively low purchasing powers in the residential children's market. It is more likely that lower costs can be achieved by working collaboratively with regional partners.
3. Participate in a sub-regional residential children's home framework. As all 14 Local Authorities / Trusts in the West Midlands have participated in the development and tendering of the FCA, it would be difficult to identify potential partners to support this process.
4. For Herefordshire to procure a block contract or operate an in-house residential children's home service. These are service models that are being explored as potential opportunities for ensuring more children can be placed in Herefordshire when their needs require residential accommodation. Any proposals would be subject to a future governance decision. Assuming that Herefordshire did operate either a block contract or in-house residential provision however, there will continue to be a small number of children that would need to be placed under other arrangements, which the regional FCA would help to deliver.

Key considerations

5. 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.
6. Compared to regional neighbours, Herefordshire has a relatively small number of residential placements with normally 20-30 Herefordshire children placed in residential settings at any one time. Although the residential population is comparatively small, it is known that Herefordshire has a higher than usual number of looked after children compared to statistical neighbours. Herefordshire spends c.£5.5m per year on residential placements for looked after children and those with complex needs.
7. As a result of planned changes to edge of care services and improving capacity within the in-house fostering service, Herefordshire's LAC and complex needs residential population is expected to reduce from 27 in 2018/19 to 19 by 2023/24.
8. During the lifetime of the current regional arrangement (January 2015 to December 2018) 38% of the 34,000 bed nights purchased were via the framework. Placements with spot purchase providers are made only when there are no options available with framework providers.
9. The current regional residential children's home framework (led by Sandwell), which Herefordshire joined in January 2015, expires in December 2018 with no option to renew. Birmingham Children's Trust has led on developing a flexible contracting arrangement based on the principles of a dynamic purchasing system, involving all 14 West Midlands upper tier councils (the partner councils).
10. 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 Birmingham City Council on behalf of Birmingham Children's Trust (BCT). The procurement was undertaken by BCT (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 BCT to design and shape the FCA process and tender documentation.
11. The FCA aims to reduce use of spot purchase by improving market engagement and relationships with local suppliers so they are more amenable to respond to placement requests. Councils will continue to promote the FCA and encourage providers to join. Providers can register and deregister at any time creating a more dynamic market than previously.
12. Subject to satisfactory completion of final procurement/supplier checks, successful providers will be invited to join the FCA. The intention is to award contracts to 81 providers, who achieved the required evaluation criteria and standards. These 81 providers, between them provide access to 530 homes and 2,290 beds, of which 73 homes and 259 beds are in Herefordshire and neighbouring counties.
13. Providers that are successful in joining the FCA will not be guaranteed placements, but will have the opportunity to accept individually purchased placements (call-offs). Placements will be under the FCA terms and conditions and be tailored to individual need in an individual placement agreement.
14. The FCA is based on four care categories and types of placement. Details of the care categories and types are included in Appendix 1. Partner councils will be able to search providers by location, specialism, placement type, inspection judgement, and value for money to ensure that referrals are targeted appropriately to match the needs of the young

person. This will help ensure local provision is sourced, to enable children and young people to be placed as close to home, wherever possible.

15. The flexible contracting arrangement (FCA) also enables the partner councils to procure “mini” block contracts to secure two or more placements for a defined period of time. This opportunity will be explored further by Herefordshire commissioners with a view to ensuring that children that require residential accommodation can be placed closer to home more often. The intention is to initially secure 3-4 local beds. It is intended that this approach will be cost neutral but will avoid some children being placed at a distance, which will relieve some of the pressure placed on frontline social work and other services when they support distant children. Subject to the approval of the recommendations of this report, the Director for Children’s and Families and relevant Assistant Directors, informed by a commissioning options appraisal, will take all necessary operational decisions to implement block contract arrangements through the FCA.
16. 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. Despite this of the nine active residential placements that will transfer to the FCA, three will maintain their existing prices and six will transfer to a lower price, leading to an estimated annualised reduction of £30k on budget pressures. The estimated reduction will continue for as long as a child remains in the placement, until a different placement price is agreed based on the child needs, or until a provider price uplift is agreed at the regional level. Individual pricing arrangements will be communicated by the Council’s Placements Team to providers through the normal placement agreement procedures.

Community impact

17. This development supports the principles outlined in the council’s corporate plan, Children and Young People’s Plan, including:
18. Enabling residents to be independent and lead fulfilling lives by improving outcomes for children and young people. Herefordshire’s overarching vision for looked after children, and those with complex needs, is the same as for all of Herefordshire’s children and young people – that we keep them safe and give them a great start in life.
19. Prior to and during the life of the FCA, there will be robust quality assurance processes in place to ensure providers deliver a quality service and meet the needs of the children placed.
20. 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, where ever appropriate. Commissioners will work with providers to address gaps in local provision so that capacity can be developed where necessary. This approach 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.

Equality duty

21. 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.
22. 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 FCA and the wider 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 option is chosen for them.
23. An equality impact assessment has been undertaken (see appendix 2) which concludes that there is no adverse equality impact if this agreement is adopted.

Resource implications

24. Herefordshire has agreed to Birmingham Children's Trusts request for partner councils to make a financial contribution for the work done to date, and to enable the development of the Placements Portal, an essential part of this work. The estimated cost of this is £46,500, with each council contributing £3,321.
25. The ongoing cost of maintaining the contract is being considered by WMADCS (West Midlands Association of Directors of Children's Services) as part of a potential regional commissioning hub. It estimated the annual contribution will be £5,500 per authority, based on each authority contributing an equal share.
26. 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 residential placements, the amount of spend can vary.
27. Herefordshire's total spend on residential placements for 2017/18 was £4.9m, compared to £4.7m spend in 2016/17. Spend in the current year is expected to be in the region of £5.5m. This includes LAC residential placements and those for children with complex needs that are jointly funded by education, health and social care. Restricted capacity within the in-house and agency fostering sector has been the main contributing factor to the increased spend on residential placements.
28. The previous regional framework agreement effectively fixed placement prices at their 2015 rates. Through the FCA tender process, some providers currently used by Herefordshire have taken the opportunity to increase their prices by 3% on average in order to account for inflation, living wage increases, and maintain profit margins. However, placements will transfer across on their existing prices, where these are lower, and these will continue as they are until April 2020, or if the child moves. There will be no price increase for new placements made through the FCA before April 2020. Placements can be agreed at a lower cost than providers submitted core cost prices but must not be higher than their tendered prices submitted for admission to the FCA.

29. To establish a mechanism for fair pricing, the FCA makes provision for annual price uplift requests for up to 2%. If approved by regional commissioners, the price uplift will only apply to new placements made with the provider after 1 April 2020 with further uplifts only being awarded to new placements made from the beginning of financial years each 1st April.
30. If a provider offers additional services such as education and/or therapy, this can be approved as an optional extra. The cost of additional services are pre-set by the provider as part of their tender submission.
31. The average placement cost in 2017/18 through both the previous framework and spot purchasing was c.£3,600 per week. In 2018/19 to date, the average cost incurred has increased to £4,000 per week, mainly as a result of more challenging needs of young people and limited placement choice.
32. While existing placements will continue at the previous framework price to 2020 if it is cheaper than the new FCA price, future placements will be made at the new rate. It is also expected that spot-purchase providers will also continue to seek to increase their prices in future.
33. Herefordshire intends to make placements closer to home than has been the case historically. The average cost of FCA "local" providers, which operate homes either in Herefordshire or neighbouring counties, is £3,800 per week. This could represent a potential cost saving if Herefordshire can utilise children homes around this rate. It should be noted however, that average cost to be incurred through the FCA by the Council is not possible to project as it will depend upon the number and type of placements made, as well as the specific provision chosen for each child.
34. The overall residential population is expect to decrease from 27 in 2018/19 to 19 by 2023/24. Furthermore, a new entrant rate of three to five children per year is expected to be achieved by 2024. Any pressure arising from increased costs for individual children is expected to be met by the overall planned reduction in residential placements.

Legal implications

35. Provision of the service ensures that the council meets the statutory duties outlined in sections 20, 23 and 31 Children Act 1989
36. With regard to procurement the Light Touch Regime applies to procurement rules applicable for the procurement of health, social and other services listed at Schedule 3 Public Contracts Regulations 2015. The rules of procedure governing the Light Touch Regime are set out in Regulations 74-76 Public Contracts Regulations 2015.
37. Legal advice from legal services will be required with regard to the terms of the contract.

Risk management

38. If the recommendations of this report are approved, there is no risk that the flexible contracting arrangement would commit the authority to purchasing placements it does not require or inappropriate placements. This is because the FCA is not contracted on a block

contract basis and gives no commitment to any quantity or duration of placements referred through it. It does however, provide access to a large range of providers both locally and nationally with pre-agreed fees and costs submitted via a formal competitive tender process. In addition to fees, the service quality of the provider has been assessed as part of the tender evaluation process.

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.
40. Assuming that the Council entered into mini-block contract arrangements with specific FCA providers in order to successfully place locally more often, there could be a risk that the Council would continue to be financially responsible for vacant beds. This risk will be reduced through robust placement planning by children's social care and, if necessary, termination of a block contract.
41. There is also a risk that some individual block contract placements may, on the face of it, be at slightly higher weekly price compared to other FCA or spot purchase placement options. However, placements are selected based on the needs of the child first, with cost being a supplementary consideration. It is expected that the benefits to some children of being placed closer to home, and the resulting reduced burden on frontline social care services will outweigh any potential higher placement prices.

Consultees

42. Independent Children's Homes Association (ICHA), an association representing members in the independent residential child care sector, was formally represented at a regional pre-tender launch event and gave a positive and supportive view of the proposed FCA approach.
43. Independent residential children's home providers have been involved in pre-tender supplier engagement events.
44. Political group consultation has been sought and no objections or comments were received.

Appendices

Appendix 1 - Categories and Placement Types

Appendix 2 - Equality Impact assessment

Background papers

None identified