

## **Cabinet**

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**Date of Meeting:** 10 September 2019

**Report Title:** North West Special Educational Needs and Disabilities (SEND)  
Flexible Purchasing System

**Portfolio Holder:** Councillor Dorothy Flude - Children and Families

**Senior Officer:** Mark Palethorpe – Acting Executive Director People

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### **1. Report Summary**

- 1.1 This report seeks approval for Cheshire East Council to be the lead organisation in establishing a bespoke North West SEND Flexible Purchasing System for the future procurement of Special Educational Needs and Disabilities (SEND) provision for children and young people across the North West Region within Independent and Non-Maintained Special Schools. This will operate as a common, shared marketplace for SEND in the North West.
- 1.2 The benefits of a regional approach to purchasing and managing SEND placements has been widely accepted for over 10 years but the step to initiate a new purchasing system has never been taken. Cheshire East Children's Commissioning is held in high regard within the region and taking a lead role in developing a collaborative purchasing system has been welcomed by colleagues across the region. Feedback to date through regional Director of Children's Services meetings, North West Commissioners meetings and the national SEND Specialist Interest group has been very positive.
- 1.3 A core service specification and contract will be developed along with a call off process to ensure that we are achieving best value for money on all future provision, a clear focus on outcomes, robust contract management and also ensuring compliance with procurement rules and financial regulations.
- 1.4 The North West SEND Purchasing System will be a Flexible Purchasing System (FPS) under Chapter 3 Section 7 and Schedule 3 of the Public Contracts Regulations 2015, which will open periodically throughout the lifetime of the

procurement. Placement finding will remain the responsibility of individual local authorities.

1.5 The proposed “go live date” for the regional purchasing system is 1st June 2020.

## **2. Recommendations**

That Cabinet

2.1 Approves the development of a North West SEND Flexible Purchasing System by Cheshire East Council on behalf of North West local authorities for SEND Provision for children and young people.

2.2 Delegates authority to award contracts to providers to enter the purchasing system to the Executive Director People

## **3. Reasons for Recommendations**

3.1 Given that currently there is no consistent strategy in place across the region’s local authorities for the commissioning and procurement of SEND placements, it is recommended that a North West SEND Flexible Purchasing System is put in place to start to change the landscape of the market as soon as possible.

3.2 We are seeking a regional commissioning solution that will enable local authorities and SEND providers to develop a new flexible approach, working together in a way that makes best use of resources, whilst ensuring that children and young people are supported in the most appropriate setting that meets their individual needs throughout their education.

3.3 There are no official regional frameworks or service specifications for SEND placements. This has led to inconsistency in the approach for the commissioning of such provision. This has on many occasions required the Councils to pay higher costs to providers. The establishment of a North West purchasing system will support the ability for children and young people to be educated in their own community and their education pathway will prepare young people for adulthood promoting independence and employment opportunities.

3.4 There remain many benefits to collaborating across the region including:

- effectiveness of market shaping and management.
- consistency of core specification required by authorities and clarity of position in respect of expectations regarding outcomes;
- transparency and challenge, where appropriate, surrounding value for money;
- a more streamlined processes for placement finding and contract management.

3.5 Initial soft market testing and engagement has been successful and resulted in positive feedback from North West local authorities and the potential provider market.

- 3.6 Having a single regional purchasing system for SEND placements across the North West could provide better leverage when negotiating fees/rates with the market, and could offer better value for money, particularly if we look to commission some services at scale in the future. Whilst the principles of the SEND reforms are welcomed they come at a time when local authorities are facing unprecedented and sustained financial challenges across all departments. An increase in placements for children and young people with SEND attending independent and non-maintained schools and colleges is exacerbating financial pressures; alongside this is a concern that some children and young people have to move away from their local community to access appropriate provision. The benefits of a regional approach to purchasing and managing SEND placements has been widely accepted for over 10 years but the step to initiate a new purchasing system has never been taken. Cheshire East stepping forward to take a lead will ensure the benefits of a regional purchasing system materialise.
- 3.7 There is a need for a commissioning solution that will support each individual's needs, taking account of parental preference whilst at the same time providing local provision and an efficient use of resources.
- 3.8 There are currently a number of regional/sub regional SEND purchasing systems that have been successfully implemented in other areas of the country. These include the West London Alliance, East Midlands and Bristol (South West). A regional purchasing system for the North West will build upon the good practice and learning developed elsewhere as part of the system development.

#### **4. Other Options Considered**

- 4.1 One option would be to carry on with existing individual local authority spot purchase arrangements, however this would not solve any of the current issues around ensuring a joined up consistent approach to commissioning SEND placements.
- 4.2 Some local authorities in the North West have looked at developing a sub regional approach for a number of years, but nothing has come to fruition due to the reduced economies of scale and fragmentation of approach across the region. Therefore it makes sense to undertake this work collaboratively across the region as opposed to having multiple frameworks and processes in operation.

#### **5. Background**

- 5.1 Each local authority in the North West is currently working in their own area to increase the proportion of children and young people with SEND who are accessing maintained schools / academies by supporting a robust 'graduated response' approach.
- 5.2 There is also a need for efficient commissioning of SEND provision from the independent and non-maintained sector, which will be the focus of the regional

purchasing system and will focus primarily on day placements, 38 week residential placements and 52 week residential placements.

- 5.3 The reasons for placing children with an independent provider can take into account a high complexity of need, lack of appropriate places available in maintained settings, parental preference and when the placement is a result of a social care need.
- 5.4 We are seeking a regional commissioning solution that will enable local authorities and SEND providers to develop a new flexible approach, working together in a way that makes best use of resources, whilst ensuring that children and young people are supported in the most appropriate setting that meets their individual needs throughout their education.
- 5.5 Wherever possible this will mean children and young people are educated in their own community and their education pathway will prepare young people for adulthood promoting independence and employment opportunities.
- 5.6 Placements North West, St.Helens, Halton, Warrington and Cheshire West and Chester and Cumbria County Council have all joined a task and finish group, led by Cheshire East, to take the development of a regional FPS forward and make this initiative a success for local authorities and the market.
- 5.7 An initial market engagement questionnaire received 17 responses from individual local authorities (out of 23). Of the 17 Local Authorities (LAs) who responded 14 would like to be included in any regional purchasing system from commencement, 3 others from a later date. As the work progresses to establish a regional purchasing system it is likely that all 23 north west authorities will want to join.
- 5.8 A Local Authority Engagement Event was held on 1 May 2019 and a Provider Engagement Event on 6 June 2019 and both events were well attended and the proposals were positively received.
- 5.9 Parent Carer engagement has also commenced and an extensive plan for engagement across the region will take place over the coming months.
- 5.10 The detail of service specifications, selection criteria and award criteria will be developed over the coming months in co-production with service users, family carers and providers.
- 5.11 The key dates from the development and procurement timeline are as follows:

January 2019 – North West SEND Purchasing System Project Group  
Established  
February 2019 – Market Engagement Survey issued to LA's  
May 2019 – LA Engagement Event  
June 2019 – Provider Engagement Event

July 2019-Dec 2019 – Engagement with Parent Carers, Providers and LA's  
January 2020 - Specification Development  
February- 2020 - Tender issued to Market  
March 2020 - Tender Closes  
April/May 2020 - Evaluation and Award of Contracts  
1 June 2020 - Purchasing System - Go Live

- 5.12 It is a positive step for Cheshire East Council to lead the development of a regional purchasing system and enhances the Council's reputation regionally and nationally. Feedback to date through regional Director of Children's Services meetings, North West Commissioners meetings and the national SEND Specialist Interest group has been very positive.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

- 6.1.1 On the 1st September 2014 the Children and Families Act came into effect. Part 3 of the Act provides statutory duties relating to children and young people with special educational needs (SEN) and disabled children and young people. A 'young person' in this context is a person over compulsory school age and under 25. The Act provides a number of reforms and places new duties on local authorities in relation to how services and support are delivered for children and young people with special educational needs. The development of a SEND purchasing system aligns with the requirements of the Act.
- 6.1.2 The aggregate value of the SEND Purchasing System is such that these services must be procured in accordance with the Public Contracts Regulations 2015 and in compliance with the Council's Finance and Contract Procedure Rules. The total value will be the combined spend of the North West local authorities who may potentially call off through the purchasing system over the term. This will require a fully OJEU compliant procurement exercise. The Service is engaging with Legal Services and the Council's Corporate Procurement Team in this process.
- 6.1.3. The procurement is a change to the way services are currently provided and the Service is therefore engaging with stakeholders, including service users, to co-produce the service specification, ensuring that the Council adheres to its consultation duties and duties under the Equality Act 2010.
- 6.1.4 A process for Local Authorities to join the FPS (including governance, individual local authority responsibilities and call offs under the FPS) underpinned by a Memorandum of Understanding will be developed as part of the FPS development. This will include the procurement and legal requirements required to set up and sustain the FPS.

## **6.2 Finance Implications**

6.2.1 An estimate of current provision across the region suggests that for cared for children there were 210 placements recorded across the 23 North West Local Authorities. 131 placements were made with Residential Schools with a regional estimated spend of £25.8m. 79 placements were with social care providers who deliver some on-site education with a regional estimated spend of £17.7m. We realise that this does not provide the complete picture of spend across the region to include placements which are education only and therefore will capture the complete spend across social care and education placements as part of the development of the new purchasing system. Business intelligence figures from Cheshire East show that currently we have 150 children going to independent and non maintained special schools in borough and out of area with a total annual value of £6.5m.

6.2.2 The recommendation of this report is to approve the development of a regional purchasing system in the North West. The regional purchasing system will be hosted, managed and supported by Cheshire East Council. Therefore there will be additional resource requirements (systems and staffing) for the council in relation to the development of the specification, procurement process and ongoing support costs throughout the lifetime of the contract. The additional resource requirement for Cheshire East will only be determined when the scope and detailed operation of the FPS is known and the resource available from other local authorities is clear. The memorandum of understanding underpinning the FPS development will cover the contribution to costs required from other local authorities in order for the system development to be cost neutral for the Council.

6.2.3 Being part of the SEND purchasing system should result in savings in the respective Dedicated Schools Grant High Needs Funding block for SEND placement spend of Local Authorities who take part (but that cannot be used to fund base budget contributions to the development and ongoing maintenance of the purchasing system).

6.2.4 The Council's Dedicated Schools Grant - High Needs Funding block is under significant pressure. The potential value for money to be obtained from a regional purchasing system will add to the tools being applied to bring spend across the High Needs Block back under control.

## **6.3 Policy Implications**

6.3.1 The proposal to develop a SEND Purchasing System aligns with the aims of the Children and Families Act 2014 by ensuring the system is coproduced with young people, parents and providers of services and a common outcomes framework to be embedded in any procurement. This will require Council's working with providers to be more innovative and open in the way in which services are created and delivered.



6.3.2 The new purchasing system will focus on improved outcomes for those pupils with additional needs. This is in line with the Children and Young People's Plan 2019 – 2022.

#### **6.4 Equality Implications**

6.4.1. An Equality Impact Assessment will be completed as part of service development. This proposal is not expected to discriminate or have negative impacts on people with protected characteristics. Some of those people affected will have learning disabilities or mental health needs and many will have additional needs, disabilities and/or other protected characteristics.

#### **6.5 Human Resources Implications**

6.5.1 The potential human resource implications for Legal and Procurement teams will be considered as part of the FPS development and covered within the memorandum of understanding with other local authorities.

#### **6.6 Risk Management Implications**

6.6.1 The proposal for a North West SEND Purchasing System will ensure that we are able to manage the market and that there is adequate SEND provision to meet current and future needs of children and young people.

6.6.2 A Risk Management Plan has been developed as part of the process. Key risks identified so far are as follows:

- Ensuring adequate buy in from local authorities, providers and parent carers to produce a regional purchasing system.
- Ensuring sufficient staffing resources are available for the development of a regional purchasing system.
- Lack of financial resources to fund the initial and ongoing development of a regional purchasing system.

#### **6.7 Rural Communities Implications**

6.7.1 No rural communities' impacts are expected.

#### **6.8 Implications for Children & Young People/Cared for Children**

6.8.1 The introduction of the purchasing system will support the SEND (special educational needs and disabilities) Service and in particular the preparing for adulthood and transition agenda. A joined up approach to commissioning provision across Children's and Adult Services will ensure a smooth transition and improved outcomes for individuals who require care and support services.

#### **6.9 Public Health Implications**

6.9.1 There are no direct implications for public health.

## **6.10 Climate Change Implications**

6.10.1 There are no direct implications for climate change.

## **7 Ward Members Affected**

7.1 All wards

## **8 Consultation & Engagement**

8.1 A soft market testing questionnaire was issued to Local Authorities in February 2019 to gain an insight into existing commissioning arrangements and to look for innovation and/ or alternative delivery models. At the same time many local authorities are looking for efficiencies and best value to contribute to outcomes for the children and young people with special educational needs and/or disabilities (SEND) across the region.

8.2 Key findings from the Local Authority Market Engagement Questionnaire are as follows.

- Of the 17 Local Authorities who responded 14 would like to be included in any regional purchasing system from commencement, 3 others have indicated from a later date.
- The proposed services outlined for inclusion all scored highly (over 75%). Additional services highlighted by a few LA's for inclusion included short breaks/holiday provision.
- In terms of contract management a collaborative approach was most popular (69%)
- In terms of current brokerage function this varied, with a lot using SEN lead/teams and commissioners as opposed to very few with a centralised brokerage system.
- All local authorities agreed a memorandum of understanding around the procurement and legal requirements required to develop the system.

8.3 A series of market engagement events have been held with local authorities and providers from across the region and these have been positively received.

8.4 Parent Carer engagement has also started to commence from July 2019.

8.5 Further engagement will continue in 2019/20 with all stakeholders.

## **9. Access to Information**

9.1 Not applicable.



## **10. Contact Information**

10.1 Any questions relating to this report should be directed to the following officer:

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