

CABINET

24 AUGUST 2021

MEDWAY AND KENT FRAMEWORK FOR INDEPENDENT FOSTERING – GATEWAY 1 PROCUREMENT

Portfolio Holder: Councillor Mrs Josie Iles, Portfolio Holder for Children’s Services – Lead Member

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Summary

This report seeks the Cabinet’s agreement to commence the procurement of the Medway and Kent Independent Fostering Framework. This Gateway 1 report was due to be considered by the Procurement Board on 18 August 2021, the outcome of which will be reported at the Cabinet meeting.

1. Budget and Policy Framework

1.1. The 2021/22 budget for External Foster Care is £5,828,834 plus £320,000 for parent and child placements. The predicted budget increase year on year is due to the rising forecast demand in the Children in Care (CiC) population.

Service Area	2017/18	2018/19	2019/20	2020/21	Total
2					
IFA Accommodation	£4,526,171	£5,283,838	£6,560,902	£7,910,770	£24,281,681
IFA Parent & Child	£413,176	£413,018	£320,288	£283,623	£1,430,105

1.2. The Medium Term Financial Strategy predicts a budget requirement of £31.6m on IFA accommodation and £1.3m on parent and child placements over the next four years.

1.3. The current average weekly package is in line with our peers. The average rate is dependent upon a number of factors such as price,

complexity, location, matching and capacity across the categories of Limited, Standard and Intensive needs with our statistical neighbours.

- 1.4. The recommended option proposes a framework. This allows new providers to enter the Framework which is anticipated at the 2-year anniversary or as required by Kent/Medway partnership during its four year lifetime. This therefore recognises the changing landscape of the Independent Fostering Agency (IFA) market and the requirement to ensure sufficiency of available carers.
- 1.5. The commissioning process recognises the need to ensure the right range and quality of support is available in the most efficient, effective, equitable and sustainable way.
- 1.6. It is essential to continuously ensure value for money through the placement process. This issue has been factored into the development of the framework which will incorporate a call-off process whereby a referral will be issued to all providers on the list seeking offers of a suitable placement match. Once the deadline to respond to the placement has elapsed, all of the responses will be reviewed, and the placement will be awarded to the highest ranked provider on the framework who can meet the young person's needs.
- 1.7. In addition, details of the placement will be recorded to facilitate the subsequent review process. One of the factors of the review will include a consideration of whether the needs of the young person have varied during their placement, prior to determining any revisions to the level of their package and a corresponding review of the requisite placement cost to ensure it continues to meet the young person's needs and delivers value for money to the authority.
- 1.8. Local Authorities have a duty under section 22A of the Children Act 1989 to provide accommodation for a looked after child or young person. There are various requirements under section 22C of the Act for such placements including that as far as is reasonably practicable, accommodation should:
 - Be close to the child's family home.
 - Allow the child to continue attending the same school as when they were at home.
 - Allow the child to live in the same placement as a sibling who is also a looked after child.
 - If the child is disabled, meet the child's particular needs
- 1.9. This Report has been circulated separately to the main agenda. Therefore, the Cabinet is asked to accept this report as urgent due to the existing IFA contract ending on 31 January 2022 (with an additional 2-month extension in place to bring in line with financial year), and the procurement timeline for mobilisation of a new contract from 1 April 2022, timely decisions are required to the options outlined in this Gateway 1 (G1) paper. This will ensure that the Council's governance

processes and timelines are also adhered without delays in the contract award.

2. Background

2.1. **Service Background Information**

Foster care is an important way of providing short or long-term care for children whom the council has a statutory duty to provide care.

2.2. Medway has an in-house fostering service which provides a range of fostering placements. In house foster care unit costs are lower than external foster care cost and achieve important outcomes for children in care. However, we need to supplement this by using external foster care agencies. This is either because a child needs specialist support or because there is insufficient capacity in the in-house service.

2.3. The Council has a framework agreement which is led by Kent for these placements and has been in place since 2018. A partnership agreement is in place with Kent.

2.4. **Funding/Engagement from External Sources**

Funding is not sought from any external sources.

2.5. **Parent Company Guarantee/Performance Bond Required**

Not applicable.

3. Procurement Dependencies & Obligations

3.1. **Project Dependency** - The project has dependencies with our Looked After Children Strategy and the availability of the providers to join the Framework.

3.2. **Statutory/Legal Obligations** Local Authorities have a duty under section 22a of the Children's Act to provide accommodation for a looked after child or young person.

4. Business Case

4.1. Procurement Project Outputs / Outcomes

As part of the successful delivery of this procurement requirement, the following procurement project outputs / outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?	How will recommended procurement contract award deliver outputs/outcomes?
1. Increased availability of affordable, appropriate, and quality placements	Ability to place within the framework and infrequent need to spot purchase	<ul style="list-style-type: none"> - Number of bids received and evaluated and awarded through the procurement process - Placements team - Children's social care 	<ul style="list-style-type: none"> - Ongoing analysis of activity data - Performance meetings - Outcome of Framework procurement 	<ul style="list-style-type: none"> • Increased number of providers and quality level • Enhanced contract and performance management across Councils • Greater financial analysis
2. Increased availability of placements meeting a wide spectrum of needs	Success in appropriate timely matches of foster carer and child/young person	<ul style="list-style-type: none"> - Placements team - IFA Providers - Children's social care 	<ul style="list-style-type: none"> - Ongoing analysis of activity data - Stability of placements - Care plan reviews 	<ul style="list-style-type: none"> • Data analysis with ART team to confirm levels of success
3. Reduced placement costs	<ul style="list-style-type: none"> - Reduced spend on individual placements - Number of discounts negotiated 	<ul style="list-style-type: none"> - Placement teams - Finance lead - Children's social care 	<ul style="list-style-type: none"> - Outcome of Framework procurement 	<ul style="list-style-type: none"> • to be determined at 3/6/9 months into new contract • financial analysis

			<ul style="list-style-type: none"> - Ongoing finance monitoring and reporting - Performance meetings 	
4. Long term provider sustainability	<ul style="list-style-type: none"> - Review meetings with commissioners and providers. - Commitment from providers to meet the demands and recruit appropriately skilled foster carers 	<ul style="list-style-type: none"> - Social Care - Placement teams - IFA Providers 	<ul style="list-style-type: none"> - Ongoing - Continuity and long term placements/permanency plans 	<ul style="list-style-type: none"> • To be reviewed at 6/12/18 months
5. To commission high quality foster care that's provides stability and meets individual children and young peoples' needs	<p>Monitoring of:</p> <ul style="list-style-type: none"> - recruitment/assessment - Training - Matching - Support to foster carers - cost and spend 	<ul style="list-style-type: none"> - Number of foster carers in/out - Number registered foster carers - Number of referrals to DBS - Number of foster carers with training TSDES - Referrals accepted/declined - Number of placement breakdowns - Provider min/average/max cost per placement by type/age 	<p>Increased:</p> <ul style="list-style-type: none"> - Sufficiency of foster placements that can meet all levels of need - Quality of care - Specialism to meet complex and challenging placements - Timely and appropriate placements/referrals <p>Reduced:</p> <ul style="list-style-type: none"> - placement breakdowns 	<p>By delivering placements that allow children and young people to:</p> <ul style="list-style-type: none"> - Grow up in safe families and communities - Have good physical and mental health - Learn to have opportunities and achieve throughout their lives - Make safe and positive decisions - KCC and Medway Council maximises value for money

4.2. Procurement Project Management

Kent County Council will lead this procurement.

4.3. Post Procurement Contract Management

Regular quarterly meetings with KCC to look at use of framework and outcomes. Annual reports to Quality Board on progress and use of framework.

5. Market Conditions and Procurement Approach

5.1. Market Conditions

There are providers already in existence that form part of an existing framework arrangement. These providers as well as new ones are very positive to continue a framework and be part of an arrangement that reduces the strictures but with added benefits of a bigger source of referrals and shared risks.

5.2. Procurement Options

For all options set out below, current risks around sufficiency and capacity of the market to respond to demand have been considered in arriving at the recommended option.

5.3. Option 1 (Recommended option): commission a Framework Agreement in partnership with Kent CC.

Option	Risk	Benefits
Competitively tender for a new Framework Agreement with fixed prices and set categories of need jointly with Kent CC	<p>Timelines and meeting the requirements of distinct borough governance arrangements</p> <p>Reliant on relationships built to develop and implement the IFA framework since 2018.</p>	<p>Consistency in tendering, pricing, contract management, and the call off arrangements for placements and managing the market.</p> <p>Partnership Agreement is in place and lessons used to inform processes and relationships</p> <p>The existing contractual arrangements have worked well, gives capacity to deliver commissioning intentions/sufficiency and risks managed.</p> <p>There is an appetite and willingness within the local market to work with both Kent & Medway in some form of joint contractual arrangement other than spot contracts</p>

5.4. Option 2: do nothing.

Option	Risks and issues	Benefits
<p>Do nothing – let the existing arrangement lapse and spot purchase individual placements.</p>	<p>Prices would be free floating with the market deciding what they wish to charge including annual price increases</p> <p>Medway Council would not be legally compliant as there would be no overarching contractual arrangement.</p> <p>Increased transaction costs for providers and Placements Team</p> <p>Lack of market intelligence and performance data to assist with cost effective and efficiency considerations.</p> <p>Loss of influence and shaping the market at local and cross regionally where placements are needed outside Medway boundary.</p> <p>Increase of placements by other LAs as Medway will not be using its power to influence.</p> <p>Commissioner relationships with the Kent & Medway IFA providers forum</p> <p>Communication and sharing of key information/intelligence would be weakened</p>	<p>Medway Council would not be tied to a particular group of providers for a period of time.</p> <p>Reduced commissioning, procurement and contract management with minimal processes safeguarding and sanction alerts. Note that placements would only be made with Ofsted registered providers who would be legally obliged to comply with fostering regulations and associated quality guidance.</p> <p>Possible to still have a relationship with the market but would need to identify alternative ways to influence.</p> <p>No tendering process to be undertaken along with no requirement to evaluate bids. Categories and types of placements would not be required as each placement would be individually negotiated.</p>

5.5. Option 3: commission a solo Framework Agreement

Option	Risk	Benefits
<p>Competitively tender for a new Framework Agreement with fixed prices and set categories of need</p>	<p>This closed arrangement would limit choice and quality as well as innovative provision for newer market entrants</p> <p>Would always still require some spot purchasing.</p> <p>If a provider wanted to offer a lower price than they originally tendered provided it was stipulated in the terms and conditions, we could accept a lower price. However, there is less incentive for a provider to do this as they are holding the risk by offering a fixed price across placement types. Providers will take a view on seeking a higher margin on some placements to offset lower margins on others.</p> <p>Providers may choose not to tender to spot contract instead, where they determine the costs depending on demand in their service (based on a business decision rather than needs of the child)</p> <p>Medway Council will need to pre-determine categories of need and age group in order to allow for price differentiation. There is a risk that these categories will not reflect the complexity of needs of individual children needing a placement.</p> <p>The need to fix prices over a multi-year framework (e.g. 4 years) may mean that we experience a sharp increase in average weekly costs of IFA placements in</p>	<p>Clear pricing mechanisms - Agreeing prices at the tender stage for a period of time gives certainty to the market.</p> <p>A closed arrangement means providers cannot resign and then re-join at higher prices.</p> <p>Able to link and control annual price increases to Medway budget planning processes.</p> <p>Strong contract management arrangements in place to ensure service is delivered in accordance with agreed performance and quality levels.</p> <p>Easier to maintain and develop supplier relationships for an open and constructive relationship. Most local providers like having a strong relationship with their host authority.</p> <p>There is an appetite and willingness within the local market to work with both Kent & Medway in some form of joint contractual arrangement other than spot contracts</p>

Option	Risk	Benefits
	2022-23 as providers will probably seek to 'price in' the risk that we will not agree to increase rates in subsequent years but this risk could be partially offset by stating clearly the price review process during the course of the agreement.	

5.6. Option 4: commission Qualified Provider List/Framework (hybrid option – open framework)

Option	Risk	Benefits
Qualified Provider List (QPL) with no fixed prices. Any Ofsted registered IFA would be able to join the QPL	<p>Prices cannot be fixed.</p> <p>Prices given at time of entry are indicative only and the providers cannot be held to them. Prices will be determined with each provider on their financial and vacancy position. On emergency cases prices are likely to be higher due to 'needing to place'. This may drive up prices across sector.</p>	<p>Minimise the need for any spot purchasing outside of the QPL.</p> <p>New providers can join at any time.</p> <p>Enables additional discussions about the needs of the child and this is directly linked to what you would pay. ART would need to negotiate on a case-by-case basis.</p> <p>Less likely to experience a significant change in prices when the existing Framework ends.</p> <p>Contract management arrangements can be put in place. This arrangement could re-focus this activity so that indicative prices are monitored to see if they are met or whether individual providers are deviating. This would provide evidence on costs and facilitate challenge in terms of provider performance.</p>

5.7. Option 5: join Regional Arrangements / Consortia

Option	Risk	Benefits
<p>Join a Regional Arrangement</p>	<p>If we joined an existing arrangement rather than creating our own regional arrangement it would be harder to maintain and manage relationships in their current guise.</p> <p>The more partners in an agreement the harder it is to get a consensus for change and one size does not fit all with the sufficiency needs and demographics of Kent & Medway</p> <p>It is difficult to evidence that combined buying power as part of a larger regional arrangement would bring savings.</p> <p>Responsibilities in terms of contract management differ between models but this would either be carried out by the agency running the arrangement or each local authority would take responsibility on behalf of the region for provider inspections in their respective geographic boundary. For an Authority the size of Kent with a sizeable provider population this could be a big commitment which would require dedicated resources. It is likely we could be carrying out compliance requirements with providers that we would not actually be using.</p> <p>Costs of joining regional arrangements are significant e.g. to join West London Alliance is a minimum of £50k p/a up to £100k p/a depending on what package was required.</p>	<p>DfE, national bodies and market are supportive of regional arrangements due to consistency of approaches.</p> <p>Potential for authorities to leverage combined buying power.</p>

5.8. Option Cost comparison

Option	Procurement cost considerations	Annual cost of centralised management	Risk profile
Option 1 - Commission joint KCC Framework	Could negotiate and agreed in house procurement team in exchange for legal costs and/or other arrangement (e.g. QA)	None	
Option 2 - Do nothing	None	None	Escalation of individual placement costs Compare current average cost of standard/ enhanced of SPOT vs Framework
Option 3 - Commission solo Framework	In house procurement and legal costs	None	Zero purchasing power so tantamount to doing nothing option
Option 4 - Commission Qualified Provider list	In house procurement and legal costs	None	No appetite from providers therefore unlikely to result in achieving objectives and tantamount to doing nothing option
Option 5 - Join Regional Consortium	In house procurement and legal costs Likely to be joining fees to established arrangements	Yes – all would have an annual fee	Decisions made on quorate basis by larger authorities and can result in costs Medway could not afford.

5.9. Procurement Process Proposed

- 5.10. It is proposed that a multi-supplier framework agreement is procured from which KCC and Medway will access a list of providers for each level of need set out in Option 1 of 5.3 above. The framework will be an open, single stage competitive process under which all bids are evaluated. All providers will be required to have good to outstanding OFSTED ratings in order to be accepted onto the framework.
- 5.11. Once the framework is in place it will be used by the Placements Team as part of the search process and to have tenders for each bid will be used to produce a ranked list of suppliers for each type of support. Whenever a need for an external placement arises that need can be met by holding a mini- competition asking all providers on the relevant ranked list for a match to the needs of the child. The placement will be awarded to the highest ranked provider who can provide a foster family which matches the needs of the child or young person or sibling groups.

- 5.12. The intention is that the invitation to tender will be issued in October 2021, with the successful providers being awarded in February 2022 to facilitate the framework being in place for 1st April 2022. The procurement would cover the period 1 April 2022 to 31 March 2026.
- 5.13. It is recommended that the framework agreement is awarded for four years on terms which include provisions which allow Medway to commence a review on or around the second anniversary of the framework commencement date – or at any time. This will enable providers who did not express an interest in the original procurement to join the framework and will also give existing providers an opportunity to submit new prices should they choose to do so.
- 5.14. The partnership with KCC intends to undertake regular engagement with providers in order to review local capacity and developments and develop stronger relationships, where these will support strategic intentions. Medway will continue to collaborate with neighbouring local authorities to share best practice. This includes membership of the Children's Cross Regional Arrangements Group (CCRAG).

5.15. **Evaluation Criteria**

Tenders will be evaluated against a quality and price ratio of 40 / 60%.

6. **Consultation**

6.1. **Internal (Medway) Stakeholder Consultation**

Current and ongoing consultation takes place through the Corporate Parenting Panel, Children in Care Council, Housing Providers, Health Agencies and so on.

6.2. **External Stakeholder Consultation**

A providers' forum is in place and formed in 2018. A regularised forward planner is in place and quality assurance meetings to influence policy and service design and development are in place.

6.3. **Procurement Implications**

KCC will be leading the procurement process and the Council's Senior Commissioning Officer, Children in Care and Designated Category Manager will be actively engaged in the process. A project timetable and governance requirements are in place.

7. Other Considerations

7.1. Diversity and Equality

The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- b) Advance equality of opportunity between people who share a protected characteristic and those who do not
- c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3. The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. The completed EqIA has indicated a positive impact on all of the protected characteristics equality groups, with low extent of impact.

7.4. Social and Economic Considerations

There is a commitment to place children and young people with local foster families to allow them to maintain contact with families and friends continue at the same school and thrive within their own community.

7.5. Each child/young person will have access to foster care services which recognise and address their needs in terms of gender, religion, ethnic origin, language, culture, disability, and sexuality. Placement decisions will consider the child's assessed racial, ethnic, religious, cultural, and linguistic needs and match these as closely as possible with the ethnic origin, race, religion, culture and language of the foster family.

7.6. Some local authorities directly provide almost all their foster care and Medway does have an in-house fostering service however, most local authorities do commission and directly provide fostering services. Fostering now takes many forms and the national picture shows its use has grown significantly as the use of children's homes has reduced.

- 7.7. The growing demand and complexity of needs arising from COVID is noticeable in Children's Services and a sufficiency strategy is in place and one of the key programmes is fostering capacity to be increased and the support to foster carers improved in order to provide a safe family environment for those children who are identified as able to step across from residential provision. Whether the step across from residential care is into an in-house foster care household or one provided by an IFP, utilising foster care in this way will provide opportunities for efficiencies against residential spend.
- 7.8. Martin Narey's Fostering Review (February 2018) found that for IFPs the main cost driver (approximately 55% of total costs) and 18% greater than for local authorities, was the fees and allowances paid to foster carers. Various bodies such as the ADCS and Audit Commission have attempted to break down and understand the difference in costs between a local authority in-house foster care placement and one made with an IFP. Narey concluded that IFP placements are more expensive albeit the difference being not so great once cost differentials such as money spent on carer allowances, placement management, training and recruitment is taken into account.
- 7.9. In general, a local authority is reluctant to share the price paid for foster care placements with the external market. Firstly, this makes benchmarking a challenge with the added complication that local authorities demand and most importantly the level of complexity of the children and how this is all procured makes cost comparisons of little use as it is unlikely to be like for like.
- 7.10. An additional issue in terms of pricing is that other local authorities are placing a significant number of children in care in Medway with the independent sector. They often pay more (particularly the London Boroughs) and are limiting the remaining capacity for Medway children along with any levers we may have with the market.
- 7.11. **Environmental Considerations**

The Framework is virtual but has little impact on environmental or climate change factors. A robust and well populated framework could give more choice of placements meaning young people are placed closer to Medway therefore reducing travel for social work teams.

8. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Procurement Process	There is a risk that the interface and joint working between Medway Council and Kent County Council including decisions, processes and governance process and timelines may not align.	Regular dialogue and meetings with Kent Commissioners, including procurement, legal and finance leads from Kent and Medway to ensure procurement plans and pathways/protocols are fully aligned, and that all parties are fully informed of timely decisions which will impact the project plan including timelines. Discussions taking place with other local authorities exploring opportunities for Medway to join other frameworks in the event of partnership working with Kent not being viable.	C2
Procurement Process	There is a risk that there may be a lack of providers expressing an interest in the tender and submitting bids. This may result in a need to spot purchase and a decrease in negotiating power.	Good engagement and communication with incumbent and prospective providers throughout the consultation process. The level of business within the joint procurement and revised framework arrangements will be an incentive for providers to be part of the framework.	D2
Financial	There is a risk that providers may seek to secure an increase in unit cost as placements on existing framework have remained firm for the last 4 years with a 1.4% increase in 2020.	Substantial benchmarking has indicated that this is not the case in other local authorities and other opportunities for seeking economies will be incorporated. Legal has advised that IPA contracts cannot be amended unless agreed by both parties.	D2

Quality Assurance	There is risk that new service providers fail to deliver required improvements in scope of service and offer opportunities for delivering efficiencies.	Robust management of the new contract based on the outcomes described in the performance framework.	D2
Service Delivery	There is risk that there are inadequate numbers of appropriate foster carers capable of meeting increased complexity of need.	To include KPI's within the contract to ensure that framework providers actively recruit appropriate workforce, including specialist training and support to meet the needs of our LAC.	D2

9. Financial Implications

- 9.1. The procurement requirement and its associated delivery (as per the recommendations at Section 11, will be funded from existing revenue budgets.
- 9.2. Further detail is contained within Financial Analysis of the Exempt Appendix, attached to this report.

10. Legal Implications

- 10.1. Local Authorities have a duty under section 22A of the Children Act 1989 to provide accommodation for a looked after child or young person. There are various requirements under section 22C of the Act for such placements including that as far as is reasonably practicable, accommodation should:
 - Be close to the child's family home.
 - Allow the child to continue attending the same school as when they were at home.
 - Allow the child to live in the same placement as a sibling who is also a looked after child.
 - If the child is disabled, meet the child's particular needs.
- 10.2. These factors will affect whether or not a provider is able to offer a match for any particular placement.
- 10.3. Foster carer services fall within 'social and other specific services' within Schedule 3 of the Public Contracts Regulations 2015. This means that, although the total value of all call-off contracts expected to be awarded under the framework is estimated to exceed the current threshold of £615,278, the purchase of these services is not subject to the full rigours of procurement law. However, Medway is still required

to carry out a competitive process before awarding the contract. The procurement process must follow the principles of equality, transparency and non-discrimination.

11. Recommendation

11.1. It is recommended that the Cabinet approves Option 1, as set out in section 5.3 to the report, to approve the commissioning of the Medway and Kent Framework for Independent Fostering.

12. Suggested reason for decision

12.1. Procurement of the Medway and Kent Framework for Independent Fostering is essential to continuously ensure value for money through the placement process and to meet the Council's statutory responsibility.

Lead Officer Contact

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Appendices

Exempt Appendix 1

Background Papers

None