



Author/Lead Officer of Report: Becky Towle

Tel: 0114 273 4982

Report of: John Macilwraith, Executive Director, People Services

Report to: Cllr Jackie Drayton, Cabinet Member for Children & Families

Date of Decision: 3 December 2019

Subject: Observational Contact Service

Is this a Key Decision? If Yes, reason Key Decision:- Yes No

- Expenditure and/or savings over £500,000
- Affects 2 or more Wards

Which Cabinet Member Portfolio does this relate to? Children, Young People & Families

Which Scrutiny and Policy Development Committee does this relate to? Children, Young people & Family Support

Has an Equality Impact Assessment (EIA) been undertaken? Yes No

If YES, what EIA reference number has it been given? 277

Does the report contain confidential or exempt information? Yes No

If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-

*“The (**report/appendix**) is not for publication because it contains exempt information under Paragraph (**insert relevant paragraph number**) of Schedule 12A of the Local Government Act 1972 (as amended).”*

Purpose of Report:

This Report sets out proposals for the future of for observational contact services for looked after children and seeks approval of the procurement strategy for re-commissioning those services in the short-term.

Recommendations:

The Cabinet Member is recommended to:

- 1) agree the proposal for officers to conduct a thorough review of the Observational Contact Service to develop and improve the experiences of children & young people and their families and to explore the possibility of providing the service in a variety of ways including bringing it back in-house and report back within 6 months with an option appraisal;
- 2) approve the proposal to recommission and retender a contact service framework of providers to be called-off as necessary for a period of up to four years; and
- 3) delegate authority to the Director of Finance and Commercial Services and in consultation with the Executive Director of People's Portfolio or his nominated representative to award the framework contract(s).

Background Papers: None

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance & Commercial Services: <i>Andrew Bray – Finance</i> <i>Sian Holmes– Commercial Services</i>
		Legal: Sarah Bennett
		Equalities: <i>Bashir Khan</i>
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>		
2	EMT member who approved submission:	John Macilwraith Executive Director People Services Portfolio
3	Cabinet Member consulted:	Councillor Jackie Drayton
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: Becky Towle	Job Title: Assistant Director Improvement, Children's disability and ADM for adoption
	Date: 15 October 2019	

1. PROPOSAL

Background and Responsibilities of Local Authorities

- 1.1 The Local Authority has a duty to promote contact between children who are Looked After and their families under Schedule 2 of the Children Act 1989 and Children and Families Act 2014, unless it is not practicable or it is not consistent with the child's welfare.
- 1.2 In addition the Human Rights Act 1998 by reference to Article 8 of the Human Rights Convention defines the right to family life, and a failure to promote contact at the correct level both in terms of frequency and level of support provided could be argued as contrary to this, if it was disproportionate and without good reason.
- 1.3 There are currently 646 children in care: of these 476 are in foster care, 23 are living with family, 34 are living independently, 83 are in residential care, and 30 are in adoptive families awaiting final court decisions.

Current Situation

- 1.4 The current service is designed to facilitate contact between Children in Care, including those who are the subject of care proceedings and those where care proceedings have concluded and contact is an ongoing requirement, and their families.
- 1.5 In Sheffield, supervised contact provision currently involves the contact supervisor observing contact, with activity reporting and intervention in difficult circumstances.
- 1.6 The current service is delivered through a multi-supplier framework. There are three Service Providers who deliver the service.
- 1.7 Where contact is undertaken at the provider's premises, every contact session is observed by a suitably trained worker.
- 1.8 Where it is deemed in the best interests of the child, observational contact may be undertaken at another location. This can be premises within the community (e.g. a family centre) or in another Local Authority premises or a prison. Transport for the child/ren and an observing worker are provided by the contracted service providers, with travel costs reimbursed by SCC.
- 1.9 Social workers will determine the activity and location of the contact in a 'Contact Plan' derived from the individual child/young persons 'Care Plan' which is often guided by the courts. Some activities may be deemed unsuitable for contact.

The Proposed New Service

- 1.10 Children are at the centre of our practice. Our Corporate Parenting Strategy 2018-2020 states that we need to make sure that children and young people feel safe and secure, have stability in their lives and that we help them to achieve their full potential by supporting them in fulfilling their ambition and aspirations. Thus, it is hoped the proposed new service which will increase the range of 'family time' options aligns with our corporate parenting principles
- 1.11 We are now looking to review and realign the contact service to enhance service delivery and value for money. There are a significant number of contacts that are currently supervised that could continue to run without the need for supervision. Identifying these would allow us to give children, young people and their families more pleasant family time together, reduce demand on the contact service and achieve efficiencies. It has been identified that considerable savings can be made by reducing the overall number of contacts and establishing more cost effective arrangements, whilst retaining quality of service. There will also be a process developed to ensure that every contact is in line with the new contact policy that will be introduced.
- 1.12 The new proposal should enhance the experiences for children and young people, allowing it to be a more 'natural' environment referred to as 'family time'. This provision where it is deemed in the best interest of the child should be undertaken at another location within the community, such as a park, play centre, museum or other activity that replicates family time. Offering more support to families to enable better quality time for children with their families and significant others. A key ongoing requirement will be for providers to be able to support evening contact, weekend day and / or bank holidays to enable the local authority to fulfil its legal duties. We propose to make a clear distinction between different types of contact, as per the categories below:
1. **Facilitated Contact** – provider to supply safe, clean, secure and stimulating facilities, fit for the needs of contact. Provider staff onsite during contact, but will not wholly supervise the contact. Instead provider staff will monitor handover at commencement and end of contact to conduct some safe and well checks. Provider staff may also pop in to the contact session from time to time if requested by the Social Worker.
 2. **Overseen/Supervised Contact** – the provider will remain present throughout the whole of the contact session in an observational capacity, and submit a contact report back to social care afterwards.
 3. **Supported Contact** – staff will provide guidance, advice, support and encouragement to the family to enhance their family time/contact.

We will be commissioning services 1-3 and only these will form part of the framework. The local authority will have the option for all of the above to take place at their own venues.

- 1.13 The approach we are proposing is a wide scale gradual transformation to the contact service in Sheffield - supporting operational transformation, not just improving existing practice but adding real value, including social value. This will encourage and promote collaboration within, and across agencies, in order to provide a joined up service provision for our service users.

Preferred Commissioning/Procurement Strategy

- 1.14 The proposed procurement strategy will enable the council to explore the opportunity of bringing this service back in house. This will require a full and thorough review of the service and in consultation with Commissioners, stakeholders, users and staff.
- 1.15 In order to conduct this analysis to the appropriate level, it will be necessary to put in place a temporary arrangement to ensure continuance of service provision throughout the review period. Commissioners suggest that approval is given to recommission and retender an observational contact service via a framework contract enabling providers to be called-off to deliver services as and when required. We would recommend that the term of the framework is for up to four years.
- 1.16 This procurement strategy is our preferred option which would enable the local authority to explore delivering the service in a different way, and to consult with partners, children young people and families whilst maintaining an excellent service for its end-users. It would enable Commissioners and Stakeholders to have flexibility about delivering the service in a new way once the review is completed whilst also providing continuity of service and ensuring that they have the time they need to properly consider all of the options for the future. This option would enable a better integration with the social work teams. It would offer more of a gatekeeping approach and lead to more efficiencies. Quality of providers will be monitored during the period of the framework.

2. HOW DOES THIS DECISION CONTRIBUTE?

- 2.1 By fulfilling the Authority's statutory duty to maintain contact between families and children and young people in care we increase the health and wellbeing of those individuals involved by providing a contact session. We also reduce inequalities for those families currently disconnected that, without support, would struggle to maintain a level of contact in a safe and structured environment.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 The Authority has to provide an observational contact service to fulfil its statutory duty. However, there has been consultation with the market and potential providers, taking place via both a written soft market test (under

the auspices of the Council's e-procurement portal 'YORtender') plus a market engagement session held between potential providers and Sheffield City Council on 11 April 2018. This has allowed the Council to market test and obtain the views of potential providers in advance of the formal tender process, with some of the outcomes of this engagement included within this report.

- 3.2 The significant change is that the provider will offer more than purely observational contact. They will support parents to offer good quality contact wherever possible. Throughout the lifetime of the contract feedback has been received from a variety of stakeholders which has been and will be used to review the service specification, and refine and improve the service.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 Decisions need to take into account the requirements of the Public Sector Equality Duty contained in Section 149 (1) of the Equality Act 2010. As part of documenting the meeting of the requirements of the duty, we have carried out an Equality Impact Assessment. Section 149 (1) identifies the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

- 4.1.2 The Equality Act 2010 Section 149 (7) identifies the following groups as a protected characteristic:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

- 4.1.3 The Observational Contact service contributes to meeting the authority's statutory duties to facilitate contact between children and young people, their parents, siblings and key people in their lives.

4.1.4 An EIA has been completed and highlights positive impacts of contact (where it is practicable and in the child's welfare) on Looked After Young People and also highlights the positive impacts on health and wellbeing.

4.2 Financial and Commercial Implications

4.2.1 The observational contact service is currently provided by three providers. The available budget in 2019/20 is £879k, which is a reduction from the current level of funding.

4.2.2 Section 1.16 proposes that SCC explores bringing the service provision back in-house. The review of options will be brought back in a future report.

4.2.3 The proposed framework duration is sufficient to enable the review of the service to be undertaken and completed and any subsequent action taken to bring it in-house, should the decision to do so be taken, without a requirement to go out to the market again for a further interim arrangement. The framework is for up to four years with options to change at any point over that time.

4.3 Legal Implications

4.3.1 As noted in paras 1.1 and 1.2 above the procurement supports the exercise of the Authority's statutory functions in relation to Looked After Children. Failure to meet a statutory duty leaves the Authority vulnerable to legal challenge by way of judicial review.

The proposal for a full, open tender process is compliant with the Public Contracts Regulations 2015 and Contract Standing Orders.

4.3.2 TUPE implications shall be assessed and the incumbent providers asked to advise on any potential TUPE eligible staff. This shall be taken into consideration through the procurement process.

4.3.3 All current Service Providers will be advised to take their own legal advice on this matter and will be required to provide information on the Workers they believe are eligible for TUPE in the event they are unsuccessful. This information will be made available to prospective Tenderers to allow them to accurately price their tender submission.

4.3.4 The implications of new providers taking over the contract will be dealt with by the organisations currently providing the service. The council's lead in time to begin a new contract will allow for any activity that is required to meet these legal obligations.

5 ALTERNATIVE OPTIONS CONSIDERED

5.1 SCC could approach the market to create a Dynamic purchasing Procurement System (DPS) multi-supplier framework agreement. This

would enable SCC to appoint providers at the beginning of the framework period and would allow for additional providers to apply to join the framework throughout its duration. The recommended term of the DPS framework would still be up to 4 years as a shorter arrangement could result in a permit the review of the service to be undertaken and completed and any subsequent action taken to bring it in-house, should that decision be taken, without a need for a further interim arrangement to go out to market again.

- 5.2 A DPS Framework Agreement with multi-agency providers can enable greater market competition and, if and, when new providers join it would facilitate more choice for children and families. Greater market choice is also a driver for reduced pricing. A DPS framework maximises the opportunities to develop localised contact. It is also designed to develop ongoing market capacity allowing for organisations, which were not ready to participate in the original tender, to organise the appropriate facilities to fulfil the contract requirements. However, due to the fact that providers can apply to join the DPS at any time a DPS framework is more resource intensive. The mechanisms for call-offs are also more restricted with a DPS and the way they operate is generally better suited to “off the shelf” products and services.
- 5.3 SCC could alternatively approach the market to seek to appoint a single supplier to undertake the contract. The approach would be taken that SCC would not guarantee a set number of hours as part of the contract. This approach could be regularly reviewed and the authority would retain the right to amend this subject to predicted future demand and experience of practice.
- 5.4 Adopting a single provider approach would have the benefit of reducing time spent of contract management and ancillary activities. However it would expose the Council to the risk of having a sole provider delivering all its observational contact services. The risk of a single point of failure in respect of a statutory service is seen as outweighing the benefit attached to a reduced burden in terms of contract management. There was also concern that city wide access and availability for this service could prove challenging for a single supplier. Current suppliers with their facilities are geographically based whereas this option would require a provider to have staffed facilities across the city available at evenings, weekends etc
- 5.5 SCC could choose not to undertake any further procurement activity in relation to this service provision.
- 5.6 Doing nothing to continue this service provision via a legally compliant procurement procedure will see the failure of the Authority’s statutory functions in relation to Looked After Children. The Local Authority has a duty to promote contact between children who are Looked After and their families under Schedule 2 of the Children Act 1989 and Children and Families Act 2014. Failure to meet a statutory duty leaves the Authority vulnerable to legal challenge by way of judicial review and the negative publicity and reputational damage. Consequently, in the event that SCC

was not in contract (written or by performance) it would have to discharge its statutory duty by delivering in-house with immediate effect. As SCC does not currently have the capacity or capability to do so, this cannot be considered as a realistic option.

6. REASONS FOR RECOMMENDATIONS

- 6.1 The Council has a statutory responsibility to provide contact for children and young people in care and is not currently in a position to deliver this service in-house.
- 6.2 Procuring a framework for up to 4 years, with break clauses each year, provides both continuity and flexibility thereby enabling SCC to explore bringing all or some of the service provision in-house .
- 6.3 Procuring a framework for the proposed revised service ensures:
- the model of delivery remains fit for purpose
 - that the providers of the service can meet the changing needs of children looked after and their key contacts so that we maintain our ability to deliver a quality service which has value for money principles.
- 6.4 The proposed option therefore enables SCC to resolve the long-term strategic direction for the observational contact function and to generate savings in the meantime through a stratification of the levels of contact necessary.