

Tender Framework for Early Years and Childcare Provision

To: Children and Young People's Committee

Meeting Date: 1 March 2022

From: Executive Director: People and Communities.

Electoral division(s): All

Key decision: Yes

Forward Plan ref: KD2022/043

Outcome: The Council will be able to respond more quickly and consistently to changes in the childcare provider sector, including a rise in closure rates, in a way that secures continuity of provision and minimises potential disruption for children and families, reducing the need to secure exemptions from having to go out to tender process whilst ensuring provision is commissioned and secured in accordance with the Council's financial regulations relating to procurement and contracts.

Recommendation: The Committee is asked to

- a) Endorse the tender policy as set out in Appendix 2 to this report for immediate adoption and implementation.
- b) Note the existing delegation to officers to enter into agreements to dispose of interests in property at less than best consideration up to an annual rental limit of £20,000

Officer contact:

Name: Clare Buckingham

Post: Strategic Education Place Planning Manager (Cambridgeshire & Peterborough)

Email: clare.buckingham@cambridgeshire.gov.uk

Tel: 01223 699779

Member contacts:

Names: Councillors Bryony Goodliffe and Maria King

Roles: Chair/Vice-Chair

Email: bryony.goodliffe@cambridgeshire.gov.uk maria.king@cambridgeshire.gov.uk

Tel: 01223 706398 (office)

1. Background

1.1 The Council's Statutory Duties

The Childcare Act 2006 placed specific sufficiency duties upon Local Authorities (LAs), including to secure:

- sufficient and suitable childcare places to enable parents to work, or to undertake education or training which could lead to employment.
- sufficient and suitable early years places to meet predicted demand; and
- free early years (EY) provision for all 3- and 4-year-olds of 15 hours per week 38 weeks per year (570 hours per year).

- 1.2 The Education Act 2011 extended LAs' duties to include an entitlement of 570 hours of free early education per year for eligible two-year olds, from the term following their second birthday.
- 1.3 The Childcare Act 2016 further extended LAs' duties such that, since September 2017, children aged three and four from working families who meet the qualifying criteria (Appendix 1), have been entitled to an additional 570 hours of free childcare, providing them with a total of 1040 hours of free childcare (equivalent to 30 hours per week for 38 weeks per year).
- 1.4 The Childcare Act 2006 expands and clarifies in legislation the vital role LAs should play as strategic leaders in facilitating the childcare market, which was first laid out in the Childcare Act 2004. The 2006 Act also reinforced the framework in which LAs were already working – in partnership with the private, voluntary, and independent (PVI) sector – to shape children's services.
- 1.5 The Council's role in providing early years and childcare places is principally, therefore, that of commissioning or securing providers of childcare where new settings or opportunities are created and facilitating the market to ensure that there is sufficient quality childcare provided across the county.
- 1.6 The Council only has a direct role in the provision of childcare as the provider of last resort. However, there are significant issues associated with the Council taking on this role which has resulted in CYP Committee at its meeting on [30 November 2021](#) approving the establishment of a Childcare Framework to identify childcare providers when needed, both at short notice and when service agreements and leases are approaching the point at which they are to terminate, and a tender is required.
- 1.7 The commissioning route requires the Council to tender opportunities as they arise and enter a series of contractual relationships. These arrangements need to comply with the Council's financial regulations in respect of procurement and contracts. The regulations do permit exemptions, but this should be by exception and a formal process seeking such an exemption should be followed.

2. Main Issues

- 2.1 A written policy agreed by this Committee is required, to formalise current custom and practice in respect of how opportunities provided by the Council are offered to the private, voluntary and independent (PVI) sector for the following reasons:
- Cambridgeshire remains a growth area and a significant number of new and expanded schools will be required in the major new development areas. All new primary schools are provided with dedicated facilities for delivery of early years and childcare providing new opportunities for both PVI providers and schools to establish and run these settings.
 - There has been an increase in closure rates associated with the disruption caused in the sector by the Covid-19 pandemic. The financial impact of Covid-19 on the sector is expected to have an impact on the sustainability of some settings for some time to come. Where a setting closes and the Council has an identified sufficiency need for early years and childcare places in that area of the County, a new provider will need to be secured quickly.
 - A recent audit report and case study identified the need for a formal Council policy on the tendering of childcare opportunities and the circumstances in which an exemption should be sought. It further identified the need to distinguish between the tender exemption process and the disposal of property at less than best consideration. The latter process is entirely separate and is not an alternative to seeking an exemption to tender an opportunity.
- 2.2 The proposed policy (Appendix 2) establishes that the default position when an opportunity arises is to go out to tender.
- 2.3 Historically, one of the barriers to undertaking a tender exercise is the timescale required to undertake an open market tender. An EY and childcare provider is required to provide three-months' notice of closure and this is not sufficient to undertake all the processes required. Consequently, exemptions would be sought on the grounds of urgency, in order that a new childcare provider could be identified and ensure there was no loss of service to families. Such a loss would not only cause considerable upheaval to children and parents, but it would also place at risk the Council's ability to meet its statutory EY sufficiency duty. However, the Childcare Framework approved by this Committee on 30th November 2021 will enable the Council to respond more quickly and offer these opportunities more easily to potential providers. The formal adoption of the new policy supported by the Childcare Framework is expected to reduce the need to seek exemptions from the Council's procurement/tender rules.
- 2.4 The tender policy identifies the circumstances in which an exemption will be sought. These have been drawn tightly and seek to restrict its use to circumstances where:
- The introduction of a new provider would destabilise the local childcare market and the sustainability of existing local providers and the places they offer
 - Changes to the occupation of premises arising from Council policy or investment decisions
 - Technical changes required to the terms of occupation of premises (for example,

renewal of lease) which do not constitute a proposal by the Council to commission a new service

Any request for an exemption will require the approval of the Executive Director People and Communities and the Head of Procurement.

- 2.5 Where an opportunity is tendered the market rent for the property (what a provider is prepared to offer) is effectively set by this process. Any decision to offer a property to a provider at less than the market rent will only apply in those circumstances where an exemption to the tender process has already been secured. A less than best rent will only be set after a full sustainability assessment of the individual provider in question.
- 2.6 The less than best consideration process is separate to the tender process and is only activated once an exemption to tender has been secured. The process is already well-established and is approved by Council with appropriate officer delegations put in place. The Committee is asked to note these provisions.

3. Alignment with corporate priorities

3.1 Communities at the heart of everything we do

It is important that parents can access a childcare place close to where they live. The clarity offered by this policy should reduce any potential delay in identifying new providers where continuity of provision is at risk. It also identifies those circumstances where the Council would seek an exemption from the tender process where it is not a genuine new commercial opportunity, or such an approach would disrupt or threaten existing community provision.

3.2 A good quality of life for everyone

This corporate priority is explicit throughout the report as it relates to early years provision, which not only supports children to learn, thrive and achieve their full potential but also supports parents to undertake learning and to work.

3.3 Helping our children learn, develop and live life to the full

This corporate priority is explicit throughout the report as it relates to young children gaining access to EY education which will support their learning and development. This is key to securing optimal outcomes for all children, as well as supporting their wellbeing and playing an important role in safeguarding them.

3.4 Cambridgeshire: a well-connected, safe, clean, green environment

Securing local providers of EY and childcare supports parents to access childcare close to home and, therefore, reduces the need to travel.

3.5 Protecting and caring for those who need us

High quality EY and childcare plays a role in caring for and safeguarding all children who access it. The provision referred to within the report covers EY education for funded 2-year-olds, 3- and 4-year-olds and childcare for the children of all ages of working families.

4. Significant Implications

4.1 Resource Implications

The following bullet points set out details of significant implications identified by officers:

- In situations where a tender exercise is undertaken the consideration offered by prospective bidders for use of the Council's premises in effect determines the market rent i.e., what providers of this service are prepared to pay. Where the exemption to tender route is followed, a market valuation will be undertaken by the Council's Strategic Assets team and the final level of rent/lease established following a rigorous assessment of the financial viability of the provider.

In either case the Council is seeking to secure the best available consideration for the use of its property asset

- The adoption of the Childcare Framework will reduce the amount of officer time and resource previously needed to run individual, full open market tenders.

4.2 Procurement/Contractual/Council Contract Procedure Rules Implications

The following bullet point sets out the significant implication identified by officers:

- The Procurement team provided advice on the establishment of the Childcare Framework and will continue to support its subsequent implementation. Advice will be sought from them whenever the Council needs to undertake a tender process for EY and childcare provision in the County.

4.3 Statutory, Legal and Risk Implications

The following bullet points set out the significant implication identified by officers

- There is a need to deliver the statutory sufficiency duty in respect of EY and childcare but within the financial regulations of the Council in terms of procurement and contracts. The proposed policy seeks to achieve that.
- The legal authority to dispose of property consideration at less than best value is contained in the General Disposals Consent (GDC) regulations of 30th July 2003.

4.4 Equality and Diversity Implications

The following bullet point sets out the significant implication identified by officers:

- Sufficient good quality EY and childcare provision is essential in securing better outcomes for all groups with the community.

4.5 Engagement and Communications Implications

The following bullet points set out the significant implications identified by officers

- Where a new opportunity arises for a provider the Council will communicate this in the following ways:
 - the annual publication of a Market Position Statement, which sets out where new provision is required as well as monitoring and reviewing capacity within existing provision regularly to reflect the impact of new developments
 - ensuring that all future tender opportunities or calls on the new Childcare Framework are advertised on the Council's website, Pro Contract, as well as on Find a Tender and Contract Finder
 - sending out an email communication to all providers about future tender opportunities to establish new provision or take over provision in the event that an existing provider indicates they plan to serve notice and the Council has a sufficiency need for places in that area.
- Where an existing provider gives notice that it intends to cease operating, the Council will send a letter to parents of children who access the current setting, to inform them of the changes and how they can continue to access their free EY entitlement. Support will also be provided to both the existing and new provider to ensure that parents remain fully informed throughout the process and are aware of the changes.

4.6 Localism and Local Member Involvement

The following bullet point sets out the significant implication identified by officers:

- The Local Member will be fully briefed in respect of any changes to EY and childcare provision in their division.

4.7 Public Health Implications

The following bullet points set out details of significant implications identified by officers:

- There is good evidence that EY and childcare settings can do much to promote good nutrition and physical activity especially when habits are being formed.
- There are strong links between education and health.
- Improving school readiness is part of the Public Health Outcomes Framework

4.8 Environment and Climate Change Implications on Priority Areas

This will depend on the successful childcare provider. Assurance relating to requirements for minimising carbon, will be sought via the social value questions in the tender. The award of a tender will be determined based on cost and quality. The Council can choose the weighting between the two.

4.8.1 Implication 1: Energy efficient, low carbon buildings.

Positive/neutral/negative Status: Positive

Explanation: EY and childcare is delivered from various Council premises across the County and the successful provider will not have the ability to influence this. However, the Council's new education buildings will meet the carbon reduction targets in the Council's climate emergency policies. Provision has been made in the capital programme to meet the additional capital cost. Over time the Council will be required to reduce the carbon impact of its existing buildings under the same policy.

4.8.2 Implication 2: Low carbon transport.

Positive/neutral/negative Status: Neutral

Explanation: The intention is to sustain local EY and childcare provision wherever possible.

4.8.3 Implication 3: Green spaces, peatland, afforestation, habitats, and land management.

Positive/neutral/negative Status: Neutral

There is limited outdoor space attached to most Council EY and childcare venues, however, assurance it will be sought that all outdoor space will be maintained in an appropriate manner.

4.8.4 Implication 4: Waste Management and Tackling Plastic Pollution.

Positive/neutral/negative Status: Neutral

Explanation: There is limited opportunity to make a significant difference.

4.8.5 Implication 5: Water use, availability, and management:

Positive/neutral/negative Status: Neutral Explanation:

There is limited opportunity to make a significant difference.

4.8.6 Implication 6: Air Pollution.

Positive/neutral/negative Status: Neutral Explanation:

There is limited opportunity to make a significant difference.

4.8.7 Implication 7: Resilience of our services and infrastructure and supporting vulnerable people to cope with climate change.

Positive/neutral/negative Status: Positive

Explanation: Providers will be encouraged to influence those in their care about climate change and positive behaviour relating to this. This will help build resilience in our communities.

Have the resource implications been cleared by Finance? Yes

Name of Financial Officer: Martin Wade

Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement? Yes
Name of Officer: Clare Ellis

Has the impact on statutory, legal and risk implications been cleared by the Council's Monitoring Officer or LGSS Law? Yes
Name of Legal Officer: Fiona McMillan

Have the equality and diversity implications been cleared by your Service Contact? Yes
Name of Officer: Jonathan Lewis?

Have any engagement and communication implications been cleared by Communications? Yes
Name of Officer: Simon Cobby

Have any localism and Local Member involvement issues been cleared by your Service Contact? Yes
Name of Officer: Jonathan Lewis

Have any Public Health implications been cleared by Public Health? Yes
Name of Officer: Helen Freeman

If a Key decision, have any Environment and Climate Change implications been cleared by the Climate Change Officer? Yes
Name of Officer: Emily Bolton

5. Source documents guidance

- 5.1 [Framework for Early Years Provision - report to the Children and Young People Committee 30 November 2021](#)