

Open Report on behalf of Debbie Barnes, Executive Director of Children's Services

Report to:	Councillor Mrs P A Bradwell, Executive Councillor for Adult Care, Health and Children's Services
Date:	18 June 2018
Subject:	Lincolnshire Secure Unit – Ministry of Justice contract bid
Decision Reference:	I015438
Key decision?	No

Summary:

Children's Services operates a Secure Children's Home (SCH), the Lincolnshire Secure Unit (LSU), based in Sleaford. The LSU has worked with the Youth Justice Board (YJB) and now the Ministry of Justice (MoJ) since 2002, providing Secure Accommodation for young people on both a Remand and Sentenced basis.

In April 2014, the LSU won a tender to provide secure accommodation for the YJB and this Agreement, recently novated to the jurisdiction of the MoJ, ends on the 30 September 2018. The current contract is for eleven beds, presently valued at £594.49 per night per bed. This equates to c. £2.387m per annum. These funds are a substantial source of income for the overall running of the LSU.

The LSU employs over fifty Full Time Equivalent (FTE) staff. Many of the external contracts supporting this service are from within Lincolnshire, further contributing to the local economy.

The MoJ has recently announced it will adopt a Direct Award Contract (DAC) approach to the recommissioning of contracts in 2018. The DAC approach essentially means the MoJ will directly negotiate with any SCH interested in providing beds under contract with the MoJ with no resort to a formal tender process.

The MoJ has indicated it intends to complete individual negotiations on 30 June 2018 with a view to awarding contracts for 1 October 2018. Failure to negotiate for the new contract would result in a significant loss of guaranteed funding, running the risk that the LSU would likely close, leading to loss of capacity for Lincolnshire and the wider public sector, redundancies and consequent loss of business for Lincolnshire suppliers. Moreover, should the LSU cease to continue to operate, it could result in the Council being required to repay previous capital grant funding from the Department for Education.

It is of critical importance for Children's Services to negotiate for this contract in order to continue to provide a SCH facility and accrue the benefits this offers.

Recommendation(s):

That the Executive Councillor:

1. Approves the Council entering into negotiations directly with the MoJ to provide Secure Accommodation facilities from the LSU.
2. Delegates to the Executive Director for Children's Services, in consultation with the Executive Councillor for Adult Care, Health and Children's Services, the authority to conduct the negotiation, determine the commercial and contractual terms of any contract and, if successful, approve the entering into of an Agreement and any ancillary legal documentation with the MoJ on behalf of Lincolnshire County Council.

Alternatives Considered:

The alternative would be to decide not to negotiate for the contract and either:

1. Decommission the LSU. This would lead to redeployment and/or redundancy of over fifty FTE staff with consequent loss of business for Lincolnshire suppliers to the LSU and the loss of secure unit capacity for Lincolnshire and others; or
2. Become dependent upon the sale of welfare bed accommodation to other Local Authorities (LAs). It is envisaged that, in the present LSU building, this would not be a sustainable option, and would present a high risk of budget overspend leading to possible closure of the unit.

Reasons for Recommendation:

Negotiation with the MoJ is critical to the ongoing sustainability of the LSU and the secure accommodation capacity it provides for Lincolnshire and the wider public sector. A successful bid would:

- Provide guaranteed contract funding to support the running costs and delivery of the LSU
- Thereby secure the capacity offered by the facility and allow the LSU to continue to provide welfare bed accommodation for Lincolnshire and other LA young people
- Meet the conditions of previous and ongoing capital development grant funding
- Keep the staff group in employment and negate the need for redeployment/ redundancies
- Support the local economy

1. Background

Overview

The LSU is a modern, twelve-bedded SCH, located in Sleaford, which originally opened in 1997. Since then, the LSU has undertaken a programme of modernisation funded through the Department for Education to the value of in excess of five million pounds. The LSU employs approximately 54.5 FTE staff from around the County. Many of the external contracts supporting this service are from within Lincolnshire, further contributing to the local economy.

Eleven of the beds are contracted to the MoJ for young people sentenced or remanded into custody with one bed used for LAs, including Lincolnshire, to spot-purchase for young people requiring secure accommodation under Welfare criteria.

LSU adheres to the legislative and licensing requirements of the Children's Homes Regulations 2001 (amended 2011 and 2015), the Children's Homes National Minimum Standards 2015 and the Youth Justices Services Standards 2013, whilst also meeting its contractual obligations to the MoJ. The most recent OFSTED Full Inspection found the Unit to be 'Good' overall with 'Good' for the Quality of Care offered to Young People.

Through effective case management and resettlement processes the LSU seeks to enable young people to desist from offending, improve life chances and reduce risk of serious harm to self and others. The unit aims to provide an outstanding education service, in an engaging, inspiring and well-resourced learning environment in which young people will achieve academically and which provides positive learning outcomes which young people value. The unit looks to create an empowering learning environment in which young people's strengths and abilities are identified and improved, and any specific barriers to learning are addressed which enables young people to value education as a means to moving into the mainstream of society.

Benefits

A major factor in building resilience for young people is the positive relationships they are able to build with the adults around them. The robust recruitment and retention policies of Lincolnshire County Council allows for a diverse and highly competent workforce to be developed within the LSU. These professionals are able to act as role models for the young people in their care. Working with these young people, they are able to raise their aspirations, re-engage them in education and facilitate their own development through a process of education, training and self-development, and by increasing self-esteem, confidence, self-belief and a willingness to engage.

Maintaining the LSU within Lincolnshire ensures these positive outcomes can be achieved locally by Lincolnshire young people when resident at the LSU as well as providing a valuable resource more widely.

Moreover, service provision within the LSU will focus on ensuring young people maximise access to education and training opportunities whilst resident to enhance their long-term employment prospects. The service will also look, wherever

appropriate, to mediate with their families to help maintain contact and enable them to return to the familial home when and where appropriate. This can help to avoid family breakdown which can often lead to long-term economic disadvantage for young people as a result of adjusting to new living arrangements and/or homelessness.

The LSU itself is purpose built to deliver a Secure Children's Home; negotiating with the MoJ to continue delivery of such services from the unit will maximise the potential of the available resource whilst generating significant employment and financial benefits to the local economy.

The location of the LSU within Lincolnshire enables it to be accessed via local transport links by the families and carers of those Lincolnshire young people remanded there or placed there on a welfare basis. It also enables employees to gain easy access to work, and involved professionals to access young people with the minimum of transport time and associated costs. Its proximity to local facilities also reduces the associated costs (financial and environmental) of visits for young people and enables a more integrative approach to transition.

Fully utilising the LSU as a local resource, the skills and expertise of those working in and around the LSU can be shared amongst other settings - via secondment opportunities and joint working with other children's home settings – to further enhance the competencies of the workforce and therefore the outcomes for the young people placed there.

Existing Contract Provision

The LSU has worked with the YJB/MoJ since 2002 providing Secure Accommodation for young people on both a Remand and Sentenced basis. The MoJ undertakes regular Contract Monitoring visits and data collection to monitor against Key Performance Indicators. The contract delivery is currently rated as 'Green' by the Youth Custody Service (YCS) on behalf of the MoJ.

The current Contract started on the 1 April 2014, originally for two years plus the option to extend for a fixed period of up to two further years (one plus one) ending on 31 March 2018. In December 2017 LCC agreed the terms of a Notice of Change to amend the extension period to add an additional six months, plus three months as a contingency measure if the re-procurement exercise exceeded the initial six month extension. The resulting contract shall now terminate on 30 September 2018 or, alternatively, on 31 December 2018 if the DAC approach runs behind schedule.

The current contract is for eleven beds, valued at £594.49 per night per bed. This equates to £2,386,877.35 per annum.

In addition, the LSU offers one bed to young people placed on a Welfare basis. This is available to both Lincolnshire young people and young people placed by other Local Authorities. The bed price for 2018/19 has increased to £850.00 per night. The income received in 2017/18 for the one welfare bed was £0.287m. Welfare beds are generally much sought after nationally and the LSU is anticipating maintaining a high occupancy rate in 2018/19.

2017/18 Revenue Funding:

In 2017/18, the income received from the MoJ contract (£2.321m) and income from the provision of welfare beds (£0.287m) ensured full cost recovery of the direct staffing and non-staffing costs in operating the unit and the Council's support service costs. The MoJ contract provides guaranteed income from the agreed beds provided for 365 days (irrelevant of whether they are filled or not); however financial risks are recognised with welfare income dependent on occupancy levels, and the inherent risk in meeting the complex needs of such young people, therefore a degree of prudence is applied in the unit's financial planning.

MoJ Recommissioning process

The MoJ have recently confirmed that they are re-procuring on a Direct Award Contract (DAC) approach. The DAC approach essentially means the MoJ will directly negotiate with any SCH interested in providing beds under contract with the MoJ with no resort to a formal tender process. The direct negotiation will focus on three main areas:

1. The number of beds a SCH can offer to the MoJ;
2. The price at which those beds will be offered; and
3. The length of contract to be awarded.

The MoJ envisage completing individual negotiations by 30 June 2018 and having the new contracts in place by 1 October 2018.

Prior to the tender process in 2014, the YJB commissioned 168 beds for children and young people sentenced or remanded to custody. This was reduced to 138 beds as part of the 2014 tender exercise and then further reduced in 2016 to 117. The LSU therefore accounts for nearly 10% of the commissioned beds. There are currently fourteen SCH in England with a total of 228 beds available (see Appendix A).

Capital Funding

In June 2008 the LSU was awarded £2.2m in grant funding by the Department for Education (DfE) to build a new education unit, which has been successfully constructed. Conditions of the grant award allow that the Secretary of State may require Lincolnshire County Council to repay the grant, in whole or in part, if it is not used for the purpose for which it was made or the accommodation is not used as, or ceases to be used as, secure accommodation. This power would not come to an end in the event of the accommodation being sold by Lincolnshire County Council. If the accommodation is sold and ceases to be used as secure accommodation the Secretary of State could require repayment of the grant from Lincolnshire County Council.

The Council has also utilised some additional grant funding from the DfE to explore the possibility of a new build 24-bed SCH.

Legal Issues:

The LSU delivers significant benefits to Lincolnshire and its young people as well as being a major resource for the youth justice system more widely playing a national role in providing a safe and secure environment in which young people can address offending behaviour and receive the educational support they need to improve their life chances.

The purpose underpinning the proposal to negotiate a contract with the MoJ is to secure an income stream to help defray the cost of maintaining the unit and the benefits it delivers.

It is therefore considered that although the entering into of a contract with the MoJ would involve the Council receiving income from the MoJ, the purpose of the Council in entering into the contract is not commercial since the relationship proposed is ultimately a collaboration between public bodies with the aim of achieving outcomes in the public interest. The purpose is to maintain the availability of a key resource within Lincolnshire that contributes to the local offer to young people in Lincolnshire and the wider public good through supporting the youth justice system.

The Council therefore has the power to enter into the arrangement proposed and to do so without the need to form a company.

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to 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.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

An Impact Assessment has not been completed relevant to this report as approval is sought merely to negotiate with the MoJ to maintain and preserve the existing service. That service is made available to any young person placed by the MoJ regardless of protected characteristics. In particular the LSU itself is designed to appropriate standards of accessibility for young people with a physical disability.

An Impact Assessment will be undertaken as part of any identified changes resulting from the outcome of negotiations with the MoJ to ensure that the Council remains compliant with its equality obligations.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

The proposals contribute to the following themes of the JSNA.

Be Healthy

Young people likely to be resident in the unit will include some with issues such as substance and alcohol misuse, offending behaviours and mental health problems. The support offered will be tailored to the needs of the young people and empower them to address such issues whilst accessing education and training opportunities to enhance long-term employment prospects.

Stay Safe

The primary focus of the secure children's home is to provide young people with a safe and stable environment in which to learn and achieve whilst preventing both themselves and others, including local communities, from harm.

Enjoy and Achieve

A key part of the service delivery is to enable young people to maintain education and training opportunities. Individual support plans will be tailored to meet the needs of young people with regard to education and training.

Positive Contribution

Individual young people are active in developing support plans and identifying the outcomes they wish to achieve whilst resident in the LSU. The services will empower young people to make use of universal services, where appropriate, that are available locally.

Achieve Economic Wellbeing

Young people resident at the LSU will have the opportunity to maintain the same education and training opportunities as their peers, enhancing their longer-term employment prospects.

The Lincolnshire Health & Well Being Strategy includes five main themes, with an additional theme of “mental health” running throughout the document. The service delivered by the LSU supports the following themes.

Promoting healthier lifestyles

Commissioned services will support some young people with substance and alcohol misuse issues as well as helping young people's sense of mental wellbeing through access to support services. Furthermore, the primary focus is to provide young people with a safe and stable environment in which they, and others, will remain safe and free from harm.

Improve health and social outcomes for C&YP and reduce inequalities

The service delivered by the LSU will focus on supporting young people to maintain education and training opportunities thereby enhancing long-term employment prospects, life chances and reducing inequalities. It will also empower young people to build up resilience through their relationships with staff and support networks both within the provision itself and in the wider community through access, where applicable, to universal and targeted services.

Tackling the social determinants of health

As indicated above, accessing and maintaining education and training opportunities are an integral part of the support being offered through the commissioned service to enhance longer-term employment prospects, one of the key social determinants of health.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

The service commissioned through the MoJ offers a secure and stable environment for young people often removing them from households or communities where they may have been involved in and/or experienced crime and disorder, keeping those young people and the wider community safe from harm. It will also support some young people with substance misuse issues to address those concerns through access to relevant support services during their residency.

2. Conclusion

Failure to negotiate with the MoJ to continue provision of a secure Children's Home from the LSU site is likely to lead to the unit ceasing to operate as there would be no guaranteed income through the MoJ contract. If the LSU ceased to operate it would lead to the loss of the benefits provided by the LSU as set out in the Report both for Lincolnshire young people and more widely.

Financially, this could result in Lincolnshire County Council being liable to the Department of Education for the partial or full repayment of capital grants received, and would likely result in the redeployment or redundancy of the staff employed at the unit, as well as the knock-on effect upon local businesses, both directly and indirectly.

It is therefore recommended that the Council enter into negotiations with the MoJ and reach a successful conclusion to retain the ability to deliver the service from the LSU and safeguard the benefits accruing to the Council through securing a guaranteed income stream from the MoJ contract to ensure the financial sustainability of the facility.

3. Legal Comments:

The Council has the power to enter into negotiations for and to conclude a contract on the basis proposed.

The decision is consistent with the Policy Framework and within the remit of the Executive Councillor.

4. Resource Comments:

The recommendation to approve Children's Services to negotiate directly with the MoJ in providing Secure Accommodation facilities will ensure the sustainability in the LSU's business model for the agreed contract period. The business model is based on full cost recovery, and the guaranteed income through the MoJ contract will ensure its going concern. Direct negotiations will allow the Local Authority to represent its views to the MoJ on the cost challenges for the new contract period.

The alternatives would incur unplanned financial implications to the Council in the form of potential redundancies and decommissioning costs of the building, and would place greater financial risk towards the Council at a time when it is faced with a very challenging financial environment.

5. Consultation

a) Has Local Member Been Consulted?

No

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The decision will be considered by the Children and Young People Scrutiny Committee on 8 June 2018 and the comments of the Committee will be reported to the Executive Councillor prior to her reaching her decision.

d) Have Risks and Impact Analysis been carried out?

Yes

e) Risks and Impact Analysis

See the body of the Report

6. Appendices

These are listed below and attached at the back of the report	
Appendix A	Map of secure children's homes in England

7. Background Papers

No Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report.

This report was written by Mark Rainey, Children's Commissioning Manager, who can be contacted on 01522 554053 or mark.rainey@lincolnshire.gov.uk.