

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

Report to:	Executive Councillor for Children's Services and Lifelong Learning
Date:	01 March 2013
Subject:	Exception to Contract and Procurement Procedure Rules - Separating Parents Programme
Decision Reference:	02154
Key decision?	No

Summary:

Since 2010, Lincolnshire Children's Services has entered into a pilot programme with Relate Lincolnshire to provide a comprehensive package of support for parents, children and young people in Lincolnshire who are in the process of separating or have separated. The 'Separating Parents Working Together' project recognises that parents and families need support to enable them to deal with issues and reach agreements to enable them to build positive relationships and co-parenting responsibilities into the future.

This pilot programme is currently funded via a Grant Agreement to the value of £177,000. Now the pilot is complete Children's Services wish to continue the service and enter into a Contract Agreement with Relate Lincolnshire for the period 1st April 2013 to the 31st March 2014, at the existing value of £177,000.

Permission is required to approve an alternative procurement route to the LCC Contract and Procurement Procedure Rules. This exception is required in order to maintain current service levels and minimise service disruption.

Recommendation(s):

That the Executive Councillor approves the entering into by direct negotiation of a contract with Relate Lincolnshire for services in relation to separating parents for the period 1 April 2013 to 31 March 2014.

Alternatives Considered:

1. To end the service and not issue a new agreement. To no longer fund

the service would present the substantial loss of a preventative service, which helps to reduce families entering crisis situations and helps to improve positive outcomes for children and young people.

2. To re-tender the service. Before committing the funding for this project, Children's Services had to await confirmation of the provisional budget settlement for 2013/14. Therefore it has not been possible to confirm the future of this service until now. Unfortunately timescales do not now allow for a full competitive tender process to be complete by 31st March 2013. Any break in service would cause disruption to users and create potential damage to the reputation of the Council.

Reasons for Recommendation:

The pilot programme had proven very successful, with some of the key highlights of the project being:

- * Over 200 cases seen per quarter (240 cases in Q2 2012).
- * Up to 400 individuals access sessions per quarter (365 individuals in Q2 2012)
- * High numbers of males engaged in the project (43% of users in Q2 2012)
- * Users reported a positive impact on increased self-confidence, children's distress and sense of isolation.
- * Low percentage of users late cancelling/no shows, demonstrating clients value in the service (13% in Q2 2012)
- * Range of referral sources, including GPs (22 in Q2), friends (19 in Q2) and current advertising by Relate (31 in Q2)
- * Clinical progress demonstrates that clients felt less tense, nervous or anxious, more able to cope when things go wrong and have better sleeping following intervention.

There is inadequate time available to go out to competitive tender for the delivery of this service and to ensure the successful continuation of this service a formal contract agreement with the provider will be required. This will allow adequate time to review the future needs of the service and develop a commissioning plan for counselling support services across Children's Services.

1. Background

It is easy for children to become the emotional victims when parents separate. Research identifies when parents part, what children need most is stability and the reassurance that both parents love them and although not living together will, where possible, resolve issues jointly.

Lincolnshire County Council in partnership with Relate Lincolnshire offers a comprehensive package of support for parents, children and young people in Lincolnshire who are in the process of separating or have separated. The 'Separating Parents Working Together' project recognises that parents and families need support to enable them to deal with issues and reach agreements to enable them to build positive relationships and co-parenting responsibilities into the future.

The service is available across the county. Users can access eleven different centres including locations in areas of deprivation, including Boston, Gainsborough, Lincoln, Spalding and Mablethorpe. Each family can receive up to ten counselling sessions which are used flexibly and innovatively to meet the needs of the family. This may include individual sessions with children and young people, parents and family counselling.

Since 2010 the Council has commissioned the project as a pilot through grant funding. That pilot has proved very successful. Some of the key highlights are set out in the Reasons for Recommendation section above.

It is now appropriate for the Council to commission this service as a contract for services. However, there is inadequate time available to go out to a competitive tender for the delivery of the service and to ensure the successful continuation of this service. A contract for one year will allow adequate time to review the future needs of the service and develop a commissioning plan for counselling support services across Children's Services.

Procurement implications

As a social service the contract falls under Part B for the purposes of the Public Contracts Regulations 2006. This means that the full requirements of the EU procurement regime do not apply. In particular the Council is not required to undertake the pre-award advertising requirements of the Regulations.

However the Council is still subject to the general EU treaty obligations of equal treatment, non-discrimination, transparency, proportionality and mutual recognition. These apply to all contracts which may be of interest to a contractor in another EU member state even if they are Part B and imply the need for any contract opportunity to be adequately advertised and awarded as a result of a fair competition.

It is for the Council to decide whether the contract might be of interest to economic operators located in other member states based on an evaluation of the individual circumstances of the case. The Council should consider the following factors

- **The subject matter of the contract** – is there a competitive Europe wide market; is it a prestigious or innovative contract – if so interest may be more likely
- **Estimated value** – the higher the value of the contract the higher the likelihood of cross-border interest
- **Specifics of the sector concerned, for example size and structure of the market and commercial practices** – is it a large competitive Europe-wide market, who are the main players, has any neighbouring contracting authority had interest from or awarded a contract to a contractor from another member state for leisure services
- **Geographic location of the place of performance** – can the services, be delivered remotely, might a provider set up in the locality for the degree of profit available

On the basis of these factors it is not considered that this contract would be of interest to a contractor in another member state. In particular, there is not a Europe wide competitive market for the delivery of these kinds of counselling services, the value of the contract is low and the services would have to be delivered locally. The length of the contract and the low levels of profit involved would not attract a contractor in another member state into the market for the purposes of delivering these services.

Therefore neither the Public Contracts Regulations nor the general Treaty principles require the contract to be advertised.

Public Services (Social Value) Act 2012

In January 2013 the Public Services (Social Value) Act 2012 came into force. Under the Act the Council must before starting the process of procuring a contract for services consider two things. Firstly, how what is proposed to be procured might improve the economic social and environmental wellbeing of its area. Secondly, how in conducting the process of procurement it might act with a view to securing that improvement. The Council must only consider matters that are relevant to the services being procured and must consider the extent to which it is proportionate in all the circumstances to take those matters into account.

It is considered that the subject matter of this contract does contribute to the improvement of the social wellbeing of the area as it helps individuals and families cope with the implications of marital breakdown. Consideration has been given to the way in which other improvements may be delivered by the way in which the contract is let but as an individual service of short duration and limited value the scope for this is restricted. However as part of a wider commissioning strategy for counselling services other opportunities may arise and these matters will be taken into account further in developing the wider strategy.

Under section 1(7) of the Act the Council must consider whether to undertake any consultation as to the matters referred to above. Again the scope for that in relation to the current contract is limited given the timescales involved and therefore it has been included that consultation should not be undertaken on this occasion. However the issue of market and stakeholder engagement will be dealt with through the development of the wider strategy.

Equality Act 2010

The Council's duty under the Equality Act 2010 needs to be taken into account by the Executive Councillor when coming to a decision.

The Council must, in the exercise of its functions, have due regard to the need to:

- (1) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- (3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it: Equality Act 2010 section 149(1). The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation: section 149(7).

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

- (1) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (2) 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;
- (3) 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.
- (4) 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.
- (5) 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.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others.
- (7) The relevant protected characteristics are:
 - Age
 - Disability
 - Gender reassignment
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex
 - Sexual orientation
- (8) A reference to conduct that is prohibited by or under this Act includes a reference to:
 - (a) A breach of an equality clause or rule
 - (b) A breach of a non-discrimination rule

It is important that the Executive Councillor is aware of the special duties the Council owes to persons who have a protected characteristic as the duty cannot be delegated and must be discharged by the Executive Councillor. The duty applies

to all decisions taken by public bodies including policy decisions and decisions on individual cases and includes this decision.

To discharge the statutory duty the Executive Councillor 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.

A draft equality impact analysis has been undertaken in this instance (see Appendix A) and equality considerations have been taken into account. The current provider monitors information relating to some protected characteristics. In particular;

- Data from Quarter 3, 2012/13 shows that 45% of the clients seen were males and 55% were female. This demonstrates that a high percentage of both sexes engage with the programme.
- A wide range of ages of clients, from those aged under 9, through to over 60 years of age access the service. As would be expected, the highest numbers of clients are in the age ranges 30-39 and 40-49.
- Ethnicity data is collected and is thought to be marginally representative of the Lincolnshire population.

Although data on the other protected characteristics is not collected, there is no evidence to suggest that the contract negatively affects these protected characteristics.

The Commissioning Team will continue to hold quarterly contract monitoring meetings with the provider to ensure that the programme monitors and addresses any impact on protected characteristics.

Child Poverty Strategy

The Council is under a duty in the exercise of its functions to have regard to its Child Poverty Strategy. Child poverty is one of the key risk factors that can negatively influence a child's life chances. Children that live in poverty are at greater risk of social exclusion which, in turn, can lead to poor outcomes for the individual and for society as a whole.

In Lincolnshire we consider that poverty is not only a matter of having limited financial resources but that it is also about the ability of families to access the means of lifting themselves out of poverty and of having the aspiration to do so. The following four key strategic themes form the basis of Lincolnshire's Child Poverty strategy: Economic Poverty, Poverty of Access, Poverty of Aspiration and Best Use of Resources.

The Strategy has been taken into account in this instance and the following comments are made:

Economic Poverty

According to a recent DfE report, parental separation typically comes at a huge financial cost to the state, estimated recently as several £billion per year. Family breakdown and crisis can also lead to economic disadvantage for children, given the increased risk of parents dropping out of the labour market or having difficulties gaining employment which accommodates childcare responsibilities, which then increases the number of children living in poverty. In Quarter 3, for the financial year 12/13 the project supported 103 individuals who wanted to save their relationship. As the programme supports these families to stay together this may help to prevent families entering economic poverty.

Poverty of Access

Poverty of access is concerned with regard to vulnerable groups that are at risk of poor outcomes compared with their peers. This service ensures that those children who are vulnerable due to their parents separating have access to the support they require.

Counselling uses a person centred approach to support families to work through their issues, which helps them to feel more confident in the future. This is associated with improved performance and access to employment.

Poverty of Aspiration

This is a preventative service providing early intervention into families at risk of separation and reducing family breakdown. The support to parents identifies the impact which separation can have on children and how parents can mitigate against any adverse effects.

Best use of Resources

Best use of Resources aims to ensure that all key stakeholders contribute to reducing child poverty and improving the life chances of children and young people in a coordinated way. The separating parents programme is a single service that runs across the whole of Lincolnshire, ensuring that best value for money is achieved within the contract as it avoids duplication of effort. High numbers of referrals from partner agencies, including health services, education and employers demonstrates the partnership approach to the project. Early intervention and prevention secures improved outcomes and reduced demand on resources.

2. Conclusion

This is a vital service and it is important that the Council continues to fund counselling services for separating parents in a fair and equitable way.

3. Legal Comments:

The Council has the power to enter into the contract proposed. Other legal considerations including procurement issues are dealt with in the Report.

The Council's Contract Regulations would normally require a competitive exercise to be carried out prior to the award of a contract of the value proposed. However where a Chief Officer proposes an alternative route including direct negotiation he or she must seek prior approval. For contracts of a value between £75,000 and £250,000, approval must be sought from the relevant Executive Councillor.

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

4. Resource Comments:

The Council's Contract and Procurement Procedure Rules are designed to promote good purchasing practice, public accountability and deter corruption. They permit exemptions to normal procurement practices in very exceptional circumstances, including where there will be serious disruption to Council services.

An exemption to those rules is necessary in this instance because of the need for this important service to continue and due to the unavoidable delay in confirming the budget availability for 2013/14. Funding is now known to be available within Children's Services 2013/14 revenue budget to meet the cost of this contract.

The report states clearly that best value for money is being achieved.

5. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

There has been no pre-decision scrutiny of this decision

d) Policy Proofing Actions Required

The key impacts of the proposal have been considered and the results are reported in the body of the Report

6. Appendices

These are listed below and attached at the back of the report	
Appendix A	Draft Separating Parents Impact Analysis

7. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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