

Open Report on behalf of Heather Sandy, Executive Director - Children's Services

Report to:	Executive
Date:	06 July 2021
Subject:	Extension to Best Start Lincolnshire: Early Years and Family Service Contract
Decision Reference:	I022167
Key decision?	Yes

Summary:

An exception is sought to the Council's Contract Regulations, to extend the Council's contract with the Pre-School Learning Alliance (trading name Early Years Alliance) for the Best Start Lincolnshire: Early Years and Family Service, for up to 12 months to 30th June 2023. The value of the extension is £1,871,712.

A review is currently being undertaken of the Commissioned Early Years Services, which includes the Best Start Lincolnshire: Early Years and Family Service, but the timescales for the review completion have been delayed by the impact of the Covid-19 pandemic and a number of interdependencies that have also been impacted by Covid-19, including timescales for any potential re-procurement of an Early Years and Family Service.

Recommendation(s):

That the Executive approves an extension to the contract for the Best Start Lincolnshire: Early Years and Family Service with Pre-School Learning Alliance for up to a maximum of 12 months from 1st July 2022 to 30th June 2023 (9 months initially to 31st March 2023), whilst the Commissioned Early Years Services review is concluded.

Alternatives Considered:

1.	Do nothing. This is not a viable option as the current contractual arrangement will expire on 30 th June 2022 and until the review has concluded it is not yet possible to determine if no future service delivery is required.
2.	Decommissioning. This is not a viable option as decommissioning of the service is likely to result in a gap in provision that won't have been properly considered until the review has concluded. This would be likely to put pressure on other existing services and could also result in the Council not meeting its statutory duties under

	Section 3 of the Childcare Act 2006.
3.	Influencing. Commercial aspects of the service cannot be delivered without funding and it is not feasible to think that the service could be delivered through influence alone.
4.	Insourcing. This is not a viable option until the outcome of the review is known and recommended model(s) identified and agreed.
5.	Procurement. This is not a viable option at this time and it is not a viable option to procure a service for a one year period. Further work on the review and Council reporting needs to be completed before the final model for any future Early Years and Family service is agreed.

Reasons for Recommendation:

Extending the contract for up to 12 months (9 months initially) will allow the Council to complete a robust review of service requirements and based on clear evidence, agree what service is needed in the future. The initial 9 months extension will allow the Council to include in the review another children's commissioned service, the Kids Crèche Service, which is also delivered within Children's Centres and supports children with disabilities aged 0 to 5 years and which will cease on 31st March 2023. To allow the services to be seen in the round, it is prudent to align contract end dates. The additional further 3 month extension will only be invoked if absolutely necessary and in agreement with the Executive Director of Children's Services in consultation with the Executive Councillor.

The Covid-19 pandemic delayed the progress of the review of Commissioned Early Years Services and the pandemic has impacted on which services have been using Children's Centres. Pre-Covid-19, the Best Start Lincolnshire: Early Years and Family Service was delivered from Children's Centres, which have been used to deliver more health related services for families during the pandemic, e.g. Health Visiting and Midwifery appointments. Following a report presented to Children's Services Directorate Leadership Team (DLT) on 17th March 2021 it was agreed that the future use of Children's Centres needs to be clarified prior to a new commissioned model for early years services being decided. Children's Centres were only able to deliver in person Health Visiting and Midwifery support during the height of the pandemic; a strategic steer on their use post Covid-19 has been provided recently which clearly recognises the real need for early years services to return to face to face support.

More time is required to consider what services are needed post Covid-19 for a generation of very young children and their parents/carers that have universally missed out on social interaction and potentially key development opportunities. More time is also needed to consider the newly published Public Health England Healthy Child Programme which was delayed, which there are interdependencies with the Best Start Lincolnshire: Early Years and Family Service.

If re-procurement of the service is a recommended option, a procurement process will be conducted for this service, but until a final commissioned model is identified and

agreed it is not possible to meet the timescales required for gaining agreement for this through Council decision making processes and undertaking a procurement process before the end of this contract.

If an extension was not agreed, it is likely that the Council would have to consider re-commissioning based on the current model for up to a one year period. This would disadvantage service users and staff significantly if a new provider was awarded the contract for up to one year, due to the impact of transitioning to a new service at short notice. It is also likely the market response would be low due to the short time of the contract. There would be a higher risk of the contract and service being ineffective. This is a financial and reputational risk to the Council and could increase pressure on other existing internal and commissioned services. In addition, the likelihood is that costs associated with delivering the service would be higher due to the short-term period of the contract.

The recommendation provides the Council with a solution which protects the interests of the Council and maintains provision for young children and their families, including vulnerable groups of children, whilst the review of Commissioned Early Years Services is properly concluded and a final model for any future procurement is agreed.

1. Background

A commissioning review of Commissioned Early Years Services commenced in August 2020 which included the Best Start Lincolnshire: Early Years and Family Service. This review had been delayed in starting whilst staff were focussed on other priorities relating to the Covid-19 pandemic.

The review was anticipated to be concluded by April 2021, however, following review board meetings and a paper presented to Children's Services Directorate Leadership Team (DLT) on 17th March 2021, it was agreed that the review needs to be extended in order for key relevant interdependencies such as the future use of Children's Centres to be considered and defined in order to inform a future commissioning model.

Best Start Lincolnshire: Early Years and Family Service is delivered by Early Years Alliance (trading name of the Pre-school Learning Alliance) via a Contract for Services following an open tender process which also included the Best Start Lincolnshire: BME Inclusion Service. The Early Years and Family Service commenced 1st July 2017, alongside the Best Start Lincolnshire: BME Inclusion Service, and has been extended to its current maximum term to 30th June 2022. The current annual value of the contract is £1,871,712.

The Early Years and Family Service provides early childhood activities across Lincolnshire that support children's early development and their parents and carers positive parenting skills/techniques. Delivery encompasses play-based sessions focusing on different areas of child development to provide tailored support where needed, such as communication themed sessions. Service provision also includes delivery with other professionals such as midwifery, e.g. antenatal top tips sessions. Services are mainly delivered from Children's

Centres, however, during Covid-19, delivery has mainly been through virtual platforms, with some outdoor face to face delivery where Covid-19 restrictions have allowed.

The Covid-19 pandemic has had a huge impact on the delivery of the Early Years and Family Service and many other interdependent services. As England moves forward with the Government's 4-step plan out of the current lockdown more face to face groups have commenced and further groups are planned in accordance with Covid-secure guidelines. It is highly likely that there will be a permanent change to the way the Early Years and Family Service is delivered in the future. However, key interdependencies relevant to the delivery of this Service such as the Healthy Child Programme and other related services such as the Kids Crèche Service, along with the findings from the Commissioned Early Years' Service review first need to be considered before any recommendations on a future model can be identified.

The Best Start Lincolnshire services support the Council's statutory duty under Section 3(2) of the Childcare Act 2006 in relation to making arrangements to secure integrated early childhood services and maximising the benefit of those services to parents, prospective parents and young children.

In addition to Section 3 there are several other Sections of the Childcare Act 2006 linked to the provision of Children's Centres and are outlined below:

- **Section 1:** Duty on local authorities to improve the well-being of young children in their area and reduce inequalities between them.
- **Section 2:** Explanation of the meaning of early childhood services.
- **Section 3:** Duty on local authorities to make arrangements to secure that early childhood services in their area are provided in an integrated manner in order to facilitate access and maximise the benefits of those services to young children and their parents.
- **Section 5A:** Arrangements to be made by local authorities so that there are sufficient children's centres, so far as reasonably practicable, to meet local need.
- **Section 5C:** Duty on local authorities to ensure each children's centre is within the remit of an advisory board, its makeup and purpose.
- **Section 5D:** Duty on local authorities to ensure there is consultation before any significant changes are made to children's centre provision in their area.

As well as the above statutory duty the services in scope of the review support other Local Authority statutory responsibilities in relation to:

- the Children Act 1989 and 2004
- the Education Act 1996, 2002 and 2011
- the Care Act 2014
- the Working Together to Safeguard Children (2015)
- the Equality Act 2010
- the Special Educational Needs and Disability Regulations 2014
- the Special Educational Needs and Disability Code of Practice (0-25 years)
- the Autism Act 2009

- Ofsted – inspection of Children's Centres services for children and families (although this is currently under review)

As the final model and commissioning option for any future Best Start: Early Years and Family Service provision is still to be formally agreed, there is insufficient time to agree the final model, complete formal Council decision making and develop the tender documentation. All of which will need to have been completed by December 2021 in order to meet the required procurement timescales.

Although a new Contract, if commissioned would be above the threshold for UK procurement law, proceeding with a potential procurement in December 2021 before a final commissioning model is agreed is very likely to result in adverse financial outcomes for the Council due to potentially the right service not being procured at the right time, thus there is a risk of the service not effectively meeting the needs of young children and their families. Given that most of the Council's high value contracts are for at least three to five years the adverse financial impact of procuring an insufficient service is likely to be significant.

Finance

The current overall contract value for the Best Start Lincolnshire: Early Years and Family Service between 1st July 2017 and 30th June 2022 is £9,358,560.

The current financial year commitment for the 2022/23 financial year is £467,928 and the further financial commitment required to further extend the contract is as follows:

- 2022/23 financial year: £1,403,784
- 2023/24 financial year: £467,928

Should the full 12 months extension be required, the overall additional financial commitment required would be £1,871,712 and the total overall contract value would increase from £9,358,560 to a maximum of up to £11,230,272. This is within the current allocated budget.

2. Legal Issues:

Procurement

Exceptions to the normal tendering routes are provided for in the Contract Regulations and are set out in paragraph 3.5 of the Contract Regulations. An exception permits an alternative route to the normal tendering route to be adopted, for example, by allowing a contract to be placed by direct negotiation with one or more Economic Operators or securing fewer quotations for RFQs.

Chief Officers have the authority, under the Contract Regulations, to approve an alternative procurement route where the contract has an Estimated Total Contract Value

between £10,001 and £249,999, subject to the Chief Officer consulting with their Executive Councillor on all exceptions where the contract value exceeds £75,000.

An Executive Councillor has the power to approve an extension of a contract as set out in this report where an Estimated Total Contract Value between £250,000 and the Light Touch Regime Threshold (currently £663,540).

The Executive has the power to approve an extension of a contract with an Estimated Total Contract Value over the Light Touch Regime Threshold.

Although the value of the extension is above UK Procurement Law, the Public Contract Regulations 2015 allow for a modification to lawfully extend a contract where certain conditions set out in the regulations are met. In this instance, it has been determined that Regulation 72 (1) (e) can be applied to allow for the lawful extension of the Best Start Lincolnshire: Early Years and Family Service contract as set out in this report.

Preparations in the meantime will commence to allow for a legally compliant process to take place in advance of the expiry date of the extended contract, should the conclusion of the review identify this as the recommended commissioning option.

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.

The extension of the Best Start Lincolnshire: Early Years and Family Service contract will allow future decisions to be made that ensure the right service will be procured at the right time in order to effectively meet the needs of Lincolnshire children and their families. There are no adverse impacts identified for any groups with protected characteristics based upon this decision as the contract will be extended on the same basis as currently.

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 and Wellbeing Strategy (JHWS) in coming to a decision.

Poor social and emotional capabilities increase the likelihood of mental health problems, a decrease in physical health and wellbeing and can lead to a poor quality of life and lower educational attainment. Ensuring the right support is available at the right time for children and families are essential to effectively meeting their needs, including support within the early years in order to improve children's development and their future life chances.

The Best Start Lincolnshire: Early Years and Family Service supports the Early Years topic of the JSNA in relation to raising the Good Level of Development (GLD) of Lincolnshire children aged 0 to 5 years and achieving at least the expected level of development in the early learning goals outlined in the Early Years Foundation Stage (EYFS) curriculum by the time they finish their reception year.

By having skilled and trained staff who can deliver high quality early education sessions and support parents/carers to enhance their knowledge and home learning for their children, will support children to develop to their full potential and therefore be 'ready for school', improving their outcomes and closing the gap in equality.

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.

There is limited impact to crime and disorder, but by extending the contractual arrangements with Pre-school Learning Alliance, it will ensure that children have access to quality early years provision, thus raising attainment and building the foundations for their future academic learning and subsequently the ability to engage within society and their community.

3. Conclusion

It is recommended that an exception to the Council's Contract Regulations is agreed and an extension of the contract for up to a maximum of one year to 30th June 2023 to Pre-school Learning Alliance for the provision of the Best Start Lincolnshire: Early Years and Family Service is approved.

4. Legal Comments:

The Council has the power to approve the extension proposed.

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

5. Resource Comments:

The recommendation in the report is to make an exception to the Council's Regulations to enter into a direct contractual agreement to award a contract extension from 1 July 2022 for up to 12 months to 30 June 2023 (9 months initially to 31st March 2023) with the Pre-School Learning Alliance for the Best Start Lincolnshire: Early Years and Family Service. The reason for the recommended extension is because of the impact from the Covid-19 pandemic in completing the review thoroughly due to staff focusing on more immediate priorities, and a number of interdependencies have also been impacted by Covid-19. The extension will therefore allow the Council to complete a robust review of service requirements and based on clear evidence, and agree what service is needed in the future.

The continuation of the service provision will provide support for children and parents, and also supports the Council's statutory duty under Section 3(2) of the Childcare Act 2006.

The service is currently funded as a base budget through Council core funding. The financial constraints facing Local Authorities mean it is imperative that the right support offer is provided to children and young people and that it delivers best value.

6. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

This will be considered by the Children and Young People Scrutiny Committee at its meeting on 25 June 2021 and the comments of the Committee will be reported to the Executive at its meeting on 6 July 2021.

d) Risks and Impact Analysis

Yes

Pre-School Learning Alliance (trading name Early Years Alliance) is the current provider for the Best Start Lincolnshire: Early Years and Family Service. The Public Contract Regulations 2015, Regulation 72 (1) (e) allows for the lawful extension of the Best Start Lincolnshire: Early Years and Family Service, where the modifications, irrespective of their value, are not substantial. The modification does not render the contract materially different in character to the one originally concluded; it does not introduce conditions which would have impacted on the original procurement process; it does not alter the economic balance of the contract as although the contractor will receive additional payment they will also be required to deliver the same services on the same terms; and it does not change the identity of the contractor. The Best Start Lincolnshire: Early Years and Family Service contract will be extended for a period which equates to some 20% of the original contract duration and therefore the modification does extend the scope of the original contract. However this change in scope is not considered to be considerable in proportion to the original contract duration. It is therefore anticipated there is a low risk of successful legal challenge.

To extend the current contract will ensure that the service provision is maintained, with no impact on service users, whilst the review of the Commissioned Early Years Services is concluded. To do nothing or to procure a service too soon is likely to cause a bigger risk to the Council as undertaking re-procurement too early could result in the wrong service being procured at the wrong time, which is likely to create a financial and reputational risk to the Council and increase pressure on other existing internal and commissioned services.

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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