

# Decision Report – Cabinet Decision

17 January 2018

## South West Peninsula Framework Contract for Independent Fostering

Cabinet Member(s): Cllr Frances Nicholson – Cabinet Member for Children and Families

Division and Local Member(s): All

Lead Officer: Philippa Granthier - Assistant Director – Commissioning and Performance

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	<b>Seen by:</b>	<b>Name</b>	<b>Date</b>
	County Solicitor	Honor Clarke	20/12/17
	Monitoring Officer	Julian Gale	21/12/17
	Corporate Finance	Kevin Nacey	03/01/18
	Human Resources	Chris Squire	03/01/18
	Property / Procurement / ICT	Richard Williams	03/01/18
	Senior Manager	Julian Wooster	03/01/18
	Local Member(s)	All	N/A
	Cabinet Member	Cllr Frances Nicholson	03/01/18
	Opposition Spokesperson	Cllr Jane Lock	03/01/18
	Relevant Scrutiny Chairman	Cllr Leigh Redman	03/01/18
<b>Forward Plan Reference:</b>	FP/17/09/05		
<b>Summary:</b>	<p>This report gives information regarding the recommendation to award a framework contract for Independent Fostering in Somerset.</p> <p>Somerset is part of the Peninsula Commissioning and Procurement Partnership (PCPP), a longstanding collaboration between Cornwall Council, Devon County Council, Plymouth City Council, Torbay Council and Somerset County Council. Devon County Council (DCC) is leading the joint procurement on behalf of the partnership.</p> <p>Since 2006 the council has collaborated with the Peninsula to purchase fostering placements from the independent sector. The current framework expires on 31<sup>st</sup> March 2018. A competitive tender exercise has been carried out, the deadline for which was 26<sup>th</sup> October 2017, and Independent Fostering providers have submitted bids for admission to the new framework. The new framework will commence on 1<sup>st</sup> April 2018 for a period of 4 years.</p> <p>A previous procurement carried out in December 2016 resulted in a decision not to award the contract. The new procurement has addressed issues which emerged from this process.</p>		

	<p>In a non-key decision taken on 14<sup>th</sup> September 2017 (Appendix A) the Director of Children’s Services authorised Somerset’s participation in the Peninsula procurement process.</p> <p>It is anticipated that Somerset County Council’s spend on independent fostering placements in 2017/18 will be in the region of £6.1 million. If this level of placement were to continue it is anticipated that Somerset County Council’s spend on independent fostering placements would be in the region of £26.6 million over the 4 year framework.</p> <p>As at September 2017, Somerset County Council had 154 children looked after placed with independent fostering agencies, compared with 217 placed in in-house foster care and 50 in residential provision.</p>
<p><b>Recommendations:</b></p>	<p><b>That Cabinet authorises the Director of Children’s Services to enter into the Peninsula Framework for independent fostering for a period of 4 years (48 months) from 1<sup>st</sup> April 2018.</b></p>
<p><b>Reasons for Recommendations:</b></p>	<p>Without a framework in place, future purchases of independent fostering placements after 31<sup>st</sup> March 2018 are likely to be made as spot purchases with individual contracts. This is a risk at the point of purchase, when we will rely on our placements team to negotiate a good price. The framework provides clarity of costs for all, although is still open to negotiations at the point of placement. The framework agreement will aim to achieve improved value for money for placing authorities through greater transparency of pricing and competition through call-off.</p> <p>The Peninsula framework will increase the supply of high quality, locally available placements in a family setting. In order to achieve positive outcomes for vulnerable children and young people, there is a focus on supporting placement stability and permanence for children and young people.</p>
<p><b>Links to Priorities and Impact on Service Plans:</b></p>	<p>This decision directly links to actions in the Children and Young People’s Plan (CYPP) and supports the priorities within the County Plan around Children’s Services. It also links to the Council’s Social Value Policy as working together across the Peninsula area will maximise the impact of public expenditure.</p>
<p><b>Consultations and co-production undertaken:</b></p>	<p>A bidders’ day was held on 5<sup>th</sup> October 2017 to consult and engage with Independent Fostering Agencies. This engagement informed the procurement process and resulted in a more robust and successful exercise than that carried out in December 2016.</p>

	<p>Consultees listed in this document were consulted from 19<sup>th</sup> December 2017 to 3<sup>rd</sup> January 2018.</p> <p>No comments were received from elected members.</p>
<p><b>Financial Implications:</b></p>	<p>A financial analysis has been completed utilising proposed price submissions, set against the current placement price for the children and young people in placement, removing all those who will be 18 by the time the new contract begins on 1<sup>st</sup> April 2018.</p> <p>The new framework tender has resulted in an increase in placement prices. The overall impact if applied to all children and young people currently in placement is £0.53 million per year over the length of the framework agreement, representing an increase of 8.4% on forecasted spend on independent foster placements for the next financial year. This is an indicative cost which does not take into the account the ability of the Placements Team to negotiate discounts at the discretion of providers. Historically, the Placements Team has often been able to negotiate up to a 5% discount on the framework placement cost. If we were able to continue this strong record, it could reduce the cost pressure by up to £300k per annum.</p> <p>As the un-awarded tender in 2016 shows (providers were resistant to any kind of further price constraint, even removing themselves from future contractual arrangements as a result. Pursuing the prices in the 2016 tender would have had a significant impact in the medium to long term on local placement sufficiency, and the effectiveness of any contractual arrangements. The cost of care in the fostering market has risen in this time, with foster carers increasingly being able to ‘shop around’ for the agency which offers them the best support and reward. Due to the complexity of the children and young people being placed, agencies have had to ensure they have access to staff with the right skills to support this complexity, as well as offering multi-faceted training packages to meet a variety of needs.</p> <p>The average cost for a fostered 11-15 year old from the current framework is £836. The new tender provides an average cost of £906 for this age group. This is an increase of 8.4%.</p> <p>The transfer of existing packages of care to the new framework will involve a robust review of any packages with additional support, ensuring that this is reduced if it is no longer needed or being supplied. The new framework provides clear parameters for additional support payments, requiring carers to have had relevant training and skills to be able to manage complex behaviours. If the agency cannot demonstrate this, the additional payment will not be made. The existing framework (which ends on 31<sup>st</sup> March 2018) did not include quoted rates for specialist provision, whereas the new framework specifically requested these as part of the tender process. Having access to the</p>

	<p>providers' quoted rates for additional and complex support as part of the new framework will enable us to have more control in price negotiations.</p> <p>Regular meetings with each fostering agency will be held, enabling Somerset County Council to provide support and challenge on each agency's direction of travel, informing local recruitment drives and encouraging agencies with greater financial efficiency to grow.</p> <p>In line with our agreed Somerset Sufficiency Statement for Children Looked After and Care Leavers 2016-19, Somerset County Council's approach is to utilise our in-house service first before searching for placements in the independent market. Our in-house service recruited 24 foster carer households (excluding Connected Persons) in 2016-17 and recruitment activity targeted provision of placements for children 10 and over with more complex needs.</p> <p>The aim is to recruit an additional 40 in-house foster carers during 2018-19 (excluding Connected Persons), which will contribute to reducing the authority's use of independent fostering agencies as much as possible. Estimates indicate that if 36 more children were placed with Somerset's in-house foster carers, this would offset the indicative £0.53m annual increase of the fostering framework cost.</p> <p>Investing in fostering capacity and skills is crucial to reducing the council's use of residential care for children looked after. It is already the case that fostering provision, with any additional support or enhancement required for complex care needs, is thoroughly explored before children are considered for residential care. The use of the Peninsula framework will provide Somerset with a wider range of fostering options so that we reduce our use of residential provision. The average weekly cost currently of a residential placement is approximately £4,300 (compared with £549 for an in-house fostering placement and £827 for an independent fostering placement) but this can be significantly higher for children with complex needs. In this context, the cost of an independent fostering placement, even with the new framework rates, is more cost effective.</p> <p>The Children's Commissioning Team works closely with fostering providers and is focused on building and maintaining relationships, quality and capacity of provision with the sector. Working with providers will enable us to increase their focus on recruitment within Somerset, potentially increasing the number of foster carers in the County.</p>
<p><b>Legal Implications:</b></p>	<p>Somerset County Council has a statutory duty to provide sufficient placements for children looked after which meet their needs. Independent fostering providers are essential to meeting the demand for placements in Somerset.</p>

	<p>The procurement of the Peninsula Framework was undertaken by DCC on behalf of the partner authorities. The partners remain liable for any breaches of procurement law by DCC. For this reason it would be advisable to obtain indemnities from DCC against any losses that SCC incurs as a result of errors made during the procurement. The risk of losses arising to SCC in this case is not known although SCC has significant experience of working with DCC on joint procurements.</p>						
<p><b>HR Implications:</b></p>	<p>No HR implications to be considered.</p>						
<p><b>Risk Implications:</b></p>	<p>If the Council were to rely heavily upon independent fostering agencies to provide placements to children looked after, there is a risk of overspend. The mitigation for this is searching for an in-house fostering placement first, which costs the Council less, and to continue to recruit more in-house foster carers to increase capacity.</p> <p>However, without adequate fostering provision Somerset County Council would need to make increased use of residential provision which is significantly more expensive. The average weekly cost of a residential placement is approximately £4,300 (compared with £321 for an in-house fostering placement and £827 for an independent fostering placement).</p> <table border="1" data-bbox="513 1144 1465 1182"> <tr> <td><b>Likelihood</b></td> <td><b>3</b></td> <td><b>Impact</b></td> <td><b>3</b></td> <td><b>Risk Score</b></td> <td><b>9</b></td> </tr> </table>	<b>Likelihood</b>	<b>3</b>	<b>Impact</b>	<b>3</b>	<b>Risk Score</b>	<b>9</b>
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<p><b>Other Implications (including due regard implications):</b></p>	<p><b><u>Equalities Implications</u></b></p> <p>The service is expected to have a positive impact on looked after children in Somerset.</p> <p><b><u>Community Safety Implications</u></b></p> <p>No implications foreseen.</p> <p><b><u>Sustainability Implications</u></b></p> <p>No implications foreseen.</p> <p><b><u>Health and Safety Implications</u></b></p> <p>No implications foreseen.</p> <p><b><u>Privacy Implications</u></b></p> <p>No implications foreseen.</p>						

	<p><b><u>Health and Wellbeing Implications</u></b></p> <p>Providing sufficient foster placements within Somerset is expected to have a positive impact on the mental health and wellbeing of children looked after in Somerset. Children thrive more in a family environment and wherever possible being placed close to home, school or social networks as appropriate for the needs of the child.</p>
<p><b>Scrutiny comments / recommendation (if any):</b></p>	<p>Not applicable.</p>

## **1. Background**

- 1.1.** Somerset is part of the Peninsula Commissioning and Procurement Partnership (PCPP), a longstanding collaboration between Cornwall Council, Devon County Council, Plymouth City Council, Torbay Council and Somerset County Council. Devon County Council (DCC) is leading the joint procurement on behalf of the partnership.
- 1.2.** Since 2006 the council has collaborated with the Peninsula to purchase fostering placements from the independent sector. The current framework expires on 31<sup>st</sup> March 2018. A competitive tender exercise has been carried out, the deadline for which was 26<sup>th</sup> October 2017, and Independent Fostering providers have submitted bids for admission to the new framework. The new framework will commence on 1<sup>st</sup> April 2018 for a period of 4 years.

## **2. Options considered and reasons for rejecting them**

- 2.1** Without a framework in place, future purchases of independent fostering placements after 31<sup>st</sup> March 2018 are likely to be made as spot purchases with individual contracts. This is a risk at the point of purchase, when we will rely on our placements team to negotiate a good price.
- 2.2** Discussions have taken place between Children's Social Care Commissioning and Commercial and Procurement Team colleagues during which alternatives to awarding the framework agreement were discussed, as follows:
  1. Somerset County Council led framework agreement/range of contractual arrangements separate from and outside of the PCPP framework agreement.

This could be procured as an alternative to the PCPP framework agreement, i.e. SCC chooses not to participate in the PCPP framework agreement at all and procures an SCC-specific arrangement instead; or to complement the PCPP framework agreement, i.e. SCC chooses to use the PCPP framework agreement and also procure an additional SCC arrangement alongside.

### **Pros:**

- An additional arrangement may provide further options besides those already available via the PCPP framework agreement, both in terms of different providers and more favourable pricing
- To the extent that SCC is able to understand from Devon County Council (lead procuring authority for the PCPP framework agreement) whether providers raised any red flags as part of the PCPP procurement procedure as to variables that could have been changed during the procedure that would have had an effect on pricing, it may be possible to take account of those factors when designing an alternative procurement procedure and accompanying procurement documents such that SCC is able to influence the pricing and commercial position of providers to the benefit of SCC

Cons:

- It is not clear at this point whether an alternative or additional arrangement would deliver any greater value for money and in fact it could be assumed that it would not, given that SCC would not be able to take advantage of the leverage available to us through collaboratively procuring with a range of other local authorities
  - Procuring an alternative or additional arrangement may serve to undermine not only the PCPP procurement procedure but also SCC's wider credibility in the market. It is a fairly well established principle that despite the fact that local authorities have the discretion not to award a contract or framework agreement once procured, they ought not to use procurement procedures to simply understand bidder's commercials for the purposes of benchmarking. Furthermore, this course of action may undermine SCC's position with its PCPP partners and again undermine its influence in relation to future collaborative procurement that SCC may wish to participate in
2. Other viable framework agreements already in existence. It may be the case that SCC has access to properly procured arrangements already in place that have financial advantages over the PCPP framework agreement, which could be used as an alternative. Some work has been done to understand the extent to which those alternatives exist, but it is reasonable to suggest that SCC has not approached every viable County or Unitary Council to ask the question. However, it is worthy of note that out of those authorities already approached, that being Bath and North East Somerset and Southampton City Council on behalf of the Southern consortia of local authorities (which includes the majority of local authorities across the Southern part of the United Kingdom), neither or their already procurement framework agreements were open to SCC for use. Children's Social Care Commissioning colleagues have not pursued other opportunities beyond the South of England thus far on the basis that there is a geographical influence on pricing such that it has been considered that even in the event that framework agreements covering authorities in the North of England, but which are also open for SCC to use, may not be truly representative of the nature of the expenses claims that would be incurred as part of the contract costs.

### **3. Background Papers**

- 3.1. Appendix A – Peninsula Fostering Framework Tender, Non-key decision by the Director of Children's Services, 14<sup>th</sup> September 2017

Somerset County Council Sufficiency Statement for Children Looked After and Care Leavers 2016-2019 <http://www.somerset.gov.uk/childrens-services/care-and-chaperoning/children-in-care/>

Somerset Children and Young People's Plan 2016-2019 <http://www.somerset.gov.uk/policies-and-plans/plans/children-and-young-peoples-plan/>



Somerset County Council Fostering Service Annual Report, April 2016 – March 2017

<http://www.fosteradoptsomerset.org.uk/wp-content/uploads/2014/09/Fostering-Service-Annual-Report-April-2016-March-2017-Final-1.pdf>

## Equality Impact Assessment Form and Action Table 2015

(Expand the boxes as appropriate, please see guidance ([www.somerset.gov.uk/impactassessment](http://www.somerset.gov.uk/impactassessment)) to assist with completion)

"I shall try to explain what "due regard" means and how the courts interpret it. The courts have made it clear that having due regard is **more than having a cursory glance** at a document before arriving at a preconceived conclusion. Due regard requires public authorities, in formulating a policy, to give equality considerations the weight which is **proportionate in the circumstances**, given the potential impact of the policy on equality. It is not a question of box-ticking; it requires the equality impact to be **considered rigorously and with an open mind.**"

**Baroness Thornton, March 2010**

**What are you completing the Impact Assessment on (which policy, service, MTFP reference, cluster etc)?**

South West Peninsula Framework Contract for Independent Fostering

**Version**

1

**Date**

6/12/17

### **Section 1 – Description** of what is being impact assessed

This decision recommends that Somerset County Council awards the South West Peninsula framework contract for independent fostering. A procurement process has been carried out by Devon County Council on behalf of the South West Peninsula Partnership and providers have submitted bids to be admitted to the framework.

### **Section 2A – People or communities that are targeted or could be affected** (taking particular note of the Protected Characteristic listed in action table)

Independent fostering agencies provide foster carers for looked after children so the service is targeted at young people aged 0-17 in Somerset or are either already in, or entering, local authority care. Foster carers care for children with a wide variety of needs from a range of cultural backgrounds.

All placements made will include an assessment of the needs of the child, the views of the child and parents if appropriate, and the outcomes that are required by the foster carers. These are then matched to available foster carers to find the most appropriate placement for the child; stability of the placement for the child is a key factor that SCC monitors closely and is judged on.

### **Section 2B – People who are delivering** the policy or service

Independent fostering agencies.

### **Section 3 – Evidence and data** used for the assessment (Attach documents where appropriate)

The Service Specification for the framework tender makes clear that all bidders are expected to comply with Equality Legislation. If they fail to demonstrate this they are excluded from the Procurement Process at the assessment stage.

### **Section 4 – Conclusions** drawn about the equalities impact (positive or negative) of the proposed change or new service/policy (Please use **prompt sheet** in the guidance for help with what to consider):

Many children placed will have a Special Educational Need (SEN) or disability. These needs are recorded and explored, and placements are identified in order to meet these needs. This will not change in the new framework and no adverse effects are expected.

Any needs related to faith, religion, belief, culture or heritage are recorded and explored by the social worker, and these are represented when searching for a foster carer on the framework. The framework's ability to respond to this is not expected to change and no adverse effects are expected.

Any needs related to gender or sexuality, including gender reassignment and transgender needs, are recorded and explored by the social worker, and these are represented when searching for a foster carer on the framework. The framework's ability to respond to this is not expected to change and no adverse effects are expected.

The ITT requires providers to comply with equality legislation as pass/fail criteria, which includes four questions such as asking whether the organisation has had a complaint upheld following an investigation by the quality and human rights commission.

Payment to foster care agencies on the framework is only made on the basis of placements made. It is the responsibility of the council to ensure placements are made which appropriately meet the needs of the child or young person. Therefore it is in provider's interests to ensure they have carers available to match the needs of the child.

If you have identified any negative impacts you will need to consider how these can be mitigated to either reduce or remove them. In the table below let us know what mitigation you will take. (Please add rows where needed)			
Identified issue drawn from your conclusions	Actions needed – can you mitigate the impacts? If you can how will you mitigate the impacts?	Who is responsible for the actions? When will the action be completed?	How will it be monitored? What is the expected outcome from the action?
<b>Age</b>			
<b>Disability</b>			
<b>Gender Reassignment</b>			
<b>Marriage and Civil Partnership</b>			
<b>Pregnancy and Maternity</b>			
<b>Race</b> (including ethnicity or national origin, colour, nationality and Gypsies and Travellers)			
<b>Religion and Belief</b>			
<b>Sex</b>			
<b>Sexual Orientation</b>			
<b>Other</b> (including caring responsibilities, rurality, low income, Military Status etc)			

<b>Section 6</b> - How will the assessment, consultation and outcomes be published and communicated? E.g. reflected in final strategy, published. What steps are in place to review the Impact Assessment	
The assessment will be published alongside Cabinet papers. A review will take place when the framework contract comes to an end in 2022. Ongoing dialogue with independent fostering agencies over the life of the framework contract allows continuous scrutiny of processes.	
<b>Completed by:</b>	Louise Palmer
<b>Date</b>	6 <sup>th</sup> December 2017
<b>Signed off by:</b>	Philippa Granthier
<b>Date</b>	02/01/18
<b>Compliance sign off Date</b>	03/01/18
<b>To be reviewed by:</b> (officer name)	Louise Palmer
<b>Review date:</b>	2022