



Report

Date: 1 February 2024

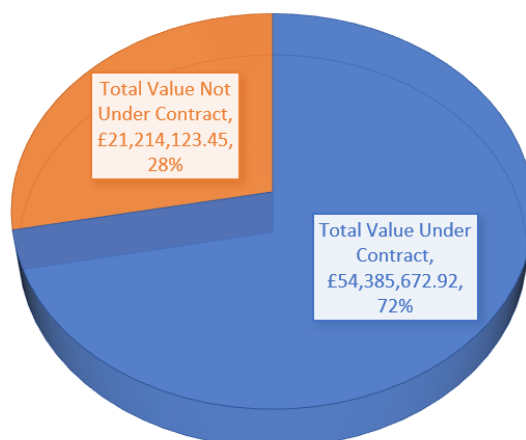
To the Chair and Members of the AUDIT COMMITTEE

Report Title: CYPF Commissioning Arrangements

| Relevant Cabinet Member(s) | Wards Affected | Key Decision? |
|--|----------------|---------------|
| Cllr Lani-Mae Ball Cllr Rachael Blake | All | No |

EXECUTIVE SUMMARY

1. The purpose of this report is to provide Members with transparency on procurement activity which has not been compliant with the requirements of Contract Procedure Rules (CPRs) and to offer assurance regarding the commissioning activities and plans for the Children, Young People and Families Directorate (CYPF). Additionally, it will provide assurance by outlining the commissioning plans and strategies for engaging with providers.
2. Contractual spend within the CYPF Directorate for the rolling year (December 2022 to December 2023) totalled £75 million. Of this expenditure 72% is compliant with contractual rules and of the 28% non-compliant spend the main categories of spend relating to this are detailed below.



- The table below summarises the 4 main categories of non-compliant contract spend in accordance with Contract Procedure Rules.

| Category | Compliant Contract spend | Non-Compliant Contract Spend | % Non-Compliant |
|-----------------------------------|---------------------------------|-------------------------------------|------------------------|
| Children Residential care | 5,834,975.70 | 7,245,798.38 | 55.39 |
| 16 plus Supported Living Services | 485,011.12 | 4,370,874.12 | 90.01 |
| Independent fostering Agencies | 5,919,386.31 | 1,306,820.36 | 18.08 |
| Adoption therapy services | 658,370.28 | 102,763.09 | 13.50 |
| | 12,897,743.41 | 13,026,255.95 | 50.25 |

EXEMPT REPORT

- This report is not exempt

RECOMMENDATIONS

- To note the significant measures in place for placements/commissioned packages that are recorded as not being compliant with Contract Procedure Rules and to provide details of the controls and mitigations that are in place and future work with the market to attempt to mitigate further non-compliant spend.
- For the CYPF Directorate, supported by the Head of Procurement, to provide an update in October 2024 to the Audit Committee, that details the current status of the spend on placements and work to date to improve and mitigate the existing issues.
- To note work undertaken by the CYPF Directorate and Commissioning Team in conjunction with Strategic Procurement Team (SPT) to ensure compliance and delivery of services.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

- By implementing the arrangements outlined in this paper, the City of Doncaster Council will continue to fulfil its obligations to meet the needs of some of the most vulnerable residents, with a focus on delivering best outcomes for Children and Young People. Work will be undertaken with stakeholders including providers, to develop and shape the markets, exploring new and innovative ways of working to meet their needs and make best use of available resources via compliant routes to procurement.

BACKGROUND

9. The majority of non-compliant spend relates to individual placements for children and young people, this includes education and residential placements provided by independent providers. Non-compliant contract spend for children's placements refers to the expenditure made **on contracts or agreements** that do not fully meet the Council's Contract Procedure Rules. The CPRs set rules and procedures on how Council contracts must be let, and where the total contract value breaches certain financial thresholds, what the minimum requirements are for calling for competition. Although the CPRs are not fully adhered to for various reasons children's placements are carefully monitored and evaluated for contract compliance. This includes conducting thorough background checks on providers, ensuring adherence to legal and ethical standards, and regularly assessing the quality of care and support provided.
10. Local authorities have statutory duties in relation to the children taken into their care. Section 22(3) of the Children Act 1989 establishes the general duty of the local authority who looks after a child to safeguard and promote the child's welfare. This duty underpins all local authority activity involving looked after children.
11. The SEND Code of Practice 2014 includes the voice of the young person and family in the decision-making process for a placement. At times this results in placing with an off-contract providers due to parental preference.
12. The Competitions and Markets Authority launched a market study into children's social care in England. *The placements market – the arrangements by which local authorities' source and purchase placements for children – plays an important role in the provision of residential and fostering placements for children.* As such the Children's Social Care market study March 2022 was in response to major concerns regarding how the placements market was operating. The report detailed that local authorities were too often unable to access appropriate placements to meet the needs of children in their care and that the prices paid by local authorities were high and this, combined with growing numbers of looked-after children has led to a national problem in securing services with a lack of placements of the right kind, in the right places. The report highlighted that the largest private providers of placements are making materially higher profits, and charging materially higher prices, than would be expected if this market were functioning effectively. Over three-quarters of places in England and Wales now come from these independent providers. This has led to the difficulties local authorities face in finding appropriate placements, in the right locations, for children as they need them and means children a being placed far from their established communities. The current shortfall in capacity in the placements 'market therefore represents a fundamental failing in market functioning. This lack of ability to engage effectively with the market has led to local authorities having to contract outside established local and regional arrangements.

13. Since Doncaster Children's Services Trust (DCST) transferred back to the City of Doncaster Council (CDC) in September 2022, all contracts relating to spend on Children's services novated to the council and are now required to be compliant with the Council CPRs.
14. Spend on children's placements is managed through a number of local and regional frameworks. The frameworks are a contracting mechanism to identify and contract provision:
 - a. Three local frameworks cover contracted spend for 16 plus Group Living and Supported Tenancies Accommodation, Short Breaks and Specialist Education Provision. These three frameworks have been fully recommissioned in 2023.
 - b. Three regional frameworks administered through The White Rose Framework led by Leeds City Council covers Residential, Special Education and Independent Fostering Agencies.
 - c. The Regional Adoption Agency procure Adoption Support Fund providers who are on the Approved Provider list held by North Yorkshire.
15. Throughout 2023, significant market engagement has been undertaken to engage providers on the local and regional frameworks.
16. Where providers are not part of local or regional frameworks spot purchases have been necessary to meet needs and provision not available via framework providers. Where services are procured off framework governance and controls are in place to mitigate risks of non-compliant spend as much as possible, albeit the contracts are spot purchased based on child's needs, parental choice or in emergency situations.
17. A large number of providers of residential care have pulled away from the regional White Rose Framework which has led to contractual gaps as shown in the figures for on and off contract spend for children's residential care. This trend is the same across all other local authorities in the region and is due in part to contracting with providers who are outside of the city and national providers who do not look to join regional frameworks.
18. The 16 plus Group Living and Supported Tenancies Accommodation local framework was set up in September 2023 and following intensive market engagement has been successful in engaging providers. The high level of off contract spend (90%) in this area will decrease as these providers transfer their contracts onto the framework including legacy placements made before the new framework was in place. This work is underway which will see a significant reduction in the level of off contract spend for this area. Since 2023 this service has become OFSTED regulated and as such, we expect to see an increase in providers joining the framework as they see the benefits of networking and local support.

19. Contractual spend with Independent Fostering Agencies is largely on contract through the regional White Rose Framework, however where agencies are not willing to join the regional framework this will mirror the reasons stated for the Children's residential framework.
20. Adoption therapy services are contracted with a large number of small providers with options currently being explored for an approved provider list which will reduce off contract spend.
21. Placements are highly regulated through panel and decision-making processes for individual education and care packages. The decision makers for all panel decisions are the City of Doncaster Council Assistant Directors who chair the panels, and the NHS South Yorkshire Integrated Care Boards (SYICB) Senior Contracts Manager for jointly commissioned and funded placements. Decision-making is aided by members of the panel and require cases to be presented by service managers/lead practitioners and signed off by Head of Service before being referred to panel and must represent best use of resources and value for money. The purpose of all panels is to ensure that placement decisions are in the best interest of children, young people and families, and represent best value for money, and that the placements and packages offered are directly proportionate to a child, young person and the families assessed needs.
22. SEND and Inclusion Quality Assurance Panel consider the following requests for education placements:
 - a. Children with SEND
 - b. Special school places in independent schools/colleges incl. travel
 - c. Transport costs
 - d. Additional support requirements to support individuals or cohorts of children with SEND in mainstream settings.
23. Joint Resource Panel consider the following requests:
 - a. Bi-Part or Tri Part Funding
 - b. Require funding from Health – including Therapy and IFR
 - c. Short Breaks resource over the indicative budget
 - d. Section 117 requestsWhere an emergency decision is needed, and a decision is made outside of panel progression to JRP will be required if joint or tri-part funding is required.
24. Social Care Placement Panel coordinates the oversight of packages on a child-by-child level to ensure that appropriate care plans and support are in place and that the placement meets the presenting need.
 - a. Children living in a residential home – both internal and external to Doncaster
 - b. Children in 16+ accommodation
 - c. Children in secure or remand settings
 - d. Children in an IFA where there is additionally

- e. Oversight of delivery of commissioned social care providers
- f. Transport costs
- g. Accommodation / placement over the age of 18

25. Placements process and use of regulated providers

For placements, officers will explore alternative options to meet needs prior to commissioning any external provision. Where Panel agrees commissioning of a placement, the search will initially go to local and regional framework providers who are Good or Outstanding with OFSTED. If they are unable to meet need the search is extended to include approved providers e.g., Section 44 or known providers who have satisfied due diligence requirements before any approaches are made to any off-contract provision.

26. Due Diligence

This is a contractual requirement and is completed with all providers, where possible prior to contracting with them, or as an immediate action before placing children and young people to ensure the council fulfils its Duty of Care. Minimum compliance checks include safeguarding processes, safer recruitment, insurances, references. Placements cannot be made until these checks are complete. Once the young person is in placement, this becomes part of the regular Quality Assurance and Contract Monitoring Cycle, which covers due diligence and compliance.

27. Quality Assurance

The City of Doncaster Council has a duty to assess all providers commissioned to deliver services for children and young people, to ensure full compliance with the requirements set out in section 11 of the Children Act 2004. A regular cycle of Quality Assurance Monitoring is in place for all providers, prioritised according to the risk level of the contract/regulatory judgement and as a minimum, conducted annually. Many visits are multi-Disciplinary with feedback sought from a range of Services including Social Worker, Independent Reviewing Officer and Local Area Designated Officer prior to the visit. The Quality Assurance Framework covers a range of areas including

- a. Education
- b. Health
- c. Protection of Children
- d. Care Planning
- e. Safer Recruitment
- f. Health & Safety
- g. Overview of staffing in place

Should a safeguarding/OFSTED concern arise, an unannounced visit will be completed, and an action plan developed for any follow up actions.

OPTIONS CONSIDERED

28. For all providers to join the Framework mechanisms.

Both regional and local frameworks give the legal basis to enable providers to contract with the council and to assure the quality and compliance of provision, support safeguarding, manage costs and provide compliance with CPRs.

This will support and mitigate against non-compliant spend, but due to associated complexities in the provider market this will be an on-going process. Working with the provider market either through the White Rose Framework or the development of further local agreements has seen some success in increasing providers on frameworks but continuing to meet needs will require the continued procurement of specific and specialist provision by means of spot purchases.

OPTIONS CONSIDERED

29. The Councils CPRs allow for exemptions on Health and Social Care contracts where the recipient of care has a personal choice and directly contracts with the care provider including direct payments included under Section 31 – 36 of the Care Act 2014, section 57 – 58 of the Health and Social Care Act 2001, section 12A of the NHS Act 2006 and section 17A of the Children Act 1989. Where contract spend is not covered by the exemptions but where there is a need to award a contract that has not complied with the competitive requirements of the CPRs a waiver is completed. Due to the number of waivers that would be required for children's placements the Commissioning Team will instead complete a quarterly submission detailing all placements that have been awarded outside the current frameworks, where the Council have had no choice to place due to their statutory obligations.






REASONS FOR RECOMMENDED OPTION




30. The proposed approach to ensuring transparency regarding non-compliant spend seeks to mitigate risk. It is important that the Council's CPRs are adhered to and, where non-compliance is identified this is managed by the CYPF Commissioning Team and monitored through the Strategic Procurement Team.

31. Due to the instability and failure in the market nationally and the continuing need to place children as per the Council's statutory obligations, non-compliant spend will continue. However, for transparency a quarterly report stating the rationale of urgent need will be produced by the Commissioning Team.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

32.

| Great 8 Priority | Positive Overall | Mix of Positive & Negative | Trade-offs to consider – Negative overall | Neutral or No implications |
|--|------------------|----------------------------|---|----------------------------|
|  Tackling Climate Change | ✓ | | | |
| <p>Comments: This is considered when procuring and forms part of the social value deliverables obtained through contracting.</p> | | | | |
|  Developing the skills to thrive in life and in work | ✓ | | | |
| <p>Comments: Social value is included in all public procurement above threshold contracting as a minimum of 10% weighting in the evaluation criteria. Part of the social value targets are associated with opportunities to develop skills.</p> | | | | |
|  Making Doncaster the best place to do business and create good jobs | ✓ | | | |
| <p>Comments: Social value is included in all public procurement above £100k contracting as a minimum of 10% weighting in the evaluation criteria. Part of the social value targets are associated with opportunities to create opportunities for local people.</p> | | | | |
|  Building opportunities for healthier, happier and longer lives for all | ✓ | | | |
| <p>Comments: Support residents to live independent and rewarding lives in the place they call home (The 16+ Group Living and Supported Tenancies Accommodation Framework and Short Breaks) Work towards becoming an even more Disability-Friendly borough.(Short Breaks)</p> | | | | |
|  Creating safer, stronger, greener and cleaner communities where everyone belongs | ✓ | | | X |

| | | | | |
|--|---|--|--|----------|
| Comments: | | | | |
|  Nurturing a child and family-friendly borough | ✓ | | | X |
| Comments: Increase the availability and quality placements and activities for families and young people. | | | | |
|  Building Transport and digital connections fit for the future | ✓ | | | X |
| Comments: | | | | |
|  Promoting the borough and its cultural, sporting, and heritage opportunities | ✓ | | | X |
| Comments | | | | |
| Fair & Inclusive | ✓ | | | |
| Comments: This is covered as part of the social value delivered through contracting at the Council. | | | | |

33. Legal Implications [Officer Initials: SRF | Date: 10.01.24]

As set out in the body of the report, the Council has legal duties in relation to looked after children. Services for those children (including the provision of accommodation) should be commissioned in accordance with Council Contract Procedure Rules as well as the appropriate guidance to ensure that the wishes of the child, their families and the best interests of the child are all appropriately considered.

34. Financial Implications [Officer Initials: AB | Date:12/01/2024]

The total spend figures shown in paragraph's 2 and 3 cover the period December 2022 to December 2023. The spend in the period December 2022 to 31st March 2023 was included in CYPF's yearend outturn position for the financial year

2022/23, and the spend from 1st April 2023 onwards is included in CYPF's financial projections for financial year 2023/24. These financial projections don't break down spend into compliant and non-compliant categories, which is managed as set out in this report, but the total spend is monitored against budget on a monthly basis by the directorate and reported quarterly to cabinet.

35. Human Resources Implications [Officer Initials: KW | Date: 11/01/2024]

There are no Human Resource implications

36. Technology Implications [Officer Initials: PW | Date: 09/01/2024]

There are no technology implications in relation to this report.

RISKS AND ASSUMPTIONS

37. Contracting can be high risk if undertaken without full compliance with the CPRs. Quarterly reporting of non-compliant spend and compliance monitoring will seek to counter and address these risks.

CONSULTATION

38. There has been consultation with the various services in the CYPF Directorate and applicable officers.

BACKGROUND PAPERS

39. None

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

40. CYPF – Children, Young People and Families
DCST – Doncaster Children Services Trust
SPT – Strategic Procurement Team
CMA – Competition Markets Authority
CPRs – Contract Procedure Rules

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