

North Somerset Council

Report to the Executive

Date of Meeting: 08/12/2021

Subject of Report: Commissioning and Procurement Plan Approval – Alternative Learning Provision Framework 2022-27

Town or Parish: All

Officer/Member Presenting: Executive Member for Children's Services and Lifelong Learning

Key Decision: Yes

Reason:

The spend is over £500k per annum.

Recommendations:

i. It is requested that the joint commissioning and procurement plan be approved to proceed.

1. Summary of Report

The report details the current position of purchasing alternative learning provision (sometimes called Alternative Provision, ALP or AP) by North Somerset Council (NSC) for young people who cannot attend mainstream schools, or who need additional support. AP is currently bought using spot purchasing arrangements with individual providers, which leaves NSC unable to evidence value for money and a risk around the completion of due diligence checks and quality assurance. Purchasing via a framework¹ or dynamic purchasing system (DPS) will help to mitigate these risks in most circumstances.

Bristol City Council are currently recommissioning their ALP framework, with a go live date of September 2022 and the commissioning intention and route to market is, along with South Gloucestershire Council (SGC), to join a regional open framework, contract for five years with the option to extend for one year. The new framework will be established to allow the local authority (LA) and schools within our LA areas to purchase ALP support from independent schools and part-time providers, across three distinct contract lots, supporting all pupils with alternative education needs:

- 1. Full-time and revolving door ALP (registered schools only)**
- 2. Part-time ALP**
- 3. Early intervention (in-school support)**

¹ The terms DPS (Dynamic Purchasing System) and Framework are often used interchangeably but for the purposes of this decision shall be taken to mean the same thing i.e., providers are signed up to the DPS/Framework and NSC 'call off', or purchase, from it.

NSC, BCC and SG Councils are part of the South West Sub-Regional Commissioners Group (SWSRCG) and there are several other frameworks that we collaborate on due to the benefits of commissioning across county areas, not least less duplication of work and resources and a stronger position in the market. The procurement of the new framework is being led by BCC with NSC and SG supporting the procurement process including the evaluation of applications from prospective providers to join the framework. The Group will collaboratively oversee the management of providers and the contract for the duration of the arrangement.

2. Policy

This recommendation relates to the Council's overarching priorities as detailed in the Corporate Plan 2020-2024 to be **'a council which empowers and cares about people'** and be **'an open and enabling organisation.'**

North Somerset Council has made a 'commitment to protect the most vulnerable people in our communities' with 'a focus on tackling inequalities and improving outcomes.' By working collaboratively with our partners to procure local, high quality, alternative provision for children and young people who are either excluded from mainstream schools or need additional support, they will be 'enabled...to lead independent and fulfilling lives' enhancing their 'skills, learning and employment opportunities.' Our contracted providers will actively seek to further develop the volume and resilience of local provision within North Somerset supporting us to 'empower our communities.'

In accordance with the Child Transformation Board priorities **'Prosperity & Opportunity,'** this contract may also 'drive growth in the North Somerset economy and local jobs.'

The Children's Annual Directorate Statement 2021-2022 further outlines commitments to **'ensure we are a council that empowers and cares about people'** by 'strengthening commissioning activity across children's services to ensure sustainable, improved outcomes for children and families.' This is a new piece of commissioned work within Education Partnerships, which will ensure better value for money for the council and better utilisation of resources in terms of calling off from the framework and ensuring due diligence checks are completed and contract management occurs on an ongoing basis.

A further framework agreement, will reinforce existing inter-authority relationships benefiting children and young people to achieve 'sustained improvement of emotional wellbeing, education and employment outcomes.' Cross border 'relationships with partners and the voluntary sector, communities and local businesses' in more ethnically diverse areas, are also beneficial for the three Local Authorities working together.

3. Details

Current Arrangements

- Local authorities have a statutory duty to arrange suitable full-time education for permanently expelled pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such Alternative Learning Provision (ALP). Schools are responsible for commissioning ALP for pupils on their school roll, where this is provided on a part-time basis. In a wider sense, ALP can cover far ranging services from pupil referral units (PRUs), hospital education and education for children in custody, to provision of full-time or part-time education outside of mainstream school. It also includes preventative programmes working with individuals or groups of children to prevent them from being excluded from school.

- North Somerset Council (NSC) does not currently have a framework in place for purchasing alternative provision.
- Purchasing of AP is done on an ad hoc, spot purchase basis, which can be more costly than if the costs were submitted as part of a framework agreement.
- NSC do not have a catalogue of providers who have been vetted and checked, including references obtained, but we do utilise Bristol City Council's (BCC) catalogue of AP providers who are on their current framework.

Provider Summary in NSC

- **77 providers have been used in total since 2018.**
- **In 2018/19 the total cost of AP was £237,710 across 21 providers.**
- **The total cost of AP in 2019/20 was £312,388, across 28 providers.**
- **51 providers were used in 2020/21, at a total cost of £881,396.**
- **In the current financial year 43 providers have been used since April 2021 at a cost of £767,991.**

- Although overall costs for alternative provision have gone up quite considerably since 2018, year-on-year, the big increase in spend since 20/21 is due to COVID-19 impact, but it is reasonable to assume that long term spend should start to reduce as more children return to mainstream education.
- NSC have, within county boundaries, 3 maintained special schools (Westhaven, Ravenswood and Baytree) as well as the Voyage Learning Campus (VLC) which is a Pupil Referral Unit (PRU).
- For Independent and Non-Maintained Special Schools (INMSS), which NSC young people may attend if they are excluded from school or have needs that cannot be met within the NSC area, there is a framework in place, which Bristol also lead on.

Proposed Contract Structure

There will be 3 lots on the ALP Framework:

1. Full-time and revolving door ALP (registered schools only)
2. Part-time ALP
3. Early intervention (in-school support)

In line with BCC's commissioning strategy for their ALP framework, the main priorities of the ALP framework, across the four stages of a pupil's journey through ALP, are as follows:

Pre-ALP (Early intervention)

- 1. Alongside the part-time and full-time/revolving door lots, a new framework lot for in-school support commissioned directly by schools, supporting children to stay in mainstream school where appropriate**
2. Providers encouraged to diversify their offer to provide more in-school support
- 3. SEMH pathway and graduated response, ensuring adequate support has been made available to students before referral into ALP**

Moving into ALP

1. Details of pre-ALP support, pupil need(s), and safeguarding details provided prior to referral
2. Consideration of pupil needs to develop suitable ALP offer, including blended packages, with pupil and parent voice to be clear part of the process
3. Consistent expectations of start times and induction processes post-referral
- 4. Diverse range of providers on the framework, offering wide range of support, including support to meet the needs of harder to place pupils**
- 5. Value for money through inflation-only price increases for providers for framework duration**

Thriving, achieving, and belonging in ALP

1. Focus on attendance and improved outcomes for pupils, based on appropriate baselining
- 2. Evidence-based quality assurance processes, ensuring consistent high standards across all ALP settings**
- 3. High quality careers guidance offered early, supported by an ALP catalogue with distinct careers information, advice, and guidance provision**
4. Ensuring providers have access to adequate CPD and resources to support pupils with complex needs
5. Best practice and support facilitated through provider forum

Leaving ALP

1. Clear transition plans in place for pupils, including to post-16 education, employment, or training (EET) for year 11 pupils
2. Development of 'keep in touch' transition offer following move to EET, reintegration to mainstream school or move to specialist provision
3. Provision of all relevant needs, support, and safeguarding information to onward destination

All alternative provision providers on the BCC framework will go through a stringent process of quality assurance and been included onto a framework agreement of alternative provision.

Route to Market

- The commissioning strategy compiled by BCC has been out for consultation, with the final report completed in October 2021.
- There is currently soft market testing happening, via a PIN out on the Bristol Portal, to gauge interest.
- Market engagement events will be conducted in December 2021 virtually, due to the pandemic.
- ALP provision through independent registered schools and unregistered part-time providers will be purchased and quality assured through a new five-year open framework (school year 2022/23 to 2026/27), with the option for an additional one-year extension. The current approach has been effective in attracting a number of part-time providers to the market and offering choice for commissioners. The window for new applications is currently three monthly, which BCC wish to continue.
- NSC will contact providers that are already being used to encourage them to apply.

Timescales

The dates are below are indicative only and the local authority reserves the right to change these where necessary or appropriate.

Stage	From	To
Consultation on BCC's draft commissioning strategy and proposals	June 2021	July 2021
Publication of final commissioning strategy	October 2021	-
First opportunity for providers to submit tenders	January 2022	February 2022
Implementation of new framework	June 2022	August 2022
New framework and service level agreements start	September 2022	-

Governance

- Any joint commissioning of ALP with BCC, NSC and SGC local authorities will be governed by an **inter-authority agreement**, with respective data sharing and quality assurance responsibilities determined at the outset of the framework.
- Effective monitoring of ALP requires a clear national or local framework.
- Although it is not set out whether the good governance practices the DfE market assessment from 2018 identified will be in place on the framework, they have been noted by BCC, the Lead LA in their commissioning strategy, emphasising the need for involvement from schools and local authorities (LAs) in partnership, including clear roles and responsibilities of schools and the LA; a local ALP directory; Quality Assurance visits; the tracking of pupil progress by schools (although auditing via the framework may occur by the LA to share good practice); Governance to oversee QA; Data Sharing (including outcomes and costs to track placements and system level performance); and LA oversight to work with schools and offer support.
- The Ofsted review into off-site ALP found inconsistent practice across schools in terms of quality assuring part-time provision, ranging from limited questions on safeguarding, inconsistent checking of registration status, and not ensuring a wide curriculum was provided so that pupils could effectively progress in mainstream schools.

Social Value, Sustainability and VCSE

- Providers will have to use the Social Value Portal, as per BCC contract arrangements (see Bristol Social Value policy).
- A new, more streamlined/easier to use SV model through the portal is about to be launched and this will be used for the ALP framework.

Evaluation

- BCC would be leading on provider evaluations, however NSC and SGC are feeding into the quality questions and design of the specification by liaising regularly and will be informed by operational leads in their respective areas.
- Plans for tender evaluations are for all three LA's to be involved.

Prequalification

- All alternative provision providers on the BCC framework will go through a stringent process of quality assurance and been included onto a framework agreement of alternative provision.

Pricing Evaluation

- Pricing will not be evaluated to get onto the framework, but providers will be limited to inflation only increases that they apply for annually (very similar model to INMSS). Similarly, call offs can be made by direct placements based on criteria in spec (including price), or through mini competitions where providers can be invited to submit a price up to or lower than the price submitted in their tender

Quality Assessment

- A draft of the questions broadly looks at the categories in the IntegratED quality AP Toolkit. BCC are paring down the original draft to make it more accessible for providers.
- A standard BCC scoring matrix will be used to evaluate the quality questions.

Pricing Schedule

- Upon application, prices will be set out and uplifts will be agreed in line with inflation.

Contract Management

- A new quality assurance approach will be developed alongside the ALP service level agreements and framework contract, ensuring that the priorities for young people set out above are adhered to by ALP settings. This will focus on safeguarding, school improvement and effective contract monitoring, ensuring consistency in approach with Bristol's commissioning of INMSS and SEND school places.

Quality assurance and monitoring of safeguarding practice will be supported by a new, annual self-assessment safeguarding audit for providers, based on the section 175 audit completed by schools currently. Effective ALP will be monitored against evidence-based benchmarking tools, including the IntegratED Quality Benchmark Toolkit, which assesses quality against the following areas:

- Workforce development and wellbeing
- Home and family engagement
- Partnership working
- Use of evidence-based practice and innovation, including trauma-informed approaches
- Pupil induction
- Attendance and engagement
- Supporting pupils' needs, including literacy, SEND and health and wellbeing needs
- Quality of education
- Personal development
- Qualifications
- Assessment of need
- Appropriate transitions
- Post-16 destinations Quality assurance information will be based on Bristol's own monitoring, as well as information from other relevant parties such as schools and neighbouring local authorities. Where monitoring identifies issues with pupil education, development, attendance or safety, improvement plans will be put in place, with the option for pupil placements to be stopped until progress against these plans are demonstrated.

Market Suppliers

- For part-time ALP settings, **the current BCC framework has 30 providers on it, covering a range of provision, including: tuition, sports and activities, mentoring, vocational and training, therapeutic, and early college.** BCC also currently commission placements from ALP academies as well as using a maintained Bristol Hospital Education Service, as well as their current open framework to purchase part-and full-time places. Bristol schools can also purchase part time ALP.
- The service in Bristol is much wider than in North Somerset, both in terms of the services offered (they have several LA funded Alternative Learning Provision Schools for example), the scale of their need(s), and the amount of spend in comparison to NSC and South Gloucestershire Council (SGC), but there are many benefits to entering into a joint commissioning arrangement, also alongside SGC including:
 - Combined tendering reduces the cost pressures of procurement exercises on individual authorities
 - Offers a more efficient and cost-effective tendering process by requiring providers to undertake one tendering process including demonstration of one set of quality and performance criteria
 - Offers authorities benefit from scale and market share when negotiating fees and contract terms and in collation of performance monitoring and evaluation
 - Delivers a joined up, coherent and robust message to providers about the

- needs of the sub-region to receive high quality, VFM local ALP sufficiency
- Supports authorities to run mini tenders to meet specific needs
- Consolidates a route to market compliant with Public Contract Regulations

Wider Providers in the Education Market

- To go alongside the ALP framework, NSC are part of the South West & South-Central Flexible Framework for Independent & Non-Maintained Special Schools (INMSS) alongside 9 other local authorities. We can commission specialist education places from circa 45 INMSS and Specialist Post-16 Institutions across the region. Through this framework we are developing our relationships with providers and undertaking market shaping exercises as a consortium.
- NSC are also part of the South West Sufficiency Project with 13 other local authorities; the project is being led by South Gloucestershire Council and received two years' funding from the DfE. The project's aims are twofold; to look at how LAs can work more efficiently with the independent sector and how LAs can commission, design and deliver services together. The project will:
 - Produce a South West needs analysis to include an understanding of the market and aggregation of data to inform equality decisions.
 - Produce one market position statement for residential, fostering, and independent / non-maintained special schools.
 - Develop recommendations for new ways of delivering services including new ways of partnership working across LAs.

4. Consultation

- North Somerset Council's SEND, Procurement and Contracts and Commissioning teams have been engaged throughout the procurement process.
- The Director of Children's Services, Interim Assistant Director of Children's Support & Safeguarding and the Head of Children's Commissioning have been consulted and the Children and Young People's Scrutiny group have been kept abreast of developments as far back as 12 months ago.
- The lead Contracts and Commissioning Officer continues to work with the SEND Manager and Finance Team to maintain an overview of the needs of the local authority and demographic of those requiring ALP.
- The commissioning leads from BCC, SGC and NSC have met regularly to discuss the procurement activity required for the flexible framework, is currently undergoing soft market testing by way of a PIN advertised on the Portal to gauge interest and are planning a market engagement events both virtually and in person with prospective providers in November. Providers will be contacted to encourage them to apply.
- With BCC as the lead LA, proposals in their commissioning strategy have been shaped by initial engagement with stakeholders across pupils, parents/carers, providers, schools and other relevant professionals, and engagement work will continue throughout this process, alongside the consultation for the strategy which was available throughout the summer. Results of this initial engagement were set out in the strategy with additional information to be set out in the Needs Analysis which will accompany the final version of BCC's strategy.

5. Financial implications

Costs

- Anticipated costs for the procurement activities, led by BCC is £0 to NSC. This is because NSC are joining BCC's framework in line with their commissioning plan, rather than jointly procuring it alongside them as partners. This is the same for SGC.

- The actual spend for the previous three financial years are illustrated below for Alternative Provision. The forecasted spend for this current financial year (2021/22) will need to be adjusted due to an unexpected increase due to pandemic impact.
- The funding comes from the Dedicated Schools Grant (High Needs Block).

Year	Total
2018/19	237,710
2019/20	312,388
2020/21	881,396
2021/22 as at 31.10.21	767,991

Future spending principles

- Future spending principles are hard to anticipate but the use of a framework, where costs are more transparent, should help to plan more effectively for service delivery.
- Assuming all the providers that NSC have used, or will use, apply to go on and are accepted onto the framework, based on last year's spend (*which may be unusually high due to impact of the pandemic*) the anticipated cost of the framework life for North Somerset will be c. £5.3 million, if the one-year extension is undertaken. Bristol's spend is circa £6m per year, whereas South Gloucestershire's spend is similar to NSC.
- In order to better manage and plan expenditure, it is proposed that under the new framework, price increases will be limited to annual inflationary uplifts.
- Actual spend in this budget is demand led and the volume of commissioning activity is dependent on the individual assessed needs of the children and young people requiring alternative provision.
- Providers of part-time ALP in non-school settings have expressed concerns that fixing a price for the contract duration will limit their ability to flexibly develop provision, and BCCs consultation sought further input from providers on the impact of such proposals. Should a fixed-price approach be taken across all three contract lots, it will need to allow for significant flexibility for providers to adapt offers to meet pupil needs.

6. Legal Powers and Implications

- There are many statutory duties in relation to providing alternative education for children who have either been permanently excluded from, or cannot attend, full time education for some other reason(s).
- The legislation primarily refers to the Education Act 1966 (see Appendix 2 for further information on legislative and statutory duties).
- The Alternative Provision framework will help to meet these duties by ensuring that there is a ready and up-to-date catalogue of providers that can be purchased from, who are already vetted to check they have the relevant policies and procedures in place and for whom appropriate references have already been obtained. This saves valuable time when searching for placement within tight timeframes, such as six days after a child is permanently excluded from school that is proscribed under Statutory Guidelines for Exclusions (2017).
- Quality questions will also need to be answered before providers are accepted onto the framework to make sure they have the relevant experience in delivering alternative provision for children and young people.
- In relation to safeguarding legislation, the framework will ensure that providers on the framework contract have the correct policies and procedures in place and that staff have been recruited to safer recruitment practices.

7. Climate Change and Environmental Implications

- Successful providers will be required to adhere to environmentally friendly practices wherever possible when developing services and managing existing infrastructure.
- There is a proposed quality question within the tender which will ask, “how will you add to the economic, social and/or environmental well-being of the local area, as required under the Public Services (Social Value) Act 2012?”. Evaluators will expect detail on how providers “will contribute to the economic, social and/or environmental well-being of the area, such as links with local employers to enable learners to access work experience and promote sustainable travel to school for example.
- NSC officers will continue to utilise video and teleconferencing apps to meet with local authority colleagues and providers for meetings wherever possible.
- Where in person attendance is required, officers will maximise use of public transport or other sources of sustainable transport including electric pool cars.

8. Risk Management

There are two main risks associated with the recommended commissioning however both are considered to be low risk for the reasons below:

Key providers fail to join the framework:

- NSC do not have a framework in place currently but use Bristol’s catalogue to source providers. There are 30 providers on the current Bristol framework, yet NSC have directly spot purchased placements with 77 providers in the course of fulfilling need for AP in North Somerset since 2018.
- The Group will engage in soft market testing and market engagement events to encourage existing and new providers to join the BCC framework. Engagement events will continue during the life the framework in line with the (current three-monthly interval) opening of the framework.
- AP providers that NSC have purchased from will be contacted to encourage them to apply to the join the framework and the opportunity can be advertised via the NSC Portal, directing providers to the Bristol Portal and the opportunity to apply for.
- NSC can still spot purchase provision, if a provider who will meet need is not on the framework.

Providers challenge the council’s procurement method:

- The framework adheres to a transparent and robust procurement process.
- The framework will be open for new providers to apply to go on at quarterly intervals, as is the current practice for the existing framework, but this is subject to review in accordance with demands upon Officer time in evaluating the applications. This will support North Somerset Council to minimise commissioning of ‘spot purchased’ placements, which reduces the risk of challenge.

9. Equality Implications

Have you undertaken an Equality Impact Assessment? **Yes** (see *Appendix 1*)

The services are already being purchased and are a statutory responsibility of the LA to do so. The impact of (re)commissioning BCC’s ALP framework collaboratively with South Gloucestershire Council on equality groups is assessed to be none. The framework will specifically enable NSC to procure appropriate alternative provision education placements for those who require them, who will experience a low but positive impact. The proposal does

not discriminate against any protected groups and actively seeks to improve outcomes for children who might have been excluded from mainstream school or need alternative provision above and beyond what their school delivers, such as mentoring.

10. Corporate Implications

- Management of the flexible framework rests with Bristol City Council ultimately, as NSC and SGC are joining their procurement activity.
- Budget responsibility rests with the Director of Children's Services.
- The joining with and (re)commissioning of BCCs flexible framework will actively support the needs of North Somerset Council's vulnerable children and young people and promote their life outcomes, by enabling them to have more opportunities to engage in education, employment and training alongside extracurricular and social activities supporting them to achieve improved life chances and contribute positively to their communities as adults.
- Consequently, the framework has the capacity to positively affect the work of other council services such as Children's Support & Safeguarding, Youth Offending Services, Consult! and some non-council services such as Addaction, Substance Advisory Services, CAMHS, Avon & Somerset police etc.

11. Options Considered

Carry on spot purchasing Alternative Provision, as required – not recommended

- NSC's current arrangements are not sustainable, financially, or to manage risk and the market as a framework arrangement supports.
- Alternative provision placements need to be commissioned in line with statutory legislation with a need to avoid 'off framework' and 'spot purchased' placements for numerous reasons including cost, contract due diligence and quality assurance.
- Spot purchasing does not allow for an economy of scale, due diligence and checks to be completed on the same level as a framework would.
- Current arrangements are not in line with contract standing orders due to the spend NSC have with some providers due to an increased need, possibly as a consequence of the pandemic impacting upon certain young people's ability to learn.

Join Bristol City Council's Alternative Learning Provision Framework – recommended

- Collaborating with BCC and SGC as part of a South West group of commissioners strengthens bonds NSC already have with our neighbouring LA's in existing commissioning arrangements.
- Providers that NSC purchase from are generally within our wider geographical area(s).
- The open framework approach encourages new providers to join at regular intervals, currently three monthly, which refreshes the marketplace and encourages providers to deliver value for money.
- Its transparent nature gives providers the demographic and referral intelligence they need to develop services in line with need and demand.

Commission our own Alternative Provision Framework – not recommended

- This was an option NSC considered, however BCC and SGC are in the similar position of recommissioning their framework, and updating their AP catalogues respectively, so it made sense to collaborate to pool resources and lessen duplication of work, when the markets are similar and many of the providers are the same.

- A standalone commissioning option limits the councils purchasing power including the economies of scale afforded by the flexibility and size of a multi-council DPS. It would require significant investment from the council to provide the required resources needed to design, implement, and manage a stand-alone framework including all quality assurance and contract monitoring functions.

Author

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Appendices

- Appendix 1 Initial Equality Impact Assessment
- Appendix 2 Legislation and Statutory Responsibilities

Background Papers

- North Somerset Council Corporate Plan 2020-2024
- Children’s Annual Directorate Statement 2021-2022
- Child Transformation Board
- Childrens Sufficiency Strategy (DRAFT 2021)
- Bristol City Council’s ALP Commissioning Strategy 2022-2027 (October 2021)
- Bristol City Council Social Value Policy (February 2021)

Appendix 1

North Somerset Council Initial Equality Impact Assessment

Please add content where << XXX>> is indicated.

Please make Yes or No bold as appropriate.



1. The Proposal

Directorate:	Children’s Services/Education Partnerships	
Service area:	Children’s Contracts and Commissioning	
Lead Officer:	Charlotte Badger	
Links to a budget reduction proposal:	Yes	No
Date of assessment:	03/11/2021	

Description of the proposal:

What is changing? N/A

The proposal is to collaborate with other Local Authorities (Bristol and South Gloucestershire) who are recommissioning a flexible framework for the procurement of alternative learning provision for children and young people (these services are currently being purchased, albeit on a spot purchasing arrangement, which needs to be contracted).

Summary of changes: Please describe how the policy or service will change as a result of the proposal.

The new flexible framework will come into effect on 01/09/2022 for five years with an optional extension of a further 24 months. Additional alternative provision providers will join the flexible framework enhancing North Somerset Council’s commissioning offer in line with the benefits to collaborating across frameworks.

2. Customer equality impact summary

Will the proposal have a disproportionate impact on any of these groups?

Insert X into one box per row, for impact level and type.

H = High, M = Medium, L = Low, N = None

+ = Positive, = = Neutral, - = Negative

Impact Level	Impact type						
	H	M	L	N	+	=	-
Disabled people				X			
People from different ethnic groups				X			
Men or women (including those who are pregnant or on maternity leave)				X			
Lesbian, gay, or bisexual people				X			
People on a low income				X			
People in particular age groups				X			
People in particular faith groups				X			
People who are married or in a civil partnership				X			
Transgender people				X			
Other specific impacts, for example: carers, parents, impact on health and wellbeing, Armed Forces Community etc. Please specify: Children and young people who require alternative provision, whether through exclusion, or by other needs which may make them vulnerable, for example children who have SEND and/or children in care.			X		X		

3. Explanation of customer impact

Please describe the reasons for the impact level in the table above.

The flexible framework will specifically enable North Somerset Council to procure appropriate alternative provision placements for Children who require them, either through being excluded from mainstream education, or those who require additional support through some other vulnerability, such as being a Child in Care, or who has SEND. They will be positively affected by the proposal (if at all, it is the way the providers will be contracted that is the change, not a change to service delivery *per se*); sequentially other groups won't be impacted.

4. Staff equality impact summary

Are there any staffing implications for this proposal? Yes **No**

Explanation of staff impact

If yes, please describe the nature of the impact, including how many posts could be affected, please state whether they are vacant, or filled permanently or temporarily. **N/A**

5. Consolidation savings

Please complete for medium or high impact areas

Does this budget saving include many service areas/savings/projects?

If so, please identify the areas included in this proposal that could potentially have a medium or high impact for equality groups

Service area	Value of saving
Total	

6. Review and Sign Off

Service Manager Review

Insert any service manager comments here:

<<Text here>>

Is a further detailed equality impact assessment needed? Yes **No**

If 'yes', when will the further assessment be completed? N/A

Service Manager: <<Text>> Date: <<Text>>

Appendix 2: Legislation and Statutory Responsibilities

Statutory duty to provide alternative education

- Statutory duty to provide alternative education LA's have a statutory duty under section 19 of the Education Act 1996 for arranging suitable full-time education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such provision.

- Other duties in the 1996 Act include the duties to secure sufficient education in the area (sections 14-15B) and to promote high standards in education (section 13A). Local authorities also have a power (not a duty) to arrange alternative education provision above compulsory school age.
- There is also a duty under section 10 of the Education and Skills Act 2008 to promote the participation of 16–17-year-olds in education and training. These duties apply to all children of compulsory school age resident in the local authority area, whether or not they are on the 'roll' of a school, and whatever type of school they attend.
- Full-time education for excluded pupils must begin no later than the sixth day of the exclusion (for a child in care of the local authority, this should be the first day after exclusion).²
- While there is no statutory requirement as to when suitable full-time education should begin for pupils placed in ALP for reasons other than exclusion, LAs should ensure that such pupils are placed as quickly as possible.³ In the case of fixed-term exclusions (FTEs), schools have a duty to arrange suitable full-time education from the sixth day of fixed period exclusion (or the sixth day of consecutive FTEs).⁴
- Regulations to the Education Act 2002 were put in place in 2010 and 2012 with the intention to stop children, especially those with SEND, being put in ALP indefinitely as a way of unofficially excluding them. Where schools' direct pupils off site to improve behaviour, the pupil's parent must be informed (or pupil if aged 18+) and the local authority too if the pupil has an EHCP. This must be done as soon as practicable, no more than two days before starting in off-site provision.

Local authority safeguarding duties

- Under section 10 of the Children Act 2004, local authorities are required to make arrangements to promote co-operation between the authority and its partners, to improve the wellbeing of children in the authority's area – including protection from harm and neglect alongside other outcomes.
- Section 11 states that this must also cover where services are contracted out. Local authorities must, in discharging their education duties, ensure these are exercised with a view to safeguarding and promoting the welfare of children under section 175 of the Education Act 2002, as well as safeguarding and promoting the welfare of children within their area who are in need, by providing a range of appropriate services (section 17 of the Children Act 1989).
- The 'Prevent' duty on local authorities states that they must have due regard to the need to prevent people from being drawn into terrorism and extremism, as do schools (including independent schools). This duty on local authorities also extends to out-of-school settings. Authorities are also required to understand the range of activity and settings in their areas and take appropriate and proportionate steps to ensure that children attending such settings are properly safeguarded.
- The full statutory safeguarding framework can be found in:
 - Working together to safeguard children - GOV.UK (www.gov.uk)
 - Keeping children safe in education - GOV.UK (www.gov.uk)

Registering as an independent school

² Statutory Guidance on exclusions, 2017

³ AP statutory guidance, 2013

⁴ The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, and The Education (Provision of Full-Time Education for Excluded Pupils) (England) (Amendment) Regulations 2014

- Providers of ALP are legally required to register as an independent school if they provide full-time education for five or more pupils of compulsory school age, or one pupil with an EHCP or one child in care of the local authority. There is no legal definition of what constitutes 'full-time' education. However, the DfE considers an institution to be providing full-time education if it is intended to provide, or does provide, all, or substantially all, of a child's education.
- Generally, the DfE considers any institution that is operating during the day, for 18 hours per week, to be providing full-time education⁵. Providers of part-time ALP are not required to register with any authority, and they are able to operate in whatever form they like so long as they comply with relevant legislation around health and safety, safeguarding etc.
- The DfE has proposed to introduce a legal definition of full-time education, as well as reviewing whether any additional educational institutions will need to register as independent schools, in a consultation which closed in November 2020 ('Regulating independent educational institutions').

Statutory guidance

Commissioners and providers of ALP must have regard to all relevant statutory guidance, including:

- Alternative Provision statutory guidance
- Career's guidance and access for education and training providers
- Children missing education
- Ensuring a good education for children who cannot attend school because of health needs
- Keeping children safe in education
- Promoting the education of looked-after and previously looked-after children
- School suspensions and expulsions
- SEND Code of Practice: 0 to 25 years
- Working together to safeguard children Section 5 sets out further details on good practice from the above statutory guidance.

National Policy Developments in Commissioning ALP

In March 2018, the Government published a White Paper, *Creating opportunity for all: our vision for alternative provision*.

This looked broadly at:

- Sharing best practice (including AP Innovation Fund)
- Exclusions practices
- New statutory guidance on local authority and school commissioning responsibilities
- Developing a bespoke ALP performance framework with Ofsted
- In 2016, proposals were set out to transfer commissioning responsibilities fully to schools, including where a child is permanently excluded. However, these were scaled back in the 2018 White Paper: *The Government set out plans to transfer accountability for AP commissioning and the education of pupils in AP from local authorities to mainstream schools [...] We remain committed to ensuring that schools play their part and work in collaboration with AP providers and local authorities to take more responsibility for these areas. The Government also consulted on the proposal to devolve local authorities' high needs funding for ALP to schools, to fund*

⁵ DfE, *Registration of Independent Schools: Departmental Guidance for Proprietors and Prospective Proprietors of Independent Schools in England*, August 2019

ALP placements or provide support in school prior to a permanent exclusion ('SEND and AP Provision: Call for Evidence').

- The consultation closed in July 2019. New statutory guidance was also scheduled in the White Paper for Winter 2019 but has not yet been published.
- The AP Innovation Fund project ended in May 2021 with the publication of a report looking at how the fund was used across three areas: helping children back into mainstream or special schools, helping young people into further education or employment, and supporting parent/carer involvement in their child's education. The report will also be used to help inform the development of a new ALP performance framework.⁶

Exclusions and ALP

The Timpson Review of School Exclusion was published in May 2019 to look at how headteachers used exclusion in practice, and why some groups of pupils are more likely to be excluded.

The Government's response to the review set out a number of commitments, including:

- Design a consultation to consider how to reform school exclusions, so that the school retains responsibility for the outcomes of pupils it permanently excludes
- Consider changes to introduce sharing of expertise between mainstream schools and ALP
- Conclude the Children in Need (CiN) Review to look at what makes a difference to the educational outcomes of CiN
- Consider how to change guidance on SEND Local Offer, so that more support services for parents and children in ALP, or at risk of exclusion, are included
- After consultation, consider reducing the limit on the total number of days a pupil can be excluded in one year (45), and whether to strengthen the requirement to arrange ALP during fixed-period exclusions
- Revise 'Mental Health and Behaviour in Schools' guidance, which contains specific information about how schools can support pupils through Adverse Childhood Experiences (ACEs) and on whole school trauma and attachment awareness

Demographics

An evidence review by the Education Select Committee for its 2018 inquiry into Alternative Provision found particular groups of children disproportionately more likely to be educated in ALP:

- Boys
- Children in care
- Children in need
- Pupils with SEND
- Pupils from economically disadvantaged backgrounds
- Pupils from Black Caribbean and Gypsy, Roma, Traveller (GRT) heritage backgrounds

The Select Committee report also looked at exclusions data as well as ALP attendance. In terms of usage of AP by individuals in North Somerset, recording and monitoring practices are being looked at to enable more meaningful analysis to take place at an individual level in addition to the providers being used from the next financial year, if not before.

⁶ In January 2021, DfE published its new careers White Paper, Skills for jobs: lifelong learning for opportunity and growth, which sets out proposals on careers information, advice, and guidance, and is likely to be the basis for amendments to existing careers statutory guidance