

DERBYSHIRE COUNTY COUNCIL

CABINET

20 September 2018

Report of the Director for Children's Services

URGENT DECISION TAKEN BY THE STRATEGIC DIRECTOR FOR CHILDREN'S SERVICES TO APPROVE THE PROCUREMENT OF THIRD-PARTY APPRENTICESHIP PROVIDERS FOR THE DIRECT DELIVERY OF LEVY-FUNDED APPRENTICES FOR THE COUNCIL

1. Purpose of the Report

To note the urgent decision taken by the Strategic Director for Children's Services in accordance with the Council's Constitution, to approve the procurement of third-party apprenticeship providers for the direct delivery of levy-funded apprentices for the Council.

2. Information & Analysis

On the 14th September 2017, Cabinet approved (Minute Reference: 274/17) the process to award apprenticeship sub-contracted opportunities for approved providers on the Register of Apprenticeship Training Providers (RoATP).

At a meeting at the end of May 2017, the Education and Skills Funding Agency (ESFA) clarified that as Derbyshire County Council is first and foremost a Levy Paying Employer where it cannot deliver the technical, specialist to "niche" provision within given apprenticeship standard or framework through its provider arm (Derbyshire Adult Community Education Service) then it can procure an alternative main provider from RoATP to deliver this directly. This is in accordance with the existing ESFA's funding rules¹.

This approach will significantly minimise the risk to the Council of non-compliance with the ESFA funding rules, regulatory inspection, audit and intervention. The Council needed to procure third-party providers for technical, specialist or "niche" apprenticeship provision that the Council's provider arm is unable to deliver. This provision needed to be in place to start in September 2018 which was prior to the Cabinet meeting on 20

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720824/1819_Employer_Rules_CL.pdf

September 2018. It is for this reason that the urgent approval of the Strategic Director was sought.

3. **Legal Considerations**

The Council's Constitution provides that "notwithstanding any other provision of the Constitution Strategic Directors shall have the power, after discussion, if practicable, with the Leader of the Council or the relevant Cabinet Member or Chair, to take such actions deemed to be necessary and expedient in matters requiring urgent consideration and which, because of the timescale involved, or the need to safeguard the interests of the County Council, cannot be dealt with by submission to the next following meeting of the Council, Cabinet, Cabinet Member or Committee".

4. **Social Value Considerations**

The development of minimum qualifying criteria, including the requirement to provide training and assessment at Council premises, will ensure the impact of travel and day-release are minimised on successful apprentices as providers will be delivering in, or local to, their workplace which will help secure positive outcomes for local people and communities in Derbyshire.

5. **Other Considerations**

In preparing this report the relevance of the following factors has been considered – prevention of crime and disorder, human resources, equality of opportunity, financial, health, environmental, transport and property considerations.

6. **Background Papers**

Any background papers relating to this item are held within the Derbyshire Adult Community Education Service.

7. **Key Decision** Yes

8. **Call-in**

Is it required that call-in be waived in respect of the decision proposed in the report? No

9. **Officer's Recommendation**

That Cabinet notes the report.

Jane Parfrement
Strategic Director for Children's Services

CONTROLLED

CHILDREN'S SERVICES
STRATEGIC DIRECTOR DECISION

TO APPROVE THE PROCURMENT OF THIRD-PARTY APPRENTICESHIP
PROVIDERS FOR THE DIRECT DELIVERY OF LEVY-FUNDED
APPRENTICES FOR THE COUNCIL

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| Head of Service Submitting request | Mark Homer, Head of Service DACES |
| Date of Submission | |
| Date submitted to Strategic Director | 18 th July 2018 |
| Strategic Director Decision | Approved |
| Strategic Director Approval | Signed:  JANE PARFREMENT |
| Date of Strategic Director Decision | 18 th July 2018 |

DERBYSHIRE COUNTY COUNCIL
URGENT DECISION TAKEN BY THE STRATEGIC DIRECTOR FOR
CHILDREN'S SERVICES

18 July 2018

TO APPROVE THE PROCUREMENT OF THIRD-PARTY
APPRENTICESHIP PROVIDERS FOR THE DIRECT DELIVERY OF LEVY-
FUNDED APPRENTICES FOR THE COUNCIL

1. Purpose of the Report

- 1.1 To seek the Strategic Director's approval to procure third-party apprenticeship providers for the direct delivery of levy-funded apprenticeship frameworks and standards that the Council, through its provider arm (Derbyshire Adult Community Education Service), is not able to deliver to meet the recruitment timetable for apprenticeship starts at the beginning of September 2018.

2. Information & Analysis

- 2.1 Cabinet (Decision Reference: [274/17](#)) approved on the 14th September 2017 that, where Derbyshire Adult Community Education Service (DACES) were not able to deliver the technical content of a framework or standard, the need to procure competent delivery sub-contractors² to deliver full or part of an apprenticeship framework and standard. To this end, on the 14th September 2017, Cabinet approved the process to award apprenticeship sub-contracted opportunities for approved providers on the Register of Apprenticeship Training Providers (RoATP).
- 2.2 Whilst there have been issues experienced by the Council in being able to successfully identify providers able to deliver some of the standards identified by the Council, this has been due in significant part to either provider readiness or a delay in the approval of the standard in question. There have been occasions, however, where a provider has been successful in tendering for an apprenticeship sub-contracting opportunity, but upon further investigation, is not able to deliver all of the apprenticeship themselves. They have then sought to contract further with another provider to deliver the remaining parts of the apprenticeship standard. This is defined as secondary sub-contracting and is not allowable under the existing Education and Skills Funding Agency (ESFA) funding rules³.
- 2.3 Whilst the Council has been able to identify other ways of delivering these organisational and learner development needs, this has proven to be time-consuming and resource-intensive and, as such, is considered to be unsatisfactory. To this end, the Council met with representatives of the

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698909/Subcontracting_guidance.pdf

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720824/1819_Employer_Rules_CL.pdf

ESFA at the end of May 2018 to clarify the Council's current approach to procuring apprenticeship opportunities, and to seek guidance on any alternative approaches.

2.4 The ESFA advised that:

- Derbyshire County Council (DCC) is first and foremost a Levy Paying Employer in their own right and has an Apprenticeship Service account to that effect. In addition, DCC has been successful as a **Main Provider** on RoATP; meaning that the part of the organisation which can deliver apprenticeships – DACES – has its own Provider account in Apprenticeship Service from which it submits Provider Management Information.
- When DCC is able to deliver the apprenticeship (or at least part of it) itself as a **Main Provider** then DCC's Employer arm chooses DCC as the Provider of that apprenticeship.
- DCC Provider Arm (DACES) cannot deliver technical, specialist or "niche" provision, then DCC as an Employer can procure an alternative main provider from RoATP to deliver this directly. This procurement will have to meet the requirements of the ESFA and those of the Council.
- In these circumstances, there is no need to sub-contract to another provider as the apprentice will go through the Apprenticeship Service account of the successful bidder.

2.5 The Council is currently in the process of seeking to procure third-party providers for technical, specialist or "niche" apprenticeship provision to start in September 2018 that DCC Provider Arm (DACES) is unable to deliver. These starts need to commence before the next Cabinet meeting in September and provider contracts need to be in place before the end of August. To significantly minimise the risk of non-compliance with the ESFA funding rules, regularity inspection, audit and intervention, urgent approval is being sought from the Strategic Director.

2.6 For those apprentices who work with an alternative provider, this approach will minimise the Council's exposure to regular inspection, audit and intervention. However, it does need to consider its approach to the due diligence relating to the monitoring of these contracts to ensure that apprentices achieve and in a timely fashion. It is considered that, with some minor amendments, the existing commitment statement signed by sub-contractors will provide the sufficient framework to provide assurance.

2.7 The existing procurement process and evaluation, which includes the planned line manager and/or supervisor as part of the process, will be sufficient in meeting the requirements of both the Council and the ESFA.

2.8 It is also recognised that, to maintain the flexibility and responsiveness of the Council, the permission to retain the ability to sub-contract part or whole of an apprenticeship with a third-party provider remains in place.

The appropriateness of and when to deploy this permission would be agreed between the DCC Employer Arm and DCC Provider Arm (DACES) and would follow the existing procurement and evaluation process accordingly.

3. Financial Considerations

- 3.1 The Council's annual levy contribution is estimated to be £2.2m, which includes £1.3m from LA maintained schools. The Government will also provide 10% top-up for each month's contribution; thus providing the Council with just over £2.4m to invest in apprenticeships each year for its existing workforce, new recruits and LA maintained schools. Funds in the digital account, where levy contributions are kept, will have a twenty four-month 'lifespan' before the Government reclaims unused funds.
- 3.2 Apprenticeships costs were initially split across 15 funding bands and will range from £1,500 to £27,000 depending on the apprenticeship framework and standard and level undertaken. This will be revised for August 2018 starts to be extended to 30 funding bands⁴. The maximum will remain at £27,000.

4. Legal Considerations

- 4.1 The Council's Constitution provides that "notwithstanding any other provision of the Constitution Strategic Directors shall have the power, after discussion, if practicable, with the Leader of the Council or the relevant Cabinet Member or Chair, to take such actions deemed to be necessary and expedient in matters requiring urgent consideration and which, because of the timescale involved, or the need to safeguard the interests of the County Council, cannot be dealt with by submission to the next following meeting of the Council, Cabinet, Cabinet Member or Committee.
- 4.2 The Council is required to place contracts with the approved Register of Apprenticeship Training Providers for contracting the delivery of the qualifications in compliance with Education and Skills Funding Agency Funding Rules.
- 4.3 Based on the information set out in this report, the Director of Legal Services considers that the contract can be awarded in accordance with the Council's Financial Regulations.

5. Human Resources Considerations

- 5.1 The Council is required to pay due regard to the Public Sector Apprenticeship Targets and that the annual targets for new apprenticeship starts will be 2.3% based upon headcount rather than full-time equivalents. The projected total of new apprentice starts in each financial year is approximately 600. These recommended third-party contracting

⁴ <https://www.gov.uk/government/publications/apprenticeship-funding-bands>

arrangements are vital in enabling the Council to meet a proportion of this target.

6. Social Value Considerations

- 6.1 The development of minimum qualifying criteria, including the requirement to provide training and assessment at Council premises will ensure the impact of travel and day-release are minimised on successful apprentices as providers will be delivering in, or local to, their workplace which will help secure positive outcomes for local people and communities in Derbyshire.

7. Other Considerations

- 7.1 In preparing this report the relevance of the following factors has been considered – prevention of crime and disorder, human rights, equality of opportunity, health, environmental, transport and property considerations.

8. Officer's Recommendations:

- 8.1. That the Strategic Director for Children's Services approves:
 - 8.1.1 procurement of third-party apprenticeship providers for the direct delivery of levy-funded apprentices frameworks and standards that the Council, through its provider arm (Derbyshire Adult Community Education Service), is not able to deliver;
 - 8.1.2 the existing procurement and evaluation procedures currently used for identifying sub-contracted providers;
 - 8.1.3 the existing commitment statement be adapted to ensure due diligence of all direct delivery contracts with third-party apprenticeships providers: and;
 - 8.1.4 the Council, when appropriate, to sub-contract with apprenticeship providers to deliver all or part of an apprenticeship standard or framework.