



CABINET – 7 FEBRUARY 2025

**EXCEPTION TO CONTRACT PROCEDURE RULES TO PROVIDE
AGENCY COVER FOR PROVISION OF SPECIAL EDUCATIONAL
NEEDS ASSESSMENT (SENA) TRIBUNAL OFFICERS – URGENT
ACTION TAKEN BY THE CHIEF EXECUTIVE**

REPORT OF THE DIRECTOR OF CHILDREN AND FAMILY SERVICES

PART A

Purpose of the Report

1. The purpose of this report is to report urgent action taken by the Chief Executive to approve an exception to the Council's Contract Procedure Rules to use a supplier, outside of the current corporate contract to supply temporary SENA Tribunal Officers agency cover in the Special Educational Needs and Disabilities (SEND) Service in the Children and Family Services Department.

Recommendation

2. It is recommended that the action taken by the Chief Executive to approve an exception to the Contract Procedure Rules to enable the direct award of contracts for the temporary provision of two agency SENA Tribunal Officers with the contract running until the 31 March 2025 up to a maximum spend of £282,693.00 be noted.

Reasons for Recommendation

3. The County Council's Contract Procedure Rules (Part 4G of the Constitution) require that, where the estimated value of a contract exceeds £179,087, formal tenders must be invited.
4. Where an exception to the Contract Procedure Rules is required for contracts over £179,087, Rule 6 (e) provides that Cabinet approval be obtained to the exception where this is justified on its merits. In an urgent case the Chief Executive, after consultation with the Leader or Deputy Leader of the Council, may direct that an exception is made subject to this being reported to the next meeting of the Executive (the Cabinet).
5. It has not been possible to source the necessary staff required via the Council's existing recruitment and agency arrangements.
6. The decision followed consideration of the balance of risks to service delivery against the risk of procurement challenge, and it was the view of the Director of

Children and Family Services that an exemption was the right course of action for the Council and in the best interests of the relevant service users.

Timetable for Decisions (including Scrutiny)

7. The Chief Executive agreed the exception on 19 December 2024.

Policy Framework and Previous Decisions

8. The exception to the Contract Procedure Rules is provided for in the Council's Constitution (Contract Procedure Rule 6 (e)).

Resource Implications

9. The Children and Family Services Department is currently spending approximately £2.8m per annum (based on spend since 1 April 2024) to engage temporary agency workers to meet the increasing demands of the SENA Service.
10. The SENA team has worked within its usual contractual arrangements to deliver SENA Case Managers across the service to meet growing need and respond to the Transformation of Inclusion and SEND in Leicestershire Programme (TSIL); however, there is a national shortage of Tribunal Officers. A Tribunal Order on 17 July 2023 directed the Council to improve its Tribunal delivery and recruitment to a Tribunal Team was initiated to ensure the Council could meet its statutory obligation and Tribunal requirements which has led to the decision referred to in this report.
11. The Director of Corporate Resources and Director of Law and Governance have been consulted on the content of this report.

Circulation under the Local Issues Alert Procedure

12. None.

Officers to Contact

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PART B

Background

13. The Children and Family Services Department's Recruitment and Retention Strategy aims to attract applicants with the right skills, competency, experience, qualifications and up to date professional registrations to fill its vacancies. The primary goal is to appoint permanent staff to improve performance and quality in line with the Department's 'Continuous Improvement Plan 2024-2027 – Achieving Excellence through Purposeful Practice'. The TSIL programme is primarily focussed on cost savings without compromising the experience for service users. As part of this programme, there is a regular review of staffing needs, both on an interim basis and what is needed to sustain changes.
14. The Recruitment and Retention Strategy enables the Department to continually react to changes in the local and national recruitment environment and take a proactive and positive approach.
15. The Department currently operates an interim model of SENA through the TSIL programme to measure impact, ensure compliance and delivery. The Tribunal Team includes temporary and agency positions to model the impact of delivery with the desired effect of compliance and reduced Tribunals. Since the creation of the Team, Tribunals have reduced by 21.2% and the Council has met its statutory duties and satisfied the Tribunal demands. These staff are critical to the way the Council discharges its duties around the statutory response to both mediation and tribunals, as governed by the Children and Families Act 2014 and the SEND Code of Practice (2014).
16. As part of the corporate contract, the Department engages temporary agency workers across Children and Family Services. Currently there are 12 agency SENA staff to support temporary demand and positions where recruitment has been unsuccessful. SENA is a wholly statutory service and thus is subject to statutory timescales and duties regardless of staffing shortages. The Council was unable to satisfy recruitment to the Tribunal positions and therefore it was necessary for alternative arrangements to be put in place outside of standard procurement process. The Department has used an alternative provider, since 1 April 2024 and has accrued invoices of c.£2.8m. Initially, three agency tribunal officers were employed, then with the fall in the number of Tribunals this was reduced to two (the total spend covers all these posts).
17. In the autumn of 2024 officers identified that the cumulative spend with the alternative provider had exceeded the thresholds in the Council's Contract Procedure Rules and Public Contract Regulations 2015.
18. Working outside of a formal contract with these suppliers has also meant that the Council has had to negotiate termination fees as standard so that the Department does not incur excessive costs each time it recruits. This has been in place for the last 12 months. There is no formal contractual arrangement with the supplier and the current arrangement therefore falls outside of standard procurement processes.

19. As soon as the error was identified action was taken to address the issues. This included seeking approval of the exception from the Council's Corporate Procurement Board and action to move existing agency staff to the Council's corporate contract. Additionally, approval was given by the Department's management team to recruit to the two SENA Tribunal Officer posts on a permanent basis.
20. Unfortunately, there was a misunderstanding that the necessary approval had been given for the spend by the Corporate Procurement Board. When this came to light in late 2024, the Director of Law and Governance advised that action should be taken urgently to regularise the situation.
21. The Council's Constitution provides for exceptions to the Contract Procedure Rules for contracts over £179,087 subject to the Cabinet's approval and provides that in urgent cases, the Chief Executive after consultation with the Council Leader or Deputy Leader, may agree the exception be made subject to this being reported to the next meeting of the Cabinet. The Chief Executive agreed the exception on 19 December 2024.
22. It is noted that there are procurement risks associated with this exception as in this instance the corporate contract was not used. It is the view of the Director of Children and Family Services that the risk to service delivery of work around tribunals outweighed the risk of procurement challenge and that exemption was the appropriate course of action.
23. Considering the above the following learning and actions have been put in place within Children and Family Services to minimise this situation recurring:
 - a) A review of processes regarding the tracking of commissioning requests in Children and Family Services has been undertaken and improvements of the oversight of authorisation has been implemented.
 - b) Staff have undergone full briefings and training to fully understand the correct procedures for commissioning agency staff.
 - c) Any future agency/locum requirements within service follow a new process, requiring an 'Agency Permission To Recruit' report presented to the weekly Education Senior Management Team meeting for sign off, where process and spend will be monitored.

Equality Implications

24. There are no equalities implications arising from the recommendations in this report.

Human Rights Implications

25. There are no human rights implications arising from the recommendations in this report.

Background Papers

None.

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