

Scotland Excel

To: Executive Sub Committee

On: 28 February 2020

**Report
by
Director Scotland Excel**

Tender: Secure Care Services

Schedule: 0219

Period: 1 April 2020 until 31 March 2022 with an option to extend for up to 24 months

1. Introduction and Background

Scotland Excel has developed and managed contractual arrangements for secure care services since April 2011 which are used by local authorities and the Scottish Government.

These are developed following national policy aimed at delivering positive outcomes for children and young people. Scotland Excel will continue to work closely with our key stakeholders such as Scottish Government, Convention of Scottish Local Authorities (COSLA) and others to ensure that our procurement arrangements support any policy decisions that may arise from the recommendations such as the Independent Care Review.

The current secure care contractual arrangements were awarded on a negotiated basis with the only four specialist providers of these services in Scotland in April 2017 for a period of two years, with the option to extend for up to a maximum of one further year. This extension was agreed by Scotland Excel's internal governance in November 2017, and therefore the arrangement will end on 31 March 2020.

Three reviews were conducted during the last year of the current arrangement:

- The Independent Care Review, which reported its findings in February 2020;
- The Justice Committee Review of secure care and prison places for children and young people in Scotland, which reported its conclusions in November 2019;
- The Children and Young People's Commissioner Scotland launched an enquiry into the deprivation of liberty of young people in December 2019.

This is examining the use of secure accommodation in Scotland and has yet to be concluded.

The findings and recommendations of all of the above could have a significant impact on the future of secure care services in Scotland as they present a degree of uncertainty with regards to the political, social and legal environment in which these services operate. However, it was not possible to postpone the tender exercise until completion of the above reviews, as the current contracts will expire in April 2020 with no opportunity of a further contract extension.

In order to manage the risk associated with this uncertainty, the new contracts were designed to be capable of adapting to changes in legislation, standards and practice. Furthermore, in order to ensure service continuity and stability while awaiting the outcomes of the above reviews, it was decided to limit the new contract term to a period of two years, with an option to extend for a further period up to 24 months. In addition, the tender process was designed in accordance with the light touch regime - ensuring conformity to the requirements of section 7 (Regulations 74-76) of the Public Contracts (Scotland) Regulations 2015, thus simplifying the procedure for service providers.

As in past years, the new contracts were advertised as being awarded on a negotiated basis and allowed for a further post-tender negotiation phase if required. This was justified on the basis that the independent market in Scotland continues to be limited to the four currently contracted providers.

The results of the Independent Care Review were published on 5 February 2020 – earlier than previously anticipated, giving Scotland Excel a very brief period to consider the outputs and recommendations in regard to the new contracts.

Scotland Excel has pledged a commitment to help the Independent Care Review achieve its goal of delivering real change for infants, children and young people who experience care, and to:

- Ensure the voices of young people are heard through their meaningful involvement in shaping our care contracts;
- Champion the rights of young people, remove the stigma of care and recognise that love is a key component of care;
- Where possible, consider opportunities for care experienced young people both organisationally and through our contracts;
- Ensure that information about what we do is easily understood and accessible, including to the young people who use the services;
- Make innovative, responsive and positive changes to support the findings of the “Journey” phase, to ensure all Scottish children receive the care they deserve;
- Commit to enabling a motivated and committed workforce who are passionate about caring for young people and their wellbeing

The report from the Justice Committee made a number of recommendations with regard to the availability of secure care, and the contractual arrangements.

Further to this, Scotland Excel has been in communication with external bodies to understand the implications of the report, and again, what role Scotland Excel, and the contract arrangements can play in this.

Prior to this tender exercise, Scotland Excel participated in a significant programme of co-production work in partnership with the STARR group (a group of care experienced children), the Care Inspectorate, providers, Child and Adolescent Mental Health Services (CAMHS) professionals, Social Work Scotland, Scottish Prison Service, and Centre of Excellence for Looked after Children in Scotland (CELCIS) to develop the Secure Care Pathway and Standards Scotland. These draft standards outline the expectations of children who are either in or on the edge of Secure Care in Scotland.

Scotland Excel elected to include these draft standards within the tender documents, with a caveat that these had not yet been formally adopted by Scottish Government and COSLA, but in anticipation that this process would be completed imminently. The standards were adopted on 31 January 2020 and are due to be published in April. This will be followed by significant work by key stakeholders to identify resources required to implement the standards.

Further details of the standards, and how these have been embedded into the contracts, along with other areas which were amended to focus on the quality of care for children in secure care can be found in the “Benefits” section, below.

This report describes the tender process, the outcome and recommends the award of four contracts for secure care services from 1 April 2020 to 30 March 2022 with an option to extend for any period up to and including 24 months.

2. Scope, Participation and Spend

Secure accommodation restricts the liberty of children under the age of 18 placed in such care. Children can be placed in secure accommodation through a variety of ways including where a child is ‘looked after’ by the local authority, as a requirement of the Children’s Hearings Scotland system, or the Courts.

Secure accommodation is a particular form of residential care for the very small number of children whose needs and risks, for a particular period in their lives, can only be managed in the controlled settings of secure accommodation.

The specialist providers in Scotland able to provide this service are limited.

Scotland currently has 84 secure accommodation places, spread across five dedicated secure units including the following four independent secure accommodation providers:

- The Good Shepherd Centre Bishopton;
- Kibble Education and Care Centre;
- Rossie Young People’s Trust;
- St. Mary’s Kenmure.

The four independent providers offer 78 places across Scotland, with the remaining 6 places operated by the City of Edinburgh Council.

All of the units provide a full curriculum of care, delivering a range of educational, health and behavioural programmes for children. In addition, the units undertake tailored programmes of work to prepare children for their transition back into the community.

Scottish Government is responsible for placements for sentenced children whilst the local authorities are responsible for placements for children who have been remanded in custody and for those who require placements for welfare reasons.

All parties responsible for purchasing secure accommodation placements in Scotland (the 32 Scottish local authorities and Scottish Government) participate in the current contracts. Following dialogue with Scotland Excel, all of the current purchasing organisations have agreed to use the new contracts from the start date.

Since the start of the current contracts, 29 local authorities and the Scottish Government have purchased secure care placements. The exceptions to this are Clackmannanshire Council, East Renfrewshire Council and Comhairle nan Eilean Siar, who have not required Secure Care services since the start of the contract but remain participant to ensure availability should this requirement change.

There is no guarantee of business for providers under the Secure Care Services contracts. However the estimated forecast spend for across Scotland is £17.5m per annum, broken down as follows:

- Local authority spend - £15 million;
- Scottish Government spend - £0.7 million; and
- Contingency allowance for variable demand and additional services - £1.8 million.

A contingency has been built in due to unpredictable demand, particularly as there has been a steady increase in spend over the last 12 months, and to ensure coverage for additional services.

Details of each purchasing authority's average annual spend, over the period January 2018 to December 2019, is shown in Appendix 1.

However, given that the requirement for secure accommodation can only be determined by the authority of a children's hearing or by the order of a court, demand and spend patterns across purchasers are variable. Therefore, it should be noted that the figures quoted in this report are estimates and are subject to change over the life of the contracts.

3. Procurement Process

Procuring care and support services for children is a complex area and accordingly requires special consideration within a public body's overall approach to the procurement of goods and services.

Secure care services come within the 'Social and Other Specific Services' category as defined in Schedule 3 and are subject to the procurement regimes set out in section 7, both of the Public Contracts (Scotland) Regulations 2015.

This allows an organisation to use the procurement procedures, tools and techniques of its choosing, whilst following a procurement procedure, as a matter of best practice, that takes account of fundamental considerations such as the EC Treaty principles of openness and fairness, as well as areas such as fair work practices.

The procurement exercise, including the negotiation element, was tailored to reflect the light-touch regime and ensure conformity to the requirements of section 7 of the Public Contracts (Scotland) Regulations 2015.

Subject to approval of the recommendations in this report, an individual contract will be entered into with each of the four providers. However, as with the current arrangement, each of the providers entering into this arrangement is aware that this does not offer any guarantee of business from purchasers.

Scotland Excel published a contract notice in the Official Journal of the European Union (OJEU) on 27 November 2019. Notwithstanding the limited pool of providers in Scotland, given the critical nature of the services and to ensure that the providers continue to be suitably qualified to provide quality secure accommodation services, the contract notice detailed robust selection criteria that would be applied to providers as part of the exercise. This included a requirement for:

- Registration with the Social Care and Social Work Improvement Scotland ("Care Inspectorate") as the provider of a secure accommodation service under the Public Services Reform (Scotland) Act 2010;
- Registration in accordance with the Education (Scotland) Act 1980, as amended, with the Registrar of Independent Schools
- Approval by Scottish Ministers under the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 for accommodations to be provided for the sole purpose of restricting the liberty of children in residential premises where care services are provided;
- Evaluation of financial stability;
- Evaluation of insurance provision.

Publication of this notice fulfilled the purpose of providing adequate publicity for the proposed new contracts.

The invitation to tender (ITT) was published on 28 November 2019 and included the above minimum selection criteria. In addition, value for money was evaluated using the following service delivery and financial weightings:

- Quality 60%
- Financial 40%

In the quality section providers were asked to submit their Care Inspectorate registration details and current grades on the inspection framework for all four criteria. This section accounted for 30% of the marks used to assess providers.

Providers were also required to submit responses on the following areas:

- Fair Working Practices (10%)
- Community Benefits (10%)
- Sustainability (10%)

These responses were required to reflect both corporate and service level information, and where relevant, those which included the involvement and development of children within the services.

The average rate of increase was 2.26%, which is below the indices used to evaluate offers in these contracts, such as increases to the Real Living Wage, Consumer Price Index and National Minimum Wage.

4. Report on Offers Received

All four of the existing providers detailed at Appendix 2 submitted bids, with no late offers received.

All bids were evaluated against the criteria and methodology set out in the tender documents.

Scotland Excel verified all provider submissions to ensure they were submitted on an autonomous and independent basis. Alongside this work an analysis was conducted on each tender bid, with an assessment of the breakdown of the cost of the service, to ensure efficiencies and determine whether or not each bid was fair and reasonable.

The final scores obtained by the four providers against the about quality and commercial weightings are set out in Appendix 3.

5. Recommendations

It is recommended that contracts should be awarded to the four providers detailed in Appendix 3, based on the tender scores.

6. Benefits

Improvements for Children in Secure Care

The tender documentation, and in particular, the service specification document, were reviewed to ensure that the most up to date practices and policies were included.

The Secure Care Pathways and Standards Scotland were embedded, and other areas of the specification were redeveloped to better reflect current research and policy regarding the care of children in Scotland.

The Secure Care Pathways and Standards Scotland

These standards are written from the perspective of the child and cover the areas children detailed were most important to them and had the greatest impact on their experiences, with an aim to:

- Improve the experiences of, and seek to provide better outcomes for, young people;
- Ensure that Children are treated with respect and dignity, and that their human and children's rights are upheld;
- Support Scotland's Health and Social Care Standards and the legal requirements, ethos and principles set out in all the relevant existing statutory and practice guidance;
- Set out what Children and their families should expect from professionals and corporate parents when a Child is being intensively supported in the community or in a secure care setting.

The specification also notes that the individualised implementation of these standards should be based on each child's assessed strengths, needs, vulnerabilities, risks and circumstances, ensuring that each child is treated as a unique individual and is also given the opportunity to exercise their rights.

Some areas, such as "Before Secure Care" and "After Secure Care" are not directly relevant to the contracts, and therefore not referenced - but some areas may touch on other aspects of care – such as ensuring children are kept informed and involved throughout their journey through secure care. Therefore providers were reminded that children should be made aware of the standards and their rights and responsibilities, in a way that they can understand, and be supported to have these rights fulfilled.

Improved Specification

The specification was further amended to take on board issues raised by other stakeholders, such as the Children and Young People's Commissioner Scotland; detailing mandatory policies to ensure the fair treatment of children within secure care services; and including a requirement to embed the United Nations Convention on the Rights of the Child (UNCRC) in the performance of the service.

Providers are required to ensure children have access to information about their rights in a format they can understand, are supported to exercise these rights and can express their views.

The Children and Young People's Commissioner Scotland published "No Safe Place" in 2018, a report on restraint and seclusion in schools.¹

In light of this, these two areas were given more prominence in the specification and capture some recommendations made, including requirements for reporting occurrences of restraint and seclusion, and ensuring training in de-escalation for staff.

A list of mandatory policies, aimed at providing a better quality, consistent and safe service for children, were drawn up by stakeholders (including the UIG and Scottish Government). Providers must hold these as a minimum and the specification also details the main requirements which must be contained within each policy.

Scotland Excel has discussed methods for monitoring these requirements and meeting the commitment pledged to the Independent Care Review, including surveys of both children and staff; continued involvement in the STARR group; continued communication with the Children and Young People's Commissioner Scotland, as well as working with care experienced children through other identified channels.

Cost Impact

As part of the procurement process, all four current providers submitted a fee in excess of their current rate. The average fee increase equated to 2.26%.

These providers offer at least pay parity to public sector pay scales for their teaching and care staff, due to the specialist nature of the work. In light of the recent pay increases in these areas, it was anticipated that the costs for staffing would increase, and subsequently impact the fees charged. The recommended fees ensure that the Real living wage continues to be paid to all staff, and there is no detriment to the service which purchasers and, ultimately, the children receive.

Monitoring the quality of these services will form an integral part of contract management, to ensure continued improvement, or at least consistency. The evidence submitted during this stage of clarification will be used as base line information in these reviews, alongside other stakeholder feedback and Management Information.

Scotland Excel conducted a benchmarking exercise which applied the impact of the fees tendered to each purchaser's previous annual spend with each provider.

¹ <https://www.cypcs.org.uk/ufiles/No-Safe-Place.pdf>

On average, the overall expected increase over the next 12 months to purchasers and the Scottish Government, based on the previous year's spend, will be approximately £393k.

Price Stability

At the implementation of the first framework in 2011, the range of fees offered by providers varied significantly. Through continued close scrutiny of the providers' budget proposals during the life of the contracts and in the procurement process to award the new contracts, Scotland Excel has worked with providers to achieve efficiencies, whilst ensuring that the fees are sustainable.

The level of detail provided within the commercial bid from the four providers gives assurance that the proposed rates are becoming more transparent and more sustainable over time and also supports purchasers to continue to make placements based on the needs of children placed in secure accommodation. It does continue to reflect a variance in both the services offered, and the pricing structure adopted by the providers.

The providers have agreed to hold their fees at least until 1 April 2021. Any request for a fee increase will only be considered in accordance with the contract terms and conditions, including timescales, and will be evaluated against prevailing market conditions.

In addition, the contract contains a clause which allows for any surplus generated through the contract to be re-invested in the following year's budget proposal, which could reduce the agreed fee in future years and/or lead to improved quality of service.

Sustainable Procurement Benefits

Providers were requested to consider sustainability issues within the technical section of the tender. By its nature, the contract supports some of the most vulnerable and disadvantaged children in society. Providers have also committed to a range of other benefits.

Real Living Wage

Providers were asked to confirm their approach to fair work practices and the Real Living Wage status. All four of the recommended providers pay their staff at least the Real Living Wage, and three have confirmed they are accredited living wage employers. Details are contained in Appendix 4.

Scotland Excel includes monitoring Real Living Wage positions within contract and provider management and will work with the provider who has not yet secured accreditation by the Living Wage Foundation to encourage them to achieve this.

Fair Work Practices

Providers were also invited to submit details of their organisational practices and policies relating to fair work, including areas such as no exploitative use of zero-hour contracts, living hours, reducing the pay gap, training and reduced inequalities.

As well as identifying the key practices indicated, a number of additional factors, such as involvement of unions, wellbeing assessments, strong staff voice, Investors in People accreditation and a commitment to the Scottish Government's Business Pledge were identified by providers.

These practices and policies will be monitored through the life of the contract and will form part of the regular reporting requirements.

Community Benefits

Providers were asked to confirm their commitment to community benefits, and to submit details of the benefits which they will endeavour to provide throughout the period of the contracts.

Community Benefits will have to be agreed by purchasers annually, so these submissions are a guideline of the types of community benefits the providers anticipate they will be able to offer. Suggestions featured relevant areas from the Scottish Government's National Performance Framework and promoted the inclusion and development of children.

These commitments will be monitored through the life of the contract and will form part of the regular reporting requirements.

Providers have committed to work with purchasers to continue to deliver their wide range of community benefits, and gave some examples of recent activities in line with this:

- Community engagement: providing use of facilities/grounds to the community for sporting events and/or local groups;
- Community engagement: providing social and sporting activities for homeless people on an ongoing basis;
- Local sponsorship and volunteering;
- Support the local economy wherever possible, sourcing local products, services, and expertise from nearby producers, sole traders and Small Medium Enterprises (SME's);
- Work in partnership with Police Scotland to deliver information and education sessions;
- Producing crafts for local markets to boost fundraising for charity events;
- Support local employment, including interns and apprentices – with further reserved placements for care experienced children;
- Provide education, training and work opportunities to children, including close links with local colleges and community groups.

Sustainability

Providers were invited to detail their approach to sustainability at both corporate level and service level - focusing particularly on those areas which promote the inclusion and development of children within the service.

The sustainability questions were drafted in line with the National Outcomes, National Indicators and Sustainable Development Goals from the National Performance Framework - identified via the Scottish Government Sustainability Test.

These will be monitored through the life of the contract and will form part of the regular reporting requirements. Providers provided details such as:

- Protection and restoration of woodland and water related ecosystems;
- Reduction of waste, “reduce, recycle, reuse” and upcycling initiatives – including children to encourage reduction of their carbon footprint;
- Review of supply chain – encouraging buy local; fair and ethical trading;
- Healthy eating initiatives – maximum usage of food, reduction of waste;
- Wind turbine generated sewage treatment works;
- Replace lighting with more efficient LED lighting;
- Educating in diversity and inclusion, including training in reducing racism and raising awareness of equal rights.
- Encouraging biodiversity and education through community, sensory and wildflower gardens and Forest School – offering children opportunities to develop horticultural and environmental skills, including gaining accreditation from the Royal Horticultural Society;
- Minimise food waste through daily monitoring and recycle food waste, including composting facilities for waste, then utilised in garden projects;
- Cycle to Work scheme and other car journey limiting targets.

Providers were also asked to submit their current position on the Eco-Schools² award. Eco Schools is an international initiative designed to encourage whole-school community action on Learning for Sustainability, which encourages closer links between schools and the communities around them and is also linked to the Sustainable Development Goals of the National Performance Framework.

Three of the providers indicated that they currently hold the Green Flag award, while the final provider holds a Silver award and committed to working towards achievement of the Green Flag during the initial period of the contract.

Other Benefits

Consultation and Support of Children

The contract requires that providers consult with children in their care on at least an annual basis and use feedback given to inform the future of their service.

The contract requires providers to support children, where appropriate, in their transition from secure accommodation back to the community, and to assist children to learn skills supporting their future independence.

² <http://www.keepsotlandbeautiful.org/sustainable-development-education/eco-schools/>

Management Information

Scotland Excel will continue to use the management information submitted by the providers to create contract management reports. These contract management reports will provide a detailed account of spend and use by provider, relevant trend information and information on the population of the independent secure sector.

The management information and annual reports will continue to be developed by Scotland Excel to improve reporting to purchasers to enable them to understand placement patterns in relation to the national picture and to inform good practice across the sector.

Stakeholder Engagement

Following the end of the Secure Care Strategic Board, in December 2018, when the long-term vision of secure care was transferred to the Independent Care Review, a Secure Care Panel was established to complete outstanding work and Scotland Excel participates on this panel. The group provides strategic oversight to ensure that the remaining tasks of the board are completed and to ensure that there is no overlap or duplication of effort in the work of the independent Care Review.

Scotland Excel also meets regularly with members from the Independent Care Review to ensure that the outcomes of the review will inform the strategy of any future secure care contracts.

7. Contract Mobilisation and Management

These contracts will require a of minimum quarterly provider meetings and a meeting of purchasers will be convened on a regular basis throughout the period, due to the high level of spend and the high risk.

Due to changes in the specification, inclusion of the standards, and the outcomes of the reviews, there may potentially be a requirement for more intensive engagement at the commencement of the contracts, to ensure clarity for all stakeholders, and ensure a smooth transition to the new arrangements.

Scotland Excel will provide a mobilisation pack to purchasers which will contain details on the contract arrangements and the relevant documents such as the individual placement agreement which they will complete for every placement.

Each participating purchaser will be asked to confirm its lead contract officer through whom information will be gathered and disseminated.

On a quarterly basis, providers will submit management information on a range of areas including individual placements and community benefits which will be monitored and analysed by Scotland Excel and used in the creation of regular management information reports.

8. Summary

The recommended secure care contractual arrangements aim to provide a high-quality service which demonstrably improves outcomes for the vulnerable children placed in their care and provides transparency and effective management of fees.

Accordingly, the Executive Sub Committee is requested to approve the recommendation contained in this report to award these contracts.

Appendix 1 – Participation and Spend Summary

Secure Care 0219

Annual Average Spend (based on the period January 2018 to December 2019)

Purchaser	TOTAL	% of Overall Spend
Aberdeen City	£481,769	3.03%
Aberdeenshire	£548,819	3.45%
Angus	£286,181	1.80%
Argyll & Bute	£275,745	1.73%
Dumfries & Galloway	£388,423	2.44%
Dundee City	£192,679	1.21%
East Ayrshire	£107,166	0.67%
East Dunbartonshire	£200,859	1.26%
East Lothian	£410,834	2.58%
Edinburgh, City of	£862,725	5.42%
Falkirk	£334,559	2.10%
Fife	£1,572,299	9.88%
Glasgow City	£2,293,604	14.42%
Highland	£452,726	2.85%
Inverclyde	£46,191	0.29%
Midlothian	£517,634	3.25%
Moray	£434,801	2.73%
North Ayrshire	£1,028,350	6.46%
North Lanarkshire	£1,198,040	7.53%
Orkney Islands	£80,027	0.50%
Perth & Kinross	£74,238	0.47%
Renfrewshire	£604,324	3.80%
Scottish Borders	£310,593	1.95%
Scottish Government	£757,338	4.76%
Shetland Islands	£187,759	1.18%
South Ayrshire	£690,707	4.34%
South Lanarkshire	£421,271	2.65%
Stirling	£220,855	1.39%
West Dunbartonshire	£558,314	3.51%
West Lothian	£371,609	2.34%
Grand Total	£15,910,437	

(No spend recorded for Clackmannanshire Council, East Renfrewshire Council or Comhairle nan Eilean Siar)

Appendix 2 - SME Status

Secure Care 0219

Provider	Postal Town/City:	Organisation Size	Organisation Type	Company Number	Charity Number
The Good Shepherd Centre Bishopton	Bishopton	Medium	Private Limited Company by guarantee without share capital use of 'Limited' exemption	SC412325	SC030019
Kibble Education and Care Centre	Paisley	Medium	Private Limited Company by guarantee without share capital use of 'Limited' exemption	SC158220	SC026917
Rossie Young People's Trust	Montrose / Angus	Medium	Private Limited Company by guarantee without share capital use of 'Limited' exemption	SC157602	SC019969
St. Mary's Kenmure	Glasgow	Medium	Private Limited Company by guarantee without share capital use of 'Limited' exemption	SC390523	SC029984

Appendix 3 - Scoring and Recommendations
Secure Care 0219

Tenderer	TOTAL SCORE
Kibble Education and Care Centre	81.64
Rossie Young People's Trust	76.48
St. Mary's Kenmure	72.84
The Good Shepherd Centre Bishopton	67.84

Appendix 4 – Real Living Wage Position

Secure Care 0219

Tenderer	Accredited	Currently progressing through Real Living Wage accreditation process	Pay Real Living Wage to all employees, and committed to gaining accreditation over the initial 2 years of contract	Pay Real Living Wage to all employees, but not accredited	Neither accredited nor paying Real Living Wage, but do commit to pay the Real Living Wage to all employees over the initial 2 years of the contract	Neither accredited nor paying Real Living Wage
The Good Shepherd Centre Bishopton	Y					
Kibble Education and Care Centre	Y					
Rossie Young People's Trust				Y		
St. Mary's Kenmure	Y					