



REPORT TITLE: Recommissioning Youth Support Services – an extension to the current contract

Cabinet Date	25 th January 2023
Cabinet Member	Cllr Stephen Davies, Cabinet Member for Children’s Safeguarding and Early Years
Key Decision	Yes
Purpose of Report	To seek approval to enter into negotiations with the incumbent providers of Youth Support Services with a view to extending the current contract, due to expire on 30 th June 2023, for a further 12 months to allow for changes in the operating landscape to be fully embedded within partner arrangements.
Recommendations	<p>That Cabinet delegates authority to the Executive Director of Children’s Services to:</p> <ol style="list-style-type: none">1. enter into negotiations with the incumbent provider of Youth Support Services, namely Prospects, with a view to extending the term of the council’s existing contract with it for a further period of 12 months commencing 1st July 2023; and2. consider and, if appropriate, approve the said contract extension following the conclusion of such negotiations.

<p>Reasons for Recommendations</p>	<p>The proposed modification is necessitated by the introduction of an expanded performance framework for youth justice by the Youth Justice Board in October 2022. This has made the procurement of a replacement youth support services contract unachievable until uncertainties arising from the impact of such framework on the council's service requirements; the cost of providing the services; and its effects on service users are resolved and incorporated in an updated commissioning strategy in which the decisions taken by Cabinet on 26 January 2002 relating to the Youth Support Service shall be reviewed and revised, as appropriate.</p> <p>Youth Justice services form a key part of the Youth Support Service. The Youth Justice Board (YJB) has recently enhanced the performance management framework for Youth Justice Services along with revised case management guidance around key aspects of practice. The recent Turnaround initiative announced by the Ministry of Justice (MoJ) also places a greater emphasis on enhancing the links between youth justice and early help support for families. Taken together, the programme of change now underway will impact on the operational landscape for any new provider. The extension will allow time for local partners to work through the changes in performance and practice and ensure that any future contractual arrangements clearly articulate local and national expectations.</p>
<p>Resource Implications</p>	<p>The full value of the Youth Support contract is £4.716 million per annum, which would represent the value of the proposed 12-month extension and will be funded from existing budgets.</p>

Background Documents

Previous decisions

- [Recommissioning of Youth Support Services in 2022](#) Key decision January 2022
- [Options and Decision on Youth Support Service from 2020](#), 30 Jan 2019, Cabinet
- [Decision on Commissioning Youth Support](#), 22 July 2020 Cabinet – A Direct Award to Prospects Services from April 2021 for a period of 12 months.
- [Decision of existing contract for Youth Support Services](#) 21 July 2021, Cabinet.

Youth duties

- [Must know for youth services](#), March 2019, LGA
- [Youth Strategy Task Group Report](#), Oct 2019, OSC: Children & Families
- [Youth Work Inquiry Final Report](#), April 2019, APPG on Youth Affairs

Participation & skills

- [Youth Survey 2019](#), Oct 2019, GFirst LEP & Young Gloucestershire

Health & wellbeing

- [Children, Young People and Families - Needs Analysis, 2018](#), GCC Public Health/Inform Gloucestershire
- [Young People Substance Misuse Commissioning Support 2020-21](#), PHE
- Frameworks for [Teenage Pregnancy Prevention](#) and [Supporting Teenage Mothers and Young Fathers](#), 2019, PHE & LGA

Justice & prevention

- [Police and Crime Plan 2021](#), Police and Crime Commissioner
- [Child First Justice: The research evidence base](#), 2021, Loughborough University
- [Standards for children in the youth justice system](#) - GOV.UK (www.gov.uk) 2019
- [Youth Justice Plans: practice note for youth offending partnerships](#) - GOV.UK (www.gov.uk) March 2021 •
- [Youth justice service governance and leadership](#) - GOV.UK (www.gov.uk) December 2021
- [Gloucestershire Youth Justice Plan 2021](#) - Youth Justice Board

[Violence Prevention Needs Assessment](#), Jan 2020, Safer Gloucestershire

Statutory Authority	<p>Section 40 of the Crime and Disorder Act 1998 sets out the duty placed on each local authority, after consultation with local partner agencies, to formulate and implement an Annual Youth Justice Plan, setting out how youth justice services are to be provided and funded, how they will operate and what functions will be carried out.</p> <p>Section 507B, Education Act 1996 imposes a statutory duty on Councils to: <i>secure, so far as is reasonably practicable, sufficient provision of educational and recreational leisure-time activities for young people aged 13-19 and certain persons aged 20-24</i></p> <p>Regulation 72(1)(b) of the Public Contracts Regulations 2015 permits a modification to be made to a public contract where it allows a contractor to deliver additional works, services or supplies that have become necessary and were not included in the initial procurement on the basis that:</p> <ul style="list-style-type: none"> i) A change of provider cannot be made for economic or technical reasons. ii) A change of provider would cause significant inconvenience or a substantial duplication of costs for the Council; and iii) Any increase in price of the contract does not exceed 50% of the original contract value. <p>Regulation 72(2) of the Public Contracts Regulations 2015 provides that where several modifications are made, the 50% threshold applies to the value of each modification subject to the proviso that such successive modifications should not be aimed at circumventing the application of the procurement rules.</p>
Divisional Councillor(s)	All
Officer	Name: Wendy Williams Tel. no: (01452) 328526 Email: wendy.williams3@gloucestershire.gov.uk
Timeline	February 2023 Issue VEAT Notice February 2023 – June 2023 Engagement with partners, stakeholders and providers. July 2023 – Contract extensions commence September 2023 – Report to Cabinet with recommendations October 2023 – Implementation of recommendations July 2024 – New services commence.

Background

1. The Council commenced a competitive exercise for the procurement of Youth Support Services in 2012, pursuant to which it awarded a contract to Prospects. The contract commenced on 1st April 2013 and was for an initial period of 3 years with two extension options, each of 2 years duration. The Council subsequently opted to exercise both 2-year extension options, taking the original contract period to 31st March 2020.
2. There have been a series of decisions relating to the existing Youth Support Services contract, as set out below:
 - i) **30 January 2019:** Cabinet authorised a variation to the services being provided by Prospects (resulting in some of the services being brought back in-house) and a contract extension of 1 year from 1 April 2020 to 31 March 2021.
 - ii) **22 July 2020:** Cabinet authorised a contract to Prospects for a period of 12 months from 1 April 2021 to 31 March 2022 to provide stability through the COVID-19 pandemic.
 - iii) **21 July 2021:** Cabinet approved a variation of the Prospects contract by extending its term from 1 April 2022 to 30 September 2022, to provide the Council with an opportunity to complete a process of extensive market testing and market development.
 - iv) **26 January 2022:** Cabinet approved procurement of a new contract or contracts for integrated Youth Support Services, following the end of the current Youth Support contract on the 30 September 2022.
 - v) **August 2022:** A further extension to 30 June 2023 was agreed by the Cabinet Member, following a positive Ofsted inspection, which allowed for further discussions on the future direction of both children's services and youth support services.
3. The Covid pandemic has had a profound and enduring impact on the mental health and emotional wellbeing of young people who have experienced periods of isolation, disrupted education and depressed employment opportunities. The continuity of service provision by the current provider and the agility of their response to the constraints imposed by Covid has served to mitigate some of those impacts through ongoing support and well-established relationships. Over time, the longer-term implications of Covid for future service provision are becoming much clearer, with the opportunity to refine our commissioning and procurement approach accordingly, in the best interests of children and young people.
4. Although the Youth Support Service Contract comprises of a range of elements, youth justice services are a significant component. In October 2022, the Youth Justice Board (YJB) set out in detail its proposals for a significantly expanded performance framework for youth justice. The new framework has 10 new key performance indicators (KPI's) which are required to be reported against by April 2023, in addition to the current data set. The expanded framework encompasses the work of a range of local partners including education, health (physical/mental), substance misuse services and district councils, in terms of housing and accommodation.

5. The revised framework is less a set of metrics for the provider but rather a challenge for the wider system of statutory and non-statutory partners around their support for young people at the cusp or within the criminal justice system. Responding to this will require discussion between the accountable body (GCC) and local partners to ensure that any new provider of Youth Support Services is entering a system in which the relevant support and reporting requirements are well established. Elsewhere the youth justice service is part of the local authority, acknowledging its role as the accountable body, which makes this process clearer however within a commissioned situation it would be unreasonable to leave this to a third-party provider to negotiate the network of partner commitments.
6. In October 2022, the YJB issued revised case management guidance for youth justice covering relationships, supervision, interventions, restorative justice and safeguarding work with victims. Further updates are due on out of court disposals and custody resettlement by the end of year/early next year.
7. In November 2022, the Ministry of Justice (MoJ) announced the Turnaround Programme based on the learning from the Supporting Families Programme. The aim is to promote earlier intervention and greater integration of youth justice activity with early help and statutory services for children and young people. The project will run over the current year and subsequent 2 years and ultimately engage around 120 young people in the county identified as being eligible. The extension of the contract would allow for the programme to be embedded within the existing network of relationships between partners so that any the new contract is building on a stable and effective foundation.
8. In November 2022, the Youth Justice Board published their Brighter Futures research setting out what steps are needed at practice, partnership and governance levels to achieve a 'child first' youth justice system. The research is currently being considered by local youth justice partners with the aim of feeding the learning into future service developments and, by consequence the council's commissioning strategy in respect of the provision of Youth Support Services.
9. Taking all the above into account, a programme of change is underway impacting significantly on operational landscape for any new provider, reflecting national expectations around performance and practice, as well as the policy direction towards a greater integration of youth justice within the wider early help, safeguarding and family support system. It would be unreasonable to expect a new provider to navigate these successfully in the absence of the local partnership having come to a view around its joint and several responses. The proposed extension to the term of the council's current contract with Prospects would enable those discussions to take place, through the Youth Justice Management Board and other relevant groups, working through the implications of the changes in performance and practice, prior to any new contract being procured. This will ensure that the Council revised commissioning strategy, once completed, is able to clearly articulate local expectations.

Options

Option 1: Allow the current contract extension to expire and progress with retender.

10. The current extension comes to an end on 30 June 2023, following which a new contract is due go live on 1 July 2023.
11. Putting the contract back out to competitive tender within the available timeline would not allow sufficient time to fully incorporate the recent changes in the operational landscape for youth justice and reflect the views of local partners. If the Council were to put the tender out immediately there is risk that key requirements are not fully embedded and opportunities to improve our effectiveness in meeting the needs of some of most vulnerable and risky young people are missed.
12. The programme of change which is underway within youth justice is at a relatively early stage. This would give prospective providers limited knowledge to ensure that services are structured in the best way and could impact significantly on the operational landscape for any new provider. The ripple effect could mean that services are not fully reflective of national expectations around performance and practice, as well as the policy direction towards a greater integration of youth justice within the wider early help, safeguarding and family support system.

For this reason, this option is **not** recommended to the Cabinet Member

Option 2: That Cabinet agrees to extend the Youth Support Services contract with The Prospects Group for an additional 12 months from 1 July 2023 to 30 June 2024.

13. A modification under Regulation 72(1)(b) of the Public Contract Regulations 2015 to extend the current contract with the existing provider would continue delivery of statutory duties while enabling discussions to take place with local youth justice partners on the programme of change now underway. This would ensure these are fully reflected within any revised commissioning strategy, thereby providing clarity and certainty for any prospective provider.
14. The value of a 12-month contract extension would amount to £ 4.716M (which is below 50% of the value of the original contract value for the purposes of Regulation 72(1)(b)). Moreover, if all the extensions beyond the initial period of 7 years were added together (including the proposed new 12-month extension) this would amount would also be below 50% of the value of the Original Contract value (£42 million).

For these reasons, this option 2 **is** recommended to Cabinet.

Risks

15. There are several risks associated with this decision:

Risk:

There is a risk in respect of any contract extension, that it may be subject to legal challenge under the Public Contract Regulations 2015 (“PCRs”)

Mitigation:

It is acknowledged that a contract extension is only permissible under the PCRs on very limited grounds, however the extension proposed in this report is justified on the following basis:

There are “economic reasons” why a change in provider cannot be made due to the uncertainties arising from the economic impact of the latest developments in youth justice support performance and practice expectations, related policy developments, YJB research outcomes and changes in case management guidance. After conducting the relevant engagement and review activity, the Council will be required to consider how this will affect the requirements of the youth support service moving forward which could impact, for example, on performance metrics, partnering and collaborative duties and support and reporting requirements. Any additional requirements placed on the provider under the New Contract will likely have an economic impact on the cost of providing the services with such costs needing to be factored into tenders for the New Contract.

There are also “technical reasons” why a change of provider cannot be made at the present time. These relate to (a) the difficulties in finalising the service specification considering the above developments; and (as with the previous extension) (b) the sensitive pastoral issues that need to be addressed before a potential change of provider can occur. The YJB and MoJ have only recently set out the detail of their proposals for the development of youth justice, which would be unachievable to fully embed within the current tender timetable. As such, bidders may be unable to develop their bids fully and accurately, potentially causing delay to the tender process. Additionally, the “Turnaround Programme” needs to be embedded within the existing network of relationships between partners without disruption to service users so that any new provider comes into a stable and effective youth support environment.

It has been held by the courts in principle (albeit in a different context) that “reasons of continuity” could in principle constitute “technical reasons”¹. The risk of harm to members of the vulnerable youth group is clearly a significant concern that needs to be considered when timing the re-commissioning procurement of youth support services. If the Council were to proceed with its previous proposals, as set out in the paper *Recommissioning of Youth Support Services* approved by Cabinet on 26 January 2022, this would add to the risk of service disruption hence, for the technical reason of continuity, a change of provider cannot be made in July 2023.

¹ Case C-385/02 *Commission v Italy*

Running the procurement now to award the New Contract would cause significant inconvenience and could also result in duplication of costs for the Council considering the uncertainties of the impact on the requirements for the youth service moving forward. As such the Council is not able to finalise the specification for the New Contract yet and so it would likely have to make a series of amendments to the procurement and/or New Contract which, as highlighted above, could introduce additional procurement risks. There is also a risk that the Council would not be able to mobilise the New Contract in time for the expiry of the Original Contract and must put in place an interim arrangement with Prospects that would run in parallel to the New Contract to ensure continued service provision.

The value of the extension would be £4.716m, which is less than 50% of the value of the original contract. Regulation 72(1)(b) provides that where several modifications are made, the 50% threshold applies to the value of each modification subject to the proviso that such successive modifications should not be aimed at circumventing the application of the procurement rules. The value of the original contract was circa £42 million and even if all the extensions beyond the initial period of 7 years were added together (including this proposal) it would remain below the 50% threshold.

The Council is entering into this further extension with the aim of seeking additional time due to the legitimate reasons outlined above and earlier in this report. It is also the intention to publish a modification notice in accordance with its transparency obligations and additionally a voluntary transparency notice in Find a Tender to reduce the risk of challenge under the Public Contracts Regulations (2015).

Risk:

The proposed 12-month extension will provide insufficient time to ensure that a revised commissioning strategy can be completed within such extended timeline.

Mitigation:

Gloucestershire's Youth Justice Management Board provides for multi-agency oversight of the development and delivery of youth justice in the county. While the detail of the proposed changes has arrived too late to fully accommodate within the current tender timetable, initial partner discussions have commenced which can be translated into the council's revised commissioning strategy over the coming months. This will ensure that such commissioning strategy can be implemented in a timely manner, working within the proposed 12-month extension period to which this report relates.

Financial implications

16. The value of the proposed 12-month contract extension commencing 1 July 2023 is £4.716m. This will be funded from existing budgets

Climate change implications

17. There are no direct climate change implications arising from this decision.

Equality implications

18. An Equalities Impact Assessment (EIA) has been completed. The service will continue to work with the current specified service user group of 10-18 (up to 25 with special needs) and inclusively with young people with additional needs through its established and accredited equality and diversity strategy. The service is relaunching an intensive work programme for girls and young women on the cusp of offending/reoffending and actively reaches out to young people from underrepresented communities.

Data Protection Impact Assessment (DPIA) implications

19. A DPIA is in place to support the recommissioning exercise when that happens. Whilst amending the DPIA was considered for this contract extension, it was not considered necessary as this is a temporary continuation of our current contract with our incumbent supplier. As a result, the proposed contract extension does not pose any additional or unforeseen data protection risks that need to be specifically highlighted that have not been considered and mitigated against on previous occasions

Social value implications

20. Officers continue to work with the incumbent provider of Youth Support Services on the Social values contained within the original contract.

Consultation feedback

21. A period of vigorous engagement with Youth Justice partners and stakeholders will commence in early 2023 to ensure our commissioning approach clearly reflects local and national expectations, enabling prospective providers to formulate their bids accordingly. Working in this way is more likely to achieve better specifications and higher quality bids for future service delivery.

Officer Recommendations

22. Considering the options and associated risks, Officers advice that under the current circumstances **Option 2** and, more particularly, the Recommendation contained in this report, is recommended as the optimum way of discharging the Council's statutory and partnership obligations in relation to the provision of effective Youth Support Services.
23. It is therefore recommended that Cabinet agrees to extend the Youth Support Services contract with The Prospects Group for an additional 12 months from 1 July 2023 to 30 June 2024.

Performance management/follow-up

24. Current performance management arrangements will continue to apply throughout the contract term, in any transition periods and in new contract mobilisation. This will include oversight of the youth justice service by Gloucestershire's Youth Justice Management Board.