



City of Westminster

Cabinet Member Report

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| Meeting or Decision Maker: | <i>Cabinet Member for Children, Families and Young People</i> |
| Date: | <i>14th March 2018</i> |
| Classification: | <i>General Release</i> |
| Title: | <i>Access Agreement and Call-Off from the WLA Dynamic Purchasing Vehicles for Children's Residential Homes, SEN Provision and Independent Fostering Agencies</i> |
| Wards Affected: | <i>All</i> |
| Key Decision: | <i>Yes, included in the Forward Plan of Key Decisions</i> |
| Financial Summary: | <p><i>The Access Agreement to this framework does not restrict WCC's flexibilities to engage other providers outside of the framework where suitable, so the financial risk of being a party to this Dynamic Purchasing Vehicles framework is minimal.</i></p> <p><i>There may be financial benefits of being part of this framework but there is insufficient information at this stage to quantify the financial benefits or cashable savings.</i></p> |
| Report of: | <p><i>Melissa Caslake, Bi-Borough Executive Director of Children's Services</i></p> <p><i>Contact Details: mcaslake@westminster.gov.uk</i></p> |

1. Executive Summary

- 1.1. In August 2016, The three Councils entered into an agreement to work in collaboration with the West London Alliance to develop, procure and call off from three Dynamic Purchasing Vehicles (DPV). This included the provision of placements for our Looked After Children and young people with Special Educational Needs or Disability:
 - a) Independent Fostering Agencies
 - b) Special Educational Needs for Independent and non-maintained special schools
 - c) Children's Residential Homes
- 1.2. We are now seeking approval to enter into access agreements with the lead West London Alliance (WLA) Boroughs and permission to call-off these framework agreements. This will not commit the Council to procurement, but will enable it to call off from the frameworks if they demonstrate significant quality and value for money.
- 1.3. The aim is to ensure that there is good quality, locally available provision for Westminster's LAC and Children with Special Education Needs and Disabilities, which represents value for money and is compliant with Public Contract Regulations 2015. These DPVs will be used by the nine WLA boroughs, other interested local authorities and other organisations that carry out part or all of the statutory duties relating to Children.

2. Recommendations

- 2.1. It is recommended that the Cabinet Member for Children, Families and Young People:
 - a) Delegates the authority to the Executive Director of Children's Services for the access call-off and award of the WLA contracts for the Dynamic Purchasing Vehicles.
 - b) Delegates the authority to the Executive Director of Children's Services to select the various call-off options in award of contract in accordance with the rules of the DPV. Where a suitable placement cannot be found, to delegate authority to spot purchase placements outside the identified frameworks
 - c) Agree to the use of an alternative bespoke procurement portal, Curtis Fitch software application, as an e-Procurement platform for the purpose of e-sourcing and supplier relationship management.

3. Reasons for Decision

- 3.1. This provision of placements for our Looked After Children and young people with Special Educational Needs or Disability are to be procured by the Council by first entering into Access Agreements with Brent, Ealing and Barnet Councils to allow it to use the framework agreements that they are in the process of procuring.
- 3.2. Once the Access Agreements has been signed, the Council can procure services under the Frameworks using the call off procedure set out in the Framework Agreements. The Council has not had sight of the Framework Agreements at this stage or draft Access Agreements. It is understood that they will be available at the conclusion of the current EU procurement.
- 3.3. It is recommended, therefore, that the Cabinet Member delegates authority to the Executive Director of Children's Services, the decision to enter into the Access Agreements provided the Director of Law approves. This will ensure that the Council does not enter into such Agreements without due consideration of the procurement process conducted by Ealing, Barnet and Brent and the terms of the Access Agreements.

4. Background, including Policy Context

- 5.1. WCC is committed to providing high quality placements for our Looked After Children and young people with SEND. The West London Alliance DPV has been established in a way that will enable them to work with the existing supply chain and incorporate it under the new arrangements.
- 5.2. The Dynamic Purchasing Vehicles will be a public sector sourcing tool that follows the key principles of a Dynamic Purchasing System (DPS), utilising the “Light Touch Regime” within Regulations 74 to 76 of the Public Contracts Regulations 2015. As a procurement tool, it has some aspects that are similar to an electronic framework agreement, but where new suppliers can join at any time. This DPV will operate a selection and award process that is akin to a Dynamic Purchasing System as prescribed within Regulation 34 and 67 (11) of the Procurement Regulations 2015.
- 5.3. The lead authorities will set up the DPVs that will identify the requirement, which may be divided into placement categories – type and level of support. The DPV will be a two-stage process. First, in the initial setup stage, all suppliers who meet the selection criteria (subject to vetting and quality assurance – selection questionnaire and submission of required documents) will be admitted to the DPV. Unlike framework agreements, suppliers can also apply to join the DPV at any point during its lifetime. Individual contracts are awarded during the second stage. At this stage, the authority invites all suppliers on the DPV to bid for the specific contracts.
- 5.4. The DPV will streamline procurement for both suppliers and authorities; although suppliers will demonstrate suitability and capability during setup stage, they will not be required to resubmit their credentials every time they wish to compete for a placement. The award of individual tenders will be quicker than under some other procedures. The DPV is more flexible in some respects than frameworks, particularly as suppliers may join it at any time during its period of validity, meaning that suppliers are not locked out for the duration as they are with traditional frameworks.
- 5.5. It is proposed that WCC enters into access agreements with the lead West London Alliance (WLA) Boroughs and gives permission to call-off these DPV agreements. This will not commit the Council to procurement, but will enable it to call off from the DPV if this demonstrates significant quality and value for money. The West London Alliance has developed three Dynamic Purchasing Vehicles (DPV). The DPV contract will run for three years with up to three years’ extension. This will include the provision of:
 - a) Independent Fostering Agencies – led by the London Borough of Barnet
 - b) Special Educational Needs for Independent and non-maintained special schools – led by the London Borough of Brent
 - c) Children’s Residential Homes – led by the London Borough of Ealing
- 5.6. It is proposed that the DPV will utilise an alternative bespoke procurement portal, Curtis Fitch software application, as an e-Procurement platform for the purpose of e-sourcing and supplier relationship management for the WLA boroughs. Suppliers will complete the initial first stage of procurement through this e-Procurement platform. Children’s Services placement officers will identify the most suitable placement at the best price using the eBrokerage software CarePlace. The latter will enable a large range of providers to be contacted electronically with detailed selection criteria set. Searches can be restricted to specific locations as well as enabling the timing and duration of a placement to be set and any Ofsted or other quality criteria to be taken into consideration when searching for an appropriate placement.
- 5.7. It is proposed that WCC enters the three DPVs as outlined above. The Benefit of the DPV will include:

- **Compliance with Regulations** - The ending of the practice (now non-compliant with legislation) of spot purchasing placements. Accessing the DPV's will deliver greater compliance with the Children & Families Act 2014, Care Act 2014 and Public Contracts Regulations 2015. This will lower the risk of legal challenge and help the Council to deliver against its Best Value Duty.
- **Competition** – A DPV creates a high level of competition with the potential of driving down price and reducing the local authority spend. It will enable the Placement Team to make a decision based on both quality and price, ensuring value for money. The DPV will also streamline the way in which we buy placements via CarePlace, delivering robust market intelligence and analysis
- **Quality control** - Suppliers must first be accredited against a set of quality criteria dictated by the partners before being granted entry to the DPV. This will ensure that only high quality suppliers with strong financial checks, are permitted to submit bids.
- **Transparency** - The Council will have complete visibility over the end-to-end process of procuring placements, and a full transparent audit trail. The open, transparent nature of a DPV can also build trust and certainty for suppliers.
- **Increased flexibility** - Unlike a Framework, the DPVs can respond quickly to sudden demand or supply changes in the market, e.g. a school or home closing or losing the required Ofsted rating and allow new suppliers and services to be added through the life of the DPV.
- **Value for money** – WCC make relatively small numbers of residential placements each year. With the DPV ranking bids in terms of both cost and quality, LA's are able to demonstrate that all services procured represent maximum value for money.
- **Admin consolidation** - The electronic, automated nature of a DPV means that suppliers can tender without having to invest hours of time completing forms. For the Council, this will reduce the time and cost for procurement, contract management and quality assurance. Shared contracts and specifications for each category across West London will also reduce waste in the supply chain and ensure consistency in terms, outcomes and standards. This is an opportunity to establish a shared contract management approach with contract monitoring information available
- **Continued Partnership** – The programme, developed by the West London Alliance, is part of the valuable partnership and collaborative working that has formed across the region. Information sharing and an ongoing partnership relationship can be developed electronically and more efficiently with early warning across LA's of market challenges or supplier issues.

- 5.8. The lead authorities will be responsible for quality assurance within the first stage of the procurement process. It will be the leads responsibility to ensure that providers are Ofsted or Independent Schools Inspectorate registered. Only providers that are rated above 'Requires Improvement' will be able to access the framework. The WLA will also have a dedicated contract management/performance team, who will manage providers and address performance issues. They will have responsibility for a suspension and barring policy. Should the Council decide to call-off the framework, the Placement Team will access tenders through CarePlace and complete its own quality assurance.
- 5.9. The WLA have identified modest savings that could be achieved through the DPVs. Once providers have submitted their prices, due diligence is required to establish the viability of these assumptions.
- 5.10. WCC is currently accessing a Framework Agreement, led by the London Borough of Hillingdon, for Independent Fostering Agencies. This framework will expire on the 31st March 2018 and is to be replaced by a Dynamic Purchasing Vehicle led by the London Borough of Barnet.
- 5.11. The West London Alliance is the largest subscription based, sub-regional arrangement representing all London boroughs located in the west area of London, namely Barnet, Brent, Ealing, Hammersmith and Fulham, Harrow, Hillingdon, Hounslow, Westminster and RBKC. The agreed contributions for the Children's Commissioning & Procurement Service, including CarePlace, is outlined in the table below:

| Commissioning & Procurement | Contract Management | Children's Programme Total | CarePlace | Total |
|--|----------------------------|-----------------------------------|------------------|----------------|
| £26,472 | £18,039 | £44,511 | £10,819 | £55,330 |

5.12. The cost of the DPV and CarePlace will come from the existing WLA budget and no further contribution will be required.

6. Background

- 6.1. The delivery of quality placement provision for a child under the Children's Act 1989 (and subsequent legislation) involves many of the different front line teams within the directorate.
- 6.2. Current practice is strong: in-house fostering and placement teams are highly effective, with positive reputations both inside and outside of the organisation, while the wider teams continue to innovate and drive quality through the Partner's in Practice agenda. Strong relationships with the WLA and their sub-regional projects further augment practice.
- 6.3. However, pressures still exist: the variety and complexity of the looked after children population is increasing; UASCs continue to supplement the citizen care population on account of wider macro-environmental pressures; changing legislation around accommodation, care leaver's age and youth justice further increases demand; market forces and inter-authority competition is restricting placement choice and driving up costs; local rents are increasing; benefit caps are being introduced; and we are working with ever reducing funding from central government, with further austerity highly likely, that influences children and young people both directly and indirectly.
- 6.4. On the 31st March 2017, 182 young people in WCC were in care. While the majority of these young people were placed in foster care, a small proportion (15 young people) were placed in residential care.

Independent Foster Agencies

- 6.5. It is recognised that the Council's in house fostering service is unable to match all of our foster care placement requirements, due to the level of diversity and individual needs of the children we place.
- 6.6. Excess demand for foster care placements are commissioned from Independent Foster Agencies (IFA). These services are commissioned in two ways:
 - West London Alliance IFA Framework (primary contract)
 - London Care Placement Framework (secondary contract)
- 6.7. WCC is currently accessing the WLA Framework Agreement, led by the London Borough of Hillingdon. To date, there have been 47 IFA placements made by WCC in 2017/18. 29 (62%) of these placements were commissioned through the existing WLA framework. The remaining 18 were made through the London Care Placement Framework (LCP).
- 6.8. Broadly speaking, the price difference between the WLA framework and the London Care Placement Framework is negligible. Notwithstanding this, the Council does commission the majority of its IFA placements from a small number of providers from the framework. The table below shows those placements commissioned through the WLA framework, compared to the price on the LCP framework.

| Core Cost – Per week | | | | | |
|-------------------------------|--------------------------------|-------|-------------------------------|------------------------------------|---------------------------------|
| No of commissioned placements | Provider | Age | 2016-17 Initial Fee Request ≠ | West London Alliance IFA Framework | London Care Placement Framework |
| 1 | Greater London Fostering | 0-10 | £787 | £721 | £778 |
| | | 11-17 | £787 | £742 | £794 |
| 8 | National Fostering Agency | 0-10 | £787 | £745 | £735 |
| | | 11-18 | £787 | £735 | £780 |
| 2 | Integrated Services Programme* | 0-18 | £1,212 | £1,195 | £1,298 |
| 1 | By the Bridge* | 0-4 | £1,212 | £930 | £930 |
| | | 5-10 | £1,212 | £1037 | £1,016 |
| | | 11-15 | £1,212 | £1,064 | £1,064 |
| | | 16+ | £1,212 | £1,072 | £1,072 |
| 2 | Foster Care Associates | 0-10 | £787 | £789 | £822 |
| | | 11-18 | £787 | £822 | £818 |
| 1 | Fostercare UK Ltd | 0-4 | £787 | £722 | £722 |
| | | 5-10 | £787 | £798 | £791 |

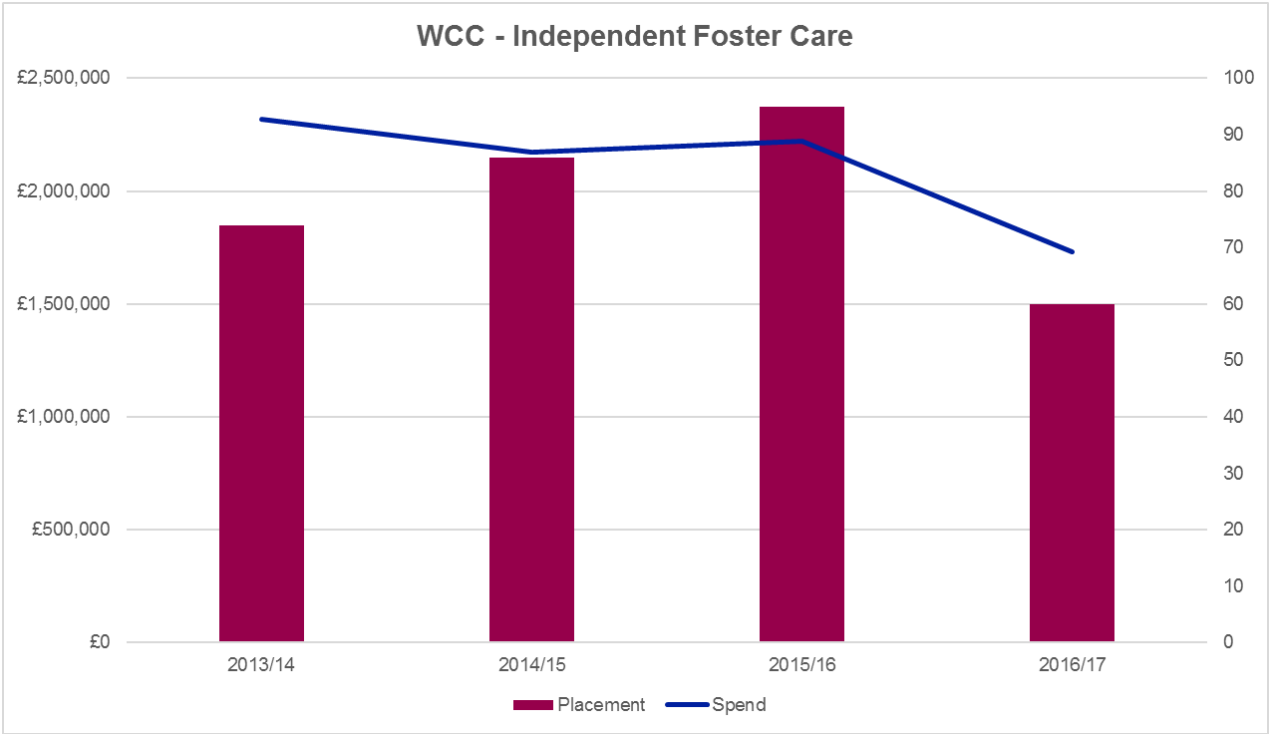
| | | | | | |
|---|----------------------------------|-------|------|------|------|
| | | 11+ | £787 | £798 | £841 |
| 5 | Capstone Foster Care | 0-16 | £787 | £763 | £793 |
| 3 | Compass | 0-4 | £787 | £625 | £625 |
| | | 5-10 | £787 | £725 | £725 |
| | | 11-18 | £787 | £800 | £830 |
| 1 | Next Step Fostering Services Ltd | 0-16 | £787 | £920 | £920 |
| 1 | Orange Grove Fostercare Ltd | 5-11 | £787 | £812 | £817 |
| | | 12-18 | £787 | £812 | £847 |
| 2 | Safehouse Ltd | 0-16 | £787 | £920 | £920 |
| 1 | Nexus Fostering | 0-18 | £787 | £791 | £862 |
| 1 | Rainbow Fostering Services Ltd | 0-15 | £787 | £728 | - |
| | | 16+ | £787 | £749 | - |

≠ London Councils (2017) Commissioning Childhoods: Exploring the role and function of cross-regional commissioning arrangements (London Care Services) for looked after children in London

* Specialist & targeted services

6.9. The table above illustrates the potential cost avoidance from both the LCP and WLA placement frameworks. When compared to the indicative spot purchased cost (initial fee), the WLA framework is cheaper than both the spot purchasing and places commissioned through the LCP framework.

- 6.10. On average, young people are in an IFA placement for 139 weeks¹. While the difference in price looks relatively modest, the length of placements magnifies the potential cost avoidance associated with the WLA framework. For example, if a 139-week placement is commissioned with the National Fostering Agency for a young person aged between 11-18 years, the spot purchase price would be £108,420. This compares to £102,165 for a place commissioned through the WLA framework.
- 6.11. The graph below shows the number of commissioned IFA placements over the last four years and the level of spend. In 2016/17, the Placement Team made 60 IFA placements at a total cost of £1,733,101.
- 6.12. This framework will expire on the 31st March 2018 and will be replaced by a Dynamic Purchasing Vehicle led by the London Borough of Barnet. If the Council decides not to enter into the DPV it will be subject to increased cost associated with spot purchasing placements. The Council will also be subject to additional administrative costs related to procurement, contract management and quality assurance.
- 6.13. A review of Foster Care in England² by the Department for Education, implies that Councils in England are too small to influence the market to commission effectively. The review recommends that Councils come together to create commissioning consortia with critical mass, better able to understand commissioning requirements, discouraging direct competition between local authorities.
- 6.14. It could also be suggested that spot purchasing placements are not compliant with current legislation. Entering this framework would reduce this risk and create a high level of competition that has the potential of driving down prices and reducing the local authority spend.



Residential Children’s Home

- 6.15. The Placement Team are dependent on established relationships and the London Care Placement Framework for the placement of young people in Residential Children’s Homes.

¹ West London Alliance Children’s Programme: Market Position Overview 2016/17.
² Narey, M (2018) Foster Care in England: A review for the Department for Education

WCC commissions a relatively small number³ of residential placements each year through a spot purchase arrangement. In 2016/17 the Council commissioned 17 places at a total cost of £840,669.

- 6.16. Through the WLA framework, WCC would benefit from the combined volume of places purchased through the partnership and the preferential rate that this attracts from providers. It is envisaged that the DPV will also generate greater competition and reduce the administrative burden associated with spot purchasing.

Special Educational Needs for Independent and non-maintained special schools

- 6.17. WCC commissions a number of placements in independent and non-maintained special schools. As at February 2018 the total number of placements was 67 at a cost of £2,980,640. The number of placements made each year can be variable and in 2016/17, a total of eight new placements were made at a cost of £103,151. The majority of these were day placements (seven) and one residential placement was made.
- 6.18. Day placements are arranged through the SEND Service and residential placements are arranged through the placement team as these children and young people are likely to have care needs.
- 6.19. The WLA has negotiated with providers in relation to discounts based on the number of placements made across the area e.g. cost and volume discounts. This has provided greater purchasing power when accessing placements at schools used across WLA local authorities.

7. Financial Implications

- 7.1. This paper seeks agreement to access and call off from the WLA Dynamic Purchase Vehicle for Independent Fostering Agency, Residential Children's Home and SEN provisions.
- 7.2. Access agreement to this framework does not restrict WCC's flexibilities to engage other providers outside of the framework where suitable so the financial risk of being a party to this DPV framework is minimal.
- 7.3. There may be financial benefits of being part of this framework but there is insufficient information at this stage to quantify the financial benefits or realisable savings.

*Financial Implications provided by: Ade Solanke, Finance Manager – Children's Services
(asolanke@westminster.gov.uk)*

8. Legal Implications

- 8.1. The Council has statutory duties under Children Act 1989 in respect of looked after children and under Children and Families Act 2014 in respect of children with special educational needs and disabilities. The recommendations in this report to call off from three frameworks currently being established for the placement of children with foster carers, the provision of special educational needs services and placements in residential children's homes are recommendations made in order to assist the Council in fulfilling those statutory duties.
- 8.2. Services of the description set out in this report are 'light touch' and therefore they are not subject to the full EU procurement regime. The rules of procedure governing the light touch regime (including the requirement to advertise at EU level) are set out in regulations 74-76 of the Public Contracts Regulations 2015 and to some extent elsewhere in the regulations. There

³ WLA average – 38 residential placements. West London Alliance Children's Programme: Market Position Overview 2016/17.

are few mandatory rules in respect of the way in which above threshold contracts are procured and there are significant flexibilities.

- 8.3. The services are to be procured by the Council by first entering into Access Agreements with Brent, Ealing and Barnet Councils to allow it to use the framework agreements that they are in the process of procuring. Once the Access Agreements are signed, the Council can procure services under the Frameworks using the call off procedure set out in the Framework Agreements. The Council has not had sight of the Framework Agreements at this stage or draft Access Agreements. It is understood that they will be available at the conclusion of the current EU procurement.
- 8.4. It is recommended, therefore, that the Cabinet Member delegates authority to the Executive Director of Children's Services, the decision to enter into the Access Agreements provided the Director of Law approves. This will ensure that the Council does not enter into such Agreements without due consideration of the procurement process conducted by Ealing, Barnet and Brent and the terms of the Access Agreements.
- 8.5. The Council is obliged to comply with its Contract Regulations. The following is an extract -

2.19 Social and other Specific Services

(a) Contracts for social and other specific services listed in Schedule 3 of the Public Contract Regulations 2015 where the value of the contracts is equal to or greater than £589,148 (€750,000) shall be awarded in accordance with Section 7 of the Public Contract Regulations 2015. The proposal to join the frameworks in accordance with the recommendations fulfils the requirement of 2.19 of the Council's Contract Regulations.

Legal Implications provided by: Angela Hogan, Interim Senior Solicitor (ahogan@westminster.gov.uk)

9. Staffing Implications

- 9.1. The electronic, automated nature of a DPV means that suppliers can tender without having to invest hours of time completing forms. For the Council, this will reduce the time and cost for procurement, contract management and quality assurance. Shared contracts and specifications for each category across West London will also reduce waste in the supply chain and ensure consistency in terms, outcomes and standards. This is an opportunity to establish a shared contract management approach with contract monitoring information available

10. Consultation

- 10.1. This report was presented to Children's Services, Senior Management Team, on the 12th February 2018.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

Wesley Hedger, Strategic Commissioner – Children's Commissioning

For completion by the **Cabinet Member** for Children, Families and Young People

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____
NAME: _____

State nature of interest if any
.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Access Agreement and Call-Off from the WLA Dynamic Purchasing Vehicles for Children’s Residential Homes, SEN Provision and Independent Fostering Agencies** and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Children, Families and Young People

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
.....
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal and Democratic Services, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

