

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

4730

Author:

Lisa Lopez

Department:

Finance and Resources

Contact:

Lisa Lopez

(Job Title: Lead Commissioning Manager, Email: lisa.lopez@nottinghamcity.gov.uk, Phone: 01158762746)

Subject:

SEND Disagreement Resolution, Mediation Advice and Mediation services

Total Value:

Up to £145,570

(Type: Revenue)

Decision Being Taken:

- 1) To approve the expenditure of up to £145,570 for Nottingham City Council's use of the regional contract, over the entirety of the contract term (up to 5 years), for the provision of the SEND Disagreement Resolution, Mediation Advice and Mediation services. The procurement is to be led by Lincolnshire County Council on behalf of all ten local authorities in the East Midlands region, through an appropriate procurement process. The approved contract is to commence on 1 November 2023 for a period of up to 5 years (3+1+1).
- 2) To approve the payment to Lincolnshire County Council for commissioning, procurement and contract management over the entire term of the contract (see Appendix 1 for details of such).
- 3) To approve Nottingham City Council calling- off from Lincolnshire County Council's Framework contract when established, up to the value listed above.
- 4) To approve an extension of the existing contract for up to 6 months, to 31 October 2023, to the value of £10,000 (Nottingham City Council's expected spend under the current contract.) (The extended value of the whole framework is up to £138,295).

Reasons for the Decision(s)

1. To support the fulfilment of statutory duties towards children/young people with special educational needs and/or disabilities (SEND) and their parent/carers. The Children and Families Act (2014) and the associated SEN Code of Practice sets out statutory duties for local authorities to provide disagreement resolution to all families of children/young people with SEND, who disagree with any aspect of their education, health and/or social care provision; and to provide mediation advice and mediation services to families of children/young people with SEND who have an Education, Health and Care (EHC) assessment and/or plan, and who disagree with any aspect of it.

2. To maximise efficiency and value for money in the services we commission. We will do this by continuing to offer a single contract for Disagreement Resolution, Mediation Advice and Mediation, across all ten East Midlands local authorities. This creates economies of scale, reduces management costs by having a single service across the whole region, and makes the contract more appealing to potential bidders. Improving citizen's experience of SEND Disagreement Resolution and Mediation services is likely to result in more families having their needs met without recourse to Tribunal, benefitting both the family and the local authority. The contract is paid based on usage only, and performance-managed to ensure that the needs of citizens are met without recourse to Tribunal wherever possible, keeping the costs of Tribunal to a minimum.

3. To maintain consistent provision of a Disagreement Resolution, Mediation Advice and Mediation service for children/young people with SEND and their parent/carers, across the East Midlands region. The current contract for the Disagreement Resolution, Mediation Advice and Mediation service is managed by Nottingham City Council, and is due to end on 30/04/23. In order to maintain provision this service needs to be re-commissioned at a regional level. (Having consistency across the region benefits families whose children may be educated in a different local authority area - this is more common for children/young people with SEND, especially for those attending special schools. Having a regional service also benefits local authorities by enabling us to recognise regional trends and issues.) Lincolnshire County Council have agreed to lead the next cycle of re-commissioning, but have asked that Nottingham City Council extend the current contract for up to 6 months to allow them to do so. This is because there is a new SEND Green Paper recently out for consultation. This Green Paper includes proposals to:

- 'establish a new national SEND and alternative provision system setting nationally consistent standards for how needs are identified and met at every stage of a child's journey across education, health and care' ; and**
- 'streamline the redress process to make it easier to resolve disputes earlier, including through mandatory mediation, whilst retaining the tribunal for the most challenging cases'.**

These proposals have the potential to change both the process for identifying young person's needs (currently through the Education, Health and Care Plan), and impact specifically on the mediation aspect of this service. The public consultation for these changes closed in late July 2022. The government has stated its intention to publish a national SEND delivery plan, setting out their response to the consultation and how the proposals will be implemented later this year.

No timescale is given for when the changes will need to be implemented by, but it is likely that if the changes are significant there will be a period of up to 12 months allowed in which to implement the changes. Given the nature of the proposals, local authorities will need time to understand the legislative changes. Partnership working across a whole region and ten authorities also takes considerable time, both in agreeing a consistent robust approach at officer level and navigating our respective organisations' approval processes. Extending the contract for up to six months over and above the contract end date is permissible under contract procedure rule 18.99, and would allow sufficient time for the results of the consultation to be published, for regional local authorities to have a view of what the new guidance means, and for Lincolnshire to procure the new service.

Briefing notes documents: Appendix 1 Contract values.docx

Other Options Considered:

1. Tender the service solely as Nottingham City Council and do not undertake a joint process. The economies of scale that present themselves through a joint procurement process enable the Council to achieve best value for money, and create a robust contract offer for the successful provider. It's unlikely that we would achieve value for money by commissioning a separate service - Nottingham City Council has relatively low numbers of families using the service. This is positive for families, but means there would be insufficient business for a provider to make an individual contract appealing to a provider. Nottingham City Council would need to purchase services separately for each individual family ('spot-purchasing'), which would increase costs significantly. Therefore this option is not recommended.
2. For Nottingham City Council to lead the re-commissioning and procurement process. Previously Nottingham City Council led the commissioning, procurement and contract management of this service, and charged the other local authorities a small fee for doing so. Currently, Nottingham City Commissioning, Procurement and Contracting colleagues no longer have the capacity to lead this piece of work. If Nottingham City Council were to charge the other local authorities for officer time spent re-commissioning the service, this would still not result in sufficient capacity to manage this project - we would need additional staff, therefore would need fees to cover at least a whole officer post to make this option viable. This would not be cost efficient for Nottingham City Council or for other local authorities. Therefore this option is not recommended.
3. Do nothing - allow contracts to end and not re-commission services. All local authorities have a statutory obligation under the Children and Families Act (2014) and the associated SEN Code of Practice, to offer disagreement resolution to all families who disagree with any aspect of their education, health and/or social care provision; and to provide mediation advice and mediation services to families who disagree with any aspect of their Education, Health and Care (EHC) assessment and/or plan. Without this contract it's likely that the local authority would be reliant on spot-purchasing the services at an increased cost. This is likely to result in a more expensive, less reliable service, and an increase in cases progressing to tribunal, further increasing the costs. Therefore this option is not recommended.

Background Papers: None

Published Works: SEND green paper - SEND Review: Right support, Right place, Right time (HM Government, March 2022)
DD3310 SEND Dispute Resolution, Mediation Advice and Mediation Services (30 October 2018)

Affected Wards: Citywide

Colleague / Councillor Interests: None

Consultations: **Date: 01/04/2023**
Other: Parent carers and families of children with SEND.
Parent carers and families of children with SEND are to be consulted as part of the commissioning review, led by Lincolnshire County Council. The date given is indicative - specific dates and outcomes of consultations are not available at this stage.

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications: **None**

Equality: **Please login to the system to view the EIA document: DRS Mediation EIA 2022 - DRAFT.docx**

Social Value Considerations: **N/A**

Decision Type: **Portfolio Holder**

Subject to Call In: **Yes**

Call In Expiry date: **10/10/2022**

Advice Sought: **Legal, Finance, Procurement, Equality and Diversity**

Legal Advice:

The proposals in this report raise no significant legal issues and are supported.

The recommendations relate to the commissioning of SEND Disagreement Resolution, Mediation Advice and Mediation services through regional commissioning and contracting arrangements led by Lincolnshire County Council. The City Council will call-off from the established framework for future requirements beyond the existing arrangements.

The existing contract for these services is held by Nottingham on behalf of the other partners and is due to end in April 2023. It is proposed to extend the framework for a short term period of 6 months to support the time required to recommission the services. The government's Green Paper that has been published with respect to these types of services may give rise to significant changes to the service requirements and therefore it is not considered appropriate to re-procure these services in the absence of such government direction.

The proposed contract extension is considered permissible in accordance with Article 18.99 of the Council's Contract Procedure Rules on the grounds of it being a justified short-term extension. Beyond this extended period future requirements will need to be secured under the new framework. Advice provided by Dionne Claire Screatton (Solicitor) on 08/09/2022.

Finance Advice:

The financial advice comes in two parts.

1) There is a need to extend the current commissioning arrangements which are run through NCC for a period of 6 months, while the new commissioning arrangements are set up via Lincolnshire County Council. This will not cost a material amount for the council, and it is required for a smooth transition as NCC ceases being the administrator for the current system.

2) The new commissioning system will be administered by another authority. NCC will be purchasing the services on an as needed basis. The financial impact of this is due to be £138K over 5 years.

Losing the administration of this service does not lead to a significant financial impact either as the payments to the Council are just £8K per annum for the service. This is not material.

Advice provided by Clare Rickett, Senior Commercial Business Partner, Children's and Education Advice provided by Clare Rickett (Senior Commercial Business Partner) on 12/09/2022.

Equality and Diversity Advice:

Equalities advice was provided on EIA submitted. All comments have been addressed on EIA. Happy to approve this.

This EIA will need to be updated in the event of any further changes to services. Advice provided by Nasreen Miah (Equality & employability consultant) on 13/09/2022.

Procurement Advice:

This decision relates to the commissioning of SEND Disagreement Resolution, Mediation Advice and Mediation services through regional commissioning and contracting arrangements. It is proposed to secure these services from November 2023 through call off from a framework to be established by Lincolnshire County Council on behalf of the East Midlands regional authorities, through a compliant procurement process. Call offs should be made by the Council in compliance with the terms of the framework. The existing contract for these services is held by Nottingham City Council on behalf of the regional partners and is due to end in April 2023. The proposed extension of this contract for up to 6 months aims to allow time for the re-commissioning of these services to be based on national legislative changes for SEND provision which are anticipated to be implemented in the next year. The government has published a Green Paper and the proposals may impact significantly on the requirements for these services, therefore it is necessary to await the legislative changes in order to specify the new services to be procured. The proposed contract extension is considered permissible in accordance with Article 18.99 of the Council's Contract Procedure Rules, and the duration should be kept to the minimum period possible.

Advice provided by Jo Pettifor (Procurement Team Manager) on 26/08/2022.

Signatures

Cheryl Barnard (Portfolio Holder- Children, Young People, Schools)
SIGNED and Dated: 28/09/2022
Catherine Underwood (Corporate Director for People)
SIGNED and Dated: 23/09/2022

SEND Disagreement Resolution, Mediation Advice and Mediation services

The table below sets out details of the current and proposed contract arrangements for the SEND Disagreement Resolution, Mediation Advice and Mediation services. Services are funded as follows:

	Cost Oct. 2022 - April 2023	Annual cost 2023/24	Annual cost 2024/25	Annual cost 2025/26	Annual cost 2026/27	Cost April – Oct. 2027	Value for Money	
Expected service cost	Previously approved under DDM 3310	Extending existing contract to 31/10/23 = Up to £10,000	Up to £30,000	Up to £30,000	Up to £30,000	Up to £15,000	<p>It is envisaged that the re-commissioning and procurement of the services will provide value for money as follows:</p> <ul style="list-style-type: none"> Services will be re-commissioned at regional level, with a single contract for Disagreement Resolution, Mediation Advice and Mediation services across all ten East Midlands local authorities. This creates economies of scale and reduces management costs. Services are paid based on activity, so we are only paying for the services we use up to the specified value. Costs are indicative based on current usage, and include an estimated increase from 2023 onwards due to the expected increase in activity following the outcome of the SEND Review: Right support, Right place, Right time. Improving citizen's experience of SEND Disagreement Resolution and Mediation services is likely to result in more families having their needs met without recourse to Tribunal, keeping the costs of Tribunal to a minimum as well as benefitting the families. Offering up to a 5 year contract will ensure continuity of delivery and allow time to develop and implement service improvements and efficiencies. Feedback from providers through market testing has strongly indicated that a short contract length has a significant impact on service prices and is a barrier to developing and investing in service improvements. 	
		New contract from 1/11/23 - 31/03/2024 = Up to £15,000						
Cost of re-commissioning/ procurement/ contract management	£1,561	£3,123	£3,123	£3,123	£3,123	£1,516		
Total cost per financial year	£1,561	Up to £28,123	Up to £33,123	Up to £33,123	Up to £33,123	Up to £16,516		
Total expected cost – whole life of contract								<u>Up to £145,568</u>

Equality Impact Assessment Form

[screentip-sectionA](#)

1. Document Control

1. Control Details

Title:	Disagreement Resolution, Mediation Advice and Mediation services (SEND)
Author (assigned to Pentana):	Lisa Lopez, Interim Commissioning lead – Children’s
Director:	Katy Ball – Director of Commissioning & Procurement
Department:	Strategy and Resources
Service Area:	Strategic Commissioning
Contact details:	Email: lisa.lopez@nottinghamcity.gov.uk , Phone: 0115 8762746
Strategic Budget EIA: Y/N	N
Exempt from publication Y/N	N

2. Document Amendment Record

Version	Author	Date	Approved
1	Lisa Lopez	19/08/22	

3. Contributors/Reviewers

Name	Position	Date

4. Glossary of Terms

Term	Description
SEND	Special educational needs and/or disabilities
EHC	Education, Health and Care. EHC Plans have replaced the former 'Statements'.
DRS	Disagreement Resolution Service - all families who disagree with any aspect of their education, health and/or social care provision
Mediation Advice service	For families with an EHC assessment and/or plan, who disagree any aspect of their education, health and/or social care provision. All families wishing to appeal the decision on this provision, at First-tier Tribunal, must first obtain a certificate stating that they have been offered mediation. That mediation offer is either accepted, and mediation takes places (if the issue is not resolved the certificate is issued and the family may choose to appeal) or declined (the certificate is issued and the family may choose to appeal).
Mediation service	For families with an EHC assessment and/or plan, who disagree with any aspect of their education, health and/or social care provision. All families wishing to appeal the decision on this provision, at First-tier Tribunal, must be offered Mediation. If the offer of mediation is declined, or the mediation is unsuccessful, the family may choose to appeal.
Tribunal	Refers to the First-tier Tribunal, part of the Health, Education and Social Care Chamber responsible for handling appeals against local authority decisions regarding special educational needs.

[screentip-sectionB](#)

2. Assessment

1. Brief description of proposal / policy / service being assessed

Nottingham City Council commissions Disagreement Resolution, Mediation Advice and Mediation services, to children/young people with special educational needs and/or disabilities (SEND) and their parent/carers. The Disagreement Resolution Service is for all families who disagree with

any aspect of their education, health and/or social care provision. The Mediation Advice and Mediation services are for families who disagree with any aspect of their Education, Health and Care (EHC) assessment and/or plan. The services are commissioned jointly with the other eight local authorities in the East Midlands region to maximise efficiency. The contracts are due to end 30th April 2022. This EIA pertains to the recommendation for Nottingham City Council to jointly re-commission the Disagreement Resolution, Mediation Advice and Mediation services, across the East Midlands region, with a single provider for the services. The re-commissioning is to be led by Lincolnshire County Council on behalf of all ten local authorities in the East Midlands region. The recommendation is to extend the existing contract by up to 6 months to allow Lincolnshire County Council time to carry out a thorough commissioning and procurement exercise, taking into account any changes that are likely to come into effect following the outcome of the SEND Review: Right support, Right place, Right time.

This service supports the fulfilment of Nottingham City Council's statutory duties towards children/young people with SEND and their parent/carers.

[screentip-sectionC](#)

2. Information used to analyse the effects on equality:

Information on the regional spend on 2019-2022 contract is available here: [Regional spend 2020 - 2022 DRS Mediation](#) and shows that Nottingham City has small numbers of citizens accessing the DRS, mediation advice and mediation services (Nottingham City is responsible for only 7% of the regional spend on DRS, mediation advice and mediation services from 2020-2022).

The new service is informed by the following published documents –

- The Children and Families Act (2014) <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>
- SEND Code of Practice 2015
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf
- Professional Standards for Mediators 2018 (Civil Mediation Council and College of Mediators)
https://www.collegeofmediators.co.uk/sites/default/files/Professional%20Standards%20for%20Mediators%2021-05-2018%20FINAL%281%29_0.pdf
- SEND Review: Right support, Right place, Right time (HM Government 2022)
[SEND Review - right support, right place, right time \(publishing.service.gov.uk\)](#)

Individual engagement will take place with parents/carers and children/young people from across the East Midlands region who have previously accessed mediation services. This engagement is to be led by Lincolnshire County Council. Feedback from the families will be used to inform development of the new service. Families from across the region will be invited to take part in scoring relevant sections of the bids for the contract, and will therefore take an active role in deciding the outcome of the procurement process.

3. Impacts and Actions:

screentip-sectionD	Could particularly benefit X	May adversely impact X
People from different ethnic groups.	<input type="checkbox"/>	<input type="checkbox"/>
Men	<input type="checkbox"/>	<input type="checkbox"/>
Women	<input type="checkbox"/>	<input type="checkbox"/>
Trans	<input type="checkbox"/>	<input type="checkbox"/>
<u>Disabled people (children/young people with SEND) or carers (parent/carers/families).</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pregnancy/ Maternity	<input type="checkbox"/>	<input type="checkbox"/>
People of different faiths/ beliefs and those with none.	<input type="checkbox"/>	<input type="checkbox"/>
Lesbian, gay or bisexual people.	<input type="checkbox"/>	<input type="checkbox"/>
Older	<input type="checkbox"/>	<input type="checkbox"/>
<u>Younger (young people with SEND)</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other (e.g. marriage/ civil partnership, looked after children, cohesion/ good relations, vulnerable children/ adults).	<input type="checkbox"/>	<input type="checkbox"/>
<i>Please underline the group(s) /issue more adversely affected or which benefits.</i>		

<p style="text-align: right;">screentip-sectionE</p> <p>How different groups could be affected (Summary of impacts)</p>	<p style="text-align: right;">screentip-sectionF</p> <p>Details of actions to reduce negative or increase positive impact (or why action isn't possible)</p>
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Families of a child/young person with SEND

Families can find it confusing to have the choice of DRS/mediation providers.

Having a single service simplifies processes for families in an already challenging situation, and is likely to avoid confusion regarding which service to engage with.

Having a single service provider reduces the need for the family to repeat details of their situation, which avoids contributing to their frustration at a difficult time. A single service affords citizens a greater degree of privacy by limiting the number of people they disclose personal information to, and supports ease of access for both citizens and professionals. Having consistency across the region benefits families whose children may be educated in a different local authority area – this is more common for children/young people with SEND. Improving uptake of SEND Disagreement Resolution and Mediation services is likely to result in more families having their needs met without recourse to Tribunal, benefitting both the family and the local authority. The contract will be robustly performance-managed to ensure that the needs of citizens are met without recourse to Tribunal wherever possible.

Young people with SEND

Some young people with SEND, who have capacity and who wish to do so, may disagree with their own EHC plan or assessment. The young person may choose to represent themselves, rather than be represented by a parent/carer or other family member, and may have a different opinion to that of their parent/carer. Young people in this position will benefit from the simplified process in exactly the same way as families, discussed above.

1 Actions will need to be uploaded on Pentana.

- Work in partnership with the other East Midlands local authorities to commission a single consistent service across the East Midlands region (ongoing through the commissioning, procurement and contract management process, led by Lincolnshire County Council).
- Incorporate feedback from consultations with parent/carers who have accessed mediation services in the past, into service development (October 2022 onwards).
- Include parent/carers in developing the service, including taking part in developing the service specification and scoring the bids in the tender process (Summer 2023 – Lincolnshire County Council to lead).
- Work with the successful provider to ensure the service links appropriately to the Nottingham and Nottingham Information, Advice and Support Service for children/young people with SEND and their parent/carers (October 2023 onwards)
- Contract management to ensure expected positive outcomes for children/young people with SEND and their parent/carers are met (October 2023 and ongoing throughout the contract – Lincolnshire County Council to lead).

4. Outcome(s) of equality impact assessment:

<input checked="" type="checkbox"/>	No major change needed	<input type="checkbox"/>	Adjust the policy/proposal
<input type="checkbox"/>	Adverse impact but continue	<input type="checkbox"/>	Stop and remove the policy/proposal

5. Arrangements for future monitoring of equality impact of this proposal / policy / service:

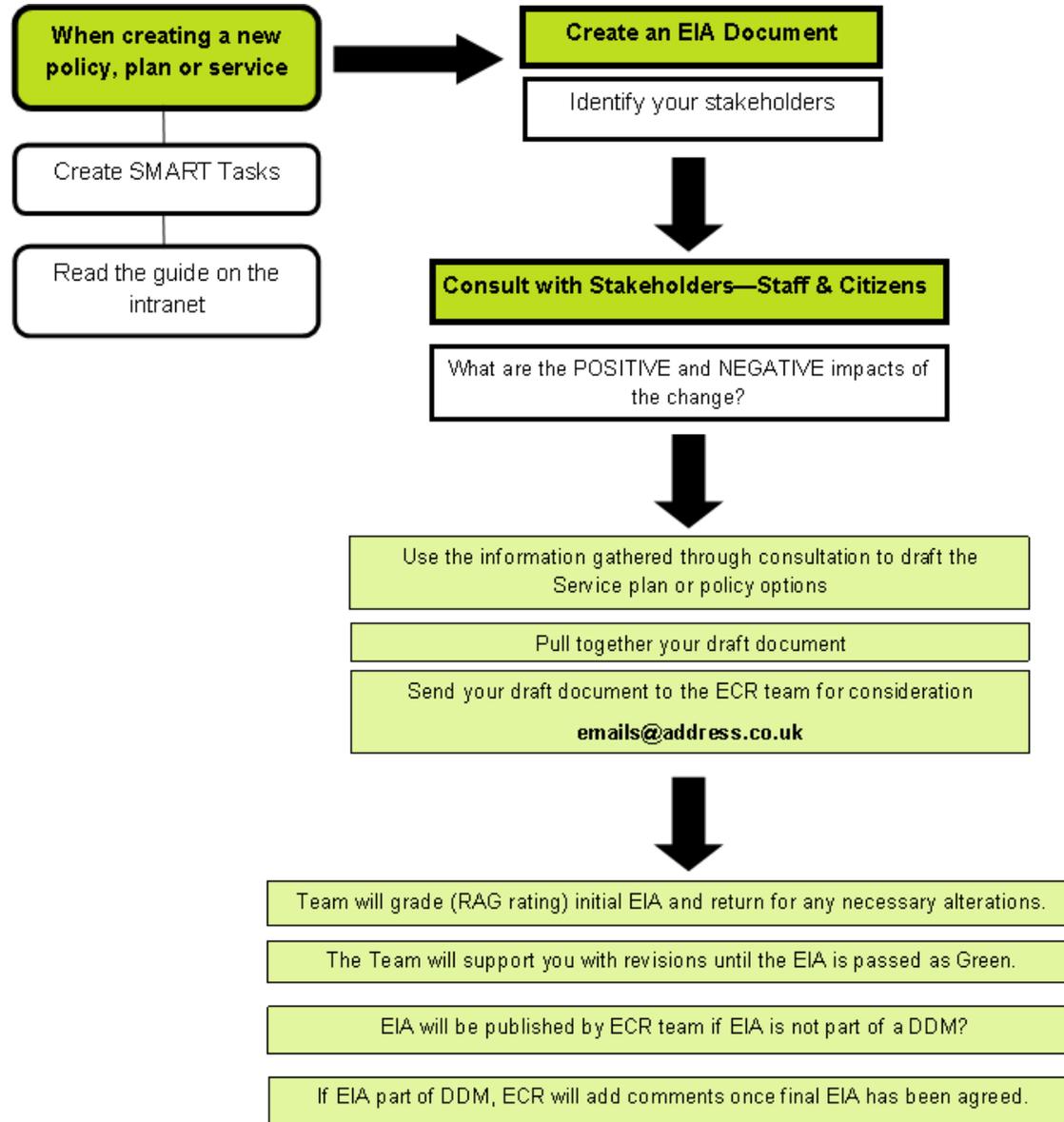
The contract for the proposed new service will be performance-managed by Lincolnshire County Council. The contract will include the requirement to report equalities information as part of the quarterly monitoring returns. This information will be submitted to the Lincolnshire County Council Contracts team. The information will be reviewed as part of the 'Review' phase of the commissioning process after the service has been in place for one year, and then on an annual basis by the Lincolnshire County Council Contracts team as part of standard contract monitoring processes. This EIA will be refreshed in the event of any further changes to services.

6. Approved by (manager signature) and Date sent to equality team for publishing:

<p>Approving Manager: The assessment must be approved by the manager responsible for the service/proposal. Include a contact tel & email to allow citizen/stakeholder feedback on proposals.</p> <p>Manager: Karla Banfield Email: karla.banfield@nottinghamcity.gov.uk Tel: 0115 87 64811</p>	<p>Date sent for scrutiny: 19/08/22 Send document or Link to: equalityanddiversityteam@nottinghamcity.gov.uk</p>
<p>SRO Approval:</p>	<p>Date of final approval:</p>

Before you send your EIA to the Equality and Community Relations Team for scrutiny, have you:

1. Read the guidance and good practice EIA's
<http://intranet.nottinghamcity.gov.uk/media/1924/simple-guide-to-eia.doc>
2. Clearly summarised your proposal/ policy/ service to be assessed.
3. Hyperlinked to the appropriate documents.
4. Written in clear user-friendly language, free from all jargon (spelling out acronyms).
5. Included appropriate data.
6. Consulted the relevant groups or citizens or stated clearly, when this is going to happen.
7. Clearly cross-referenced your impacts with SMART actions.



KEY
EIA— Equality Impact Assessment
ECR— Equality & Community Relations Team
DDM—Delegated Decision Making