

**Name of meeting:** Cabinet  
**Date:** 17 April 2018

**Title of report:** Special Educational Needs and Disability - Information Advice and Support Service (SENDIASS), known as Kirklees Independent Advice Service (KIAS) and its potential integration with Calderdale SENDIASS.

**Purpose of report:** Cabinet are asked to consider the proposal to integrate Kirklees and Calderdale SENDIASS services from September 1<sup>st</sup> 2018 under a Delegation of Functions Agreement (Local Government Act 1972)

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports)?</a>	No If yes give date it was registered
The Decision - Is it eligible for "call in" by Scrutiny?	Yes
Date signed off by Strategic Director & name	Saleem Tariq - 6.4.18
Is it also signed off by the Acting Service Director for Finance IT and Transactional Services?	Eamonn Croston - 6.4.18
Is it also signed off by the Service Director - Legal Governance and Commissioning?	Julie Muscroft - 9.4.18
Cabinet member portfolio	Cllr Masood Ahmed Cllr Viv Kendrick

**Electoral wards affected:** all  
**Ward councillors consulted:** Cllr Ahmed, Cllr Kendrick

**Public or private:** Public

---

## 1. Summary

The Council of the Borough of Kirklees (the “Council”) has a statutory duty to deliver impartial information, advice and support as defined in the Special Educational Needs and Disability (“SEND”) Code of Practice: 0 – 25 years (January 2015)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398815/SEND\\_Code\\_of\\_Practice\\_January\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf);

relating to Part 3 of the Children and Families Act 2014 (S1 2014/16) and associated regulations, including (but not limited to) the following:

- a. The Special Educational Needs and Disability (SEND) Regulations 2014 (S1 2014/1652)
- b. The Special Educational Needs (Personal Budgets) Regulations 2014 (SI 2015/16)
- c. The Special Educational Needs and Disability (Detained Persons) Regulations 2015 (SI 2015/62)
- d. The Children and Families Act 2014 (Transitional and Saving Provisions) (No2) Order 2015 (SI 2014/2270)
- e. The Children and Families Act 2014 (Transitional and Saving Provisions) (Amendment) (No2) Order 2015 (SI 2015/1619).

Kirklees Independent Advice Service (KIAS) is an independent service that offers free, confidential and impartial information, advice and support to parents and carers of children and young people aged 0 – 25 years with SEND, as well as the young people themselves.

Specific qualifications are required in order to carry out the roll including, but not limited to:

Information Advice and Support Services Network (IASSN) Legal Training – Levels 1, 2 and 3. These are accredited by the Bar Standards Board.

A recent vacancy in the team presents us with the opportunity to integrate the service with Calderdale, thereby reducing the need to recruit and train new staff, and to therefore maintain a high quality provision. The team has seen an increased demand since the implementation of the Children and Families Act in 2014, and historically recruitment of appropriately qualified and experienced staff has proved challenging.

## **2. Information required to take a decision**

An analysis of the KIAS and Calderdale SENDIASS workflows shows that demand and provision in Kirklees is twice as great as that in Calderdale. An analysis of data demonstrates that the population KIAS serves is twice as big as its Calderdale counterpart.

Due to recent budget savings in Calderdale, their SENDIASS budget is now approximately half of that of Kirklees, thereby ensuring a clear delineation of provision across the two Local Authorities.

The Kirklees Team comprises:

2 x FTE Grade 8 Case Work Officers  
1 x 0.8 FTE Grade 6 Business Support Officer

The Calderdale Team comprises:

1 X FTE Coordinator - PO 5-8  
1 X Case Work Officer - SO1/2

The Calderdale grading system does not tally with our own, however based on the information to date we would reasonably expect these grades to be slightly higher than our own.

The vacancy currently held by KIAS would be filled by the qualified members of the Calderdale SENDIASS team. The Coordinator of the Calderdale service would coordinate both services.

### **Proposed Delegation of Functions**

The Delegation of Functions would be for an agreed period for five (5) years with an annual review, and a notice period of six (6) months, and would regulate the duties and responsibilities of the two (2) local authorities.

Under this option, and for the duration of the Delegation of the Functions, Calderdale Council would assume and retain the legal responsibilities for the delivery of SENDIASS on behalf of the Council, including liability for legal claims in respect of the Delegated Functions.

### **Data Protection/Information Implications**

Under this report it is proposed that we delegate the function of SENDIASS to Calderdale Council. There would be an initial transfer of data in respect of any live ongoing cases but then afterwards Calderdale will be the sole data controller in respect of these services until such time that the delegation agreement is brought to an end and the service is brought back in-house to Kirklees.

## **Monitoring Arrangements**

Monitoring and liaison arrangements will be addressed within the Delegation of Functions Agreement in order to achieve and maintain a quality service. Appropriate systems would be developed in order to address how service user complaints are handled and who will be responsible for dealing with such complaints.

The Council would have opportunities via the arrangements in the Delegation of Functions Agreement to feedback and make proposals. However final decisions regarding the SENDIASS in Kirklees would remain with Calderdale Council as the party with legal accountability.

## **Property Implications**

There would be a comprehensive Licence to Occupy in place covering Health and Safety implications of Calderdale Council's employees working within Kirklees. There will be no co-location of staff: the Council's current staff will physically remain delivering SENDIASS provision from premises in Dewsbury.

## **Public Sector Equality Duty (PSED)**

Section 149 of the Equality Act (SI 2010/15) places the Council under a duty in carrying out its functions to have regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct which is prohibited by or under this Act; and
- advance equality of opportunity between people with a protected characteristic and those who do not share it; and
- foster good relations between people who share a protected characteristic and those who do not share it.

These are termed 'equality objectives'

Protected characteristics include age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

An Equality Impact Assessment (EIA) has been carried out. Appendix 1 of this report contains the full EIA, which sets out the full impact of the proposed Delegation of Functions to Calderdale Council. The EIA explores the impact of the proposed steps on the equality objectives, which can be summarised as follows:

- A positive impact on children and young people with SEND
- A neutral impact on all other protected characteristics.

Future EIAs may be required at a later stage.

The Public Sector Equality Duty will need to be weaved into the new Delegations of Functions Agreement with Calderdale Council.

## **Workforce Implications – Employment Costs**

As at the date of this report, estimated costs including on-costs are:

GR8	SCP 27	£30,871
GR8	SCP 26	£29,880
GR8	SCP 26	£29,880
Total		£90,631

Under the proposal staff will TUPE to Calderdale Council, but payments will be made to Calderdale to cover the staff costs, so the overall effect to the Council is nil.

## **Workforce Implications – TUPE**

It is proposed that Calderdale Council would be the host authority and therefore the two (2) members of staff from the Council would be subject to a 'relevant transfer' to Calderdale Council under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (TUPE).

TUPE was introduced to meet the obligations under a European Directive to ensure the protection of employee rights when there is a 'transfer of an undertaking'.

A 'relevant transfer' can be either a transfer of an undertaking, business or part of an undertaking or a 'service provision change' under Regulation 3 (1) (b) (i) involving the outsourcing, retender or insourcing of a service where immediately before the transfer there is an 'organised grouping of employees' whose principal purpose is to carry out activities on behalf of the Council and the activity is fundamentally the same and not a single specific event or task of short term duration. The proposed merger would constitute a 'service provision change'.

In circumstances where TUPE applies, the Council's KIAS employees transferred will become employees of the transferee ( Calderdale Council in this case) by virtue of the statutory novation of their employment contracts under TUPE.

All existing rights and liabilities in relation to transferring Council KIAS employees will transfer to Calderdale Council. The position of Council support staff (e.g. Finance, HR, IT) will be subject to further discussion during the implementation phase.

Where TUPE applies, it does so by operation of law and the parties cannot contract out of it.

The intention is that all affected staff will transfer to Calderdale Council on or before September 1<sup>st</sup> 2018. A proposed timeline is attached (Appendix 2).

TUPE includes a duty to inform and potentially consult with Trade Unions in relation to any of their members, who may be affected by the transferor by 'measures' taken in relation to it. If an employer recognises a trade union, they

must consult with that union. Both the Council and Calderdale Council will have to ensure that they comply with these duties. It is proposed that the HR service in the Council and Calderdale Council will work together on a timescale for TUPE and the provision of information and consultation with staff/trade unions.

### **Workforce Implications – Terms and Conditions of Employment**

Employees transferring from the Council to the new merged organisation will TUPE transfer on their existing terms and conditions of employment including continuity of service. The Council and Calderdale Council may have similar, but not the same terms and conditions of employment. Further work to identify the differences around for example single status and any pay differentials will be required as will consideration of the merged organisations human resource policies and procedures.

### **Workforce Implications – Pensions**

As Calderdale Council is also a Local Authority there are no implications in relation to pension provision.

### **Workforce Implications – Trade Unions**

The basis upon which Trade Unions are recognised by both organisations will be in line with the principles and agreements adopted by the Council.

### **Equality**

The Council will also need to take account of the Public Sector Equality Duty and consider the need for an equalities impact assessment for the service in relation to the staffing implications of the proposal (for more on the PSED see above).

### **Contractual/Procurement Implications**

The proposed Delegation of Functions Agreement will not be a supply of services contract, and should therefore fall outside the scope of the Public Regulations 2015 (SI 2015/102) (the 'Procurement Regs').

Notwithstanding the above paragraph, as this proposed arrangement would be deemed to be a collaboration between the two (2) local authorities in accordance with Regulation 12 (7) of the Procurement Regs, the proposed Delegation of Functions Agreement should still be exempt from the Procurement Regs.

Notwithstanding the above paragraphs, any delegation of the Council's functions is subject to Calderdale Council accepting the terms of the delegation and the restrictions referred to in the proposed Delegation of Functions Agreement.

### **3. Implications for the Council**

#### **3.1 Early Intervention and Prevention (EIP)**

KIAS is a key service in the delivery of Early Intervention and Prevention. The team works with families who have a child with SEND and offer advice and support in order to ensure that they are able to access the support they need. This can take a variety of forms from offer impartial advice about school placements to advising parents about the statutory assessment process, and working with a wide range of agencies.

#### **3.2 Economic Resilience (ER)**

Parents tell us about the number of meetings that can take place when you have a child with SEND. Access to the right support at the right time is key in ensuring that parents of children with SEND are able to maintain their own employment. KIAS officers also work with young people and their families and can offer impartial advice and guidance about preparing for adulthood and options for employment.

#### **3.3 Improving Outcomes for Children**

KIAS support parents who have concerns about their child's progress but are unsure what to do. They will link families to relevant services and also support them in finding a school place which will meet their child's needs. They are able to offer expert but impartial advice and guidance about schools and the SEND system.

#### **3.4 Reducing demand of services**

KIAS focuses on early identification of need followed by early intervention and direction to the appropriate level of service or provision, thereby ensuring that a child or young person's needs are met at the earliest time.

#### **3.5 Other (e.g. Legal/Financial or Human Resources)**

Under the proposal staff will TUPE to Calderdale Council, but payments will be made to Calderdale Council to cover the staff costs, so the overall effect to the Council is nil.

### **4. Consultees and their opinions**

An informal consultation has been carried out with the KIAS Stakeholder Steering Group (comprised of parents, alongside colleagues from KIAS, Health and schools) on 6<sup>th</sup> December 2017. No questions were raised at the meeting and they were in favour of the proposal.

A formal consultation will be needed with the KIAS officers subject to TUPE.

Due diligence will be conducted to ascertain any pending or likely claims with Kirklees employees subject to TUPE.

## **5 Next steps**

Carry out a formal consultation with KIAS staff  
Develop the Delegation of Functions Agreement

## **6. Officer recommendations and reasons**

In order for the Local Authority to deliver an efficient SENDIASS service and meet its statutory duties it is recommended that:

- 6.1 Cabinet approve the integration of Kirklees and Calderdale SENDIASS services under a Delegation of Functions agreement from September 1<sup>st</sup> 2018, or a date to be agreed with Calderdale Council in due course.
- 6.2 Cabinet approve to delegate the Council's executive functions under the legislation referred to in Section 1 of this report to the executive of Calderdale Council under Section 9EA of the Local Government Act 2000 (SI 2000/22), together with Regulation 5 of the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2012 (SI 2012/1019).
- 6.3 Cabinet authorise the Service Director of Legal, Governance and Commissioning to negotiate with Calderdale Council the terms and conditions of Delegated Functions Agreement, and to sign and seal the final Delegated Functions Agreement with Calderdale Council and to update the Council's constitution.

The integration would allow for efficiencies and sustainability through the sharing of the coordination and business support roles. It would increase the flexibility of our offer through the addition of the highly qualified Calderdale staff members.

## **7. Cabinet portfolio holder recommendation**

Portfolio Holders welcome any provision that enables additional skilled staff to work with our families and their children.

## **8. Contact officer**

Mandy Cameron - Head of Service - Education Safeguarding and Inclusion  
01484 221000 (Ext 724 93)  
[mandy.cameron@kirklees.gov.uk](mailto:mandy.cameron@kirklees.gov.uk)

## **9. Background Papers and History of Decisions**

Appendix 1: Equality Impact Assessment  
Appendix 2: TUPE timeline.

## **10. Service Director responsible**

Jo-Anne Sanders - Acting Service Director - Learning and Early Support

[jo-anne.sanders@kirklees.gov.uk](mailto:jo-anne.sanders@kirklees.gov.uk)

(01484) 221000

## A guide to equality Impact Assessments (EIAs)

### What are Equality Impact Assessments (EIAs)?

- EIAs are a **tool to help you analyse and make more considered decisions** about changes to service delivery, policy and practice. An EIA will help you to identify how specific communities of interest may be affected by decisions and to consider any potential discriminatory impact on people with **protected characteristics**.
- EIAs can also help to improve or promote equality by encouraging you to **identify ways to remove barriers and improve participation** for people with a protected characteristic.

### Why do we need to do Equality Impact Assessments (EIAs)?

- Although not a mandatory requirement, EIAs provide important **evidence** of how we have considered the implications of service and policy changes and demonstrate how we have met our legal Public Sector Equality Duty (Equality Act 2010).
  - The three main elements of the **Public Sector Equality Duty** are:
    - ✓ Eliminating discrimination
    - ✓ Promoting equality of opportunity
    - ✓ Fostering good relations
  - In fulfilling our Public Sector Equality Duty we must ensure that we demonstrate that we have followed a number of key **principles** (based on previous case law):
    - ✓ Knowledge
    - ✓ Timeliness
    - ✓ Real consideration
    - ✓ Sufficient information
    - ✓ No delegation
    - ✓ Review
    - ✓ Proper record keeping
  - We need to provide evidence that we have given **due regard to any potential discriminatory impact on people with protected characteristics** in shaping policy, in delivering and making changes to services, and in relation to our own employees.
  - We must always consider whether a service change, decision or policy could have a discriminatory impact on people with protected characteristics, not just any impact that is the same as it would be for everyone else.
  - The EIA tool allows us to **capture, demonstrate and publish our rationale** of how we have considered our communities and legal responsibilities under the Public Sector Equality Duty and is our main way of providing the evidence needed.
- **But above all, EIAs are about understanding and meeting the needs of local people and supporting us to deliver our vision for Kirklees.**

### When do we need to do Equality Impact Assessments (EIAs)?

- Whenever you plan to **change, introduce or remove** a service, activity or policy.
- At the **VERY BEGINNING** of any process of:
  - ✓ Budget setting
  - ✓ Service review (including changes to employment practice)
  - ✓ Planning new projects and work programmes
  - ✓ Policy development and review
  - ✓ Procurement or commissioning activity

### Who should do it?

- Overall responsibility for EIAs lies at a **service** level. A lead officer should be appointed from the service area that is making a proposal and all decisions should be approved by the senior management team in that service.
- Those directly affected (partners, stakeholders, voluntary groups, communities, equality groups etc) should be engaged with as part of the process.

### How should we do it?

- Our EIA process has two stages:  
Stage 1 - initial screening assessment  
Stage 2 - further assessment and evidence

Move to next  
section

## EIA STAGE 1 – SCREENING TOOL (initial assessment)

The purpose of this screening tool is to help you consider the potential impact of your proposal at an early stage.

Please give details of your service/lead officer then complete sections 1-3:

- 1) What is your proposal?
- 2) What level of impact do you think your proposal will have?
- 3) How are you using advice and evidence/intelligence to help you?

You will then receive your stage 1 assessment score and advice on what to do what next.

<b>Directorate:</b>	<b>Senior Officer responsible for policy/service:</b>
Learning and Early Help	Mandy Cameron
<b>Service:</b>	<b>Lead Officer responsible for EIA:</b>
SENDIASS	Mandy Cameron
<b>Specific Service Area/Policy:</b>	<b>Date of EIA (Stage 1):</b>
SEND	29.12.17

[Go back](#)

[Move to next section](#)

1) WHAT IS YOUR PROPOSAL?	Please select YES or NO
To <b>introduce</b> a service, activity or policy (i.e. <b>start</b> doing something)	NO
To <b>remove</b> a service, activity or policy (i.e. <b>stop</b> doing something)	NO
To <b>reduce</b> a service or activity (i.e. <b>do less</b> of something)	NO
To <b>increase</b> a service or activity (i.e. <b>do more</b> of something)	NO
To <b>change</b> a service, activity or policy (i.e. <b>redesign</b> it)	YES
To <b>start charging</b> for (or increase the charge for) a service or activity (i.e. ask people to <b>pay</b> for or to pay more for something)	NO
<b>Please briefly outline your proposal and the overall aims/purpose of making this change:</b>	
<p>ve to a shared SENDIASS service with Calderdale to enable greater flexibility and economies of sc</p>	

**Go back**

**Move to next section**

2) WHAT LEVEL OF IMPACT DO YOU THINK YOUR PROPOSAL WILL HAVE ON...		Level of Impact
		Please select from drop down
Kirklees <b>employees</b> within this service/directorate? (overall)		Neutral
Kirklees <b>residents</b> living in a specific ward/local area?		Neutral
Please tell us which area/ward will be affected:		all
<b>Residents</b> across Kirklees? (i.e. most/all local people)		Neutral
Existing <b>service users</b> ?		Neutral
Each of the following <b>protected characteristic groups</b> ?		Please select from drop down
<i>(Think about how your proposal might affect, either positively or negatively, any individuals/communities. Please consider the impact for both employees and residents - within these protected characteristic groups).</i>		
...age	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Positive
...disability	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Positive
...gender reassignment	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...marriage/ civil partnership	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...pregnancy & maternity	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...race	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...religion & belief	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...sex	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...sexual orientation	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral

3) HOW ARE YOU USING ADVICE AND EVIDENCE/INTELLIGENCE TO HELP YOU?		Please select YES or NO
Have you taken any <b>specialist advice</b> linked to your proposal? (Legal, HR etc)?		YES
Do you have any <b>evidence/intelligence</b> to support your assessment (in section 2) of the impact of your proposal on...	...employees?	YES
	...Kirklees residents?	NO
	...service users?	YES
	...any protected characteristic groups?	YES
Record of demand for services across a full year - level of service required, complexity of case work - to ascertain what will be needed to maintain existing levels of service moving forward.		
		Please select from drop down
To what extent do you feel you are able to mitigate any potential negative impact of your proposal on the different groups of people outlined in section 2?		FULLY
To what extent do you feel you have considered your Public Sector Equality Duty?		FULLY

**Go back**

**Move to next section**

## STAGE 1 ASSESSMENT

IMPACT	RISK
Based on scoring of 1) and 2)	Based on scoring of 2) and 3)
0	12
<b>SCORE (calculated)</b> Max = - / + 32	<b>SCORE (calculated)</b> Max risk = - / + 40

You need to move on to complete a Stage 2 assessment if:

The final Impact score is negative and or the Risk score is negative.

Go back

# Appendix 2

## TUPE Timeline Overview

