

Report of Strategy and Commissioning, Office of the Director of Public Health

Report to Director of Public Health

Date: 12th December 2014

Subject: Approval to waive Contract Procedure rules 9.1 and 9.2 to enter into a Contract with Leeds Community Healthcare NHS Trust without seeking competition for delivery of the Family Nurse Partnership (FNP) and Health Visitor Services (HV).

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s):		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

1. The transfer of funding and contract responsibility of 0-5 years public health services from NHS England (NHSE) to Local Authorities is due to take place on 1 October 2015. This is the final part of the full transfer of public health responsibilities to Local Government following the initial transfer of 70 public health contracts in 2013.
2. The services comprise the Health Visitor service (which works alongside Children's Centres to comprise the Leeds Early Start Service) and the Family Nurse Partnership programme which together deliver the national 0-5 Healthy Child programme in Leeds.
3. These services are currently delivered by Leeds Community Healthcare NHS Trust and commissioned by NHSE on a contract which expires on 31st March 2015.
4. From 1st April 2015 NHSE will enter into a short term six month contract with Leeds Community Healthcare NHS Trust that will be jointly managed with the Council. From 1st October 2015 a new contract will be entered into between the Council and Leeds Community Healthcare NHS Trust.
5. This decision to waive Contracts Procedure Rules 9.1 and 9.2 for LCC to enter into a contract without competition with LCH NHS Trust for HV and FNP services is recommended to ensure continuity of services critical to promoting child public

health and to provide a period of stability to inform strategic review of the services and any future re-procurement decisions.

Recommendations

The Director of Public Health is recommended to approve the waiver of Contracts' Procedure Rules 9.1 and 9.2 to establish contracts with Leeds Community Healthcare NHS Trust without seeking competition for provision of the following services, on the following terms:

- The Family Nurse Partnership programme commencing 1st October 2015 to 31st March 2017 with an option to extend for two 12 month periods.
- The Leeds Health Visiting service as part of the integrated Early Start Service commencing 1st October 2015 to 31st March 2017 with an option to extend for two 12 month periods.

Cost per annum: Health Visitor Service £9,142,000

Family Nurse Partnership £814,000

1 Purpose of this report

- 1.1 The purpose of this report is to seek approval to waive Contracts' Procedure Rules 9.1 and 9.2 to establish a contract between the Council and Leeds Community Healthcare NHS Trust without seeking competition for provision of services to deliver the 0-5 Healthy Child Programme in response to the transfer of commissioning responsibilities from NHS England (NHSE) to Local Authorities.

2 Background information

- 2.1 The Health and Social Care Act 2012 put Local Authorities in charge of driving health improvement in the local population. On 1st April 2013 around 70 public health contracts delivering services to adults and children, valued at approximately £31m, transferred to the Council.
- 2.2 From October 2015, funding and contract responsibility for 0-5yrs public health services will transfer from NHSE to the Council.
- 2.3 Leading up to the 1st April 2015 a period of co-commissioning will take place, led by NHSE in partnership with the Office of the Director of Public Health within the Council. The transfer to full commissioning by the Council takes place from 1st October 2015.
- 2.4 Guidance for Commissioners issued by NHSE in November 2014 suggested two options are available to Local Authorities to achieve the transfer. The first being a joint 12 month contract from 1st April 2015 held by the Council and NHSE which would transfer or 'novate' across to the Council in October 2015. The second is to establish a short term NHSE Contract from 1st April 2015 and a separate Council contract from 1st October 2015.

- 2.5 Consultation has undertaken with the Council Procurement Unit and Legal Services to identify the most suitable option to achieve a stable transfer of services in Leeds. Details of the how the commissioning decision was made are provided in further detail within this report.
- 2.6 The services which will transfer comprise the Leeds Health Visiting service and the Family Nurse Partnership programme which together deliver the national 0-5 Healthy Child Programme. These services are currently provided by Leeds Community Healthcare NHS Trust.
- 2.7 The Healthy Child Programme is the universal clinical and public health programme for children and families from pregnancy to 19 years of age. It offers every child a schedule of health and development reviews, screening tests, immunisations, health promotion guidance and support tailored to their needs. The 5-19 elements of the programme are led by the Specialist Community Public Health Nursing Service 5-19 (School Nursing) which is already commissioned by the Council.
- 2.8 The Health Visiting Service offers four tiers of support, ranging from Tier 1 Community work to Tier 4 targeted partnership support offered to families with complex and/or high support needs. The Family Nurse Partnership delivers an enhanced programme of support to first time parents aged 19 years and under, from early in pregnancy until the child reached 2 years of age, after which the parent reverts back to the regular Early Start Service.
- 2.9 The Leeds Early Start Service is a locally developed service which delivers an integrated model of service delivery between Health Visiting and Children's Centres. It uses inter-agency working and a collaborative approach involving parents in order to jointly achieve outcomes for child wellbeing.
- 2.10 The transfer of commissioning responsibilities into the Council provides an opportunity to refresh the local integrated Early Start Service Specification, and to ensure it fully reflects the national Health Visitor service specification. The forward commissioning intentions have also provided the opportunity to highlight emerging priorities including the Families First programme, tackling domestic violence, development of the eRed Book and contribution to perinatal education programmes (Preparation for Birth and Beyond). Work to update the specifications has been carried out by officers within Public Health and Children's Services.
- 2.11 Budget information was shared by NHSE with the Council in September 2014. At the time the information from NHSE was acknowledged as accurate by the Council subject to final confirmation.
- 2.12 Draft allocations were published in December 2014 which indicate existing funding levels will continue from April 2015 to April 2016 with the intention to 'lift and shift' funding into Local Authorities on existing terms.
- 2.13 Agreement has now been reached between NHSE West Yorkshire Area Team, the current provider and the Council that the levels of funding in the draft allocations correlate with existing spend, and this is the correct level of funding which ought to be transferred to the Council.

- 2.14 Funding includes an element of performance related payment for meeting specified quality targets (CQUIN – Commissioning for Quality and Innovation) of £244,000 per annum. Half of this amount (£122k) is included in the 6 month draft allocation for the period 1st October 2015 to 31st March 2016. It has been identified that this additional funding is a core element of the funding for the service and in future this will therefore be included within the core funding stream.
- 2.15 NHSE has made available additional funding resource of £30,000 per annum to support the additional commissioning and contract management costs which will be incurred by Local Authorities when the services transfer.

3 Main issues

- 3.1 A key focus of the transfer of commissioning for the 0-5 Health Visitor and Family Nurse Partnership programme is to ensure continuity of service and a seamless transition of the commissioner role with no negative impact on the service provider and service users.
- 3.2 These services delivered to children and families, some of who may be vulnerable and at risk, make a considerable contribution to promoting public health and longer term outcomes for children. These priorities have provided the main reference for decisions regarding the transfer and commissioning arrangements.
- 3.3 The Guidance for Commissioners and suggested options described in 2.4 were discussed with the Council's Procurement and Legal departments and with key officers within Public Health.
- 3.4 It was decided that the first option of a 12 month joint NHSE contract commencing 1st April 2015 did not provide sufficient time to review and potentially re-procure the services upon expiry of the contract on 31st March 2016. Assessments of the resource and time required to gather performance information and conduct a strategic review to inform a re-procurement exercise are in the region of 24 months.
- 3.5 This option also presents a risk of instability to delivery of the services and impacting the welfare of vulnerable children with no available option to extend the contract in March 2016 or re-procurement strategy agreed.
- 3.6 The preferred commissioning option is a short term NHSE contract from 1st April 2015 to 30th September 2015, followed by a new Council contract commencing 1st October 2015.
- 3.7 The contract specification for the NHSE contract from April 2015 has been revised and co-commissioned by officers in NHS, Public Health and Children's Services. The contract will be managed by NHSE from 1st April 2015 with full contract management responsibility transferring to the Council from 1st October 2015.
- 3.8 To provide a meaningful period of contract management from 1st October it is recommended the initial contract period is for 18 months. Performance information gathered during this period will inform a strategic review of 0-5 public health services across the city and help inform future decisions around remodelling and re-commissioning.

- 3.9 The Council contract will have two 12 month extension periods which are available to apply subject to satisfactory demonstration of value for money, performance and quality of the services.
- 3.10 The six month NHSE contract from 1st April 2015 will take the form of the 2015/16 NHS Standard Contract. The Council contract commencing 1st October 2015 will use the Local Government Health Contract similar to that used for the previous transfer of public health contracts into the Council completed in 2013.
- 3.11 Revised specifications for the services are being agreed between the current service provider, NHSE and the Council and this specification will form the NHSE contract and the Council contract from 1st October 2015.
- 3.12 Both contracts will be formally signed on or around 20th February 2015 in accordance with NHSE practices in order to provide assurance to the service provider of the longer term stability of the services from 1st October 2015.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Consultation has been carried out by officers within Public Health and the Council's Procurement and Legal departments to seek guidance on the available options and to ensure compliance with the Council's Contract Procedure Rules.
- 4.1.2 The Executive Member for Health and Wellbeing has been appraised of the transfer process and preferred contract option.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 An Equality Impact Assessment screening paper has been completed in respect of this decision and the assessment concluded that there is no negative impact on protected characteristics, diversity or community cohesion by achieving the transfer of services into the Council.
- 4.2.2 The key focus of the transfer process is to sustain continuity and prevent any disruption to service for children and families. Service specifications have been maintained and where possible enhanced to improve existing pathways and integration of services and promote access for children and families.
- 4.2.3 The Early Start Service offers a universal service to all children and families, supported by a process of assessment and early support for those with any added vulnerability (proportionate universalism). The Family Nurse Partnership programme specifically delivers to young first time mothers, and is based on evidence that it can improve outcomes for this vulnerable group.

4.3 Council policies and City Priorities

- 4.3.1 The Leeds Early Start Service, incorporating the Health Visiting Service, contributes to reducing health inequalities and promoting wellbeing and the Best Start from conception to the first 2 years of the child's life.

4.3.2 These interventions also deliver wider economic and social benefits through prevention and early intervention and are essential to supporting vulnerable children and families across the city. They contribute to the strategic aims within the Leeds Joint Health and Wellbeing Strategy 2013-2015, Leeds Children and Young Peoples Plan 2014 and Best Council Plan.

4.4 Resources and value for money

4.4.1 Draft funding allocations indicate that existing levels of funding will be transferred from NHSE to Leeds City Council to cover the period 1st October 2015 to 31st March 2016. Thereafter, the funding for 0-5 public health services will be rolled into the Public Health grant. Contract management will take place during the short term initial contract and continue when full transfer occurs on 1st October 2015 to assess value for money during the lifetime of the contract.

4.4.2 Work has begun through discussions with colleagues in Public Health and Children's Services to put in place the necessary resource to contract manage the new Public Health service from October 2015. The allocation from NHSE includes a contribution of £30k recurrent per annum towards Local Authority commissioning of this Public Health service.

4.5 Legal Implications, Access to Information and Call In

4.5.1 This is a key decision and subject to call-in and there are no grounds for keeping the contents of this report confidential within the Council's Access to Information Rules.

4.5.2 Awarding a contract directly to Leeds Community Healthcare NHS Trust in this way could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, in that it has not been wholly transparent as the opportunity is not being advertised and at least three written tenders invited. However, due to the comments set out in section 3 above this risk appears low.

4.5.3 As these are Part B Services for the purposes of the Public Contracts Regulations 2006 ("Regulations"), and therefore not subject to the full procurement regime, the risk of challenge identified at paragraph 4.5.2 is reduced by the publication of a Voluntary Transparency Notice in OJEU following the decision to award the contract and allowing the 10 day publication period to identify any challenges that may be made.

4.5.4 If no challenges are made a claim for ineffectiveness cannot be brought. Further, publication of the Voluntary Transparency Notice commences the notice period for any potential claim for breach of the Regulations, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach had occurred.

4.5.5 The Director of Public Health has considered this and, due to the nature of the services being delivered and the requirement to be physically located in the City of Leeds, is of the view that the scope and nature of the services is such that it would not be of interest to contractors in other EU member states.

4.5.6 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.

4.5.7 Although there is no overriding legal obstacle preventing the waiver of CPR 9.1 & 9.2, the above comments should be noted by the Director of Public Health in making his final decision as to the award of this contract being the best course of action for the Council. The Director should be satisfied that this represents best value for the Council.

4.6 Risk Management

4.6.1 In addition to the risks highlighted above, risks associated with the transfer process have been discussed with officers within the Council's Procurement and Legal departments. It has been agreed that the preferred option reduces the risk of interruption to service delivery.

4.6.2 Discussion has taken place around the resource and time requirements to achieve a successful and meaningful re-procurement of the services in respect of the alternative option of the 12 month NHSE contract expiring in March 2016. It was decided that this option also presents risks to service disruption and the ability to make any recommendations to re-procure within the short timescales.

4.6.3 Risks associated with the preferred option relate to the award of contract to the existing provider without procurement or competition. These may be mitigated with consideration to the circumstances of the transfer, being compulsory as a consequence of the enactment of the Health and Social Care Act and a requirement of all Local Authorities.

4.6.4 The main priorities of the transfer process are to ensure stability and continuity in the services during the transition whilst providing a sufficient period of contract management to measure performance and inform re-procurement decisions. These have been balanced to reach the recommendation to enter into a contract period of sufficient length which meets these aims.

4.6.5 Funding for the period 2015/16 has been published as a draft allocation, and will be confirmed during January 2015. However details of the longer term funding settlement for the Public Health grant for 2016/17 are not currently known. In the event of any reduction in future funding settlement negotiations with the provider will be required to ensure services are maintained along with any agreed contract variation.

5 Conclusions

5.1 The transfer of commissioning responsibilities for the 0-5 Healthy Child Programme to the Council from NHSE is the conclusion of the transfer of all public health responsibilities commenced in 2013.

- 5.2 Guidance on achieving the transfer issued by NHSE has been considered by officers within the Council to identify the most suitable way forward in consideration to the aims of a smooth transfer and sustaining stability within existing services.
- 5.3 Consultation has been made to officers within Procurement and Legal departments within the Council regarding the preferred option and it has been confirmed that a waiver of Contract Procedure Rules 9.1 and 9.2 should be sought prior to the transfer of this service to the Council.
- 5.4 Draft allocations indicate that existing funding for the services will be maintained until at least 2016/17 and the funding details have been agreed with the current service provider.
- 5.5 The transfer will enable best practice developed locally through the Early Start Programme to be integrated with the National Service Specifications and included in the new contract specifications.
- 5.6 A key rationale for the preferred option of establishing a longer term separate Council contract is to provide the necessary stability and time period to contract manage and review the service ahead of any future remodelling and re-procurement.
- 5.7 NHSE funding has been made available to contribute towards the additional commissioning resource of the transfer within the Council.

6 Recommendations

- 6.1 The Director of Public Health is recommended to approve the waiver of Contracts' Procedure Rules 9.1 and 9.2 to establish contracts with Leeds Community Healthcare NHS Trust without seeking competition for provision of the following services, on the following terms

- The Family Nurse Partnership programme commencing 1st October 2015 to 31st March 2017 with an option to extend for two 12 month periods.
- The Leeds Health Visiting Service as part of the integrated Early Start Service commencing 1st October 2015 to 31st March 2017 with an option to extend for two 12 month periods.
- Cost per annum: Health Visitor Service £9,142,000

Family Nurse Partnership £814,000

7 Background documents¹

- 7.1 Equality, Diversity, Cohesion and Integration screening paper.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.