

**Report of Public Health Manager**

**Report to Director of Public Health**

**Date: 10<sup>th</sup> October 2016**

**Subject: A report to request the waiver of Contract Procedure Rules 8.1, 8.2, 9.1 and 9.2 to directly commission third sector providers to deliver healthy child pathway services**

Are specific electoral wards affected? If relevant, name(s) of ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

- 1 This report seeks approval to award contracts directly to three third sector providers (Health for All, Henry and Women’s Health Matters) to continue to deliver healthy child pathway services (including breast feeding peer support, Henry training and young mums support) for a further 2 years. This additional time is required to enable Public Health to work with Children’s Services and the Projects, Programmes and Procurement Unit (PPPU) to undertake a review and re-commissioning project of the entire Healthy Child Pathway commissioned services. The aim of this review is to deliver the best quality and value for money long-term solution for the Council and the citizens of Leeds.
- 2 As a direct result of the Public Health Grant cuts announced by the Government in 2015, this report also seeks a reduction in the contract value of these new contracts in line with the Public Health contracts strategy.

**Recommendations**

3. The Director of Public Health is recommended to approve:
  - the waiver of Contract Procedure Rules 8.1 and 8.2 (intermediate value procurements); 9.1 and 9.2 (high value procurements) to award new contracts to the third sector providers as

defined in Appendix 1 to commence on the 1<sup>st</sup> April 2017 and expire on the 31<sup>st</sup> March 2019 (with the option to extend for a period of up to 24 months).

## **1 Purpose of this report**

- 1.1 The purpose of this report is to seek approval from the Director of Public Health to waive Contract Procedure Rules (CPRs) 8.1, 8.2, 9.1 and 9.2 to directly award new contracts to the existing third sector providers who deliver services under the Public Health's Strategic commissioning priority – Healthy Child Pathway. This will allow sufficient time for Public Health to work with Children's Services to undertake a strategic review and re-procurement of the entire healthy child pathway.

## **2 Background information**

- 2.1 On 1<sup>st</sup> April 2013, the Leeds Primary Care Trust (PCT) ceased to exist and the Public Health function transferred to Leeds City Council as set out in the Health and Social Care Act 2012. Through a Statutory Instrument under the Act, functions, resources, ring-fenced budget and assets and liabilities, including contracts, transferred to the Council via two Transfer Schemes.
- 2.2 In order to ensure service continuity and compliance with the Council's CPRs, Public Health have worked with PPPU to ensure all contracts were reviewed and providers were formally awarded contracts based on the Council's terms and conditions.
- 2.3 The third sector contracts were for one year from 1<sup>st</sup> April 2014 with the option to extend for a further period of 2 x 12 months (maximum of 3 years in total). Both of these extension periods have been taken up and the contracts are due to expire on 31<sup>st</sup> March 2017. These contracts include Henry training (Henry) and young mums support (Women's Health Matters). Full details are provided in Appendix 1.
- 2.4 The contract for the breastfeeding peer support service with Health for All was not part of the original waiver report that approved all the new public health contracts. The contract was originally established and awarded by the PCT but did not transfer to the Council as part of due diligence process.
- 2.5 A formal contract on the Council's terms and conditions was awarded in January 2014 and this contract (YORE-9HET74) was for one year with the provision to extend for a further one plus one years. This contract expired on 31<sup>st</sup> January 2016 and was not extended at the time due to the uncertainty regarding the Government cuts to the public health grants. A new contract (A85F F6CSRG) was awarded in April 2016 by a waiver of CPRs to align this contract with the other Public Health contracts (see Appendix 1).
- 2.6 Public Health developed strategic commissioning priorities to enable a structured and staged approach to re-commissioning, which can be resourced effectively in order to obtain the best quality and value for money solution for the Council and the citizens of Leeds. Two service reviews and re-commissioning projects for Locality Community Health Development and Leeds Integrated Healthy Living Service are already well underway. The strategic review for the Healthy Child Pathway is due to start imminently in partnership with Children's Services and PPPU.
- 2.5 As a direct result of the Public Health grant cuts announced by the Government in 2015, the Public Health Directorate has developed a contracts strategy to make the required cuts. A 5% cut was made to all Public Health directly commissioned contracts with third sector providers, which were extended using the last available extension provision (1<sup>st</sup> April 2016 - 31<sup>st</sup> March 2017). This report is to note that a further 5% cut in the annual value of the interim contracts will be applied. Full details are provided in Appendix 1.

### **3 Main issues**

#### **Reason for contracts procedure rules waiver**

- 3.1 The existing contracts with third sector providers to deliver healthy child pathway services are due to expire on 31<sup>st</sup> March 2017. These services will be part of the service review and re-procurement for the healthy child pathway, which may be subject to a competitive tendering exercise under the category management approach. This review, procurement and service mobilisation is expected to take 2 years due to the complex nature of the services, the large number of partners involved and the need for comprehensive stakeholder engagement. New contracts are therefore required for these healthy child pathway services (see Appendix 1 for further information) as an interim measure to ensure service continuity during the 2 year period. Extension provision is included within the new contracts in case there are unforeseen delays within the re-commissioning project.

#### **Consequences if the proposed action is not approved**

- 3.2 Continuity of these services is necessary to maintain progress towards meeting the public health responsibilities of the Council, and towards meeting the priorities set out in the health and wellbeing strategy. If these services do not continue, there would be disruption to service users and a risk to the positive outcomes for new families from these proven services. The healthy child pathway review, re-procurement and service mobilisation will not be completed until April 2019 at the earliest and therefore this decision is sought to ensure that there is no disruption to these services until this review is completed.

#### **Advertising**

- 3.3 There is no proposal to undertake a formal tendering exercise for these services due to the reasons set out in this report.

### **4 Corporate considerations**

#### **4.1 Consultation and engagement**

- 4.1.1 Consultation about the need for new contracts and the strategic public health commissioning priorities has been undertaken with public health staff, the Executive Member for Health, Wellbeing and Adults and the providers.
- 4.1.2 Consultation and engagement has taken place with all third sector providers, and contract managers will continue to provide ongoing support which also includes discussions surrounding the reduced new contract values.
- 4.1.3 PPPU has also been provided the opportunity to comment on this waiver report.

#### **4.2 Equality and diversity/cohesion and integration**

- 4.2.1 Screening assessments have been undertaken in respect to the impact of the cut in contract value on the services being provided and the organisations themselves. There is no impact in respect to this report.

#### **4.3 Council policies and best council plan**

- 4.3.1 Continuity of the identified services supports the delivery of key public health priorities, which will help to deliver:

- Vision for Leeds 2011 to 2030
- Joint Health and Wellbeing Strategy 2013 – 15
- Best Council Plan 2015 – 20
- The NHS Five Year Forward View and NHS Planning Guidance

#### **4.4 Resources and value for money**

- 4.4.1 The costs of these interim contracts will be met by revenue funding by the Public Health directorate. In the light of the cuts to the Public Health grant, there will be a further 5% reduction to the contract values (see Appendix 1).
- 4.4.2 The new contracts are required to support the review of the healthy child pathway services and to ensure there is continuity of service provision until the service review is completed and the new arrangements in place.

#### **4.5 Legal implications, access to information and call-in**

- 4.5.1 The decision is a significant operational decision and is not subject to call-in. The report does not contain any exempt or confidential information.
- 4.5.2 Awarding contracts directly to these providers in this way could leave the Council open to a potential challenge from other providers to whom this contract could be of interest. These contracts fall within social and other specific services under the Public Contracts Regulations 2015 (Regulations). The total value of these three contracts is below the threshold set down by the Regulations for social and other specific services. However, it should be noted that case law suggests that the Council should always consider whether contracts of this value should be subject to a degree of European wide advertising. It is up to the Council to decide what degree of advertising is appropriate.
- 4.5.3 The Director of Public Health has to consider the nature of the services being delivered, the requirement to physically deliver the services in Leeds and relatively low value of the contracts being offered, and is satisfied that it would not be of interest to providers in other EU member states.
- 4.5.4 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.
- 4.5.5 Although there is no overriding legal obstacle preventing the waiver of CPR 8.1, 8.2, 9.1 and 9.2, the above comments should be noted. In making their final decision, the Director of Public Health should be satisfied that the course of action chosen represents best value for the Council.

#### **4.6 Risk management**

- 4.6.1 Aside from the risk of service disruption and the risk of challenge detailed in section 4.5 above, which is mitigated by the circumstances described, there are no specific risks with respect to this report. The interim contracts have an extension provision in case there

are any delays to the review and re-procurement of the healthy child pathway arrangements.

## **5 Conclusions**

- 5.1 The healthy child pathway review, procurement and service mobilisation is expected to take 2 years to complete due to the complex nature of the services, the large number of partners involved and the need for comprehensive stakeholder engagement. As the existing contracts expire on 31<sup>st</sup> March 2017, there is a need to award new contracts to the existing third sector providers (Health for All, Henry and Women's Health Matters) to ensure that there is no disruption to these services.
- 5.2 The award of new contracts without competition the third sector providers listed in Appendix 1 will be by a waiver of CPRs 8.1 and 8.2 (intermediate value procurements); 9.1 and 9.2 (high value procurements).
- 5.3 These new contracts will be offered on the Council's standard terms and conditions; a review of performance measures will take place and implemented to ensure robust performance monitoring continues to take place. This will ensure that the Council continues to receive value for money.

## **6 Recommendations**

- 6.1 The Director of Public Health is recommended to approve:
  - the waiver of Contract Procedure Rules 8.1 and 8.2 (intermediate value procurements); 9.1 and 9.2 (high value procurements) to award new contracts to the third sector providers as defined in Appendix 1 to commence on the 1<sup>st</sup> April 2017 and expire on the 31<sup>st</sup> March 2019 (with the option to extend for a period of up to 24 months).

## **7 Background documents**

Appendix 1 – Contract details

### Third sector providers – new interim contracts

Provider	Contract Name	Existing Contract reference	End Date	2015-16 Contract Value	2016-17 % cut	2016-17 cut (£)	2016-17 Contract value	2017-18 % cut	2017-18 cut (£)	2017-19 Contract value per annum	Contract length	Extension provision
Health for All	Breastfeeding peer support service	A85F-F6CSRG	31/03/2017	£28,000	5%	£1,400	£26,600	5%	£1,330	£25,270	2 years	Up to 2 years
Henry	Can't wait strategy	YORE-9DEM75	31/03/2017	£27,400	5%	£1,370	£26,030	5%	£1,300	£24,730	2 years	Up to 2 years
Women's Health Matters	Can't wait strategy - breastfeeding (YUMS)	YORE-9DEMCE	31/03/2017	£15,000	5%	£750	£14,250	5%	£710	£13,540	2 years	Up to 2 years