

**Report of Interim Deputy Director, Integrated Commissioning ASC, LCC & NHS
Leeds NCCG**

Report to Director of Adult social Services

Date: 15 February 2017

Subject: Provision of Mental Health Services

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

Summary of main issues

1. The existing contracts with Leeds Mind, Touchstone, Community Links, Women's Counselling and Therapy Service and Leeds Survivor Led Crisis Service, were entered into following the approval of a waiver report by the Director of Adult Social Services in January 2015. The contracts end on the 31 March 2017.
2. Following a review of the way mental health services are delivered by the various agencies within the City it is proposed that new contracts are required with the existing providers in order to allow for continuity of these essential services whilst a procurement exercise to be undertaken during 2017/18 for the provision of a Community Based Mental Health Service (CBMHS).
3. A review of the services provided at Oakwood Hall provided by Community Links would also be undertaken during the time of the new contract.
4. In order to implement this course of action there are a number of decisions that need approval and the Director of Adult Social Services is recommended to approve the following:

Recommendations

1. For the Director of Adult Social Services to waive Contract Procedure Rules (CPRs) 9.1 and 9.2 using the authority set out in CPR 1.3 to enter into an interim contract with Women's Counselling and Therapy Service (WCTS) for two years
2. For the Director of Adult Social Services to approve the use of the negotiated procedure without prior publication of a notice in relation to the award of the following three contracts:
 - I. Leeds Mind for the provision of the well-being service and the Drop-In and Outreach Budget. The value for 18 months is £527,931 and for 6 months it is £175,977. Total contract value - £703,908.
 - II. Touchstone for the provision of the Community Support Team, Dosti and the Support Centre. The value for 18 months is £861,315 and for 6 months it is £287,105. Total contract value - £1,148,420.
 - III. Community Links for the provision of the Mental Health Support Service (MHSS) and Oakwood Hall. The value for Oakwood Hall for 18 months is £1,232,535 and for 6 months it is £410,845. Total contract value - £1,643,380.
3. For the Director of Adult Social Services to agree for the budgets below to be transferred to the North CCG under a Section 76 agreement as follows:
 - I. The budget for the employment service element of Leeds Mind is transferred to the North Clinical Commissioning Group (NCCG) from 1 April 2017 as they commission the much larger mental health employment service also provided by Leeds Mind. The expectation would be that the service would continue to support those individuals not entering the service via a Community Mental Health Team (CMHT). The value of this element of the contract is £173,300 and it would be reduced by 10 per cent before transferring it to the NCCG, giving a saving of £17,330.
 - II. The budget for Leeds Survivor Led Crisis Services (LSLCS) including the Connect telephone helpline be transferred to the NCCG from 1 April 2017 as they have responsibility for the Crisis Care Concordat. The value of this contract is £114,470.
 - III. The Community Support Team (CST) element of the Touchstone contract is aligned with the NCCG half of the service in the transitional part of the community pathway. That the CST budget is reduced by ten percent as it was not reduced in the previous two rounds of budget reductions giving a saving of £22,386.

For the Director of Adult Social services to agree that:
 - IV. a review of the costs for Oakwood Hall is undertaken jointly with the NCCG during 2017/18, but it needs to be borne in mind that this service does offer value for money given the weekly charge being approximately £1,200.

1. Purpose of this report

- 1.1 To seek approval from the Director of Adult Social Services to implement the various decisions set out in this report in relation to the provision of mental health services.

2. Background information

- 2.1 Leeds Adult Social Care mental health provision and social work service has an important part in the Leeds network of mental health provision. This is within the context of a citywide system led by the mental health partnership board – administered and led by the NCCG.
- 2.2 The review and implementation of the mental health services within the City (the Leeds Mental Health Framework) is being led by the Leeds Mental Health Partnership Board. The framework is based on national and local objectives and a series of priorities have been agreed. These are:
 - Community provision
 - Crisis care
 - Data
 - A functioning Information resource for public and professionals
 - A shared referral point (to gate keep both secondary and primary care)

These five priorities were chosen because they were seen as the areas which would produce the most improvement in quality and economy of provision – not necessarily because they are the only important elements of any mental health system.

- 2.3 The Council's current Adult Social Care (ASC) third sector contracts cover a number of service areas and interface with the Leeds Mental Health Framework priority objectives at a number of points. They also interface with a number of other mental health priorities. In addition there is a varied element of joint funding for different providers and different services funders include ASC, the Office of the Director of Public Health (including public health and housing related support) as well as the NCCG.

3. Main issues

- 3.1 The contracts under discussion have a historical origin, largely dating from the old mental health support grant. Historically these services were classified as Part B services for the purposes of the Public Contracts Regulations 2006, meaning that there was no real obligation to tender these services provided they continued to represent value for money and the obligation to retender was last waived in January 2015 by the Director of Adult Social Services that allowed new contracts to be issued to the current providers until 31 March 2017.
- 3.2 The reason for this was to enable the alignment of this procurement work with the development of the Leeds Mental Health Framework, which was reported to, and agreed by, the Mental Health Partnership Board (of which ASC is a member) in September 2016.
- 3.3 In order to implement the Leeds Mental Health Framework, it is proposed that a procurement exercise is undertaken by ASC for a new CBMHS which would combine the services currently provided by Leeds Mind (minus the employment

element), Touchstone (minus the CST element) and Community Links Mental Health Support Service.

- 3.4 The value of the CBMHS to be procured is £1,201,227 which is made up from the budget for Leeds Mind minus 10%, minus the employment element, Touchstone minus 10% and minus the CST element and Community Links Mental Health Support Service minus 10% and the actual savings, to be realised, from the reductions would be £133,470 in 2018/19.
- 3.5 The CBMHS to be procured will be specified to meet outcomes around recovery, continuity and sustainment. There will be an obligation to work in partnership with ASC's in-house Mental Health services, LYPFT, Housing Related Support and to develop the service to meet changing demand in the next five years.
- 3.6 In addition, it has been agreed in principle by the Integrated Commissioning Executive that the NCCG and ASC should work more closely together with the possibility of developing a pooled fund under the aegis of the Better Care Fund. The council has different obligations for procurement to the CCG and in order to maximise the gains from this ASC is proposing a Section 76 agreement of the National Health Service Act 2006 which allows for transfers of budgets to maximise efficiency and high quality future partnership work.
- 3.7 It is anticipated that the procurement of the services required to implement the Leeds Mental Health Framework will take approximately 2 years and in the meantime continuity of the existing services must be maintained. In order to achieve this it is proposed to waive Contract Procedure Rules (CPRs) 9.1 and 9.2 using the authority set out in CPR 1.3 to enter into an interim contract with WCTS for two years with a contract value of £286,680. The justification for this is set out at Appendix 1.
- 3.8 Therefore, awarding a contract to WCTS for two years will allow for this service to continue without disruption whilst the bigger piece of procurement is being undertaken for the CBMHS.
- 3.9 The other contract lengths of 18 months plus a further 6 months are required to allow for the procurement exercise to be undertaken. Due to the nature of these services and the potential vulnerability of the service users and the need for service continuity a mobilisation period of 6 months would be realistic.
- 3.10 In addition, it is also proposed, following advice from PPPU and Legal Services, that use of the negotiated procedure without prior publication of a notice under Regulation 32 (2) 9b) (ii) of the Public Contracts Regulations 2015 be agreed for the award of three interim mental health contracts to Leeds Mind, Community Links and Touchstone for the a period of 18 months (with the option to extend by up to 6 months). The justification for this is set out at Appendix 2.
- 3.11 Finally, it is further proposed to transfer of the budgets for Leeds Survivor Led Crisis Service (LSLCS) including the Connect telephone helpline and the Leeds Mind employment service to the NCCG from 1 April 2017. The justification for this is set out at Appendix 3.

4. Corporate considerations

4.1 Consultation and engagement

4.1.1 Consultation has taken place with users of mental health services to design the model for the citywide Mental Health Framework and CBMHS.

4.2 Equality and diversity / cohesion and integration

4.2.1 An Equality Impact Assessment Screening Tool has been completed and is attached at Appendix 4. If the recommendations are approved an Equality, Diversity, Cohesion and Integration screening will be undertaken.

4.3 Council policies and best council plan

4.3.1 The voluntary sector mental health services directly contribute to the delivery of key outcomes within the Best Council Plan 2013/17, specifically to improve the quality of life for our residents, particularly those who are vulnerable or in poverty and the delivery of the 'Better Lives' objective.

4.3.2 The services make significant contributions to all of the City Priority Plans, but particularly the Health and Wellbeing Plan and its priority to make Leeds the best City for Health and Wellbeing by 2030. This is achieved through supporting clients to make healthy lifestyle choices and to live safely.

4.4 Resources and value for money

4.4.1 It will be difficult to generate savings during 2017/18 as this would mean either not renewing existing contracts or taking a top slice from all the contracts, but services are already stretched due to the previous two rounds of budget reductions. If the recommendations contained within this report are approved they will generate savings of approximately £208,836 in 2018/19.

4.4.2 The transaction costs of procurement (to both providers and commissioners) are significant, so this paper proposes an approach that minimises the number of individual procurements.

4.4.3 The total value for each individual 18 month and six month contracts are as follows and there is budget provision for these services:

- WCTS 18 months £215,010 and for 6 months £71,670. Total value £286,680.
- Leeds Mind 18 months £527,931 and for 6 months £175,977. Total value £703,908.
- Touchstone 18 months is £861,315 and for 6 months £287,105. Total value £1,148,420.
- Community Links, Oakwood Hall is £654,663 and for 6 months it is £218,221 and for the MHSS 18 months £577,872 and for 6 months £192,624. Total value £1,643,380.

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

4.5.1 These are a Key Decision and are subject to call-in as the maximum cost of each service within this decision is more than £250k.

- 4.5.2 This report does not contain any exempt or confidential information under the Access to Information Rules.
- 4.5.3 With regard to the waiver of CPR 9.1 and 9.2, awarding the contract direct to WCTS in this way could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that case law suggests that the Council should always consider whether contracts of this value could be of interest to contractors in other EU member states and, if it could, the opportunity should be subject to a degree of European wide advertising. It is up to the Council to decide what degree of advertising would be appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices,) and the geographical location of the place of performance.
- 4.5.4 The Director of Adult Social Services has considered this and, due to the relatively low value of the contract, the nature of the services being delivered and the requirement to be physically located in Leeds, is of the view that the scope and nature of the services is such that it would not be of interest to providers in other EU member states.
- 4.5.5 Although there is no overriding legal obstacle preventing the waiver of CPRs 9.1 and 9.2, the above comments should be noted.
- 4.5.6 In relation to the proposed use of the negotiated procedure without publication of a notice in order to award new contracts to Leeds Mind, Touchstone and Community Links, it must be recognised that there is always the potential risk of challenge from an aggrieved provider who has not been given an opportunity to tender for the work, that there are no real technical reasons justifying the use of this procedure, and that the Council are simply seeking to circumvent the application of the rules. However, due to the reasons set out in Appendix 2 this risk is perceived to be low.
- 4.5.7 In addition, this risk can be diminished further by the publication of a voluntary transparency notice in OJEU immediately after the decision to award the contract has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made the chances of a claim for ineffectiveness being brought are significantly reduced, and would only be successful if the Council had used the negotiated procedure without publication of a notice incorrectly. Further, publishing such a notice will also start time running for any other 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.
- 4.5.8 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. 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.
- 4.5.9 In making their final decision, the Director of Adult Social Services should be satisfied that the course of action chosen represents Best Value for the Council.

4.6 Risk management

- 4.6.1 The contracts will continue to be performance managed by officers in ASC. This includes regular reviewing of performance information and quarterly contract management meetings with the provider, at which any delivery issues are discussed. To date the service has delivered in accordance with the service requirements and performance criteria outlined in the specification.

5. Conclusions

- 5.1 The new contracts will ensure that there is continuity of service delivery whilst the Leeds Mental Health Framework is established.
- 5.2 The procurement exercise will see the establishment of a new CBMHS that is fully coproduced with service users and stakeholders and this has not previously happened in the history of the existing services.

6. Recommendations

- 6.1 For the Director of Adult Social Services to waive Contract Procedure Rules (CPRs) 9.1 and 9.2 using the authority set out in CPR 1.3 to enter into an interim contract with Women's Counselling and Therapy Service (WCTS) for two years.
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For the Director of Adult Social services to agree that:

- IV. A review of the costs for Oakwood Hall is undertaken jointly with the NCCG during 2017/18, but it needs to be borne in mind that this service does offer value for money given the weekly charge being approximately £1,200.

That the Director of Adult Social Services notes:

- Sinead Cregan, Adult Commissioning Manager is the officer responsible for implementation.

7. Background documents¹

7.1 Appendices 1,2 and 3

7.2 Appendix 4 Equality Impact Assessment Screening Tool

7.3 DLT report 23 November 2016

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.