

Report of the Deputy Director, Integrated Commissioning, Adults and Health

Report to the Director of Adults and Health

Date: 20th December 2017

Subject: Request to waive Contract Procedure Rules (CPRs) 9.1 and 9.2, using the authority set out in CPR 1.3, to enter into two contracts with St Anne's Community Services for provision of a Residential Alcohol Detoxification and a Rehabilitation Service in 2018/19.

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. Leeds Adults and Health currently has a contract in place with St Anne's Community Services to deliver a 17 bedded residential rehabilitation service for 17 alcohol users at St Mark's House in Leeds.
2. Leeds Public Health (PH) (under the directorate of Adults and Health) also has a contract in place with St Anne's Community Services to deliver a 5 bedded residential detoxification service at the same location of St Mark's House in Leeds.
3. Both of these contracts expire on 31st March 2018, with no extension periods available to invoke.
4. Approval is being sought to waive Contract Procedure Rules (CPRs) 9.1 and 9.2, using the authority set out in CPR 1.3, to award new contracts to both of these services for a period of 12 months each to allow a competitive procurement exercise to be undertaken. The 12 month contract value of the residential alcohol rehabilitation service is £314,314. The 12 month contract value of the residential detoxification service is £282,860.
5. Following ongoing conversations regarding the budget envelope, it was agreed at DLT (20th September 2017) to fund these contracts up to an additional £111,546, with a further additional agreed amount of up to £23,000 to cover system costs.

These amounts are to be split across both contracts based on true cost expenditure. The approval and awarding of this additional funding is not being requested in this paper.

Recommendations

1. The Director of Adults and Health is recommended to approve the waiver of Contract Procedure Rules (CPRs) 9.1 (requirement of competition) and 9.2 (invitation of a minimum of four written tenders) using the authority set out in CPR 1.3, in relation to high value procurements, and award a 12 month contract without seeking competition to St Anne's Community Services for the Residential Alcohol Rehabilitation Service in the sum of £314,314.
2. The Director of Adults and Health is recommended to approve the waiver of Contract Procedure Rules (CPRs) 9.1 (requirement of competition) and 9.2 (invitation of a minimum of four written tenders) using the authority set out in CPR 1.3, in relation to high value procurements, and award a 12 month contract without seeking competition to St Anne's Community Services for the Residential Alcohol Detoxification Service in the sum of £282,860.
3. Both contracts will commence on the 1st April 2018 and expire on the 31st March 2019. The Commissioning Manager (Leeds ASC) will liaise with the Programmes, Projects and Procurement Unit (PPPU) to oversee the implementation of the new contracts before the existing arrangements expire on 31st March 2018.

1. Purpose of this report

- 1.1 To seek approval from the Director of Adults and Health to use the authority set out in CPR 1.3 in order to waive CPRs 9.1 and 9.2 to enter into an interim contract with St Anne's Community Services for the residential alcohol rehabilitation service for a period of 12 months.
- 1.2 To seek approval from the Director of Adults and Health to use the authority set out in CPR 1.3 in order to waive CPRs 9.1 and 9.2 to enter into an interim contract with St Anne's Community Services for the residential alcohol detoxification service for a period of 12 months.

2. Background information

- 2.1 St. Anne's Community Services deliver a 17 bedded residential rehabilitation service and a 5 bedded residential detoxification service at St Mark's House in Leeds.
- 2.2 Following ongoing discussions regarding budget pressures faced by these services provided by St. Anne's, the Council was advised that the true cost of delivery was far greater than previously reported currently standing at £708,720 p.a. and that St Anne's were not able to absorb any further reductions to their funding.
- 2.3 It was therefore agreed by DLT in March 2017 that LCC would not implement a planned reduction of 5% to the annual contract values in 2017/18 and the interim contracts for the period 1 April to 30 September 2017 were reissued to this effect for both the detox and the rehab service. The extension periods available on both of these contracts have been invoked, with the current contracts both expiring on 31st March 2018.
- 2.4 It was also agreed that competitively retendering the existing service model was the preferred route and that discussions should be held with the CCGs regarding a financial contribution including additional funding in 17/18 for the current service.
- 2.5 The discussions with the CCGs have now concluded, with the CCGs confirming they are unable to provide any funding. DLT has subsequently agreed that additional budget to cover the current shortfall is to be found from within the Adults and Health directorate:
 - Up to £111,546 p.a. to be paid on two invoices to St. Anne's each covering two six month periods in 18/19, following financial evidence being provided by the service. This is to fund the identified shortfall across both contracts.
 - Up to £23,000 to be paid on invoice to St. Anne's, funded for 2018/19 from a non-recurrent funding source within ASC. This is to fund system costs in light of the new General Data Protection Regulation being introduced in May 2018, as a result of which St Anne's have been requested to take on responsibility for commissioning the system to minimise risk to the Council.
- 2.6 It was also agreed at DLT in September 2017 to increase the budget envelope for undertaking a competitive procurement exercise from the current total combined contract value of £597,174 per annum up to £760,000 per annum. The increased budget being needed to cover the current identified shortfall, system costs, and potential rent costs that may be incurred by the successful provider based on St Anne's agreeing to rent the premises to another provider if not successful themselves.

- 2.7 Ongoing discussions have taken place with St Anne's to progress arrangements and a meeting was held on 5 December attended by Julie Staton, Head of Commissioning and Sinéad Cregan, Adult Commissioning Manager from LCC with St Anne's Chief Executive, Derek Bray and Susie Maguire, Director of Operations & Deputy Chief Executive and Helen Simpson, Finance Director. Further discussions will be required to finalise details regarding use of the existing premises.

3. Main issues

- 3.1 When existing contract arrangements were put in place it was anticipated that the service would be retendered with a longer term, recommissioned service commencing on 1 April 2018. Since then it has become apparent that the true cost of delivery is greater than previously established resulting in a budget shortfall and making it necessary to put these decisions on hold until the future funding of these services, involving ongoing discussions with the CCGs, was resolved.
- 3.2 As described in section 2 above, a way forward has now been identified however the timescales for procurement are such that the existing contractual requirements will expire prior to this being completed. The intention being that the retendered service would commence 1 April 2019.
- 3.3 There is no other known provider offering this service at present in Leeds. Due to logistics and timescales, it is not considered possible for another provider to establish a residential facility in Leeds for the 12 month period involved. In addition, using a different provider for a short period of time would be detrimental to treatment outcomes both at the start and potentially again at the end of the year due to the disruption of delaying treatment starts or transferring clients to a new service mid-way through treatment.
- 3.4 Although out of area residential treatment is available it is not a viable alternative, especially for rehabilitation where placements can be for 20 to 26 weeks which is considered too long by many clients who much prefer the 13 week intensive programme at St Anne's.
- 3.5 Waiving contract procedures to enter into new 12 month interim contracts with St Anne's for both elements of the service whilst a competitive procurement exercise undertaken is considered the best option for ensuring continuity of provision that supports service user choice and successful treatment outcomes.
- 3.6 It was highlighted in the extension report approved at Delegated Decision Panel on 9th August 2017, the intention that future decisions made in relation to these two contracts would be considered jointly in light of the merger of Leeds ASC and PH into the Adults and Health directorate, and to support the co-ordination and delivery of these contracts.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 The proposed waiver of CPRs 9.1 and 9.2 to enter into new contracts for each of these services does not involve a change to current service provision so has not involved specific service user consultation.
- 4.1.2 These proposals will ensure service continuity whilst a competitive procurement exercise is undertaken.

4.1.3 On 13th November 2017, the Executive Member for Health, Wellbeing and Adults was briefed on the proposed new interim contracts. The Director of Public Health has also been informed of these proposed decisions, and is a member of the Delegated Decision Panel in which these decisions will be taken.

4.1.4 The proposals have been discussed with the service provider, St Anne's Community Services.

4.2 Equality and diversity / cohesion and integration

4.2.1 An Equality, Diversity, Cohesion and Integration Screening Tool has been completed and is attached to this report as Appendix 1.

4.3 Council policies and best council plan

4.3.1 Residential rehabilitation and residential detoxification provision in the city directly contribute to the priorities set out in the Leeds Drug and Alcohol Strategy and Action Plan for 2016 – 2018, in particular by increasing the number of people who recover from alcohol misuse.

4.3.2 The vision contained within the Best Council Plan for Leeds to be the best city for health and wellbeing is supported through the delivery of residential rehabilitation and residential detoxification for alcohol users. This includes supporting more people to make healthy lifestyle choices and to live safely, and by giving people choice and control over their health and social care services.

4.4 Resources and value for money

4.4.1 The table below provides an overview of where the funding for each of the 12 month contracts will be provided from. Further to the 5% reduction to Public Health budgets that was planned to be applied to both of the services from April 2017, the Director of Adults and Health agreed to fund the 5% reduction to ensure the services could continue to be delivered effectively and reduce additional financial pressure on St. Anne's. This will be continued for the 2018 to 2019 contract period.

2018/19	Detox	Rehab	Combined
PH funding contribution	£268,720	-	£268,720
iBCF	-	£298,600	£298,600
ASC funding contribution (equating to 5% PH reduction)	£14,140	£15,714	£29,854
Current Contract Value	£282,860	£314,314	£597,174

4.4.2 The above funding has been agreed as available to use for this extension by relevant officers representing the PH and ASC budgets.

4.4.3 As discussed in the previous reports in relation to the detoxification and rehabilitation contracts, the weekly unit costs for the services compare very favourably with existing out of area residential treatment services (see table below).

Out of area residential treatment would be the only alternative option available to the Council if the proposed contract with St Anne's is not implemented:

	St Anne's	Other (out of area)	Variance
Detox	£1,088	£1,500 to £1,750	£412 to £662
Rehab	£356	£470 to £650	£114 to £294

4.4.4 The summary of points above demonstrates that financial resources have been identified and value for money has been considered for both contracts.

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

4.5.1 Both of these decisions are Key Decisions which are subject to call-in as both of the proposed per annum contract values exceed £250,000. A notice was published on the List of Forthcoming Key Decisions on 15 November 2017.

4.5.2 This report does not contain any exempt or confidential information under the Access to Information Rules.

4.5.3 Awarding a new contract directly to the existing provider 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 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, etc.) and the geographical location of the place of performance.

4.5.4 The Director of Adults and Health has considered this and, due to the nature of the service being delivered and the requirement to be physically located in Leeds, is of the view that the scope and nature of the two 12 month contracts is such that they would not be of interest to providers in other EU member states. Also, this type of contract will fall within the Social and Other Specific Services within the Public Contracts Regulations 2015 and the value of the contracts is below the threshold for such contracts. However, note again the comments in 4.5.3 above.

4.5.5 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.

4.5.6 Although there is no overriding legal obstacle preventing the waiver of CPRs 9.1 and 9.2 using the authority set out in CPR 1.3, the above comments should be

noted. In making their final decision, the Director of Adults and Health should be satisfied that the course of action chosen represents Best Value for the Council.

- 4.5.7 These 12 month interim contracts are both being sought to allow sufficient time to undertake a competitive procurement exercise, which mitigates the risk of challenge from other providers to some extent.

4.6 Risk management

- 4.6.1 If the waiver to enter into 12 month contracts for these two services is not approved, there is a risk that the existing services will either cease or continue on an implied basis. If the services were to terminate, this would significantly impact the drug and alcohol treatment system in Leeds, by reducing the number of people with an alcohol issue who can access residential detoxification or rehabilitation.
- 4.6.2 Allowing the services to terminate would also impact upon the budget for out of area residential detoxification and rehabilitation, which is already under pressure. Although the numbers of people accessing out of area residential provision would increase, the overall numbers of people accessing residential provision would be less as out of area unit costs are higher.
- 4.6.3 Moreover, if these waivers for both contracts are not approved, there will be no service continuity whilst a competitive procurement exercise is undertaken.
- 4.6.4 The proposed 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 service delivery issues are discussed. Officers will continue to work with St Anne's during the new contract periods to monitor the cost and quality of service provision and provide support and guidance in managing these risks.

5. Conclusions

- 5.1 The proposal to waive CPRs 9.1 and 9.2, using the authority set out in CPR 1.3, to award a 12 month contract for the residential alcohol rehabilitation service will ensure that there is continuity of service delivery whilst a competitive procurement exercise is undertaken.
- 5.2 The proposal to waive CPRs 9.1 and 9.2, using the authority set out in CPR 1.3, to award a 12 month contract for the residential alcohol detoxification service, will also ensure that there is continuity of service delivery whilst a competitive procurement exercise is undertaken.

6. Recommendations

- 6.1 The Director of Adults and Health is recommended to approve the waiver of Contract Procedure Rules (CPRs) 9.1 (requirement of competition) and 9.2 (invitation of a minimum of four written tenders) using the authority set out in CPR 1.3, in relation to high value procurements, and award a 12 month contract for 2018/19 without seeking competition to St Anne's Community Services for the Residential Alcohol Rehabilitation Service in the sum of £314,314.
- 6.2 The Director of Adults and Health is recommended to approve the waiver of Contract Procedure Rules (CPRs) 9.1 (requirement of competition) and 9.2 (invitation of a minimum of four written tenders) using the authority set out in CPR

1.3, in relation to high value procurements, and award a 12 month contract for 2018/19 without seeking competition to St Anne's Community Services for the Residential Alcohol Detoxification Service in the sum of £282,860.

7. Background documents¹

7.1 None

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.