

Report of: Consultant in Public Health/Chief Officer Adults and Health Directorate

Report to: Director of Public Health, Adults and Health

Date: 21st February 2018

Subject: Request to utilise the negotiated procedure without publication of notice under Regulation 32 of the Public Contracts Regulations 2015 to enter into negotiations with the South & East Leeds General Practice Group Ltd (incorporating Leeds West Primary Care Network and Calibre) to establish a new contract commencing 1st April 2019 for a period of 3 years with the option to extend for 2 years for the provision of the NHS Health Check service.

Are specific electoral wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, 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. This report sets out a proposal to enter into negotiations with South & East Leeds General Practice Group Ltd ('SELGPG') (incorporating Leeds West Primary Care Network and Calibre), in order to establish a new service delivery model and contract for the provision of NHS Health Checks. The contract will provide NHS Health Checks to the eligible population across Leeds through the SELGPG practices and targeted community settings.
2. The responsibility for implementation and associated funding for the NHS Health Check programme came to local authorities as a result of the Health and Social Care Act 2012, as part of the Public Health ring fenced grant. The NHS Health Check is one of the five nationally mandated Public Health programmes within the Act and the NHS remains centrally involved in its delivery. The programme is a key delivery mechanism for the Leeds Health and Well Being Strategy in relation to outcome one – people will live longer and healthier lives.

3. In February 2017 a project group was established with representation from LCC, Leeds CCG partnership and Public Health England. The project group commenced a comprehensive review process to determine key actions for improvement and milestones to track future progress and outcomes.
4. The project group undertook a comprehensive in-depth review of the NHS Health Check Programme in Leeds, to make comparisons to other areas and to understand gaps in provision and uptake of the NHS Health Check across Leeds and undertake a wide consultation with key stakeholders. To date the NHS Health Check service has been delivered by all 103 GP practices across Leeds with varying rates of invite and uptake. The review carried out in 2017 highlighted a steady decline in the rates of invitation and uptake to an NHS Health Check
5. The outcomes of the review and recommendations for future commissioning options for service delivery have been presented to the Public Health programme board. A market sounding exercise was then carried out, leading to the recommendation to the board to approve the use of regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015 on the ground that competition is absent due to the requirement for access to the GP patient records and only SELGPG can provide these as no reasonable alternative exists. The Board agreed to seek approval for this option.
6. Collectively SELPG work with all 103 General Practices in Leeds, the partnership incorporates South and East Leeds General Practice Group, Leeds West Primary Care Network and Calibre). South & East Leeds GP Group hold a personal medical services contract and deliver existing services to 12,000 patients in the Beeston area of Leeds. SELPG networks of GP practices are already delivering the NHS Health Check programme to a large number of people in Leeds.
7. The new delivery model will consist of a citywide GP alliance working alongside 3rd sector organisations in localities and with targeted communities. The model will ensure flexibility of appointment and equality of access across the Leeds population in terms of accessibility.

Recommendations

1. The Director of Public Health is recommended to approve the use of negotiated procedure without prior publication of a contract notice under Regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015 in order to enter into negotiations with SELGPG to establish a new contract for the provision of NHS Health Checks on the ground that competition is absent due to the requirement for access to the GP patient records, which only SELPGP can provide, meaning no suitable alternative exists. The contract will commence on the 1st April 2019 for a period of 3 years with the option to extend up to a further 2 years.

1. Purpose of this report

- 1.1 The purpose of this report is to seek approval from the Director of Public Health to use the negotiated procedure without publication of a notice under the Regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015, with the intention of setting in place a contract with SELGPG to provide NHS Health Checks. The contract duration will be 3 years with the option to extend for up to 2 years commencing 1st April 2019. The annual value of the contract will be £520,000.

2. Background information

- 2.1 The NHS Health Check is a national initiative to prevent heart disease, stroke, diabetes, kidney disease and certain types of dementia through early identification and management of certain risk factors. The tests, measurements and risk management interventions that make up the NHS Health Check can be delivered in different settings by different healthcare professionals.
- 2.2 The programme is for everyone between the ages of 40 and 74, who has not already been diagnosed with cardiovascular disease (CVD). As part of a rolling programme 20% of the eligible population are invited to have an NHS Health Check once every five years. Each NHS Health Check is delivered by a trained health professional who assesses the person and carries out tests. The NHS Health Check determines two outcomes: firstly, the risk of the person developing CVD in the future, in which case support and advice is offered to help the person to reduce or manage their risk; secondly, it generates referrals for treatment for people generating abnormal results. Referrals to healthy living services are also generated where appropriate.
- 2.3 On 1st 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. In order to ensure service continuity and compliance with the Council's CPRs, Public Health worked with PPPU to ensure all contracts were reviewed and providers were formally awarded contracts based on Local Authority or Department of Health terms and conditions.
- 2.4 The NHS Health Check programme is one of the five mandated services and a key delivery mechanism for the Leeds Health and Wellbeing strategy, specifically in relation to outcome one – People will live longer and healthier lives.
- 2.5 NHS Health Checks are currently delivered in all Leeds GP practices at varying rates across the city. The Operational Governance is through a joint Leeds City Council/Clinical Commissioning Group quality assurance meeting, with strategic governance through Chief Officer/Consultant in Public Health (Long Term Conditions) to the Public Health Leadership Team/DLT to the Executive Cllr for HWB to the Health and Wellbeing Board. Performance monitoring is undertaken on a quarterly basis.
- 2.6 In May 2017 Officers within Public Health completed a comprehensive review of the Leeds NHS Health Check programme. The review suggested the NHS Health Check would benefit from increased flexibility in terms of time and location for eligible people particularly males, those living in the most deprived quintile, people working full time and those with a learning disability and/or severe mental illness. The review also supported continued GP involvement in the delivery of the service.

3. Main issues

- 3.1 The NHS Health Check programme in Leeds has been in place since 2009. People living in deprived communities are still being reached but the proportion of people attending from the most deprived areas of the city has decreased by 5% in the last four years. This is not in line with the national trend, where attendance from deprived communities is increasing. It should be noted however that national attendance levels are below those in Leeds
- 3.2 In relation to ethnicity, people from a white background represent the majority of the eligible population and the largest uptake compared to other ethnic groups. Attendance data suggests all ethnicities are represented proportionately in relation to the 2011 ONS census particularly people from Asian communities. However caution should be taken with this data due to the number of people not reporting their ethnicity during an NHS Health Check.
- 3.3 Men and women are being invited to an NHS Health Check at similar rates however women are significantly more likely to take up the offer. When men do attend they are more likely to be identified as high risk.
- 3.4 There is a lack of data on NHS Health Check eligibility, invite and uptake for people with severe mental illnesses and learning disabilities however anecdotal information from health professionals and data from the annual health check for people with learning disabilities highlights the low number of attendees. Based on this we can make assumptions that these groups are poorly represented at NHS Health Checks.
- 3.5 The continuing decline in invitations sent from General Practice combined with a decline in uptake highlights the need for change to reverse this trend and ensure individuals in Leeds are given the opportunity to attend an NHS Health Check.
- 3.6 Primary care is seen as important by people and healthcare professionals. As the patient record holders they have a key role to play in the NHS Health Check, however this may not be as the main provider.
- 3.7 In order to ensure continuity of the service it was necessary to enter into a contract extension, under the provisions of the contract, with the current providers for a 12 month period from 1st April 2017 to March 31st 2018 whilst the Public Health project team completed an options appraisal and analysis of the current service.
- 3.8 In June 2017 the NHS Health Check project team identified service delivery options that would enable the project to move from Stage 1 (Feasibility and Options Appraisal) to Stage 2 (Detailed Business Case and planning of preferred option). This involved identifying a wide range of service delivery options, some of which were not deemed feasible and therefore were discounted. Where options were discounted a record was kept containing a rationale as to why they would not be a suitable delivery approach for the services, these included:
- De-Commission the service
 - Federated Model – lead organisations with sub contracts
 - Reduce the service target and scope.
- 3.9 Four options were shortlisted
- 3.9.1 Maintain the Service as it is (Do nothing)
 - 3.9.2 Lead provider Model (inc Consortia approach)
 - 3.9.3 A Wellness/health service incorporating NHS health checks

3.9.4 A Combined model – Several different contracts

- 3.10 The recommended outcome of the options appraisal was to opt for a Lead Provider Model.
- 3.11 At the Public Health Programme board on 17th August 2017 it was recommended that a Market Sounding Exercise (MSE) be undertaken to identify potential provider interest and assess the capability of the market place to deliver NHS Health Checks to the eligible population in Leeds.
- 3.12 The outcomes of the MSE demonstrated that the market for this service is extremely limited. The responses received would all rely on co-operations with all GP practices in Leeds to enable access to their clinical systems, determine the eligible population details, a systematic invitation process and appropriate follow up for people identified as being at high-risk of CVD.
- 3.13 Experience from Public Health England (PHE) has been that nationally no one has a solution to the invites to eligible population without using GP practices. In 2014, working with PHE, Leeds City Council Public Health ran a pilot with ASDA to test an alternative delivery model utilising pharmacies in stores. The pilot was a good opportunity to test alternative delivery models but reinforced the importance of having GP involvement and a systematic IT structure underpinning the NHS Health Check to ensure the eligible population could access a NHS Health Check and have a follow up with their GP if required.
- 3.14 Areas that do not use primary care have had to resort to an opportunistic approach to invites rather than systematically targeting the eligible population. This would have significant risks as Leeds would be unable to achieve the volume of NHS Health checks that the programme is capable of meeting. It would also result in the eligible population not been invited for an NHS Health Check and reliant on marketing strategies to raise awareness.
- 3.15 In the Yorkshire and Humber region the City of York Public Health Department recently redesigned their NHS Health Check service, named YorWellbeing. Unlike the previously commissioned systematic service which was provided by General Practice, YorWellbeing relies on a general marketing approach without GP engagement. On the 19th October 2017 their department hosted a national NHS Health Check team visit as the new service was unable to achieve the volume of checks required, unable to verify eligibility without use of an online tool and unable to directly offer the service to eligible people. Following this the local authority has been required to consider solutions to determine eligibility, invite people and increase uptake to achieve the expected volume of NHS Health Checks. This is not a scenario Leeds wishes to find itself in but highlights the importance of accessing the GP patient register.
- 3.16 The outcome of individual NHS Health Checks needs to be captured on the GP clinical record to determine the outcome and ensure ongoing management. Alternative Service Providers would be responsible for capturing information as part of a NHS Health Check assessment and sharing it with primary care via a secure network. This would then be reliant on GP practices taking forward the recommendations from the outcome report and following up of people needing further management post NHS Health Check. This aspect of the NHS Health Check was fed back to the MSE participants.
- 3.17 In light of the above, the Public Health Programme Board agreed on the 19th October 2017 to therefore seek approval to use the provisions of Regulation 32 of the Public Contracts Regulations 2015 (negotiated procedure without publication of a notice) on

the grounds that due to the requirement for access to the GP patient records only SPLGPG can meet the Councils specific requirements in relation to the NHS Health Check Services.

3.18 Upon seeking approval regarding the implementation of a new contract for the NHS Health Check provision it is envisaged that the new contract and service delivery model will commence on 1st April 2019. The process will involve the following stages:

- Seek approval to extend the contract for a final period of 12 months under the provisions of the contract, until 31st March 2019 to enable constructive negotiations to take place and provide a sufficient mobilisation period prior to the start of the new contract on 1st April 2019.
- Finalise the service specification and delivery model
- Appropriate terms and conditions including rates agreed

4. Corporate considerations

4.1 Consultation and engagement

4.1.1 The review process included the following consultation and engagement methods:

- Officers from Public Health attended Clinical Commissioning engagement events to explore GP perceptions, strengths and weaknesses of the current delivery model.
- Officers from Public Health held a consultation workshop at the Leeds Civic Hall to engage with key stakeholders.
- Public insight gathered from the citizen's panel and BAME forum.

4.1.2 A review of the NHS Health Check service in Leeds was submitted to the Public Health programme board in October 2017 to seek approval of the review findings and use Regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015.

4.1.3 Recommendations in this report reflect the outcomes of the review that have been approved by the Public Health programme board.

4.1.4 The Executive Member for Adults and Health has been consulted.

4.2 Equality and diversity / cohesion and integration

4.2.1 An Equality, Diversity and Community Cohesion screening template has been completed. This tool indicates that a full assessment is not required as the recommendations of the report will not impact negatively on service users, staff or stakeholders.

4.3 Council policies and best council plan

4.3.1 The vision for Leeds is to be the best city in the UK, by 2030 all Leeds communities will be successful, and Leeds will be a city where healthy choices are easier to make, our children choose healthy lifestyles and health inequalities are reduced.

4.3.2 Health and Wellbeing Strategy under the leadership of the Health and Wellbeing Board, Leeds will become a healthy and caring city for all ages, where people who are the poorest will improve their health the fastest. The strategy will ensure that:

- People live longer and have healthier lives
- People live full, active and independent lives
- People enjoy the best possible quality of life
- People are involved in the decisions made about them
- People live in healthy and sustainable communities

4.3.3 Leeds Best Council plan (2015-2020) includes a strategic priority of supporting communities.

4.4 Resources and value for money

4.4.1 The options appraisal process has taken into considerations the need to drive improvements in service quality and value for money

4.4.2 The NHS Health Check is funded from within the Public Health ring fenced grant

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

4.5.1 As the overall value of this decisions exceeds £250,000 this is a Key Decision and is subject to call in. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.

4.5.2 It is considered that there is the potential risk of challenge despite the technical reasons justifying the use of the negotiated procedure without publication of a notice in accordance with the Public Contracts Regulations 2015 and that the Council is simply seeking to circumvent the application of the procurement rules. However due to the reasons set out in this report this risk is perceived to be low. 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 made 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 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.

4.5.3 However it should be noted that voluntary transparency notices themselves can be challenged. The recent case of the Italian Interior Ministry v Fastweb SpA (Case C-19/13) highlights the limited protection that the voluntary transparency notice route can offer to contracting authorities wishing to make direct awards without following an OJEU process. A grey area remains around whether the protection of a voluntary transparency notice will be available where the contracting authority genuinely, but mistakenly considers it was entitled to award the contract without notice. It shows that the safe harbour will only be 'safe' to the extent that the justification for the direct award is in itself sound and ready to stand up to the increased scrutiny that the publication of the voluntary notice may well invite.

4.5.4 These comments should be noted by the Director of Public Health in making the final decision as to the award of this contract being the best course of action for the Council and should be satisfied that doing so it represents best value for the Council.

4.6 Risk management

- 4.6.1 The contract will be performance managed by officers in the Leeds City Council's Adults and Health section.
- 4.6.2 If the recommendation is not approved the service may be subject to competitive tender as the current contract will end on 31st March 2019. This would have significant resource implications for the council.
- 4.6.3 If the recommendation is not approved there is a risk that the existing services performance will continue to decline. Arising from this there is an additional risk that national funding is reduced due to poor performance.

5. Recommendations

- 5.1 The Director of Public Health is recommended to approve the use of negotiated procedure without prior publication of a contract notice under Regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015 in order to enter into negotiations with SELGPG to establish a new contract for the provisions of NHS Health Checks on the grounds that competition is absent due to the requirement for access to the GP patient records, which only SELGPG can provide, meaning no suitable alternative exists. The contract will commence on the 1st April 2019 for a period of 3 years with the option to extend up to 2 years.

6. Background documents¹

- 6.1 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.