

Report of Commissioning Programme Manager

Report to Director of Children and Families

Date: 6th June 2018

Subject: Request to enter into a co-operation agreement with Leeds Community Healthcare Trust to deliver the Intensive Positive Behaviour Support service



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: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. A key decision was taken on 21/03/2018 (DN46357) giving approval for the acceptance of funding from Adults and Health and the Clinical Commissioning Groups to develop an outreach Intensive Positive Behaviour Service (IPBS) for Leeds. The report stated the IPBS team will be a clinical team working with NHS colleagues using a structured, evidence informed IPBS model of assessment, planning and joined up working to reduce incidence of escalating need and a reduced need for expensive residential and respite care in later childhood.
2. Based on initial advice given at the time the key decision was taken the report indicated staff delivering the service would likely be NHS staff seconded to the local authority. Following further advice from legal and procurement colleagues, and more detailed discussions with Leeds Community Healthcare (LCH) NHS Trust, it has been agreed the most appropriate way of developing the service is via a Co-operation Agreement under Regulation 12 (7) of the Public Contracts Regulations 2015.
3. All other details of the service including the budget available and the purpose of the service remain consistent with the detail described the initial key decision taken on 21/03/2018 (DN46357).

Recommendations

4. The Director of Children and Families is asked to approve the entering into a Co-operation Agreement with Leeds Community Healthcare NHS Trust under Regulation 12 (7) of the Public Contracts Regulations 2015 to deliver the Intensive Positive Behaviour Support (IPBS) service.

1 Purpose of this report

- 1.1 To clarify the change in approach to the delivery of the IPBS with NHS partners through a Co-operation Agreement under Regulation 12 (7) of the Public Contracts Regulations 2015.
- 1.2 To seek approval from the Director of Children and Families to enter into a Co-operation Agreement with LCH.

2 Background information

- 2.1 On the 21st March 2018 a key decision (DN46357) was taken to accept funding from Adults and Health and the Clinical Commissioning Groups in order to develop an IPBS service.
- 2.2 That key decision stated that a recruitment process would be started which would enable NHS staff to be seconded to the local authority in order to deliver the Clinical Psychology element of the service.
- 2.3 That decision report (DN46357) set out clearly the purpose of the IPBS service and that the service is based on an 'invest to save' case for change. The report identified that there is national evidence that an intensive positive behaviour support service can reduce the need for residential care in adolescence, and that reducing the number of adolescents in residential care will in turn reduce the number of young people who continue in residential placements into adulthood. The costs for residential care for young people and adults with challenging behaviour is high and the outcomes for the individuals concerned are not always positive.
- 2.4 The report (DN46357) detailed funding available for the service which has not changed. The Co-operation Agreement with LCH will remain within that budget.
- 2.5 Following further detailed discussions with LCH, and procurement and legal staff within the local authority, it is felt that the most appropriate arrangement for this service is actually a Co-operative Agreement under Regulation 12 (7) of the Public Contracts Regulations 2015. Under this arrangement LCH staff will not be seconded to the local authority but will work with the local authority to deliver the IPBS service under this Co-operative Agreement.

3 Main issues

- 3.1 Approval has been received from Adult Social Care and Leeds Clinical Commissioning Group for total investment of £882,365. The financial information in the table below was included within the original Delegated Decision Report. Children and Families will provide the physical space, identified as Rainbow House, and management and resources required to deliver the service with a cash equivalent of £26,880 p.a.

ASC Funding Bid	2017/18		2018/19		2019/20	
	£	Purpose	£	Purpose	£	Purpose
	47,867.15	Staffing costs	195,297.97	Staffing costs	199,203.92	Staffing costs
Grand Total	47,867.15		195,297.97		199,203.92	
Requested via iBCF	47,867.15		195,297.97		199,203.92	
Funding from other Sources	£	Source	£	Source	£	Source
	6,720	Children & Families	26,880	Children & Families	26,880	Children & Families
	47,867.15	Leeds CCG	195,297.97	Leeds CCG	199,203.92	Leeds CCG

3.2 In order for a Partnership Agreement under Regulation 12 (7) of the Public Contracts Regulations 2015 to be put in place the following provision must be met

“A contract concluded exclusively between two or more contracting authorities falls outside the scope of this Part [the Public Contracts regulations 2015] where all of the following conditions are fulfilled:

(a) the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;

(b) the implementation of that co-operation is governed solely by considerations relating to the public interest; and

(c) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.

3.3 The objective of the IPBS service, shared by the two partner organisations, is to support young people with learning disabilities and challenging behaviour, and their families, therefore reducing the risk of permanent placement outside the home and outside of the city. Enabling children to stay with family and in the community and can live as normal a life as possible.

- 3.4 LCH provide Child and Adolescent Mental Health Services (CAMHS) in Leeds, including to those with a learning disability, whilst Leeds City Council provides educational psychology to promote inclusion in educational settings. The IPBS service will see both CAMHS from LCH and educational psychology from Leeds City Council working together from the council's residential short breaks setting to provide the IPBS service under a co-operation agreement.
- 3.5 Only a co-operation agreement with Leeds Community Healthcare NHS Trust (LCH) under Regulation 12 (7) of the Public Contracts Regulations 2015 can achieve these outcomes due to the interdependencies between the IPBS service, which includes clinical psychology, educational psychology and a range of statutory health services provided by LCH in Leeds but in particular the CAMHS. The vast majority of families supported by the IPBS service will be actively receiving a CAMHS service from LCH. Therefore only through a co-operation agreement with LCH can we deliver the true integration with CAMHS required to achieve the outcomes of the service. This will enable:
- The service to be delivered not as a standalone service but as a tier of practice required to manage the highest tariff CAMHS cases who are also managed by social care, but still at risk of placement out of area
 - Holistic care and safeguarding underpinned by statutory record keeping and appropriate sharing of information between two contracting authorities
 - A structurally integrated process of escalation and de-escalation between IPBS and CAMHS that enables families who are on the edge of crisis or family breakdown to get immediate access to support that ensures both parties fulfil their wider duties
 - Engagement with families who are on the edge of crisis within the existing network of statutory services they are already engaged with (CAMHS and Educational Psychology). Engaging effectively with families and settings in critical in implementing a positive behaviour approach.
- 3.6 A co-operation between Leeds City Council and LCH until March 2020 will enable the provision of the IPBS service as the highest level of a stepped model of support, integrating the current services for the small cohort of children.
- 3.7 The IPBS service will also ensure best use of public funding as the cost of one placement for a young people with learning disability and challenging behaviour can be in excess of £270k per year. The potential for savings to both Children and Families services, Adults and Health and Clinical Commissioning Groups is significant when considered that many young people placed in out of area settings will spend several years in placement before transitioning to an adult setting.
- 3.8 The service will be working intensively with families, and a range of setting accessed by the young person, to understand and effectively manage a range of challenging behaviours that may be being displayed by the young person.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The rationale for this proposal has been informed as part of wider service developments for children and young people with SEND. All participation and consultation forums with key stakeholders such as children and families, schools, CCGs, adult services, CAMHS and LCHCT have identified this issue as a critical gap in service.

4.1.2 Advice has been sought from the Principle Corporate Governance Officer and from the Procurement Strategic Category Manager in relation to the Partnership Agreement under Regulation 12 (7) of the Public Contracts Regulations 2015 and in relation to the recommendation in this report.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 The Equality Impact Assessment Screening Form is attached – Appendix 1.

4.2.2 Equality, Diversity, Cohesion and Integration will continue to be a key consideration for the Project Team overseeing the development of both the Partnership Agreement and the development of the IPBS service.

4.3 Council policies and Best Council Plan

4.3.1 This proposal is clearly aligned to the priorities of Leeds City Council and its partners as well as the wider priorities for social care and health. The service aims to provide intensive support where required to prevent family breakdown and ensure children and young people are supported within their community and within family environments rather than being placed at distance away from their family and support networks.

4.3.2 The proposal clearly aligns with the ambition to be a child friendly city and with the Children and Young People's Plan 2015-19 in particular the priority that all children live in safe and supportive family environments.

4.4 Resources and value for money

4.4.1 Funding has been confirmed by Adult Social Care and the Clinical Commissioning Group as outlined under section 3

4.5 Legal Implications, Access to Information and Call In

4.5.1 As a Significant Operational Decision this delegated decision is not 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 the conditions required to utilise Regulation 12 (7) of the Public Contracts Regulations 2015 (and set out at paragraph 3.6 above) are met due to the reasons set out at section 3 above. If this Regulation is used incorrectly, and it is subsequently determined that the above conditions are not met, the Council will be open to legal challenge that it has breached the

procurement rules. Further, an aggrieved contractor could potentially argue that it has missed out on a competitive opportunity and thereby seek damages for that loss of opportunity.

- 4.5.3 A Voluntary Transparency Notice (VTN) is being developed for publication in the Official Journal of the European Union (OJEU) in accordance with the Public Contracts Regulations 2015, and 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 sought to rely upon Regulation 12 (7) incorrectly. Further, publishing such a notice will also start time running for any other potential claim for breach of the Public Contracts Regulations 2015, 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.
- 4.5.4 It should be noted that voluntary transparency notices themselves can be challenged. 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.

4.6 Risk Management

- 4.6.1 Funding for the service is in place from both Adults and Health and the Clinical Commissioning Group as outlined in the previous key decision (DN46357) taken on 21/03/2018.
- 4.6.2 Appropriate advice has been sought from colleagues in the Procurement Service and Corporate Governance regarding the recommendation in this report.

5 Conclusions

- 5.1 The IPBS proposals are based on an 'invest to save' case for change which will enable intensive support to be provided to young people with learning disability and challenging behaviour, and their families, with the aim of enabling young people to remain in supportive family environments and preventing out of areas placements where possible.
- 5.2 Due to the reasons set out in section 3 above, the most appropriate way of developing this service has been identified as via a Partnership Agreement with Leeds Community Healthcare NHS Trust in line with Regulation 12 (7) of the Public Contracts Regulations 2015.

6 Recommendations

- 6.1 The Director of Children and Families is asked to approve the entering into a Co-operation Agreement with Leeds Community Healthcare NHS Trust under Regulation 12 (7) of the Public Contracts Regulations 2015 to deliver the Intensive Positive Behaviour Support (IPBS) service until March 2020 and up to the value approved in the previous key decision (DN 46357).

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.