

Report of Deputy Director, Integrated Commissioning Adults and Health and Leeds NHS CCG

Report to the Director of Adults and Health

Date: 15 May 2019

Subject: To seek approval from the Director of Adults and Health to waive Contract Procedure Rules (CPRs) 9.1 and 9.2 using the authority set out in CPR 1.3 to enter into a contract with Care UK Health Care for the provision of prison social care at HMP Leeds for 22 months from 1 June 2019 with the option to extend for a further three years in one block.

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 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. National Health Service England (NHSE) undertook a procurement exercise for the provision of health care services at HMP Leeds and the outcome resulted in Care UK Health Care being awarded the contract which commenced on the 1 April 2016. The contract ends on the 31 March 2021 with the option to extend for a further three years in one block. At this time NHSE did not include social care provision in their procurement exercise.
2. As a consequence Adults and Health had to put an agreement in place, in the form of a Memo of Understanding (MOU) with Care UK Health Care for the provision of social care within HMP Leeds. This agreement has been in place since April 2016 and the annual value is £54,252. The MOU has been renewed annually by the approval of an administrative decision report by the Head of Commissioning and the MOU has been signed by the Deputy Director Social Work and the Director of Care UK Health Care.

3. The existing arrangement was put into place to ensure that the Local Authority was in compliance with its obligations under the Care Act 2014 to provide social care support to prisoners that were assessed as having eligible social care needs.
4. The current arrangement does not provide sufficient staff cover due to the increase in the number of care hours being delivered which is due to the increase of older men receiving custodial sentences. As such, an additional £174,240 for 22 months is being requested as this will allow for three additional care staff to be recruited by Care UK Health Care in order that they can appropriately meet needs.
5. This is a significant operational decision which is not subject to call-in as the annual cost of the service is less than £250k. The time period of 22 months would allow for the alignment with the current NHSE contract duration.

Recommendations

1. For the Director of Adults and Health to approve the waiver of Contract Procedure Rules (CPRs) 9.1 and 9.2 using the authority set out in CPR 1.3 to enter into a revised MOU with Care UK Health Care for the provision of prison social care at HMP Leeds for a period of 22 months, from 1 June 2019 up to 31 March 2021, with the option to extend for a further three years in one block.
2. For the Director of Adults and Health to approve the £174,240 increase in the funding for the service over the 22 month period, from 1 June 2019.
3. That the Director of Adults and Health notes;
Sinead Cregan, Commissioning Programme Leader is the officer responsible for the implementation of this MOU.

1. Purpose of this report

- 1.1 To seek approval from the Director of Adults and Health to waive Contract Procedure Rules (CPRs) 9.1 and 9.2 using the authority set out in CPR 1.3 to enter into a revised MOU with Care UK Health Care for the provision of prison social care at HMP Leeds for a period of 22 months, from 1 June 2019 up to 31 March 2021, with the option to extend for a further three years in one block.
- 1.2 For the Director of Adults and Health to approve the £174,240 increase in the funding for the service over the 22 month period, from 1 June 2019.

2. Background information

- 2.1 National Health Service England (NHSE) undertook a procurement exercise for the provision of health care services at HMP Leeds and the outcome resulted in Care UK Health Care being awarded the contract which commenced on the 1 April 2019. The contract ends on the 31 March 2021 with the option to extend for a further three years in one block. At this time NHSE did not include social care provision in their procurement exercise.
- 2.2 When this contract is subjected to a future procurement exercise by NHSE it will be possible to include the social care elements of the contract which would allow for a joint procurement exercise to be undertaken by NHSE and the Local Authority.

- 2.3 Adults and Health currently has an agreement in the form of a memo of understanding (MOU) with Care UK Health Care for the provision of social care within HMP Leeds. This agreement has been in place since April 2016 and the annual value is £54,252.
- 2.4 The MOU has been renewed annually by the approval of an administrative decision report by the Head of Commissioning and the MOU has been signed by the Deputy Director Social Work and the Director of Care UK Health Care.
- 2.5 The existing arrangement was put into place in April 2016 to ensure that the Local Authority was in compliance with its obligations under the Care Act 2014 to provide social care support to prisoners that were assessed as having eligible social care needs.
- 2.6 This arrangement was not subject to a tender exercise as the service commissioned by NHSE was already in place. It is not possible for a Local Authority to procure a social care service within HMP Leeds as this is outside of our control. Research shows that many local authorities have delegated their responsibility for social care provision to health care staff.
- 2.7 The Leeds model of delivering our Care Act 2014 responsibilities is seen as a best practice model and has been shared by ADASS with other Local Authorities who have a prison within their Authority.
- 2.8 Security requirements at HMP Leeds require all staff to be vetted before they are able to be a key holder and to then work in the prison. Therefore, it is not possible to use a pool of staff as would be the case in the community to deliver the social care support on the health and social care wing.

3. Main Issues

- 3.1 At HMP Leeds there are 16 health and social care beds that are housed in a separate wing from the rest of the Prison, prisoners who reside on the health and social care unit require additional support with their social care needs. The cells on the social care unit are single cell and are slightly larger than your average cell to assist patients in wheelchairs. In addition to the health and social care unit, other prisoners from around the prison access the social care facility for additional support with their activities of daily living.
- 3.2 The unit is staffed currently by two social care assistants who are seconded from Leeds City Council to deliver support and they work Monday to Friday only, providing a total of 67 hours per week and it has been agreed that this arrangement will continue. They deliver a host of support from assistance with washing, dressing, hygiene needs, meal prompts, to other activities including reducing social exclusion, this take the format of encouraging social interaction with staff and other prisoners in a scheduled daily activities programme, education, and exercise based programmes. Prisoners who also require health care in addition to social care are cared for by the Prison Healthcare Team, who are employed by Care UK Health Care.
- 3.3 Care UK Health Care are currently providing a total of 274.5 hours of social care per week on the health and social care unit and there are a number of prisoners across the prison that also require social care support. Care UK Health Care are having to use nursing staff along with the support of other prisoners and prison staff to provide the remaining hours of support which is not practical nor sustainable.

- 3.4 The increase in the annual budget is to allow for three extra care staff to be employed by Care UK Health Care as the current arrangement does not provide sufficient staff cover due to the increase in the number of care hours being delivered which is due to the increase of older men receiving custodial sentences who in turn have social care needs. This budgetary increase will ensure that Adults and Health fulfils its obligations under the Care Act at HMP Leeds.
- 3.5 This is a significant operational decision which is not subject to call-in as the annual cost of the service is less than £250k. The time period of 22 months would allow for the alignment of Adults and Health's contract with the NHSE contract.
- 3.6 The table below sets out the budget for the 22 months;

Additional budget for 10 months 2019/20	£ 79,200
Additional budget for 12 months 2020/21	£ 95,040
Total additional funding for 22 months	£174,240

- 3.7 A revised MOU will be formulated along with an updated service specification that would encompass the financial increase and associated tasks.
- 3.8 Therefore, a set number of social care staff need to be recruited who would then be vetted for security clearance and would then be key holders allowing them to be employed on the health and social care wing at HMP Leeds.
- 3.9 As the threshold for undertaking an EU wide procurement for these services is just over £615,000 the values of the 22 month MOU and three year extension will exceed this sum therefore using the negotiated procedure without publication of a notice would be the mechanism for invoking the three extension period. This will entail undertaking a procurement "process" much the same as any other process and which will include issuing a specification, terms and conditions as well as getting the provider to submit a method statement which will be evaluated. It will also include obtaining a decision to use this procurement route in accordance with CPR 3.1.6 and publishing a Voluntary Transparency Notice in OJEU.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 Councillor Charlwood (Executive Member for Health, Wellbeing and Adults) was briefed on the 5 April 2019.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality, Diversity, Cohesion and Integration Screening Assessment has been completed for this report, see Appendix 1. This will be submitted alongside the report for Delegated Decision Panel.

4.3 Council policies and best council plan

- 4.3.1 The outcomes from Leeds Health and Wellbeing Plan relevant to the work within HMP Leeds are; People will live longer and have healthier lives, People will be actively involved in their health and their care and People's quality of life will be improved by access to quality services.

4.3.2 The Best Council Plan is our strategic planning document, sitting at the top of a range of supporting strategies. It sets out what the council, working in partnership, will do to deliver better outcomes across Leeds.

4.4 Resources and value for money

4.4.1 The Head of Finance has confirmed there is not specific provision for the proposed increase in cost. For 2019/20, close monitoring of budgets will be undertaken to offset this pressure within the overall Adults and Health budget. The increased cost for 2020/21 will be addressed during the budget setting period.

4.4.2 A service specification is in place and it requires Care UK Health Care to report on the outcomes contained within it pertaining to the quality of the support delivered and the number of hours of care provided. The service specification will be updated to reflect GDPR and any other relevant legislative changes.

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

4.5.1 This is a significant operational decision which is not subject to call-in as the annual cost of the service is less than £250k.

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

4.5.3 Awarding the new contract direct to Care UK Health Care 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, 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 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 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 waiving of CPRs 9.1 and 9.2 in this manner, 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.

4.6 Risk management

4.6.1 The issuing of a revised MOU will allow for service continuity and expansion ensuring the social care needs of prisoners at HMP Leeds are being met. If this decision is not approved this will cause significant pressure on the ability of the

existing staff to deliver the increase in demand and Care UK Health Care will expect the Local Authority to find an alternative solution.

- 4.6.2 An administrative decision is in place to allow for the existing arrangement to continue from 1 April 2019 with a value of £54,252.
- 4.6.3 Regular social care meetings take place with Care UK Health Care to review the work that is being undertaken and a monthly report is provided by Care UK Health Care showing the number of prisoners being supported and the total number of hours of support being delivered.

5. Conclusions

- 5.1 If this decision is approved, with the additional funding, by the Director of Adults and Health, Care UK Health Care will immediately be able to recruit the three additional staff required within the service to deliver the increased number of care hours.

6. Recommendations

- 6.1 For the Director of Adults and Health to approve the waiver of Contract Procedure Rules (CPRs) 9.1 and 9.2 using the authority set out in CPR 1.3 to enter into a revised MOU with Care UK Health Care for the provision of prison social care at HMP Leeds for a period of 22 months, from 1 June 2019 up to 31 March 2021, with the option to extend for a further three years in one block.
- 6.2 For the Director of Adults and Health to approve the £174,240 increase in the funding for the service over the 22 month period, from 1 June 2019.
- 6.3 That the Director of Adults and Health notes;
Sinead Cregan, Commissioning Programme Leader is the officer responsible for the implementation of this MOU.

7.0 Background documents¹

- None.

Appendix one

Equality Impact Assessment

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.