

# HEALTH AND WELLBEING BOARD

17 March 2015

<b>Title: Update on the preparation for transfer of the 0-5 year Healthy Child Programme (Health Visiting) Service and Family Nurse Partnership Programme from NHS England to London Borough of Barking and Dagenham.</b>	
<b>Report of the Director of Public Health &amp; Corporate Director of Children's Services</b>	
<b>Open Report</b>	<b>For Information</b>
<b>Wards Affected: All</b>	<b>Key Decision: No</b>
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<b>Sponsor:</b> Matthew Cole, Director of Public Health	
<b>Summary:</b> The purpose of this report is to give an update on the work underway to plan for the transfer in October 2015 of the commissioning of the Early Years Programme (Health Visiting and Family Nurse Partnership) services to the London Borough of Barking and Dagenham. These services are currently commissioned by NHS England and provided by North East London NHS Foundation Trust.	
<b>Recommendation</b> The Health and Wellbeing Board is asked to note the report the contract position in principal for the transition for the 0-5 commissioning arrangements.	
<b>Reasons</b> From 1 October 2015, the Government intends that local authorities (LAs) take over responsibility from NHS England for commissioning (i.e. planning and paying for) public health services for children aged 0-5. Elements of the programme will be mandated. In this context, mandation means a public health step prescribed in regulations as one that all LAs must take. The regulations are made under section 6C of the NHS Act 2006 (as amended by the Health and Social Care Act 2012).  The Government's aim is to enable local services to be shaped to meet local needs. Some services however need to be provided in the context of a national, standard format, to ensure universal coverage, and hence that the nation's health and wellbeing overall is	

improved and protected. The smooth transfer of commissioning to the Council is the next step in providing high quality care for each and every child and their family.

## **1. Introduction and Background**

- 1.1 On 28 January 2014 the Parliamentary under Secretary of State for Health, Dr Dan Poulter MP, confirmed the transfer of 0-5 public health commissioning. The transfer of commissioning responsibilities will now take place on 1 October 2015.
- 1.2 The scope of the transfer includes the 0 to 5 Healthy Child Programme (Universal/ Universal Plus), specifically:
  - Health Visiting services (universal and targeted services)
  - Family Nurse Partnership services (targeted services for teenage mothers).
- 1.3 The following commissioning responsibilities will remain with NHS England (NHSE):
  - Child Health Information System (CHIS)
  - The 6-8 week GP check (Child Health Surveillance (CHS)).
- 1.4 Responsibility for commissioning the CHIS will remain with NHSE in order to improve system functionality nationally, although a commitment has been made by the Department of Health (DH) to review the responsibility for commissioning in 2020.
- 1.5 Responsibility for commissioning the 6-8 week GP check will remain with NHSE due to the nature and complexity of commissioning arrangements which suggest there is both risk and little or no return to be gained from transferring this responsibility.
- 1.6 The Government announced on 22 August 2014 that certain universal elements of the Healthy Child Programme will be mandated in regulations in the same way it has for sexual health and some other public health services. The universal elements which will be mandated are:
  - antenatal health promotion review
  - new baby review, which is the first check after the birth
  - 6-8 week assessment
  - 1 year assessment
  - 2 to 2 and a half year review

The DH have published a [factsheet](#) on mandation to explain what this means for local authorities and to set out next steps.

## **2. Transfer of Health Visiting and Family Nurse Partnership – Contract Position agreed in principal with NHS England (London)**

- 2.1 NHSE issued guidance in October to support local areas with contract transition. This guidance was tested with the DH, Local Government Association (LGA) and Public Health England (PHE) to ensure that it supports a smooth transition of responsibilities and sustainability of services, complies with legal requirements and enables local authorities and area teams to work effectively together in commissioning sustainable services for the whole of 2015/16 and beyond. The guidance can found on the following link <http://www.england.nhs.uk/wp-content/uploads/2014/12/0-5-trans-guid-temp-let-stg2.pdf>

2.2 The Council is afforded two options for consideration:-

- Option 1: Novation: The Area Team puts in place a single contract for 2015-16 with a Deed of Novation being approved by the Council at the same time the contract is signed to confirm the contract will transfer to the Council on 1 October 2015.
- Option 2: New contract from 1 October 2015. The Area Team puts in place a 6 month NHSE contract for the period between April and September 2015 and helps the Council to put in place a similar but separate contract with the provider for the period between October 2015 and March 2016. In this position it would be desirable for both contracts to be signed at the start of the 2015-16 year.

In all cases, NHS commissioners will lead negotiations, though there will be an opportunity for each borough to shape the service particulars to local needs. The London boroughs of Redbridge and Havering followed our position of opting for Option 2.

- 2.3 Under Option 2, it should be noted that the NHSE Standard Terms and Conditions will be used as the basis for negotiations with North East London NHS Foundation Trust (NELFT).
- 2.4 Under Option 2, there is also the potential for financial liability to arise which is important for the Council to be aware of, although the risk is hypothetical and considered unlikely to arise. Specifically, all provider contracts currently run until March 2016. Under the terms of those contracts, to apply Option 2, a 12 month notice period should have been given in October 2014. As transfer planning at that point had not reached agreement in respect of financial allocations, the decision was taken nationally to not issue notice of termination to any providers. Technically, because notice should have been given and wasn't, the terms of provider contracts do give rise for a financial liability of failing to meet notice terms. It is understood that such a liability would be equal to a 1/12th share of the 14/15 contract value for each month under the 12 required (e.g. if you provide 10 months notice, a technical liability arises equally to 2/12ths).
- 2.5 The provision of a new contract with the Council for the 6 month period between October 2015 and March 2016 should give NELFT assurance of stability and continuity; we therefore do not anticipate such liabilities arising. However, in the eventuality that such circumstances do arise it will be important for NHSE (London) and the Council to work together to mitigate such a risk. It is expected that the risk of such a liability arising will be known when negotiation with NELFT begins in January and February 2015. At this stage NELFT have indicated to NHSE (London) no wish to pursue this point.
- 2.6 The NHSE Standard Contract is still not available at the time of writing this report. The Council has agreed contract particulars with NHSE (London) NELFT will receive 5 NHSE Contracts. One Specialised and four Health Visiting/FNP for each of the outer north east London boroughs. Deadline for signatures is 21 March 2015.
- 2.7 NELFT will draft and sign a Deed of Novation for the Council and return to NHSE (London) by 2 March for onward transfer to the Council by 14 March 2015. Sunset

clause is 18 months, during which mandation outcomes must be achieved, as minimum.

2.8 The proposed procurement and contracting methodology falls under the previous Legislation (PCR 2006) and as such is viewed as a Part B service, which is not mandated to comply fully with the rules, but will still be bound to operate a fair and transparent process.

2.9 Under the Council's Contract Rules all procurements above £500k as defined in clause 28.8 shall be taken before the Health and Wellbeing Board for ratification.

2.10 The requirement for the service will need to be presented to both the Procurement Board and Corporate Management Team prior to issue to the Health and Wellbeing Board.

### 3. Baseline assessment

3.1 The baseline assessment of our 0-5 children's public health commissioning resource has now been completed as well as our position on the transfer of the Health Visiting and Family Nurse Partnership contracts in October 2015.

3.2 The transfer to LAs has been on a 'lift and shift' basis for 2015-16 with additional funding to ensure that LAs do not take on additional financial burden and also provide support for commissioning.

3.3 A funding floor has been provided on the amount of resource transferred such that no LA is funded below an adjusted spend per head (0-5) of £160, based on full year allocations. In addition, it is proposed that LAs are given £15k for 2015-16 (£30k on a full year basis) equivalent to the 0.5fte of commissioning resource.

3.4 For Barking and Dagenham, the proposed allocation for 2015-16 is £2.41m, made up of £2.395m of 'lift and shift' position by Area Teams and £15k commissioning support.

3.5 From 2016-17, allocations are expected to move to a formula distribution based on population needs. The Advisory Committee on Resource Allocation (ACRA) plan to consult LAs on the public health formula (including 0-5s) in the summer.

3.6 Estimates from NELFT suggest that direct non-salary costs and other overhead costs will result in additional pressures of circa £370,000. A breakdown of additional cost is shown in the table below:

<b>Barking and Dagenham Health Visiting additional funding</b>				
<b>Pay</b>	<b>Grade</b>	<b>WTE</b>		
Management post	Band 8A	0.5	59,400	29,700
Clinical admin support	Band 3	3	25,600	76,800
1.47 MASH post	Band 7	1.47	55,200	81,200
<b>Total additional Pay costs</b>				<b>187,700</b>

<b>Non Pay</b>				
Call to action Non pay for 41.5wte ( Direct inc travel, equipment)		41.5	2,600	107,900
Mobile Devices for agile working		41.5	1,000	42,000
Mash post non pay		1.47	2,600	3,900
<b>Total Non pay Direct</b>				<b>153,800</b>
<b>Management overheads</b>				<b>28,200</b>
<b>Total additional funding required</b>				<b>369,700</b>

3.7 Funding at the proposed levels will not be adequate to commission the service at the level required without putting additional pressures on the Council's Public Health Grant. Other concerns include:

- Clarity is needed on what the arrangements for staff will be with regard to supervision and management. There is no funding to support this so current terms and conditions will not be able to be sustained.
- We also understand that it is likely that boroughs will be expected to demonstrate more rigorous performance management of the contracts, and yet there is no commissioner's management fee factored in.
- In addition not all boroughs have had their MASH staff taken from their health visitor allocations; we would like further information before we agree to this.

The Council responded in writing to the DH that it does not accept the baseline allocations as adequate to meet the financial demands of the of the 0-5 children's public health service on 16 January 2015.

3.8 DH has at the time of the report has not published the Council's baseline allocation following our challenge.

## 4. Mandatory implications

### 4.1 Joint Strategic Needs Assessment (JSNA)

The JSNA outlines the recent increases and changes in the 0-5 population which highlights the need for provision for this group. The complexity of provision of this age group is a reflection of several factors including ethnicity, poverty and parental life-style factors such as obesity, smoking and substance misuse. The current services plays a vital role in supporting our increasing and changing 0-5 population to become and remain healthy and preparing for a healthy adulthood.

### 4.2 Health and Wellbeing Strategy

Children having the best possible start in life from conception, so breaking the link between early disadvantage and poor outcomes throughout life is integral to the delivery of our joint Health and Wellbeing Strategy.

### 4.3 Integration

One of the outcomes we want to achieve for our Joint Health and Wellbeing Strategy is to improve health and wellbeing outcomes through integrated services. The report's

recommendation is underpinned for the need for effective integration of services and partnership working.

#### 4.4 **Financial implications**

Financial implications completed by: Roger Hampson Group Manager Finance (Adults and Community Services)

Barking and Dagenham is one of a small number of local authorities which have raised specific issues in respect of whether the amounts transferring are an accurate reflection of lift and shift principles. After examination, the Department of Health considers these concerns merit further analysis and understanding prior to concluding final allocations, specifically as part of the contracting process which NHS England aims to conclude by the end of February. A further report will be presented when funding allocations are confirmed.

#### 4.5 **Legal implications**

Legal implications completed by: Allan Donovan Interim Senior Projects Lawyer

- 4.5.1 Revised EU procurement regulations were introduced into UK law by the Public Contract Regulations 2015 (PCR 2015). These are effective from 26 February 2015.
- 4.5.2 However, BDT Legal consider that the subject matter of this report comes within an exemption by virtue of s.120 (PCR 2015) as a contract award procedure that relates to the procurement of health care services for the purposes of the NHS and will be executed before 18 April 2016.
- 4.5.3 The exemption cited above means that the procurement regulations governing the subject matter of this report are the previous PCR 2006 and that this would be considered a “part B service”.
- 4.5.4 PCR 2006 part B services are exempt from the rigours of a full EU procurement process but must still satisfy principles enshrined in the Treaty for the Functioning of Europe (TFEU). These state that any procurement must demonstrate equality, fairness, transparency, and openness.
- 4.5.5 Additionally, members are reminded of the need for strict adherence to the Council’s constitution and in particular the Contract Rules contained in Part 4 of that constitution.
- 4.5.6 BDT Legal understand that it is the intention of the report author to directly award the contract for continued provision of services to NELFT upon transfer from NHS (E) on 1 October 2015. BDT Legal are instructed that provision of the services in question are currently funded at some £4 million per annum and that it is intended to offer directly to NELFT a contract term of 2 years with an option to extend for a further period of 1 year. The total (lifetime) value of the contract therefore would be £12 million (3 years x £4 million)
- 4.5.7 Contract rule 28.5 states that contracts with an estimated value in excess of £500,000 MUST be let following publication of an appropriate advertisement and subsequent

competitive tendering process except where a formal waiver has been obtained in accordance with rule 6 of the rules.

- 4.5.8 Contract rule 6 states, so far as is relevant. 6.3 Where a contract value exceeds £500,000 approval to waive [the requirement of a formal tender exercise] MUST be obtained from Cabinet / HWBB except in an emergency in which case the Chief Executive can issue the waiver.
- 4.5.9 Rule 6.4 sets out the need for compliance with Chapter 16 of Part 2 of the Constitution in respect of Urgent Action procedure and exercise of the Chief Executive powers.
- 4.5.10 For a waiver to be granted in these circumstances a genuine emergency must exist. Reasons constituting a genuine emergency are set out at 6.6.1 to 6.6.8 of the rules.
- 4.5.11 In summary, a procurement strategy report will need to be completed. The procurement strategy report will need to be approved by Cabinet / HWBB as appropriate. Additionally, the procurement strategy report will need to include an application for a waiver from the contract rule requirement of a competitive tender procedure which must be approved by Cabinet / HWBB unless granted by the Chief Executive under emergency provisions.

#### 4.6 Risk management

From 1 October 2015 the responsibility for commissioning public health services for 0-5 year olds will transfer from NHSE to LAs. The transfer marks the final part of the overall public health transfer. The DH intend to lay regulations on the mandatory aspects of the service (informal consultation on this is expected between September and December). The Council will wish to undertake a detailed risk assessment once the statutory responsibilities are confirmed.

#### Background Papers Used in the Preparation of the Report:

Department of Health (November 2014) Factsheet: Commissioning the National Healthy Child Programme. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/347047/Mandation\\_factsheet\\_final\\_22-8-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/347047/Mandation_factsheet_final_22-8-14.pdf)

Department of Health (November 2014) Transfer of 0-5 children's public health commissioning to local authorities - Finance fact sheet [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/377443/Second\\_Finance\\_Factsheet\\_0-5\\_Transfer\\_November\\_2014\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377443/Second_Finance_Factsheet_0-5_Transfer_November_2014_2_.pdf)

Department of Health (December 2014) Transfer of 0-5 children's public health commissioning to Local Authorities: Baseline Agreement Exercise. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389446/Baseline\\_Agreement\\_Exercise.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389446/Baseline_Agreement_Exercise.pdf)

London Borough of Barking and Dagenham Health and Wellbeing Board (September 2014). Update on the preparation for transfer of the 0-5 year Healthy Child Programme (Health Visiting) Service from NHS England to London Borough of Barking and Dagenham. <http://moderngov.barking-dagenham.gov.uk/documents/g7564/Public%20reports%20pack%20Tuesday%2009-Sep-2014%2018.00%20Health%20and%20Wellbeing%20Board.pdf?T=10>

NHS England (December 2014). Public health services for 0-5 year-olds. Transfer of commissioning responsibilities to local authorities. Additional contracting guidance for NHS commissioners. <http://www.england.nhs.uk/wp-content/uploads/2014/12/0-5-trans-guid-temp-let-stg2.pdf>