

CABINET

23 June 2015

Title: Procurement of 0-5 year Healthy Child Programme (Health Visiting) Service and Family Nurse Partnership Programme	
Report of the Cabinet Member for Adult Social Care and Health	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Director: Anne Bristow, Corporate Director for Adult & Community Services	
Summary: <p>From 1 October 2015, the Government intends that local authorities (LAs) take over responsibility from NHS England for commissioning public health services for children aged 0-5, under section 6C of the NHS Act 2006 (as amended by the Health and Social Care Act 2012).</p> <p>This paper proposes that NHS England (London) puts in place a 6 month NHS England contract for the period between April and September 2015 and the Council puts in place a new contract from 1st October 2015 with North East London NHS Foundation Trust.</p> <p>This proposal was presented to the Health and Wellbeing Board on 17th March 2015 and to the Procurement Board in June 2015.</p> <p>Given the procurement timeline led by NHS England, it was agreed that the paper for decision is to be presented to the Cabinet as the Health and Wellbeing Board does not meet in the month of June. A direct award to the current provider North East London NHS Foundation Trust provides the best available protection against the risk in establishing a new service/transition of existing service for the following reasons:</p> <ul style="list-style-type: none">• Having our own contract in place affords us greater flexibility and local control by not tying us into NHS England's 12 month notice period and in delivery of the statutory Sunset clause of 18 months, during which mandation outcomes must be achieved, as a minimum.• The integrated early years offer needs to be part of the Ambition 2020 review programme and the direct award of a 2 year contract will allow us the opportunity to take a more evidence based approach to 'new model' and market development.• Future allocations for the public health grant are expected to move towards a distribution based on population needs, determined using a fair shares formula based on advice from the Advisory Committee on Resource Allocation (ACRA). The 2015/16	

allocation will be used as a starting point and Local Authorities will move incrementally toward their target share of the overall allocation over a number of years. The total amount of funding available for public health in 2016/17 will depend on the outcome of the 2015 Spending Review.

- The commissioning of the 0-5 year Healthy Child Programme (Health Visiting) Service and Family Nurse Partnership Programme is part of sustaining our consistently high performing and sustainable early years' services.
- This option provides the opportunity to ensure commissioning for children aged 0-5 is joined up with commissioning for those aged 5-19, so that the needs of everyone aged 0-19 are comprehensively addressed. This cannot be done within a shorter timescale as contract end points will need to be synchronized.
- Previous Public Health procurements in the last 18 months have shown that without a market tested specification and implementation plan, the Council may be exposed to operational, financial and reputational risk, because the available markets are under developed.

Recommendation(s)

The Cabinet is recommended to:

- (i) Waive the requirement to tender for the commissioning of the 0-5 year Healthy Child Programme (Health Visiting) Service and Family Nurse Partnership Programme, in accordance with the Council's Contract Rules; and
- (ii) Delegate authority to the Corporate Director for Adult and Community Services, in consultation with the Director of Public Health, Corporate Director of Children's Services, Chief Finance Officer and the Head of Legal and Democratic Services, to procure a direct award of a two-year contract from 1 October 2015, with an option to extend for up to 12 months, to North East London NHS Foundation Trust in accordance with the strategy set out in the report.

Reason(s)

To assist the Council to achieve its priority "Enabling Social Responsibility" and meet its future obligations under section 6C of the NHS Act 2006 (as amended by the Health and Social Care Act 2012).

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 Local authorities have a responsibility to promote and protect health, tackle the causes of ill health and reduce health inequalities (Local Government's new public health functions Department of Health 2011). Commissioning high-quality public health services for those aged 0-5 (as part of the Healthy Child Programme) can help to achieve this. The funding for 0-5 public health commissioning is a stated resource allocation within the ring fenced Public Health Grant.

- 1.3 The scope of the transfer includes the 0-5 Healthy Child Programme (Universal/ Universal Plus), specifically:
- Health Visiting services (universal and targeted services)
 - Family Nurse Partnership services (targeted services for teenage mothers).
- 1.4 The following commissioning responsibilities will remain with NHS England:
- Child Health Information System (CHIS)
 - The 6-8 week GP check (Child Health Surveillance (CHS)).
- 1.5 Responsibility for commissioning the CHIS will remain with NHS England 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.
- 1.6 Responsibility for commissioning the 6-8 week GP check will remain with NHS England 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.
- 1.7. 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 mandated for sexual health and some other public health services. The DH have published a [factsheet](#) on mandation to explain what this means for local authorities and to set out next steps. 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 2.5 year review

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

- 2.1 NHS England issued guidance in October 2014 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 be 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 was afforded two options for consideration:-
- **Option 1: Novation:** NHS England (London) 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.** NHS England (London) puts in place a 6 month NHS England contract for the period between April and September 2015 and helps the Council to put in place a new contract from 1 October 2015.

- 2.3 Under Option 2, it should be noted that the NHS England Standard Terms and Conditions will be used as the basis for negotiations with North East London NHS Foundation Trust (NELFT).
- 2.4 Under Option 1, there is an increased risk of financial liability with the NHS England contractual term and condition of a 12 month notice period as we are not yet in a fully informed position on any potential shortfall and uncertainty around the level of the total Public Health Grant from 2016/17.
- 2.5 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 significantly reduced.
- 2.6 We have considered a 6 month contract as well as joint proposals with the London boroughs of Havering and Redbridge. However, with the size of allocation within the ring fenced Public Health Grant and the rapid increase in our 0-5 population the benefits of taking a single borough approach for a period of 2 years is advised.
- 2.7 Following discussion between Officers and NHS England (London) a paper was presented to the Health and Wellbeing Board on 17 March 2015 agreeing to Option 2 a new contract from 1 October 2015.
- 2.8 The provision of a new contract with the Council for a 2 year period from 1 October 2015 with an option to extend for a year should give NELFT assurance of stability and continuity; we therefore do not anticipate such liabilities arising.
- 2.9 The market is at an early stage of development and subsequently there are no other providers in the Councils geographic location.
- 2.10 The Council has agreed contract particulars with NHS England (London).
- 2.11 Under the Council's Contract Rules all procurements above £500k as defined in clause 28.8 shall be taken before the Cabinet, or in some specific cases relating to Health and Social Care, the Health and Wellbeing Board for ratification.
- 2.12 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 & Wellbeing Board. The Board does not meet in June so in order to comply with the NHS England timeline for transition responsibilities the Cabinet will make the decision on the direct award of a contract to NELFT.

3. Proposed Procurement Strategy

- 3.1 **Outline specification of the works, goods or services being procured - Direct award to North East London NHS Foundation Trust.**

- 3.2 **Estimated Contract Value, including the value of any uplift or extension period** - For the London Borough of Barking and Dagenham our allocation for 2015/16 part year commencing 1 October 2015 is **£2,512,000**. This equates to a full year effect of **£5,024,000**. Therefore, the estimated contract value is £15,072,000 for 2 years with an option to extend for a year (**3 years in total**).
- 3.3 **Duration of the contract, including any options for extension** - Two years with an option to extend for a year.
- 3.4 **Is the contract subject to the (EU) Public Contracts Regulations 2006? If Yes, and contract is for services, are they Part A or Part B Services** - Revised EU procurement regulations were introduced into UK law by the Public Contract Regulations 2015 (PCR 2015). These are effective from 26 February 2015. 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.

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”. 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.

- 3.5 **Recommended procurement procedure and reasons for the recommendation** - The recommended route to market is a direct award as the market is relatively under developed as the services have historically been performed within the NHS and as such the private sector and non-geographic NHS providers are limited.
- 3.6 **The contract delivery methodology and documentation to be adopted** - The Contracts will be made as follows;
- Novated until October 2015 – NHS England Terms
 - October 2015 forward – Council terms and conditions
- 3.7 **Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract** - Given the significant increase in the 0-5 population any savings or efficiencies will in the main not be outlined as cashable, however with the service being in the control of the Council, this can be maximised to deliver higher quality services in terms of deliverables/outcomes. The full extent of the service improvements will not be known until the first full year has been conducted.
- 3.8 **Criteria against which the tenderers are to be selected and contract is to be awarded** - Not applicable as a direct award process is being conducted.
- 3.9 **How the procurement will address and implement the Council’s Social Value policies** - The Council’s social value responsibilities are taken through its vision: One borough; One community; London’s growth opportunity. The Council’s priorities around enabling social responsibility frames the Council’s intentions around supporting fully integrated services for vulnerable children, young people and families: protecting the most vulnerable and ensuring that everyone can access good quality healthcare when they need it.

The vast majority of the resource for these two services is spent on the family nursing and health visiting workforce. In terms of the service contract, we will work with the provider to seek to identify local opportunities for apprenticeships, training and recruitment for residents. A requirement for the payment of London Living Wage (LLW) will be included as a condition of the contract. All staff currently employed to provide this service are already above the LLW, so there we do not anticipate any implications for the current provider.

- 3.10 **Market Development Strategy** - The Council's priorities around enabling social responsibility commits us to providing fully integrated services for vulnerable children, young people and families: protecting the most vulnerable and ensuring that everyone can access good quality healthcare when they need it. This can only be achieved through a detailed and comprehensive understanding of commissioned services and a commitment to contract with only those providers who commit to delivering exceptional early years outcomes.

Over the next 12 months we will be setting out a market development strategy that describes the approach the Council will adopt in the analysis and management of the early years health and care system in our borough.

This strategy will ensure that a systematic approach is taken to understand the needs of our population and to determine future market priorities. It will inform our investment decisions in future years as we drive further improvements in quality outcomes, choice and service redesign. We will work with a range of responsive and high quality providers to deliver the Council's ambition. These providers could be existing organisations who share our commitment to delivering the very highest standards of early years services in the borough, or new market entrants.

Where a new service model is needed we will deliver this through a clear and transparent procurement process that ensures compliance with legal and policy requirements within the timeframe outlined in the report.

4. Options Appraisal

- 4.1 The following four options in regards to the services were discussed at the Health and Wellbeing Board on 17 March 2015:

- **Option 1: Novation:** NHS England (London) 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.** NHS England (London) puts in place a 6 month NHS England contract for the period between April and September 2015 and helps the Council to put in place a new contract from 1st October 2015.
- **Option 3: Do nothing;** this option has been discounted as the services required are mandated to be provided by the Council.

- **Option 4: Open Framework**, at time of this report being constructed there are no open frameworks available to the Council.

4.2 The Health and Wellbeing Board recommended Option 2 a new contract from 1 October 2015.

5. Waiver

5.1 Approval is sought to waive Contract Rule 28.8 in terms of conducting a formal procurement process. The justification for the waiver is to be judged under the following relevant points of the Contract Rules:

Para. 6.6.2 That there is clear evidence the goods, services or works to be procured are of a specialist technical, artistic or proprietary nature, or

Para 6.6.3 That there is only one supplier in the market capable of providing the service, goods or works(e.g. a specific artist with intellectual property rights in a work of art) such that there is no benefit to be gained from competition.

6. Other Considerations and Implications

6.1 **Risk and Risk Management** - The key business risks associated with this procurement strategy are related to delays or other issues with the transfer of health visiting contracts to the Council, as well as the financial allocation to the Council to support the future commissioning of the health visiting service.

To capture and mitigate all these risks, a robust project plan for the transition of Health Visiting is in place with clear objectives, deliverables and timescales, and an Integrated Governance Framework has been agreed with NHS England (London) which allows the Council to be co-commissioners of the service in the period leading up to the transition. A due diligence process relating to the financial aspects of the transfer is currently being carried out.

6.2 **TUPE, other staffing and trade union implications** – There are no specific implications for this contract period.

6.3 **Safeguarding Children** - Health visiting teams provide expert advice, support and interventions to all families with children in the first years of life (National health visiting service specification 2014/15 NHS England 2014). They are uniquely placed to identify the needs of individual children, parents and families (including safeguarding needs) and refer or direct them to existing local services, thereby promoting early intervention. They can also have a role in community asset mapping, identifying whether a particular community has any specific needs.

Health visiting is a universal service and because it is valued and accepted by parents it offers an opportunity to give support and advice to parents and promote positive parenting, emotional attachment and bonding (National health visiting service specification 2014/15 NHS England 2014).

We also have the Family Nurse Partnership available. This is a programme aimed at families in which the mother is aged 19 or under, which aims to provide intensive support through regular, structured home visits (Family Nurse Partnership 2014).

6.4 **Health Issues** - The Council's vision and priorities for Barking and Dagenham are intended to reflect the changing relationship between the Council, partners and the community, and our role in place shaping and enabling community leadership within the context of a significantly reducing budget. 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.

6.5 **Equalities and other Customer Impact** - The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010).

The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

In respect of this, the commissioning of the 0-5 year Healthy Child Programme (Health Visiting) Service and Family Nurse Partnership Programme is part of the solution in developing a consistently high performing and sustainable children's service. In this context a 12 month period is required to evaluate the current service landscape, decide on the specific role that health visiting will play and how this service may integrate with other relevant local services to improve and protect the health of young people and ensure that local families thrive. Also we need to ensure commissioning for children aged 0-5 is joined up with commissioning for those aged 5-19, so that the needs of everyone aged 0-19 are comprehensively addressed.

NHS England (London) has completed an impact assessment as part of their due diligence. As our plans for a new integrated early year's model develop, we will be conducting a full assessment as part of this prior to a procurement strategy being published in April 2017 and hence it is still too early to conduct our equalities and customer impact assessment. A full equalities and other customer impact will be carried out prior to the procurement process.

7. Consultation

7.1 The proposals in this report have been discussed with relevant Cabinet Members and have been endorsed by the Health and Wellbeing Board, the Corporate Management Team and the Council's Procurement Board.

8. Corporate Procurement

Implications completed by: Euan Beales, Head of Procurement and Accounts Payable, Elevate East London

8.1 The procurement routes to market can be viewed by two processes:

- **Novation** – The novation between NHS England and the Council is an approved and legitimate route to market due to the shift in responsibility with the ownership being transferred to the Council.
- **Direct Award** – The services are covered by the previous regulations (2006 revised in 2009) which outlines that the service would be considered as a Part B service, which is not mandated to be conducted using the full formal process. The market is at an early stage and subsequently there are no other providers in the Councils geographic location as the service has not been conducted outside of the NHS.

8.2 In order to ensure a full service can be appraised and future market warming can occur, I support the methodologies detailed in this paper as being the ones that offer value for money and continue to ensure the Council keeps to its corporate and social responsibilities.

9. Financial Implications

Implications completed by Roger Hampson, Group Manager Finance (Adults and Community Services)

9.1 This report seeks authority to waive the requirement to advertise the contract for 0-5 year Healthy Child Programme (Health Visiting) Service and Family Nurse Partnership Programme for the reasons set out in the report. The contract will be for two years from October 2015, with an option to extend for a year.

9.2 Barking and Dagenham was one of a small number of local authorities which raised specific issues in respect of whether the amounts transferring to the Council from NHS England are an accurate reflection of lift and shift principles. After examination, the Department of Health considered these concerns merited further analysis and understanding prior to concluding final allocations. Barking and Dagenham's allocation for the six months from October 2015 has been confirmed at £2,512,000, equating to a full year effect of £5,024,000; the total estimated (lifetime) value of the contract is potentially around £15m if the option to extend to a third year is exercised. Although it is not confirmed what the level of Public Health grant will be over the next 3 years, and whether it will continue to be ring-fenced, public health services for children aged 0-5 will be mandated, and therefore have priority in allocating the Public Health resources available,

9.3 Although the final allocation is £102k higher than previously announced, in the view of officers there is a potential pressure of around £270k which will have to be contained within the overall public health grant.

- 9.4 The resource allocation is outlined in the following link:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417433/0-5_Public_health_allocations.pdf

10. Legal Implications

Completed by Allan Donovan, Interim Senior Projects Lawyer

- 10.1 Revised EU procurement regulations were introduced into UK law by the Public Contract Regulations 2015 (PCR 2015). These are effective from 26 February 2015.
- 10.2 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.
- 10.3 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”.
- 10.4 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.
- 10.5 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.
- 10.6 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 **£5,024,000** 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 £15 million (3 years x **£5,024,000** million)
- 10.7 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.
- 10.8 Contract rule 6 states, so far as is relevant, “Where a contract value exceeds £500,000 approval to waive [the requirement of a formal tender exercise] MUST be obtained from Cabinet / Health & Wellbeing Board except in an emergency in which case the Chief Executive can issue the waiver.”
- 10.9 Given that future funding allocation has yet to be determined and that Local Authorities are mandated to assume commissioning responsibilities from NHS England whilst adhering to a timeframe over which they have no control, it is arguable that “genuinely exceptional circumstances” exist so that a waiver from the

Council's contract rules requiring a competitive tender exercise to be followed is justified, as anticipated by rule 6.6.8

Background Papers Used in the Preparation of the Report:

- Transfer of 0-5 children's public health commissioning to local authorities: 0-5 public Health allocations 2015/16:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417433/0-5_Public_health_allocations.pdf
- 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. Health and wellbeing Board 17th March 2015
<http://moderngov.barking-dagenham.gov.uk/documents/g8146/Public%20reports%20pack%20Tuesday%2017-Mar-2015%2018.00%20Health%20and%20Wellbeing%20Board.pdf?T=10>
- 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>

List of appendices: None