

CABINET

February 2013

Title: Transfer of Contracts for Public Health Services	
Report of the Cabinet Member for Health	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Divisional Director: Glynis Rogers, Divisional Director, Community Safety & Public Protection	
Accountable Director: Anne Bristow, Corporate Director of Adult & Community Services	
<p>Summary:</p> <p>As part of the transfer of Public Health to the local authority, there are a number of contracts that need to be novated to and/or recontracted by the Council from the NHS. The information needed to undertake this work has been slow to come through to the Council, in part due to the complexity of the task and the timing of Department of Health directions.</p> <p>This report therefore seeks the delegated authority necessary to conclude those contracting negotiations in time to meet the transfer of services and statutory responsibilities on 1 April 2013. It is a necessary precursor to a more substantial body of work during 2013/14 to ensure that future contracting arrangements are established that more fully and flexibly meet the Borough's needs.</p>	
<p>Recommendation(s)</p> <p>The Cabinet is recommended:</p> <ul style="list-style-type: none"> (i) To agree the proposals set out in this report and delegate authority to the Corporate Director of Adult and Community Services, working with the Director of Public Health and the Head of Legal and Democratic Services, to conclude all necessary contract negotiations for novation, extension, amendment and, where necessary, recontracting of the services outlined and any others that relate to the need to maintain stable public health services and meet statutory duties through the transition of public health functions to local authority management; and (ii) To authorise the Head of Legal and Democratic Services or an authorised delegate on her behalf, to enter into and execute all contracts, agreements and legal documentation deemed necessary and appropriate to facilitate the necessary transfers. 	

Reason(s)

In order to meet the new statutory duty on 1 April 2013 to provide public health services, and to ensure stable provision of established services such as smoking cessation, sexual health, Public Health Advice to NHS Commissioners and Health Check assessment.

1. Introduction

- 1.1 On 1 April 2013, the Council takes on responsibility for leadership of the public health system locally, under the reforms set out in the Health & Social Care Act 2012. The Public Health team, currently under the management of NHS North East London & City cluster of Primary Care Trusts, will transfer to the management of the Council.
- 1.2 Under section 2B of the NHS Act 2006, inserted by the Health and Social Care Act 2012, upper tier and unitary local authorities will have a new duty to take appropriate steps to improve the health of their populations. Local authorities are also required to provide specific services or take particular steps set out in the Local Authorities (Public Health Functions and Entry to Premise by Local Healthwatch Representatives) Regulations 2013.
- 1.3 As part of these responsibilities, the contracts for public health related services, formerly commissioned by the PCT and now through NHS North East London & City cluster, will transfer to the Council. These contracts form a significant proportion of the expenditure under the Public Health Grant. The grant allocated to the Council is £12,921,100 for 2013/14 and £14,213,200 for 2014/15, after which point the grant will be based on a national formula from the Department of Health to fund services and interventions to improve the public's health.
- 1.4 The portfolio of contracts transferring form a complex set of arrangements for the provision of services such as smoking cessation, sexual health, healthy child programmes and GP-led drug treatment. Some contracts are with major local NHS providers, such as North East London NHS Foundation Trust, whilst others are broken into a large number of smaller agreements with individual local GPs and pharmacists. National directions have been given on a number of matters relating to the contract transfer, and the standard contracting rules and regulations apply to how the Council can approach re-contracting or extension. The information required in order that the Council can take the necessary decisions has been difficult to obtain and, in some instances, remains unclear at this point.

2. Proposal and Issues

- 2.1 In order to stabilise the services involved for the coming year, Cabinet are being requested to give delegated authority to the Corporate Director of Adult & Community Services to take the necessary decisions on variance, extension or short-term recontracting of the services involved.
- 2.2 The Council's commissioning teams, working with the Public Health team, will then continue to review the contracts and establish the necessary procurement arrangements for the suite of services that the Council determines is needed to meet local need in the years ahead.

Current NHS contracting arrangements

- 2.3 Some of the services are provided by North East London NHS Foundation Trust or Barking, Havering & Redbridge University Hospitals NHS Trust, and have hitherto formed part of the wider contract held by the PCT for those hospital trusts' provision of community and acute healthcare services. In these instances, it is necessary to use our standard council contract that and incorporate new schedules with appropriate clinical elements, and reach agreement with the providers.
- 2.4 Because the transfer of community health services from the PCT to North East London Foundation NHS Trust took place ahead of other local boroughs, Barking & Dagenham is in a slightly different place in terms of timing of contracts from some of those other boroughs. Both major NHS Trusts have indicated their willingness to discuss interim contract arrangements, including some changes to the services that are to be agreed, whilst longer-term decisions can be considered and planned. Work is underway by Legal Services, with Public Health and Adult Commissioning, to design a clinical schedule to be attached to the Council contract that can contain the necessary performance measures in the service specification.
- 2.5 In terms of number of contracts, the bulk of the work concerns the establishment of contracts between the Council and local GPs for the provision of 'Local Enhanced Services' (LES), principally around such services as substance misuse shared care, contraception and NHS healthchecks. In the main, these are being transferred with no change to terms and conditions and the substantial work of planning future requirements will begin when the current services have been stabilised. In order to establish a Council contract framework for commissioning services from general practitioners, Legal Services are once again working with Public Health and Adult Commissioning and drawing on work already undertaken by other local authorities. Some of the specifications require amendment to adapt to Department of Health requirements of the service (for example, the NHS Healthcheck)
- 2.6 The contracts that are being transferred are summarised in Appendix A, but as work continues on the information sent through by NHS North East London & City, this list may change in the run-up to 1 April 2013. It is for this reason that delegated authority to conclude the work is being sought, in order that decisions can be taken in response to the changing picture.

Proposals for future of the contracts

- 2.7 The Department of Health issued a template contract for use with all the public health services which we will be responsible for on 31 January 2013. This public health services contract is a non-mandatory contract designed for use by local authorities in commissioning services to meet their new public health functions. It is adaptable for use for a broad range of public health services and delivery models.
- 2.8 Although the contract is non-mandatory it provides a robust framework to hold providers to account for the delivery of high quality public health funded services to achieve improved health outcomes. This is being evaluated by Legal Services to ensure that it is fit for purpose.

- 2.9 Where amendments are required to the services provided, these are noted in Appendix A. For the longer-term future of these services, in a number of instances the Borough is in discussion with neighbouring authorities on the options for shared (and therefore more efficient) contracting. In some instances, the future of the service, and whether it meets emerging needs, is being considered.

Public Health Support to Barking and Dagenham Clinical Commissioning Group

- 2.10 The Health and Social Care Act 2012 mandates NHS commissioners to obtain the public health advice they need to deliver their commissioning responsibilities, and regulations require Councils to provide this advice. During 2012/13, this advice has been agreed and provided through a Memorandum of Understanding (MoU) between the Council and the Barking and Dagenham Clinical Commissioning Group (CCG). This will be reviewed and the findings will be used to inform the agreement between the Council and the CCG in 2013/14. The MoU with the CCG would comprise a schedule in the overarching agreement under Health Act legislation both to ensure that public health officers can advise the CCG and are adequately supported by the CCG to do this, for example through access to relevant data.
- 2.11 The Cabinet is requested to delegate responsibility for finalising and signing this agreement with the CCG to the Corporate Director of Adult & Community Services for the London Borough of Barking and Dagenham, with the support of the Director of Public Health.

3. Options Appraisal

Alternative

- 3.1 Should the Council arrive at 1 April without having concluded the necessary contracting, or without the authority for such negotiations to be concluded, there is a risk to the continued delivery of a range of public health services which are critical to sections of the local population. Furthermore, the services concerned are, in the main, part of the mandatory set of services that the Council must provide under the new statutory responsibilities for public health. Not to have the mechanism in place to do so could be a breach of that duty, and therefore not to be entering into negotiation in good faith to try and secure the services, potentially puts at risk parts of the public health grant, which could be taken back by the National Commissioning Board in order that they can fulfil the statutory commissioning requirements on the Council's behalf.

4 Consultation

- 4.1 Discussions have taken place with NHS North East London & City, North East London NHS Foundation Trust and Barking, Havering & Redbridge University Hospitals NHS Trust, as well as representatives of the Clinical Commissioning Group, in order to conclude negotiations and establish a process for securing the services covered by the contracts to be transferred.

5. Financial Implications

Implications completed by: Dawn Calvert, Group Manager Finance (Adults and Children's)

- 5.1 The Public Health Grant for 2013/14 has been confirmed at £12.9 million. All local authority-related Public Health expenditure must be contained within the grant.

6. Legal Implications

Implications completed by: Eldred Taylor-Camara, Legal Group Manager (Partnerships & Strategic Procurement)

- 6.1 Under the Health and Social Care Act 2012, the lead local responsibility for Public Health is due to transfer to the Council with effect from 1st April 2013. The process of transition includes the transfer by the end of March 2013, of a number of key contracts currently held by the NEL cluster of PCTs to the Council. Officers are reviewing all relevant contracts which will come across to the Council and are undertaking assessments of risks .
- 6.2 There are a wide range of Public Health contracts, in terms of length, size, monetary value and type. The Department of Health (DoH) will be passing statutory Transfer Schemes to effect the formal transfer of Public Health functions to local councils. The Schemes will deal with the transfers of staff, property and liabilities between the relevant PCT and the local authority. It is anticipated that all key contracts will be novated by virtue of these statutory arrangements.
- 6.3 Guidance has been received from the DoH to assist both senders (the PCT) and receivers (the local authority) explaining their responsibilities and the process and timing for the implementation of the transfer schemes.
- 6.4 However, some other relevant contracts will not be included in the transfer schemes and others will come to an end on or by 31 March 2013 and will either have to be extended or new interim arrangements put in place to ensure continuity of service to the public.
- 6.5 In view of the urgent timescale it is necessary that Officers be granted authority to take such steps as are necessary to ensure that all relevant contracts are in place on 1 April 2013. The recommendations in this report are intended to ensure this happens and on time.

7. Other Implications

- 7.1 **Risk Management** - The proposals contained in this report are designed to minimise the risks involved in the transition from NHS commissioning of these services to Council commissioning. They do not seek to establish significant new services, but enable the Council to take on the existing responsibilities and meet statutory duties. These measures are part of the controls identified in the Corporate Risk Register, where it covers the risks of public health transition to the Council.
- 7.2 **Contractual Issues** - These are set out in the body of the report, as the report's main subject.

- 7.3 **Staffing Issues** - There are not significant staffing issues, beyond the considerable work that is required to establish, review and then manage the contracts that form part of the public health grant and responsibilities. These issues have been considered by senior officers and appropriate provision is made within staffing structures.
- 7.4 **Customer Impact** -The services which we are seeking to stabilise through these measures are of significant importance in protecting and promoting the health of local people, and the proposals seek to minimise the impact on residents trying to access the services.
- 7.5 **Safeguarding Children and Vulnerable Adults** - The measures are designed to maintain service delivery and, as such, should not have significant safeguarding impact. However, failure to maintain the services raises the risk of sexual health and smoking cessation services, amongst others, not being provided in a timely and responsive way, raising the risk to some young people and vulnerable adults. Some of the LES schemes, such as drug misuse shared care, could have significant impact on vulnerable drug-dependant adults if destabilising, potentially leading to relapse into more risky drug-using behaviour.
- 7.6 **Health Issues** - As the main subject of the report, these measures are intended to continue services that seek to improve the health and wellbeing of the residents of the borough.
- 7.7 **Crime and Disorder Issues** - Some services, such as substance misuse shared care schemes make a substantial contribution to minimising crime and disorder, and the measures described seek to minimise risk to those services.
- 7.8 **Property / Asset Issues** - There are no significant property/asset issues raised by the matters in this report, and where any contract contains specific terms and conditions relating to property and assets, these will be dealt with on a case by case basis seeking to minimise any risk to the Council and in full consultation with Legal Services.

Background Papers Used in the Preparation of the Report:

Local Authorities (Public Health Functions and Entry to Premise by Local Healthwatch Representatives) Regulations 2013
<http://www.legislation.gov.uk/ukdsi/2012/9780111531679/contents>

List of appendices:

Appendix A: List of contracts to be transferred

Contract Transfer List

APPENDIX A

This list is provided as an indicative summary of the contracts that are proposed for transfer, and on which officers will work under the delegated authority. NHS NELC agree that this list is inconclusive, possibly not exhaustive and values may not be accurate. They continue to provide us with improved, validated information. We estimate that around 300 contracts in total will be transferred with the majority of these being LES contracts.

A 'LES' contract is with a GP or GP practice for the provision of 'locally enhanced services', above the standard primary care contracted provision. Thus, where a LES contract is indicated in the table below, this may in fact be multiple contracts with all or a significant proportion of GPs across the borough. Other contracts can be on block (where a specific 'amount' of service activity is contracted for) and on tariff, where activity through the service is charged at a standard per-case rate based on a nationally published NHS tariff, and which may or may not have activity levels strictly agreed in advance. In the latter case, estimated outturn is therefore more significant than contract value. Single/shared indicates whether this is part of a larger contract across multiple boroughs.

Service function	Provider	Single/ Shared	Contract value	Estimated out-turn	Tariff/ Block	LBBD Commissioning Intention
Clinical sexual and reproductive health services	BHRUT	Shared	Block contract paid on tariff	1,061,962	National tariff	LBBD re-issue as single contract
	Other acute providers	Service cross-charge	National tariff	337,398	National tariff	Need to clarify position with LGA regarding cross-charging for out-of-area
Chlamydia screening for 16-24yrs	Terrence Higgins Trust	Shared	231,642	231,642	Block	PCT asked to extend for 12 months
Rapid HIV Testing	Terrence Higgins Trust	Single	30,250	30,250	Block	LBBD re-issue as single contract
C-Card and distribution	Terrence Higgins Trust	Single	45,000	45,000	Block	LBBD re-issue as single contract

Service function	Provider	Single/ Shared	Contract value	Estimated out-turn	Tariff/ Block	LBBB Commissioning Intention
HIV support and prevention	Body and Soul	Single	26,424	26,424	Block	LBBB instructed PCT to not to renew at end of contract in March 2013
HIV prevention and testing	Positive East and Widows and Orphans	Single	54,501	54,501	Block	LBBB instructed PCT to not to renew at end of contract in March 2013
HIV prevention and support	Positive East and Widows and Orphans	Single	41,244	41,244	Block	LBBB will incorporate into existing contract with providers for similar services. PCT instructed to not renew at end of contract in March 2013
Administration of Hormone Implant (LARC) LES	GP	LES	30,937	30,937	Tariff	PCT asked to extend for 12 months
Young Persons Chlamydia Screening LES	GP/Pharmacy	LES	9,046	9,046	Tariff	PCT asked to extend for 12 months
Pharmacy Sexual Health LES	Pharmacy	LES	Unknown	Unknown	Tariff	PCT asked to extend for 12 months
Smoking Cessation	NELFT	Shared	573,200	573,200	Block	LBBB to re-issue contract using common specification and London average tariff model. LES cost to be disaggregated and commissioned as specific service function with separate performance reporting.
	GP	LES				

Service function		Provider	Single/ Shared	Contract value	Estimated out-turn	Tariff/ Block	LBBB Commissioning Intention
Drugs and Alcohol	Shared Care	GP	LES	77,103	77,103	LES	PCT asked to extend for 12 months
	Supervised Consumption	Pharmacy	LES	Unknown	Unknown	LES	PCT asked to extend for 12 months
	Adult Pooled Treatment Budget	Unclear	Single	1,486,864	1,360,856	Block	LBBB re-issue as single contract
	Young People Pooled Treatment	Unclear	Single	146,488	146,488	Block	LBBB re-issue as single contract
	DH DIP	Unclear	Single	166,982	166,982	Block	LBBB re-issue as single contract
	City Roads	City Roads	Single	36,294	36,294	Block	LBBB re-issue as single contract
	NTA New Allocation	Unclear	Single	94,810	94,810	Block	LBBB re-issue as single contract
	Inpatient Detox	Unclear	Single	47,500	47,500	Block	LBBB re-issue as single contract
	CRI/Alcohol	Unclear	Single	610,442	610,442	Block	LBBB re-issue as single contract
	Young People's Services	Subwise	Single	71,250	71,250	Block	LBBB re-issue as single contract
Healthy Child Programme 5-19yrs		NELFT	Shared	764,000	764,000	Block	LBBB re-issue as single contract
Child weight management		NELFT	Single	151,000	151,000	Block	LBBB instructed PCT to not to renew at end of contract in March 2013. LBBB bringing service in house to align with adult weight management provision.

Service function	Provider	Single/ Shared	Contract value	Estimated out-turn	Tariff/ Block	LBBB Commissioning Intention
Provision of infant feeding support services	Lifeline	Single	50,000	50,000	Block	LBBB re-issue as single contract
Child weight management licences	MEND	Single	41,990	41,990	Block	LBBB instructed PCT to not to renew at end of contract in March 2013 as not required.
Adult Weight Management	LBBB - Healthy Adults	Single	250,074	250,074	Block	LBBB instructed PCT to not to renew at end of contract in March 2013 as bringing service in-house.
	WeightWatchers	Single	50,000	50,000	Block	LBBB re-issue as single contract
Health Checks	GP	LES	Unknown	Unknown	LES	LBBB re-issue as single contract
	Direct GP	LES	15,000	15,000	LES	
	Pharmacy	LES	Unknown	Unknown	LES	
Health Screening	GP	LES	93,808	93,808	LES	Awaiting clarity if transferring to NCBL
Domestic Violence	Women's Trust	Single	24,550	24,550	Block	Awaiting clarity if transferring to CCG as part of mental health commissioning