

MUNICIPAL YEAR 2017/2018 - REPORT NO.

**ACTION TO BE TAKEN UNDER
DELEGATED AUTHORITY****PORTFOLIO DECISION OF
CLLR FONYONGA****REPORT OF:**

Executive Director of Health, Housing
and Adult Social Care

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Agenda - Part: 1	Item:
Subject: Public Health Children's Services	
Wards: all	
Key Decision: KD 4551	
Directors Consulted: Ray James, HHASC Tony Theodoulou, Children's Services	
Cabinet Members consulted: Cllr Krystle Fonyonga, Cabinet Member for Community Safety & Public Health, Cllr Ayfer Orhan, Cabinet Member for Education, Children's Services and Protection	

1. EXECUTIVE SUMMARY

- 1.1 A decision to regularise contractual arrangements for public health children's services via development and agreement of a contract for direct award is required.
- 1.2 The decision is needed as the previous contractual arrangement has expired.
- 1.3 These services should be subject to a contractual arrangement in order to safeguard children in Enfield.
- 1.4 The aim is to ensure the continuity of services and their ongoing quality and safety whilst allowing sufficient time to fully re-procure the services.

2. RECOMMENDATIONS

This report recommends that:

- 2.1 The London Borough of Enfield continues contractual discussions with a view to regularising current delivery arrangements for public health children's services as soon as possible.
- 2.2 That the interim contract is directly awarded for a period of 18 months to secure continuity of service whilst allowing sufficient time to fully re-procure the services.
- 2.3 The development of the content of these contractual arrangements be delegated to the Director of Public Health and the Assistant Director of Legal Services.

3. BACKGROUND

Health Visiting, School Nursing, Family Nurse Partnership and Immunisations (referred to here collectively as Public Health Children's Services) were historically commissioned by the NHS. Responsibility for Health Visiting, School Nursing and Family Nurse Partnership transferred to Local Authorities between 2013 and 2015 under the Health and Social Care Act 2012, funded through the Public Health Grant. Enfield Council carries a mandated responsibility for these services, currently delivered by Barnet, Enfield and Haringey Mental Health Trust ('BEH'), which are an important element of safeguarding local children.

In anticipation of the potential for further join up of commissioning and delivery of an integrated community services offer, since 2013, Enfield Council has been an associate to a contract between the CCG and BEH. The contract covered Health Visiting, School Nursing, Family Nurse Partnership along with immunisation services, which are funded by NHS England.

Advice from Enfield Council's Procurement, Legal and Democratic Services departments concluded that Local Authority contracting processes should apply for services for which the Local Authority is responsible. They considered that the expired associate documents, on which current service delivery may be implied, are not commensurate with Local Authority requirements for commissioned services.

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Given the value of the contract; the importance of the services involved; and that there was no other form of contract considered suitable, immediate action is recommended to fulfil the Council's obligations. There is a need to regularise arrangements for the Council directly commission these services for now. This will not impact the continued exploration of collaborative options for joining up a wider range of community services, across organisations and geographies, securing the best possible value for people in Enfield would remain a priority.

In order to maintain the security and safety of these services to Enfield children, it is recommended that a directly awarded contract is put in place, to a provider who can assure the Council of the continuity of current services in Enfield.

It is anticipated that the process required to put these arrangements in place would include agreeing the contract value, specifying the service deliverables and outcome measures, along with the process for contract management and invoicing.

The final contract would be anticipated to run for an 18 month period, to allow time for full tendering of the services in the competitive market. This interim arrangement would not replace existing partnership working and the sharing of skills and functions through existing section 75¹ and other arrangements.

In order to expedite the process, a delegated member decision by the portfolio holder has been recommended by Democratic Services colleagues. Decisions around finalising the detailed content of the contractual arrangements with the provider would be delegated to the Director of Public Health and the Assistant Director of Legal Services.

4. ALTERNATIVE OPTIONS CONSIDERED

Development of contractual arrangements between Enfield Council and a service provider are considered the only option to maintain a mandated safeguarding service.

5. REASONS FOR RECOMMENDATIONS

¹ S75 of the NHS Act allows pooling of NHS and Local Authority funds for mutual benefits.

Previous contractual arrangements for NHS Enfield CCG as Commissioner have expired and have not provided as previously anticipated a suitable framework for ongoing contractual relationship and a full procurement is needed. This will take 18 months to complete satisfactorily which means that an interim solution is necessary. There is a need to secure continuity of service for this period and the risk of not implementing interim contractual arrangements are such that direct award is recommended.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

The Public Health Grant for 2017/2018 for Enfield is £17.272m. The grant is used to provide services to 0-19 year olds including 0-5 years Health Visiting, School Nursing and Family Nurse Partnership. The 0-5 services are defined as a prescribed function, by the Department of Health which means they are mandatory, whereas the 5-19 services (with the exception of the prescribed National Child Measurement Programme, NCMP) are defined as Non Prescribed and therefore non mandatory.

Part 2 of this report provides further detail.

6.2 Legal Implications

- 6.2.1 Section 10 of the Children's Act 2004 requires local authorities to make arrangements with third parties with a view to improving the safeguarding and wellbeing of children in that authority's area relating to, amongst other things, physical and mental health and emotional well-being. Statutory guidance ("*Working together to safeguard children: a guide to inter-agency working to safeguard and promote the welfare of children*", March 2015) requires local authorities to have arrangements in place that reflect the importance of preventing the impairment of children's health and development and taking action to enable all children to have the best life chances. There must be a clear line of accountability for the commissioning and/or provision of services designed to safeguard and promote the welfare of children.

- 6.2.2 As stated in section 3 (Background) above, responsibility for Health Visiting, School Nursing, Family Nurse Partnership (0-19 Services) and oral health promotion were transferred to local authorities between 2013 and 2015 under the Health and Social Care Act 2012 ("HSCA 2012"). Under section 12 of HSCA 2012, each local authority is required to take such steps as it considers appropriate for improving the health of people in its area.
- 6.2.3 Schedule 1 of the National Health Service Act 2003 (as amended by HSCA 2012) sets out local authorities' duties in respect of medical inspection and treatment of pupils and the weighing and measuring of children. Local authorities must provide such services at appropriate intervals for children in maintained schools and may provide such services for pupils in other schools. Regulation 3 of The Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 (the "Regulations") requires local authorities to provide for the weighing and measuring of children aged 4-5 and 10-11 attending maintained or Academy Schools.
- 6.2.4 The Regulations (as amended) also require local authorities to provide or secure the provision of an assessment and review of health and development by a health visitor, qualified health professional or family nurse for children aged between birth and 30 months. In performing this function, local authorities must act with a view to securing continuous improvement in the percentage of children participating in such reviews.
- 6.2.6 On 11 November 2016 the Council and NHS England entered into an agreement pursuant to Section 256 of the National Health Service Act 2006 under which the Council agreed to deliver a school health service, including an immunisation component, during the 2017/18 and 2018/19 academic years.
- 6.2.7 Section 111 of the Local Government Act 1972 permits local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. The Council has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to Public Law principles. The recommendations in this report will enable the Council to fulfil its public health and safeguarding duties outlined in 6.2.1-6.2.5 above.

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- 6.2.8 The Council must comply with all requirements of its Constitution, Contract Procedure Rules ("CPRs") and the Public Contracts Regulations 2015 ("Regulations").
- 6.2.9 As the anticipated contract values both exceed £250,000, this is a Key Decision and the Council must comply with the Key Decision procedure. It has been confirmed that approval from the Procurement and Commissioning Board has been obtained. In cases of urgency, Rule 15 and/or 16 of the Council's Constitution must be adhered to.
- 6.2.10 The CPRs require a competitive tendering process for all contracts unless a waiver is granted under CPR 9. Any such waiver must be demonstrated by the Director of Health, Housing and Adult Social Care to be reasonable in all the circumstances and to be in the best interests of the Council. The decision must be recorded in writing and all documentation supporting the decision must be retained.
- 6.2.11 The Council must ensure value for money in accordance with the overriding Best Value Principles under the Local Government Act 1999.
- 6.2.12 The contract documentation must be in a form approved by the Assistant Director of Legal and Governance. Officers should be mindful of the requirement to obtain a performance bond or parent company guarantee for every contract exceeding £250,000 in value, except where the relevant Director and the Director of Finance Resources and Customer Services consider this to be unnecessary (CPR 21.1).

6.3 Property Implications

N/A

7. KEY RISKS

If current or previous arrangements are not resolved as soon as possible the Local Authority is open to

- legal challenge from an alternative healthcare provider on the grounds of circumnavigated competitive market process under European Procurement Law, the total risk being a sum equal to the value of the contract over time, a value of at least £10 million, increasing at a rate of £500,000 per month.
- allegations of negligence in any harm which may occur to a local child on the grounds that mandated services which provide safeguarding mechanisms were not properly specified, contracted and monitored as would be commensurate with local authority process and responsibility.

Lesser but significant risks remain in the remedial actions proposed.

- legal challenge from an alternative healthcare provider on the grounds of circumnavigated competitive market process under European Procurement Law, the total risk being a sum equal to the value of the contract over time, a value of at least £10 million, which becomes capped by setting a fixed period of direct award.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

School Nursing and Health Visiting are universal services, that is to say that they provide health and safeguarding support to all Enfield children. Services are also fair, targeting certain specific support to where it is most needed.

8.2 Growth and Sustainability

Evidence shows that a healthy start in life and support for health and social welfare through childhood and adolescence provides for better social and economic outcomes in later life. These services support the core development of the next generation of Enfield residents

8.3 Strong Communities

Health Visitors and School Nurses provide support to all children and families and can help to support communities across all social and local differences in support of the common need for our residents to be healthy and thriving.

9. EQUALITIES IMPACT IMPLICATIONS

The decision will affect families and children universally including those with recognised health and social care needs.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The decision will ensure the introduction of performance management measures.

11. PUBLIC HEALTH IMPLICATIONS

The decision will enable the delivery and management of services which are designed to protect, maintain and improve the health of the population of children and their families in Enfield. These services are a core component of delivering the Health & Wellbeing strategy priority of ensuring the best start in life as well as Enfield Council's strategic aim to tackle the inequalities in the Borough, protect the vulnerable and to enable young people to fulfil their potential.

Background Papers

1. *Former contract between Enfield CCG, The Provider (BEH) with LBE as an "associate" ..\0-19 PROGRAMMES\CONTRACT\Signed LBE-SV-PRN-002 PR-ECC06-JMN28558-IRC5250 1528 001.pdf*