

**Open Report on behalf of Debbie Barnes, Executive Director of Children's Services**

Report to:	<b>Executive</b>
Date:	<b>2<sup>nd</sup> February 2016</b>
Subject:	<b>2016/17 Contract with Lincolnshire Community Health Services NHS Trust for Health Visiting, School Nursing and Antenatal Weight Management</b>
Decision Reference:	<b>I010052</b>
Key decision?	<b>Yes</b>

**Summary:**

Lincolnshire County Council, Children's Services has contracts in place with Lincolnshire Community Health Services NHS Trust (LCHS) for a number of children's health services.

Firstly, there is a contract for Health Visiting services with a value of £8.650m per annum (2015/16). This contract was originally established from 1 April 2015 by NHS England and then novated to the Council when commissioning functions for 0-5 public health services were delegated to local authorities on 1st October 2015. There is also a contract for School Nursing and Antenatal Weight Management services with a value of £2.749m per annum (2015/16). These services currently form part of a wider contract which was originally established on 1 April 2014 by the LCC Public Health department.

Both of these existing contracts have an end date of 31 March 2016, and neither contains provisions to further extend the contract period. Prior to both contracts commencing, no open competitive tender process had been run, and these contracts had been awarded directly to the provider.

Children's Services is conducting an extensive review of these services alongside other early years provision where there is a clear interface.

As a result of the review, the earliest the services the Council wants to commission going forwards could be put out to tender on the open market and become operational would be 1 October 2017, although that could be earlier where specific services allow.

This leaves a gap of 18 months from current contracts ceasing to newly commissioned services being effectively implemented and operational. It is too soon in the review to recommission services effectively for 1<sup>st</sup> April 2016.

This Report looks at the options for how to take forward the relationship with LCHS over the interim period and proposes for approval an Agreement with LCHS under section 75 of the National Health Service Act 2006.

**Recommendation(s):**

That the Executive;

1. Approves in principle the entering into by the Council of an agreement under section 75 of the National Health Service Act 2006 for the exercise by Lincolnshire Community Health Services NHS Trust of the Council's functions under section 2B of the 2006 Act insofar as they relate to the provision of Health Visiting, School Nursing and Ante-natal Weight Management services as described in more detail in the Report.

2. Delegates to the Director of Children's Services in consultation with the Executive Councillor for Adult Care, Public Health and Children's Services the authority to determine the form and content of the agreement including the detailed scope of functions and services to be covered in the agreement, and approve the entering into of all legal documentation necessary to give effect to the decision in paragraph 1 above.

**Alternatives Considered:**

1. To allow the current contractual arrangements to end on 31 March 2016.

This is not a feasible option as significant elements of the services including Health Visiting services are a statutory obligation of the Council. The decision whether or not to de-commission any of the services where this can lawfully be done needs to be informed by the results of the proposed review

2. To conduct a competitive tendering process to select a provider from 1 April 2016 forwards.

It is believed that this course of action would not be desirable, or feasible. The commissioning responsibility has been newly transferred to Lincolnshire County Council, and NHS England advises that there will be no adjustment to Health Visiting services during the period 1 April 2016 to 31 March 2017. There will be insufficient time to go through the full and proper commissioning processes, including procurement requirements set out within the UK Public Contracts Regulations 2015, in order to select a new provider from 1 April 2016, and as such this may present a significant risk to service users due to the possibility of a gap in service provision, leaving them vulnerable and without support, and would result in Lincolnshire County Council's statutory obligations not being fulfilled.

**Reasons for Recommendation:**

Arrangements need to be made to bridge the 18 month gap from current contracts ceasing to newly commissioned services being operational following an extensive review. This will ensure effective ongoing service provision for families, and allow sufficient time for the commissioning review to be put in place, including putting services out to competitive tender to ensure value for money. The proposed section 75 Agreement enables the current provision to continue lawfully whilst allowing the Council to address the health integration agenda in circumstances where the experience gained from the partnership arrangements can be fed into an extensive review of the best commissioning arrangements for these services moving forward.

**1. Background****Background & History**

The Council has a duty under section 2B of the National Health Service Act 2006 to take such steps as it considers appropriate for improving the health of the people in its area.

Under the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013, certain services are required to be delivered by the Council. These Regulations have recently been amended to include Health Visiting services during the period 1 October 2015 to 31 March 2017.

There are two existing contracts relating to Children's Public Health.

Firstly, there is a contract for Health Visiting services with a value of £8.650m per annum (2015/16). This contract was originally established from 1 April 2015 by NHS England and then novated to the Council when commissioning functions for 0-5 public health services were delegated to local authorities on 1 October 2015 as a result of the amendment to the 2013 Regulations referred to above.

Secondly, there is a contract for School Nursing and Antenatal Weight Management services with a value of £2.749m per annum (2015/16). These services currently form part of a wider contract which was originally established on 1 April 2014 by the LCC Public Health department. Since 1 April 2015 the contract management responsibility for Antenatal Weight Management and School Nursing services has moved to Children's Services.

It should be noted that 'Stop Smoking' and 'Integrated Contraception and Sexual Health Services' (which also currently form part of this second contract) are going through a separate re-procurement exercise and will not form part of this contract beyond 31 March 2016. However the early years elements referred to above (Antenatal Weight Management and School Nursing services) will continue to be part of this second contract.

Both contracts are with Lincolnshire Community Health Services NHS Trust. Both have previously been directly awarded. Both expire on 31 March 2016.

### **Early Years and Children's Health Services Commissioning Review**

This review is looking at designing a new, integrated offer for early years and public health services for all children and young people and their families.

The review covers those commissioned services aimed at supporting children to have the best start in early life, be ready for school and continue to lead happy and healthy lives in preparation for adulthood. These include Health Visiting, School Nursing, Antenatal Weight Management and Children's Centre services.

We need to review what is provided to families in Lincolnshire to ensure we are able to continue providing good quality, effective and efficient services whilst supporting the council to make financial savings.

We are engaging with key stakeholders and customers both within and outside the Council from October to December 2015 to help shape the best future for children's early years and health services in Lincolnshire.

This review however will itself take some time and if the recommended option was to put all or any of the services out to competitive procurement the earliest realistic start date for such services to become operational under a new contract would be 1 October 2017.

### **Health Visiting**

The Health Visiting Service works across a number of stakeholders, settings and organisations to lead delivery of the Healthy Child Programme 0-5 (mandated until 30<sup>th</sup> March 2017), a prevention and early intervention public health programme that lies at the heart of the universal service for children and families and aims to support parents at this crucial stage of life, promote child development, improve child health outcomes and ensure that families at risk are identified at the earliest opportunity. The Service also delivers more intensive support to vulnerable families.

### **School Nursing**

School Nurses are Registered Nurses with an additional public health qualification. They lead teams of Community Registered Nurses and School Nurse assistants to deliver a core programme of services for children and young people of school age (4-19 years) across Lincolnshire. School Nurses work across range of settings, including schools, academies, free schools, special schools, home educated and teaching and learning units. Some of the services offered by school nurses include:

- Health Needs Assessment.
- National Child Measurement Programme.

- Drop-in clinics for pupils, offering for example, support for emotional health and wellbeing, dietary advice and lifestyle choices.
- Clinic in a box (sexual health services).
- Sex and Relationships education.
- Community wellbeing clinics.
- Safeguarding.

### **Antenatal Weight Management**

The Antenatal Weight Management Service is designed specifically for all pregnant women who have a Body Mass Index (BMI) of 35 or over and are due to have their babies at either Lincoln County Hospital or Pilgrim Hospital, Boston.

It is a free, one to one service, tailored to suit the individual's needs. It provides information, advice and support throughout pregnancy over seven appointments, to achieve a healthier lifestyle which in turn promotes weight management.

### **Delivery from 1 April 2016**

The Council's options for securing delivery of the above services by 1 April 2016 are limited by legal considerations.

Under the Public Contracts Regulation 2015 the old distinction between Part A and Part B services has been removed and now contracts for health and social care services above a threshold of £625,000 have to be advertised (although there is greater flexibility about how the procurement itself is structured). Given the value of 18 months provision of such services a direct award of the contract would run significant risk of legal challenge.

As a result, consideration has been given to the flexibilities offered by section 75 of the National Health Service Act 2006 as an alternative mechanism for securing the provision of the services. A Section 75 Agreement is not a contract for services and therefore not covered by the procurement regime.

There are a number of factors pointing in the direction of a Section 75 Agreement:

- The Council has extensive experience of using Section 75 in the context of adult care with a number of such agreements having been secured as part of the Better Care Fund for 2015/2016.
- The Health and Wellbeing Board has a statutory duty to encourage integration of services.
- The announcement in the Autumn Statement of plans to move towards integration of health and social care by 2020.

One of the matters that the Council will need to consider in the review referred to above is the question of integration where health and public health functions may benefit from being commissioned or provided in an integrated way. Moving to a Section 75 arrangement with LCHS from 1 April 2016 will enable this model to be tested in operation and lessons to be learned as part of the review and for this to inform the longer term plans for early years provision.

The main difference between a contract for services (which is how the services are currently commissioned) and a Section 75 Agreement is that under the latter LCHS would exercise the Council's function rather than simply delivering a service. The functions in this case would be the Council's functions under section 2B of the National Health Service Act 2006 insofar as they relate to the services currently provided under the existing contracts.

This gives to LCHS a greater degree of flexibility in determining what services to deliver within the overall duty to comply with the Council's legal obligations. It also involves, formally at least, less control on the part of the Council. This will be addressed however in the governance arrangements for the Section 75 which will include appropriate performance management and reporting mechanisms.

Within the context of a genuine exercise of functions, the financial basis of the existing arrangements would remain the same.

Certain statutory pre-conditions must be met before a Section 75 Agreement can be entered into. Those pre-conditions and the way they have been satisfied in this instance are set out below

- (1) The partnership arrangements must be likely to lead to an improvement in the way in which the functions are exercised.

Moving towards a more integrated approach to the delivery of services enables both parties to explore ways in which to maximise the use of resources to improve outcomes from the services alongside other services delivered by LCHS such as Domiciliary Care.

- (2) The Partners must have consulted jointly such persons as appear to them to be affected by the arrangements.

The move to a Section 75 Agreement is one of form rather than substance and no services will change as a result. Consultation will be considered as part of the wider review before more permanent commissioning arrangements are put in place for the services as part of wider early years provisions.

The Section 75 Agreement itself must include a number of matters laid down by statute and these will be addressed in the drawing up of the Agreement. The NHS England funding allocation for the Health Visiting service for 2016/17 is yet to be confirmed; however the proposed Section 75 Agreement will reflect the final funding settlement.

### **Equality Act 2010**

The Council's duty under the Equality Act 2010 needs to be taken into account by the Executive when coming to a decision.

The Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it: Equality Act 2010 section 149(1).

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- Take steps to meet the needs of persons who share a relevant protected characteristic that is different from the needs of persons who do not share it
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in this section may involve treating some persons more favourably than others

The relevant protected characteristics are:

Age  
 Disability  
 Gender reassignment  
 Pregnancy and maternity  
 Race  
 Religion or belief  
 Sex  
 Sexual orientation

A reference to conduct that is prohibited by or under this Act includes a reference to:

- ❖ A breach of an equality clause or rule
- ❖ A breach of a non-discrimination rule

It is important that the Executive is aware of the special duties the Council owes to persons who have a protected characteristic, as the duty cannot be delegated and must be discharged by the Executive. The duty applies to all decisions taken by public bodies including policy decisions and decisions on individual cases and includes this decision.

To discharge the statutory duty the Executive must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified, consideration must be given to measures to avoid that impact as part of the decision making process.

Individuals who have protected characteristics should experience an accessible service regardless. Accessibility means that first and foremost they have easy access to the service and that the service offered has equal regard in terms of supporting their individual needs and aspirations. The partner will be required to have policies and procedures in place and have staff sufficiently trained in their responsibilities in regard to the Equality Act. An integral part of the partner monitoring will be to look at where individuals have experienced negative outcomes, looks at trends and whether there is any association with protected characteristics. As a result policies and procedures must be changed and regularly reviewed to minimise any negative impact.

### **Child Poverty Strategy**

The Council is under a duty in the exercise of its functions to have regard to its Child Poverty Strategy. Child poverty is one of the key risk factors that can negatively influence a child's life chances. Children that live in poverty are at greater risk of social exclusion which, in turn, can lead to poor outcomes for the individual and for society as a whole.

In Lincolnshire we consider that poverty is not only a matter of having limited financial resources but that it is also about the ability of families to access the means of lifting themselves out of poverty and of having the aspiration to do so. The following four key strategic themes form the basis of Lincolnshire's Child Poverty strategy: Economic Poverty, Poverty of Access, Poverty of Aspiration and Best Use of Resources.

The Strategy has been taken into account in this instance and the following comments are made:

#### Poverty of Aspiration

These services will provide expert support to children and young people and will support them to be healthy and happy in their early years and help to ensure they are 'ready for school'; and once at school that they are fully supported with any physical or emotional wellbeing issues they may experience.

#### Best use of Resources

Best use of Resources aims to ensure that all key stakeholders contribute to improving the life chances of children and young people in a coordinated way.

## **Joint Strategic Needs Assessment (JSNA)**

The Lincolnshire JSNA identifies a number of needs that directly relate to young people. These services will support children and young people in the following ways under the themes of the JSNA.

### Be Healthy

These services will help to ensure that all children and young people can be happy and healthy, fulfil their potential, and can address areas of concern with trained health professionals.

### Stay Safe

The Health Visiting and School Nursing staff are required to undertake regular safeguarding training and maintain a high focus on keeping children and young people as safe as they can be.

## **Health & Well Being Strategy**

The Lincolnshire Health & Well Being Strategy includes five main themes, the following of which are relevant to these services:

### Promote healthier lifestyles

These services offer support to children and young people to enable them to maximise their physical and emotional health.

### Improve health and social outcomes for children and reduce inequalities

These services will support children and young people so that it improves their general health and social outcomes.

### Deliver high quality systematic care for major causes of ill health and disability

These services will provide expert health care by trained nurses and experienced staff to children and young people from 0-19 years of age.

## **2. Conclusion**

The Executive is recommended to pursue an agreement under section 75 of the 2006 Act for the exercise by LCHS of the Council's functions in relation to the specified early years services whilst a wider ranging review is undertaken into early years provision. This will enable the Council to secure continuity in the existing services in a lawful manner, contribute to the ongoing drive towards integration whilst enabling the benefits of wider integration in the area of public health services to be tested as part of the review.

### **3. Legal Comments:**

The Council has the power to pursue the recommendation. The functions in question can be made the subject of a Section 75 Agreement and LCHS is a health body with which a Section 75 Agreement can be concluded.

The legal matters that the Executive must have regard to are dealt with in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive.

### **4. Resource Comments:**

The recommendation in the report to enter into a section 75 agreement for 18 months will assist the Local Authority to help secure the best possible value for money in the interim period, and will enable a full commissioning review to take place ensuring user needs are met and is within the funding envelope available going forward. The aspirations align to Children's Services priorities.

### **5. Consultation**

#### **a) Has Local Member Been Consulted?**

Yes

#### **b) Has Executive Councillor Been Consulted?**

Yes

#### **c) Scrutiny Comments**

The Children and Young People Scrutiny Committee will consider this report at its meeting on 15 January 2015. Comments from the Committee will be reported to the Executive.

#### **d) Policy Proofing Actions Required**

n/a

### **6. Background Papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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