

**Open Report on behalf of Glen Garrod,
 Executive Director - Adult Care and Community Wellbeing**

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| Report to: | Executive |
| Date: | 4 October 2022 |
| Subject: | Extension of the Lincolnshire Integrated Sexual Health Services Contract |
| Decision Reference: | I027867 |
| Key decision? | Yes |

Summary:

The provision of open access sexual health services is a mandatory responsibility of upper tier local authorities under the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013.

Lincolnshire County Council currently commissions the delivery of Sexual and Reproductive Health (SRH) services through a series of contractual arrangements with Lincolnshire Community Health Service NHS Trust (LCHS), registered charity Positive Health Lincolnshire (PHL), and with GP Practices and Community Pharmacies across Lincolnshire. Contracts for all current SRH services in Lincolnshire are due to end on 31 March 2023.

A re-commissioning programme is underway, but a number of emerging considerations are impacting the effective completion of the programme, and as a result it is proposed to seek to extend all of LCC's commissioned SRH services contracts for a further 12-month period to maintain the coterminous alignment of the contracts whilst the emerging considerations are addressed.

This report seeks authorisation for an exception to the Council's Contract Regulations to enable the extension of the Council's Integrated Sexual Health Services (LISH) contract with LCHS for a period of 12 months to 31 March 2024.

As the funding of the LISH contract is partly covered by a s75 Agreement with NHS England relating to HIV treatment (cost of Antiretroviral medications) approval is also sought to extend that s75 Agreement until 31 March 2024

The 12-month extension proposed does not increase the cost of services above the current contract value. The future service budget will be considered as part of the commissioning review of Sexual and Reproductive Health (SRH) services beyond 1 April 2024

Recommendation(s):

That the Executive:

1. approves the modification of the Lincolnshire Integrated Sexual Health Service (LISH) contract to extend its duration by a period of 12 months to 31st March 2024 at a value of £5,370,123
2. approves the extension of the section 75 Agreement between the Council and NHS England relating to HIV treatment (cost of Antiretroviral medications) until 31 March 2024
3. delegates to the Executive Director - Adult Care and Community Wellbeing in consultation with the Executive Councillor for Adult Care and Public Health authority to determine the final form of the modifications referred to in paragraphs 1 and 2.

Alternatives Considered:**Re-commission and procure the services to commence on the 1 April 2023**

Re-procurement of the Council's SRH services to commence on expiry of the current LISH contract on 31st March 2023 would not permit full and proper consideration of the emerging considerations described in the report, that will impact the future design and delivery of services in Lincolnshire, and which may impact the Council's ability to deliver integrated sexual health services to the Lincolnshire population, which align with national strategy.

Reasons for Recommendation:

Approving the modification of the contract (and associated section 75 Agreement) to enable an extension for a period of 12-months will:

1. Afford the opportunity to explore opportunities for a commissioning collaboration in SRH services as part of the Greater Lincolnshire Public Health Pilot.
2. Afford the opportunity to consider the content of the new National Sexual Health Strategy, publication of which is expected imminently, and take account of this in the development and finalisation of the commissioning strategy for future SRH services in Lincolnshire and across Greater Lincolnshire.
3. Enable the Council to take full account of the forthcoming changes to the commissioning and procurement landscape for Local Authority commissioned Health Services, specifically the forthcoming implementation of the Provider Selection Regime as part of the Health and Care Act 2022, in the planned and ongoing recommissioning of SRH services in Lincolnshire. By extending the

current contracts for a period of 12 months, it should be possible to understand the opportunities and implications of this change for the future commissioning of these services.

The current contracted services are performing to a high standard and the service providers have indicated their support for proposed extension, if approved.

Regulation 72(1)(e) of the Public Contracts Regulations 2015 define circumstances in which a contract modification is not to be taken to be material for the purposes of requiring a competitive procurement to be carried out. This modification is considered to meet these requirements.

In particular the modification will not result in the contract being materially different in character; will not introduce new conditions; will not change the economic balance of the contract; and will not change the scope of the contract considerably.

1. Background

1.1 Responsibility for commissioning sexual health, reproductive health and HIV services is shared across local authorities, CCGs and NHS England. Open access sexual health services are a mandatory responsibility of local authorities. Integrated Sexual Health Services (ISHS) as provided in Lincolnshire provides patients with open access to confidential, non-judgemental services including sexually transmitted infections (STI) and blood borne virus (BBV) testing, treatment and management; the full range of contraceptive provision; health promotion and prevention. Local authorities also commission contraceptive services in primary care such as Long Acting Reversible Contraception (LARC) provision in GP surgeries and emergency contraception (EC) in community pharmacies.

1.2 Lincolnshire County Council currently commissions the delivery of Sexual and Reproductive Health (SRH) services through a series of contractual arrangements with Lincolnshire Community Health Service NHS Trust (LCHS), registered charity Positive Health Lincolnshire (PHL), and with GP Practices and Community Pharmacies across Lincolnshire. The current contracts that deliver these services are set out below.

| Contract/Service | Provider | Annual Value 2022-23 | Current End Date | Available Extensions Remaining |
|---|----------|----------------------|-----------------------------|--------------------------------|
| Lincolnshire Integrated Sexual Health Service (LISH) | LCHS | £5,370,123 | 31 st March 2023 | All extensions taken |
| Sexual Health Outreach, HIV Prevention and Support (SHOHPS) | PHL | £206,000 | 31 st March 2023 | All extensions taken |

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|---|--------------------------------------|---------------------|----|-----------------------------|--|-----------|
| Service | | | | | | |
| Long-Acting Hormonal Contraception (LARC) | 64 GP Practices | Maximum of £750,000 | of | 31 st March 2023 | | 12 months |
| Emergency Hormonal Contraception (EHC) | 7 Pharmacy Providers at 81 locations | Maximum of £10,000 | of | 31 st March 2023 | | 12 months |

- 1.3 The LISH and SHOHPS contracts have been in place since April 2016 and have been extended to their full available in-contract end dates of 31st March 2023. A Section 75 Agreement is in place with NHS England to provide funding for HIV Treatment and Care (Antiretroviral medication) which is delivered and aligned with the LISH service contract end date. The existing LARC and EHC contracts commenced in April 2019 with 12 months of a potential 24-month extension already taken to align all related SRH services to facilitate collective review and consideration as part of service re-commissioning.
- 1.4 A re-commissioning programme and project group were established and commenced work in November 2021. Key activities have commenced within the review phase including a literature review, benchmarking, elements of the review of current commissioned services and planning stakeholder and service user engagement.
- 1.5 Based on re-commissioning programme review work to date, it is recommended to seek to extend all of LCC's commissioned SRH services contracts for a further 12-month period to maintain the coterminous alignment of these contracts whilst emerging considerations set out in section 2 are addressed, and the re-commissioning exercise is concluded. Subject to approval, the revised start date for the new contractual arrangements for sexual health services in Lincolnshire would be 1st April 2024.
- 1.6 The current contracted services are performing to a high standard and the service providers have indicated their support for proposed extension, if approved

2. Commissioning Considerations

- 2.1 The key factors impacting the re-commissioning of the Council's SRH services, which could have significant impacts in relation to future service provisions, that have resulted in the recommendation to extend for a 12-month period are:

a. Commissioning collaboration opportunities as part of the Greater Lincolnshire PH pilot

The Greater Lincolnshire Public Health Pilot collaboration between Lincolnshire County Council, North and Northeast Lincolnshire Councils, is seeking to integrate public health arrangements across the three authorities and aims to provide better outcomes for the people of Greater Lincolnshire and a more efficient and effective model. One of the potential opportunities to achieve efficiencies is in the

commissioning of services across the Greater Lincolnshire area, through the aggregation of demand and reduction of duplication.

The recommended extension would allow time to work through these options and opportunities in relation to SRH services and consider a Greater Lincolnshire approach.

b. National Sexual Health Strategy

The new National Sexual Health and Reproductive Health Strategy is expected to be published later this year. The new strategy, which continues to be delayed due to initial Covid 19 system pressures, will be accompanied by a national service specification. This national service specification is not expected to be prescriptive and will recognise the need for Local Authorities to undertake local sexual health needs assessments to inform local provisions, including engagement with those groups where the burden of sexual ill health is recognised to be greater, and particularly vulnerable groups such as those with learning difficulties, people who are homeless and others. The national specification and local needs assessment will inform the development of the local specification, which will also need to respond to changes and emerging trends to be addressed in the National Strategy. This may include new and/or re-emerging infections, new technologies, changing population profile and behaviours, which it will not be possible to take account of in advance of the publication of the strategy.

It is important therefore that the Council has the opportunity to take account of this in the development and finalisation of its own commissioning strategy for future SRH services in Lincolnshire and across Greater Lincolnshire to ensure alignment with the national approach and sustainability of future services. Additionally, the extension would allow time to engage with the newly formed Integrated Care Systems, and scope additional opportunities to join up sexual health service provisions, creating more streamlined and efficient operating models.

c. Impact of changing procurement regime on governance and decision making for the programme

The Health and Care Act 2022 introduces a new procurement regime, called the Provider Selection Regime (PSR) governing the procurement of healthcare contracts, including local authority commissioned health services. The establishment and implementation of the Provider Selection Regime remains subject to final formulation of regulations and statutory guidance by HM Government, but current information suggests that DHSC wishes to implement the PSR later in 2022. As a result, any future procurement of SRH Services, will be within the scope of PSR (which will include rules governing the modification of contracts in scope of the regime, as well as the identification of the most suitable provider without a tender process, and for competitive procurements).

PSR represents the government's position on the most efficient and effective way to commission and procure specifically health services. It produces a regime tailored to those services as opposed to the more general regime set out in the PCR 2015.

Formal governance and decision making for the re-commissioning of SRH services would preferably take account of the PSR in recommendations around the procurement methodology and process for health service(s). Given the current uncertainties, with secondary legislation and statutory guidance not yet available, the extension of the current contract arrangements for 12 months would enable the PSR, and its use and potential benefits (compared to PCR 2015) in the recommissioning and procurement of future health services including SRH services to be fully and properly considered.

3. Provider Performance

- 3.1 LCHS was rated as "outstanding" overall in their recent Strategic Services Annual Contract Review which took place in January 2022. The service has made a good recovery from the Covid-19 pandemic which necessitated adapted service delivery and is currently meeting all contract performance measures and KPIs. The contract is currently classified as Low-Medium risk with no current service performance concerns that would negate progression with an extension of the contract for a further 12 months. LCHS has maintained a positive working relationship with LCC demonstrating a commitment to service development, recently progressing with enhanced online service options trailed during the pandemic to broaden the service offer and efficient use of clinic time. Following recent engagement, LCHS have confirmed they are supportive of extending the contract for the proposed additional 12 months. Subject to this being approved, the open book mechanism within the contract would be utilised to enter into good faith negotiations to confirm the contract price for this period. Engagement with NHSE is underway to seek similar agreement to vary the Section 75 Agreement for the provision of Antiretroviral medication delivered through the LISH service for patients receiving HIV treatment.
- 3.2 Positive Health (PHL) was also rated as "outstanding" overall from their Strategic Services Annual Contract Review in October 2021 and equally exceeds all current KPIs. Excellent working relationships are maintained with PHL who provide added value through their Point of Care Testing and subsidised PHSE/RSE educational classes. The service has no performance improvement plans in place and continues to work with LCC to develop the service offer and respond to recent increased demand for educational support sessions. The contract has been consistently judged as low risk with no performance concerns surrounding the continuation of current arrangements into the proposed additional extension period. PHL have also provided in-principle agreement to extend their contract by an additional 12 months.
- 3.3 Long-Acting Reversible Contraception (LARC) delivery has been significantly impacted by the Covid-19 pandemic causing services in most GP practices to cease entirely or dramatically reduce over the past two years. Whilst activity is still much

reduced from pre-pandemic levels, this is slowly increasing in recent reporting periods with interventions and engagement with GPs planned to support delivery including training to increase the number of fitting practitioners. Emergency Hormonal Contraception (EHC) services are delivered to young women aged 13-19 through contracts with seven pharmacy organisations across 58 pharmacy settings paid on an activity basis. Although activity continued during the pandemic, it was affected by lockdowns reducing the interaction of people and the closures of schools and other agencies who may signpost young women to the service. Utilising the remaining 12 months available on both the LARC and EHC contracts affords the opportunity to support increased utilisation of these services whilst exploring the most appropriate delivery mechanism for such services in a revised overall system model for Lincolnshire.

3.4 The existing performance and contract management arrangements would continue for the additional 12 months of the extended contracts.

4. Cost Implications

4.1 The total value of the LISH service contract is £5,370,123 per annum. The source of this funding is set out below:

- £3,830,383 funded from Public Health grant fund
- £1,289,740 funded by NHS England for HIV treatment (cost of Antiretroviral medications) via a Section 75 Agreement.
- £250,000 is funded by Children's Services Directorate to support young people's sexual health. Children's Services DLT has agreed for continuation of this funding into the proposed extension period during 2023-24.

4.2 Additional monies have been added to the contract since October 2020 to support the delivery of the Pre-exposure Prophylaxis Treatment (PrEP) on an activity basis. This is projected to be no more than £180,455 in 2022-23 however, whilst delivery in 2021-22 was below projections a similar value for the additional extension period would need to be available to enable this key element of the service to continue.

5. Legal Issues:

Procurement Implications

The 12-month extension of the LARC and EHC services to 31 March 2024 is in scope of the existing contracts, and subject to the support of the Executive for the recommendations of this report, there are no further procurement implications associated with those arrangements.

In respect of the LISH and SHOHPS services, as there is no provision within the contracts to extend beyond 31 March 2023, any decision to extend would need to be managed by making variations to the contracts. The Council's Contract Regulations require variations

to contracts not expressly within the scope of the original procurement to be considered for procurement of a new contract. However, they do permit exceptions to be made where approved by the appropriate decision maker as set out in the Contract Regulations. Whilst we await the implementation of additional regulations as part of the Health and Social Care Act 2022, the Public Contract Regulations 2015 (PCR) remains the applicable procurement legislation, and so any decision to extend would also need to be compliant with those regulations.

- LiSH
The additional cost of a variation to extend by 12 months would be £5,370,123. This would be above the relevant threshold for the application of the Light Touch Regime under the PCR, and as such the exception decision to extend by 12 months must be made by the Executive.
- SHOSPS
The additional cost of a variation to extend by 12 months would be £206,000, and at which value the exception decision to extend by 12 months would be approved by the Chief Officer. Subject to the support of the Executive for the recommendations of this report, approval of this exception would be progressed with the Chief Officer.
- S.75 for HIV Treatment and Care
The continuation of the S.75 for 12 months to align with proposed extension of the LiSH service contract will need to be formally agreed with NHSE. As the services funded by NHSE as part of the S.75 are delivered through the LiSH Service contract, approval of the extension of this agreement is sought alongside the decision for the LiSH service.

In terms of the Council's obligations under the regulations relating to the modification of contracts set out in the PCR, this permits the modification of contracts under Reg. 72(1)e where the modifications, irrespective of their value, are not substantial within the defined meaning. For the purposes of the regulations, a modification is considered substantial where one or more of the following conditions is met:

- a) the modification renders the contract or framework agreement materially different in character from the one initially concluded;
- b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have –
 - i. allowed for the admission of other candidates than those initially selected,
 - ii. allowed for the acceptance of a tender other than that originally selected,or
 - iii. attracted additional participants in the procurement procedure
- c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
- d) the modification extends the scope of the contract or framework agreement considerably.

In this instance, because the additional services required are consistent with the scope of the existing services and their proportionate values, at 15% (LISH Service) and 14% (SHOHPS) are not significant by comparison to the original total contract values, the proposed modifications are not considered to be substantial. In particular the contracts will not be materially different in character; no new conditions will be introduced that would have allowed for the admission of other candidates, the acceptance of a tender other than that originally selected or attracted additional participants; based on the proportionate values, the economic balance of the contracts will not change; and the scope of the contracts will not change considerably.

The decision would therefore meet the requirements of Reg. 72(1)(e) and be compliant with the Council's obligations under the PCR.

Equality Act 2010

Under section 149 of the Equality Act 2010, 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 Act.

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.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

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 are 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 section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker 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.

The current service provisions aim to ensure that everyone who needs support through the services commissioned receives it. The outreach component specifically supports those in hard-to-reach communities suffering with HIV, or at risk of being exposed to HIV through risky behaviours. All the services ensure that support is localised to increase accessibility for the Lincolnshire population. Currently the ISHS is supporting those suffering with Monkeypox, mainly gay, bisexual, and other men who have sex with men (GBMSM).

Maintaining good sexual health and wellbeing can have positive long-term effects on individuals, families, and wider society. Sexual health needs vary, depending on age, gender, sexual orientation, and ethnicity but evidence shows some groups are disproportionately affected by poor sexual health than others.

The providers' ability to provide services which advance equality of opportunity will be considered in the procurement and providers will be obliged to comply with the Equality Act.

An Equality Impact Analysis is being developed alongside the service engagement work, as part of the recommissioning exercise.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

Integrated SRH services have an integral role running across and contributing to all of the seven priorities of the JHWBS. However, more specifically, ISHS can play a pivotal role in supporting, Mental Health and well-being for both young people and adults.

All of the service providers across the four main service areas play a vital role in contributing to all aspects of the JSNA for Sexual and Reproductive Health. The new service model will also strongly consider the areas of need and local demographics, as the service is remodelled.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

These integrated services are unlikely to contribute to section 17 of the Crime and Disorder Act 1998.

6. Conclusion

- 6.1 The sexual and reproductive health of local populations depends on councils adopting a whole-system approach to service commissioning, in partnership with NHS colleagues.
- 6.2 Maintaining good sexual health and wellbeing can have positive long-term effects on individuals, families, and wider society. Sexual health needs vary, depending on age, gender, sexual orientation, and ethnicity but evidence shows some groups are disproportionately affected by poor sexual health than others. The consequences of this include:
- Unplanned pregnancies and abortions
 - Poor educational, social, and economic opportunities for teenage mothers, young fathers, and their children
 - Sexually transmitted infections which can lead to long-term and life-threatening complications such as some cancers and chronic liver disease
 - HIV and late diagnosis of HIV, leading to avoidable illness, premature death, and increased infection rates
 - Psychological harm, including from sexual coercion and abuse
 - Stigma and discrimination which can impact on access to services
 - Complications with conception, pregnancy and maternity outcomes for mother and baby
- 6.3 To experience positive sexual health, Lincolnshire residents need access to age-appropriate education, information, and support to help them make informed safer decisions, as well as access to high-quality services, treatment and interventions.
- 6.4 Responsibility for commissioning sexual health, reproductive health and HIV services is shared across local authorities, clinical commissioning groups (CCGs) and NHS England. With the imminent publication of a national sexual health strategy, the additional time provided by the contract extensions will allow for both the latest strategy, and procurement regulations, to be considered alongside a Greater Lincolnshire approach. All of which is fundamental to ensuring local needs are met as effectively and efficiently as possible.

7. Legal Comments:

The Council has the power to make the variations proposed which are consistent with the Council's procurement obligations for the reasons given in the Report.

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

8. Resource Comments:

The 12-month extension does not increase the cost of sexual health services above the current contract value. The baseline funding for sexual health services is supplemented by £0.500m per year from the Public Health Grant Reserve through to 31Mar27. The funding envelope needs to be considered during the procurement for services beyond 1 April 2024.

9. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The decision will be considered by the Adult Care and Community Wellbeing Scrutiny Committee on 28 September 2022 and the comments of the Committee will be reported to the Executive.

d) Risks and Impact Analysis

See body of Report

10. Background Papers

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

This report was written by Lucy Gavens, who can be contacted on lucy.gavens@lincolnshire.gov.uk.