

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

Report to:	Executive
Date:	4 October 2022
Subject:	Extension of the Substance Misuse Treatment Contract
Decision Reference:	I027868
Key decision?	Yes

Summary:

Treatment and prevention (including harm reduction) of drug and alcohol misuse is a non-prescribed function of the public health grant, and as of 2015/16 it is a condition of the grant to have regard to the need to improve the take up of, and outcomes from, its drug and alcohol misuse treatment services.

Lincolnshire County Council currently commissions the delivery of Substance Misuse Treatment and Recovery services through contractual arrangements with We Are With You (WAWY), a registered charity, for which contracts are due to end on 30 September 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 the Council's contracted substance misuse services contracts for a 6-month period 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 Substance Misuse Treatment Contract for a period 6 months to 31 March 2024.

The cost of the 6-month extension is consistent with current costs and budgets and can be funded from the Public Health Grant, so there is no additional funding required as a result of the proposal to extend. The future service budget will be considered as part of the commissioning review of Substance Misuse Services beyond 1 April 2024.

Recommendation(s):

That the Executive:

1. approves the modification of the Substance Misuse Treatment contract to extend its duration by a period of 6 months to 31st March 2024 at a value of £2,524,826
2. 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 modification referred to in paragraph 1

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

Given the significantly changing landscape of substance misuse treatment and recovery funding nationally, re-procurement of the Council's Substance Misuse Treatment and Recovery Services for new contract(s) to commence on 1 October 2023 would not permit full and proper consideration of the emerging considerations described in the report, which will impact the future design and delivery of services in Lincolnshire.

Reasons for Recommendation:

Approving the modification of the contract to enable an extension for a period of 6-months will:

1. Afford the opportunity to explore opportunities for a commissioning collaboration in Substance Misuse services as part of the Greater Lincolnshire Public Health Pilot.
2. Enable alignment of funding cycles for the Supplemental Substance Misuse Treatment and Recovery Grants (SSMTR) in 2023/24 (£1.2m) and 2024/25 (£2.09m), as well as expected further allocations of the Rough Sleeper Drug and Alcohol Treatment Grant (RSDATG), and the contract end/commencement dates.
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 Substance Misuse services in Lincolnshire. By extending the current contract for a period of 6 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 provider has indicated their support for proposed extension, if approved.

Regulation 72(1)(e) of the Public Contracts Regulations 2015 defines 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 Lincolnshire County Council currently commissions the delivery of Substance Misuse Treatment and Recovery services through contractual arrangements with We Are With You (WAWY), a registered charity. The provision of a substance misuse service, which the Local Authority is responsible for commissioning, contributes to Lincolnshire County Council's wider responsibility to improve the health of the local population. The current contracts that deliver these services are set out below.

Contract	Provider	Annual Value 2022/23	Current End Date	Available Extensions Remaining
Substance Misuse Treatment	We Are With You	£5,049,652	30 th September 2023	All extensions taken
Substance Misuse Recovery	We Are With You	£398,000	30 th September 2023	All extensions taken

1.2 The current contracts have been in place since October 2016 and have been extended to their full available in-contract end dates of 30th September 2023. The contracts are held by We Are With You in partnership with Double Impact who deliver the Recovery Service. The providers are performing well and meeting the majority of LCC's targets in both Treatment and Recovery contracts.

1.3 A re-commissioning programme was established and began work in November 2021. Key activities have been completed within the review phase including a literature review, benchmarking exercise and current service review. Stakeholder and service user engagement is underway.

1.4 In February 2022, Lincolnshire County Council was made aware that additional grant funding for substance misuse treatment would be made available for application. These grants are the Supplemental Substance Misuse Treatment and Recovery Grant (SSMTR) which is managed by the Office of Health Improvement and Disparities (value of funding in 2022/23 £737,489) and The Rough Sleeping Drug and Alcohol Treatment Grant (RSDATG) which is managed by the Department for Levelling Up, Housing and Communities (value of funding in 2022/23 £438,250). The two separate

application processes for this funding diverted programme resources for 4 months; however, both applications were successful and resulted in a decision by the Executive in July 2022 to approve use of this grant funding through variations to the above contracts with We Are With You.

- 1.5 Following on from this, and based on re-commissioning programme review work to date, it is recommended to seek to extend both of LCC's commissioned Substance Misuse services contracts for a further 6-month period to maintain the coterminous alignment of these contracts whilst emerging considerations are addressed, and the recommissioning exercise is concluded. Subject to approval, the revised start date for the new contractual arrangements for substance misuse services in Lincolnshire would be 1st April 2024. The key drivers for this recommendation are set out in more detail in the following section.
- 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 factors impacting the recommissioning of the Council's substance misuse services, which could have significant impacts in relation to future service provisions, and that have resulted in the recommendation to extend for a 6-month period are described more fully as follows:

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

The Greater Lincolnshire Public Health pilot offers an opportunity to collaborate with North Lincolnshire and North-East Lincolnshire to jointly commission substance misuse services. Collaboration between the three Local Authorities seeks to integrate public health arrangements and to provide better outcomes for the people of Greater Lincolnshire. There is a potential opportunity in the recommissioning of substance misuse treatment and recovery services to collaborate on a more efficient and effective model. Efficiencies may include the reduction of duplication and economies of scale in certain aspects of service delivery.

The recommended extension would allow time to work through these options and opportunities in relation to Substance Misuse Treatment and Recovery Services and consider a Greater Lincolnshire approach. It would also allow time to consider emerging developments since the publication of the 2021 National Drug Strategy and subsequent local guidance (published June 2022) to establish Combating Drugs Partnerships in the finalisation of the new services.

- b. Alignment to future SSMTR and RSDATG Grant Cycles

As Lincolnshire County Council is expecting significant annual increases in the Supplemental Substance Misuse Treatment and Recovery Grants (SSMTR) in

2023/24 (£1.2m) and 2024/25 (£2.09m), as well as further allocations of the Rough Sleeper Drug and Alcohol Treatment Grant (RSDATG), a 6-month extension would align the new contract year to the grant award dates. This will make both applications for the future funding, and the practical utilisation of that funding significantly more straightforward to administer.

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 6 months would enable the PSR both nationally and locally to be managed first, and its use and potential benefits in the re-commissioning and procurement of future substance misuse services to be fully and properly considered.

3. Provider Performance

- 3.1 We Are With You were rated good in the last Strategic Service Annual Review for their Substance Misuse Treatment service and outstanding for the Recovery service. Both contracts are classified as Low-Medium risk with no current service performance concerns that would negate progression with an extension of the contract for a further 6 months.
- 3.2 Performance is monitored through the National Drug Treatment Monitoring System (NDTMS) and overall performance is good with 3244 people using the service in 2021/22. Successful completions need to improve as they are below the national average, but work is already underway to address this, and improvements are expected in future reports. Representations to services are amongst the best in the country with only 8% of Opiate users and 6.8% of alcohol clients returning to

services compared to 15.3% for opiates and 8.9% for alcohol nationally, this has been aided by ensuring people are ready to be discharged and having the recovery service in place to offer support and help post treatment.

4. Cost Implications

- 4.1 The total value of the Substance Misuse Treatment Service contract is £5,049,652 per annum. The total value of the Substance Misuse Recovery Service contract is £398,000 per annum. Both contracts are funded from the Public Health Grant.
- 4.2 The total value of a 6-month extension (to 31st March 2024) is £2,524,826 for the Substance Misuse Treatment Service contract and £199,000 for the Substance Misuse Recovery Service contract.
- 4.3 The cost of the proposed extensions is consistent with current costs and budgets and can be funded from the Public Health Grant so there is no additional funding required as a result of the proposal to extend.
- 4.4 Additional money (SSMTR and RSDATG) has already been added to the contracts for 2022-23 as approved by the Executive in July 2022. Any further SSMTR and RSDATG grant allocations agreed beyond March 2023 are likely to be subject to the PSR, which is likely to include rules governing the modification of contracts in scope of the regime, and as such will be the subject of a new decision if confirmed. This is not part of this recommendation but will be a future consideration for 2023/24 when the grant monies become available. However, it should be noted that it is a condition of the Supplemental Substance Misuse Treatment and Recovery Grants that spending must be maintained at 2020/21 levels in order to remain eligible.

5. Legal Issues:

Procurement Implications

As there is no provision within the contracts to extend beyond 30 September 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.

- Substance Misuse Treatment Service:
The additional cost of a variation to extend by 6 months would be £2,524,826. 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 6 months must be made by the Executive.

- Substance Misuse Recovery Service:

The additional cost of a variation to extend by 6 months would be £199,000, and at that value the exception decision to extend by 6 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.

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 8% (Substance Misuse Treatment Service) and 9% (Substance Misuse Recovery Service) 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 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 services aim to ensure that everyone who needs support through the services commissioned receives it. Specialist components of the service (for example female specific workers and criminal justice workers) specifically support those clients who may be more difficult to engage in services. All the services ensure that support is localised as far as is possible to increase accessibility for the Lincolnshire population, with provision concentrated in areas of greatest need.

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.

Lincolnshire's Joint Strategic Needs Assessment identifies Substance Misuse as a priority topic and describes the important role of a comprehensive treatment and recovery service for reducing harm from substance misuse. As such, the Substance Misuse Treatment and Recovery Services have an integral role in contributing to four priorities in the JHWS: mental health and wellbeing in children and young people, mental health in adults, dementia, and housing and health.

The Provider plays an active role in contributing to all aspects of the JSNA for Drugs and Alcohol, as well as the JSNA for Mental Health and Wellbeing in relation to Dual Diagnosis.

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.

The Substance Misuse Treatment and Recovery Services play an integral role in preventing crime and disorder in Lincolnshire. Substance misuse is a core priority of the Safer Lincolnshire Partnership (SLP), with a focus on prevention and treatment of substance misuse to reduce related harms to individuals and affected others, and to support wider SLP objectives of reducing reoffending, domestic violence, and serious violence.

6. Conclusion

6.1 People misuse drugs and alcohol for wide range of reasons, and some are at greater risk of misuse and dependence than others. Poverty, unemployment and social deprivation are particularly significant factors that contribute to more risky patterns of substance use. People with pre-existing mental health conditions, including anxiety and depression, are also particularly at risk. An evidence-based substance misuse treatment and recovery service can support individuals who find themselves

using substances in a risky, harmful or dependent way, to reduce their consumption and manage the associated risks to reduce harms to their health, their friends and family, and wider society.

6.2 Responsibility for commissioning substance misuse treatment and recovery services sits with the local authority, although there is a need to collaborate closely with a wider range of partners. Examples of close collaboration include with Lincolnshire Partnership Foundation Trust and the Integrated Care Board around Dual Diagnosis, and with the Police, Probation and HMP Lincoln to support the treatment needs of people in the criminal justice system.

6.3 The additional time provided by the contract extensions requested will enable us to explore opportunities for commissioning collaboration across Greater Lincolnshire to improve outcomes for local people, and also allow us to consider the implications of the new procurement regulations for the future commissioning of substance misuse services.

4. 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.

5. Resource Comments:

The 6-month extension of the substance misuse contract does not increase the substance misuse spend and therefore there is no additional funding requirement as a result of this proposal.

6. 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

As described in the body of the report

7. 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 at lucy.gavens@lincolnshire.gov.uk.

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