

**Public Report
Cabinet**

Committee Name and Date of Committee Meeting

Cabinet – 15 June 2020

Report Title

Public Health Proposals for Recommissioning Sexual Health Services (Adults and under 18s)

Error! Not a valid bookmark self-reference. Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Anne Marie Lubanski, Strategic Director of Adult Care, Housing and Public Health

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report Summary

This report requests that the tender for sexual health services, which was due for publication in July 2020, is now delayed in order to give service providers (some of which are in the NHS) time to recover from the COVID 19 crisis and furthermore to enable RMBC resources to be diverted to urgent requirements to deal with COVID 19 consequences. The report also requests that a variation to the current contract, delivered by The Rotherham NHS Foundation Trust (TRFT) is extended for a 12-month period until 31 March 2022.

Recommendations

1. That the impact of the pandemic on NHS providers and also the local authority in its role as commissioner of the Sexual Health services for Rotherham residents as set out in the report be noted.
2. That approval be given to the publication of the Sexual Health tender in April 2021.
3. That the current contract with TRFT to allow be varied for a further 12-month term until 31 March 2022 to facilitate the tendering exercise.

4. That the new service be recommissioned for a period of 5 years with annual extension options after that for up to a further 5 years, making the total potential contract length 10 years.
5. That approval be given to the amendment to the service for the recommissioned contract to include the budget held by the Council for the payments to other providers across England when Rotherham residents' access Genito Urinary Medicine (GUM) services. This is to be managed by the successful provider going forwards.

List of Appendices Included

Appendix 1 Equalities Initial Screening (part A) and full Assessment (part B)

Background Papers

(ACHPH) Sexual Health Strategy for Rotherham (Refresh 2019-2020)

<https://moderngov.rotherham.gov.uk/ieDecisionDetails.aspx?ID=917>

Cabinet Office - Procurement Policy Note - Responding to COVID-19 -Information Note PPN 01/20 March 2020 -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873521/PPN_01-20_-_Responding_to_COVID19.v5_1_.pdf

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Public Health Proposals for Recommissioning Sexual Health Services (Adults and under 18s)

Public Health Proposals for Recommissioning Sexual Health Services (Adults and under 18s)

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1. Background

- 1.1 The Local Authority responsibility for the provision of open access sexual health services is mandated by the 2012 Health and Social Care Act. The service was tendered in 2015 and awarded to TRFT. It is a mandated service and is due to expire on 31 March 2021 and was for a period of 4 years.
- 1.2 It had been planned that the procurement exercise would commence on 1 July 2020 however, an extended procurement timescale for the replacement contract has become necessary as the current provider, and many of the potential providers are NHS bodies who are not currently able to prepare bids on the original timescale as a result of the COVID 19 pandemic.
- 1.3 Additionally, an extended timescale to procure a new service is needed to allow RMBC resources to be diverted to urgent requirements to deal with COVID 19 consequences.
- 1.4 The intention is to extend the current contract with TRFT until 31 March 2022 in order to allow services (including NHS and Non-Statutory Sector) to return to a more normal state.
- 1.5 Alternatives to open procurement, including consideration of a Section 75 partnership arrangement with Rotherham Clinical Commissioning Group (RCCG) as the main commissioner of the current provider, The Rotherham NHS Foundation Trust (TRFT), have been explored over the last 6 months and do not offer a viable option at the current time.
- 1.6 The current budget held by the Council for the payments to other providers across England when Rotherham residents' access Genito Urinary Medicine (GUM) services in other areas is presently not part of the current contract. The intention is to include this element in the service specification for the new tender thereby enabling the successful contractor to manage this patient flow and respond to any identified trends in Rotherham residents choosing to go elsewhere.
- 1.7 New national guidance within which providers are being asked to consider what elements of provision can be offered in different ways to reduce future demand have been released. The recommendations within this updated guidance will be considered in the updated specification for the new tender.
- 1.8 The proposal for the new contract will be to recommission for a period of 5 years with annual extension options after that, on a year by year basis, for up to a further 5 years, making the total potential contract length 10 years. This will provide greater stability to the market and acknowledges that this type of service needs sufficient time to embed and deliver.

Key Issues

- 2.1 The tender for the provision of sexual health services was planned for publication in July 2020. The request is to delay this publication until April 2021 and to have the tender concluded and fully mobilised for a new contract start date of 1 April 2022.

- 2.2 The current contract with TRFT was awarded on the basis of a 4-year term with no options to extend. The contract expires on the 31st March 2021. The proposal to delay the reprocurement of this contract therefore requires that the existing contract is extended past its current expiry date of 31 March 2021 by 12 months until 31 March 2022. The existing contract will be varied to allow for the extension. Other contract provisions will remain the same.
- 2.3 In relation to the proposed tender, the only significant change to the existing contract is the transfer of the operational responsibility from the Council to the new provider for the payment to other providers across England when Rotherham residents access other Genito- Urinary Medicine (GUM) services in other parts of England. This is known as out of area GUM payments and every Local Authority has to pay when their residents need to use services in another area. This has been a cost pressure on the Public Health Grant in previous years and has fluctuated year to year as demand changes. Working from models of best practice and learning from other areas it is proposed to request that this is managed by the new provider, rather than the commissioner in an attempt to increase the numbers of local residents who use the local service, and better understand patient flows across neighbouring boundaries, particularly across the South Yorkshire and Bassetlaw footprint.
- 2.4 New national guidance within which providers are being asked to consider what elements of provision can be offered in different ways to reduce future demand have been released. The recommendations within this updated guidance are considered in the updated specification for the new tender taking account of equalities issues particularly for vulnerable groups.
- 2.5 As identified above, the current contract was awarded for a 4-year term. The proposal for the new contract however will be to recommission for a period of 5 years with annual extension options after that, on a year by year basis, for up to a further 5 years, making the total potential contract length 10 years. This will provide greater stability to the market and acknowledges that this type of service needs sufficient time to embed and deliver.

3. Options considered and recommended proposal

- 3.1 Alternative commissioning options have been explored in detail, including establishing a Section 75 Partnership Agreement with Rotherham Clinical Commissioning Group (RCCG). Due to the strength of the potential marketplace and legal risks to RCCG this has proved not to be a viable option.
- 3.2 As the market for these services is quite active and includes both statutory (NHS) and independent providers, including a number of social enterprises, the risk of challenge of anything other than open procurement is high. Therefore, formally tendering the services in April 2021, allowing the Council and the statutory providers time to stabilise following the current Covid-19 incident is the recommended proposal

4. Consultation on proposal

- 4.1 The Sexual Health Strategy was published in 2019 identifying the key areas for priority in the borough. This included consultation with current and potential service users and partners.
- 4.2 Other potential service providers for Sexual Health Services were invited to a market event in December 2019 and will be informed of the revised tender publication date via the YORtender portal

4.3 No additional public consultation was felt to be necessary for the procurement activity, although the specification makes it clear to any potential provider of the need to consult before any service changes can be implemented.

5. **Timetable and Accountability for Implementing this Decision**

5.1

Detailed below is the indicative high-level timetable for this procurement

Tender Issued	April 2021
Procurement Concluded	September 2021
Mobilisation	October 2021 – March 2022
Contract Commencement	01 April 2022

5.2 The mobilisation period projected between award and contract commencement is circa 6 months which allows contingency time if needed; plus an appropriate amount of time for the service to mobilise if the award is made to a new provider, which will require the transfer of patient records. This takes considerable time as consent has to be obtained.

6. **Financial and Procurement Advice and Implications**

6.1 The value for the Sexual Health contract is £2,179,930 in 2020/21. This includes an additional inflation uplift of £21,530 agreed as part of the original tender submission.

6.2 The forecast cost of out of area GUM is £180,000. As a result of the delays proposed this activity will stay with the Council until the tender is completed as TRFT may not be in a position to take on new responsibilities until the pandemic situation improves. This service is demand led and the transfer will mean any increase in demand is paid for by the successful bidder as part of the contract. Similarly, the Council would not benefit from any reduction in demand.

6.3 The cost of the one-year extension will be based on the 2020/21 budget with inflation which is still to be negotiated with TRFT. The rate of any inflation will relate to the original tender submission but may need to take account of guidance in the Public Health Grant regarding salary increases for NHS providers. The budget for the tender will be based on the total service budget of £2,359,930 which includes the GUM budget. Given the proposed length of the contract any inflationary uplifts will need to be agreed as part of the tender process.

6.4 The Public Contracts Regulations 2015 provides a mechanism for Contracting Authorities to modify (vary) a contract through Regulation 72 (Modification of Contracts during their Term) subject to satisfying certain conditions. For the purposes of the recommendations contained in this report the Council would be relying on the provisions of Regulation 72(1) which sets out the following: Contracts ... may be modified without a new procurement procedure ... in any of the following cases: (c) where all of the following conditions are fulfilled:

- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen.
- (ii) the modification does not alter the overall nature of the contract.

- (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.

6.5 Considering the current situation relating to Covid-19 it is the professional opinion of the procurement manager that the conditions of Regulation 72(1) have been satisfied. The scale and impact of Covid-19 could not have been foreseen. Public Health resource (who would be responsible for leading the tender) and resource within the NHS (who make up a large proportion of the competitive market for these services) are currently diverted to managing the Covid-19 incident. There is no intention to alter the nature of the contract during the extended period and the value falls within the 50% tolerance (the original contract value over the 4-year duration was £8,268,842. A 12-month extension at around £2,359,930 represents 28.54%).) The Council would therefore be able to defend its position, should it be challenged, that it has acted in compliance with the Regulations.

6.6 The use of Regulation 72(1)(c) in this situation has been supported by recent guidance issued by Cabinet Office through their Procurement Policy Note (PPN) 01/20 – Responding to Covid-19 on 18 March 2020.

6.7 Subject to cabinet approval, a formal modification notice will need to be published in the Official Journal of the European Union (OJEU).

7. Legal Advice and Implications

7.1 Given the gravity of the Covid-19 emergency and the impact that it has had on the health and social care partners, the approach proposed in this report is both lawful and proportionate in the circumstances. The legal basis to adopt this approach is set out in paragraphs 6.4 and 6.5. There is always the possibility for a legal challenge to any action taken by a public body, especially one in which such a large amount of money is involved, but given that the proposed course of action falls within the parameters set by the regulations the risk to the local authority is small.

Although S75 of the NHS Act 2006 is potentially available to the local authority to commission the service via a health partner, they must be prepared to accept the responsibility. In the current situation, following discussions with the CCG they have formed the view that this is not a course of action they would wish to take at this time. This option is therefore not open the Council.

There are no implications for staffing at this stage should there be agreement to extend the contract for a further 12-month period. However, if the winner of the procurement exercise is not the current provider there will be implications for staff transfer under TUPE. This, however, is an issue for the old and new providers to resolve although the Council will ensure that the mobilisation process is sufficiently robust to manage the issue

8. Human Resources Advice and Implications

8.1 There are no HR implications in relation to the contract extension. However, Transfer of Undertakings (Protection of Employment) (TUPE) may apply should the contract be awarded to a new supplier and potential providers will be required to declare their commitment to adhering to employment legislation regarding the TUPE regulations.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 Sexual Health Services are 'all age' and Children's Services have been involved in the development of the tender documents. This has included making changes and suggestions to ensure that the needs of young people are fully considered.
- 9.2 The Sexual Health Strategy also highlighted the need to consider the requirements of adults with learning disabilities, this is considered in the Equalities Assessment that has been produced.

10. Equalities and Human Rights Advice and Implications

- 10.1 Poor sexual health is disproportionately experienced by some of the most vulnerable members of our local communities, including young people, people from countries of high HIV prevalence, those who misuse drugs and/or alcohol and people from the most deprived neighbourhoods. It is important, therefore, to ensure that measures be put in place to reduce sexual health inequalities whilst improving the sexual health of all the people of Rotherham.
- 10.2 The sexual health service supports universal services for all (for example, contraceptive services for women and men of all ages) and promotes programmes of work to reach those identified as being at highest risk of poor sexual health outcomes.
- 10.3 The service will work with partner agencies to provide services tailored specifically to people with certain protected characteristics. Specifically, for example to people from the LGBTQ+ (Lesbian, Gay, Bisexual, Transgender, Queer or Questioning) community and black and ethnic minority groups.
- 10.4 The clinical services will also target areas of deprivation and ensure that services are made available in accessible buildings.

11. Implications for Ward Priorities

- 11.1 The service is targeting areas of deprivation whilst also providing a universal service for people in all wards.
- 11.2 There is a central, easily accessible base for the services but also provision across all wards (for example via the subcontracted pharmacy provision for Emergency Hormonal Contraception).

12. Implications for Partners

- 12.1 The key partners are RCCG and NHS England (NHSE) as co-commissioners of sexual health services. Both have been involved in the development of the specification to ensure that it takes account of their requirements. Specific requirements in relation to HIV treatment has been included for NHSE.
- 12.2 Other potential service providers for Sexual Health Services were invited to a market event in December 2019 and will be informed of the revised tender publication date via the YOrtender portal

13. Risks and Mitigation

13.1. Sexual Health Services are a mandated function and the risk is that although some potential providers may be in a position to respond to the exercise a large number may not given that they are NHS bodies. This would potentially exclude a number of candidates. This is mitigated by the postponement of the opportunity that is requested through this report. The extension to the existing contract will ensure service continuity in the short – medium term.

14. Accountable Officers

Teresa Roche, Director of Public Health

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp	01/06/20
Strategic Director of Finance & Customer Services (S.151 Officer)	Named officer	28/05/20
Head of Legal Services (Monitoring Officer)	Named officer	28/05/20

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