

**Committee Name and Date of Committee Meeting**

Cabinet – 22 March 2021

**Report Title**

Public Health Proposals for Recommissioning Children’s Public Health Nursing services for the 0-19 population.

**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)**

Report Author: Anne Charlesworth

Head of Public Health Commissioning, 01709 255851

**Ward(s) Affected**

Borough-Wide

**Report Summary**

This report requests that the Public Health Children’s Nursing services is recommissioned by open tender with a publication date of April 2022.

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<sup>st</sup> March 2023.

**Recommendations**

Cabinet is recommended to:

1. Note the ongoing impact of the pandemic on NHS providers and Public Health in the Local Authority; in its role as commissioner of 0-19 Children’s nursing services for Rotherham residents as set out in the report.
2. Agree the timeline for publication of the tender in April 2022 (subject to a further Cabinet decision confirming tender proposals at an appropriate stage prior to this date) 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. Extensions will only be utilised if performance is strong and there is evidence of continuous improvement.

3. Vary the current contract with TRFT to allow for a further 12-month term until 31<sup>st</sup> March 2023 to facilitate the tendering exercise.

### **List of Appendices Included**

Appendix 1 part A Equality Impact assessment for services

### **Background Papers**

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](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**

### **1. Background**

- 1.1 The Local Authority is responsible for the commissioning of Health Visiting and School Nursing services (Usually described as Public Health Children's Nursing) for the Rotherham Borough and described in the 2012 Health and Social Care Act. These key public health services ensure support to children and families, promoting age appropriate cognitive, physical, social, and emotional development, providing targeted support to those with vulnerabilities and acting as a core part of the safeguarding children structures for the borough. The services contribute to a wide range of public health outcomes in infancy, childhood and adolescence including those relating to school readiness, mental wellbeing, child obesity, sexual health, and educational attainment. The service was tendered in 2016 and awarded to TRFT. The contract is due to expire on 31st March 2022 and was for a period of 5 years.
- 1.2 An extended procurement timescale for the replacement contract has become necessary as the Public Health resource required to develop the specification has been unavailable as a result of the COVID 19 pandemic.
- 1.3 Additionally, an extended timescale to shape and specify a new service is needed to allow the Council (Public Health and Children's services) to undertake a collaborative commissioning exercise with NHS partners and market engagement with potential providers who have also been engaged with the COVID 19 pandemic response. Once the service specification has been developed there will be the opportunity for further Cabinet scrutiny of tender proposals before publication.
- 1.4 The intention is to extend the current contract with TRFT until 31<sup>st</sup> March 2023 in order to allow services (including NHS and Non-Statutory Sector) to return to a more normal state and to allow time for current services to stabilise and deal with service backlog post pandemic.
- 1.5 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.
- 1.6 Alternatives to open procurement have been considered. During the period before this tender is published it is expected that the 'Place – based' commissioning arrangements within the Integrated Care System will replace the use of Section 75 partnership arrangements and do not offer a viable option at the current time. There will also be changes to the tender rules as a result of the EU changes which will be included when the tender is published.

### **2 Key Issues**

- 2.1 The tender for the provision of this service would normally have been published in April 2021 to allow 12 months before the contract end due to the scale, value, and complexity of this service. There is a need is to delay this

publication until April 2022 and to have the tender concluded and fully mobilised for a new contract start date of 1 April 2023.

- 2.2 The current contract with TRFT was awarded on the basis of a 5-year term with no options to extend. The contract expires on the 31<sup>st</sup> March 2022. The proposal to delay the re-procurement of this contract therefore requires that the existing contract be extended past its current expiry date of 31<sup>st</sup> March 2022 by 12 months until 31<sup>st</sup> March 2023. 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 a number of other services will be reviewed as part of the scoping for this tender to consider if they should be included as part of the 0-19s pathway (although not necessarily included in the tender). These are the current pilot Children's Weight Management Service (WHAM), delivered by TRFT, the under 18s drugs and alcohol service 'Divert' provided by Change Grow Live (CGL) and a small element of the current contract on specialist feeding that may need to transfer to RCCG. The project stakeholder group, chaired by the Director of Public Health will develop proposals that will be reviewed by Cabinet prior to tender publication.
- 2.4 The service extension will be to operate on the same basis as the current contract which is currently adhering to national COVID 19 guidance. The service will submit a social value proposal for the year's extension.
- 2.5 As identified above, the current contract was awarded for a 5-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. The extensions will only be utilised if performance is strong and there is evidence of continuous improvement.

### **3. Options considered and recommended proposal**

- 3.1 Alternative commissioning options have been explored, including establishing a Section 75 Partnership Agreement with Rotherham Clinical Commissioning Group (RCCG). Section 75 is expected to have been replaced before this tender is published and due to the strength of the potential marketplace and the financial value of the contract open tender is the recommended option.
- 3.2 The market for these services was developing pre COVID 19 but may have changed as priorities have been realigned. It is expected however to be quite active and includes both statutory (NHS) and independent providers, including several social enterprises. Additional time will allow for the market to be appraised in the recovery from the COVID 19 pandemic.

### **4. Consultation on proposal**

- 4.1 A stakeholder group has been established with internal partners to the Council and other stakeholder commissioners, RCCG and NHS England. This will continue to ensure the new specification is collaborative across

commissioners.

- 4.2 An internal service review of the current service was undertaken 12 months ago which captured learning from the first 4 years of the contract delivery and which will inform the development of the specification.
- 4.3 Additional stakeholder consultation e.g. of families and wider services will need to be considered and designed in a COVID 19 secure manner over the coming months.
- 4.4 No additional public consultation is felt to be necessary for the procurement activity, although the specification will make 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 2022
Procurement Concluded	September 2022
Mobilisation	October 2022 – March 2023
Contract Commencement	01 April 2023

5.2 The mobilisation period projected between award and contract commencement is approximately six months. This 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 patient consent has to be obtained and records transferred on the agreed patient management system.

## 6. **Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)**

6.1 The contract value is £4.933m in 2021/22. This would be the cost to extend the contract for a further 12-month period until the end of March 2023, subject to further negotiation for inflation.

6.2 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.

6.3 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 continued 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 5-year duration was £23.903m. A 12-month extension at around £4.933m represents 20.6%.) The Council would therefore be able to defend its position, should it be challenged, that it has acted in compliance with the Regulations.

6.4 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.

6.5 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 (to be written by Legal Officer on behalf of Assistant Director Legal Services)**

7.1 Given the ongoing impact of COVID 19 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 6.3 and 6.4 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 where it is expected that Section 75 will cease prior to this tender being published this option is therefore not open to the Council.

There are no implications for staffing at this stage should there be agreement to extend the contract for a further twelve-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 This is a collaborative commissioning exercise between Public Health and Children's services. The revised service specification will reflect ongoing discussion about how the commissioned service and CYPS work together on agreed pathways with Rotherham families and children.
- 9.2 Health Visiting and School Nursing are universal services and every family will have some level of offer and engagement with these services. The level of engagement will vary according to need of both the child/ children in the family and the needs of parents/ carers. Effective mobilisation of this new service and continuity of care is critical for all aspects of child health and safeguarding in Rotherham. A risk register will accompany this programme of work and will be overseen by the project Board.

## **10. Equalities and Human Rights Advice and Implications**

- 10.1 This is a universal service for all children and families in Rotherham. It is known that poor physical and mental health is disproportionately experienced by some of the most vulnerable members of our local communities and the recommissioned service will aim to address inequality in health as a general principle, and to prioritise certain target groups.
- 10.2 It will be key to ensure that the specification for the recommissioned service clearly sets out the above requirements to ensure equal access and outcomes across all of Rotherham's communities whilst ensuring that no protected equalities group is being unintentionally disadvantaged or excluded.

## **11. Implications for Ward Priorities**

- 11.1 The service is targeting areas of deprivation whilst also providing a universal service for children and families in all wards.
- 11.2 There will be a number of accessible access points for the service across the Borough, plus online information, and for the current situation some services are offered online.

## **12. Implications for Partners**

- 12.1 The key partners are NHS England (NHSE) and RCCG. RCCG also commission other children's services from TRFT and there are interdependencies that are untested as TRFT has always provided these services to date. All partners are involved in the development of the specification to ensure that it takes account of their requirements, for example, NHSE commission the vaccination and immunisation programme for children from the same service and this would need to be considered if the service was awarded to a new provider.
- 12.2 Other potential service providers are likely to be other NHS Trusts, and the Social Enterprise sector. Work is ongoing to scope the market and experiences

of other areas of recent tenders.

### 13. Risks and Mitigation

- 13.1. Public Health Children's Nursing Services are an essential function. The risk of tender in the coming months is that although some potential providers may be able to respond others are NHS bodies and this may limit the market and the likelihood of tender responses. 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.
- 13.2 The one-year contract variation will be supported by an exemption from tender which further mitigates the risk of challenge.
- 13.3 The project board will oversee the risk register for the programme of work.

### 14. Accountable Officers

Ben Anderson, Director of Public Health

Approvals obtained on behalf of Statutory Officers: -

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Sharon Kemp	08/03/21
Strategic Director of Finance & Customer Services (S.151 Officer)	Named officer	04/03/21
Head of Legal Services (Monitoring Officer)	Named officer	04/03/21

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