




# Executive Decision Report

<b>Decision maker(s) at each authority and date of Cabinet meeting, Cabinet Member meeting or (in the case of individual Cabinet Member decisions) the earliest date the decision will be taken</b>	Cabinet 9 December 2013  Report by: Cabinet Member for Community Care, Cllr Marcus Ginn	
	Cllr Mary Weale  Cabinet Member for Adult Social Care, Public Health and Environmental Health  Date of decision: Not before 22 November 2013  Forward Plan reference: 04126/14/A/A	
	Cllr Rachael Robathan,  Cabinet Member for Adults and Public Health  Date of meeting or formal issue: 20 November 2013  Executive Decision Ref 557	
<b>Report title (decision subject)</b>	<b>PUBLIC HEALTH PROCUREMENT PLAN AND CONTRACT AWARD OR EXTENSION REPORT</b>	
<b>Reporting officer</b>	Dr Peter Brambleby, Interim Director of Public Health	
<b>Key decision</b>	Yes	
<b>Access to information classification</b>	A separate report on the exempt Cabinet agenda provides further exempt information.	

## 1. EXECUTIVE SUMMARY

- 1.1. This report outlines the current position and future proposals for the 158 public health service contracts. These contracts formed part of the transfer of services from the former Inner West London Primary Care Trust to the local authorities on 1 April 2013 and the majority of which expire on the 31<sup>st</sup> March 2014.
- 1.2. This paper sets out a 3 year procurement plan for recommissioning these services. Some contracts will expire before they can be recommissioned; to manage this period, this paper also seeks authority to directly award some contracts as an interim measure.
- 1.3. The majority of directly awarded contracts are proposed to be for a period until 31 March 2016 (with a 3 month notice to terminate at any time at the Councils' sole discretion). However it has recently come to light that there are no formal contracts in place with one of our NHS Providers. For those contracts supplied by this provider the proposal is to regularise the situation and place contracts from 6 January 2014 to expire on 31 March 16 with a 3 month notice to terminate at any time at the Councils' sole discretion.
- 1.4. The contracts in question have been summarised in the table below and you can find detail in Appendices A (contract awards or extensions) and B (contract award).

Borough	LBHF	RBKC	WCC	Total
No of contracts	31 plus share of 14	43 plus share of 14	44 plus share of 14	132
Annual Value of Contracts in Appendix A £'000	£1,931	£1,560	£2,987	£7,200
Annual Value of Contracts in Appendix B £'000	£2,201	£2,001	£2,375	£6,577
Share of 14 Triborough Contracts £'000	£216	£217	£289	£722
<b>Total Contracts Value £'000</b>	<b>£4,348</b>	<b>£3,778</b>	<b>£5,651</b>	<b>£13,777</b>
<b>Total Grant Income Allocation £'000</b>	<b>£20,269</b>	<b>£20,636</b>	<b>£30,385</b>	<b>£71,290</b>

- 1.5. The difference in values between the contract for award or extension value and the grant income is the value of the contracts that have been subject to

procurement since 1 April 2103, or their procurement is underway. More detail is available in paragraph 4.7 below.

## **2. RECOMMENDATIONS**

### **For the London Borough of Hammersmith and Fulham**

- 2.1. To waive the tendering requirements of the Procurement code in order to award the contracts as set out in Appendix A.
- 2.2. To award the contracts as set out in Appendix A on local authority terms and conditions from 1 April 2014 to expire on 31 March 2016.
- 2.3. If current suppliers refuse to accept these terms, to extend the contracts on current terms and conditions and give a higher priority to the reprocurement of these services.
- 2.4. To waive the tendering requirements of the Procurement code in order to award the contracts as set out in Appendix B.
- 2.5. To award the contracts as set out in Appendix B from 6 January 2014 to expire on 31 March 2016.
- 2.6. To agree to the mapping and reshaping of these services based on Council priorities and enable the development of the marketplace to improve competition for providing these services, as defined in the procurement timeline.
- 2.7. To note the recommendations for RBKC and WCC.

### **For the Royal Borough of Kensington and Chelsea**

- 2.8. To waive the tendering requirements of the Procurement code in order to award the contracts as set out in Appendix A.
- 2.9. To award the contracts as set out in Appendix A on local authority terms and conditions from 1 April 2014 to expire on 31 March 2016.
- 2.10. If current suppliers refuse to accept these terms, to extend the contracts on current terms and conditions and give a higher priority to the reprocurement of these services.
- 2.11. To waive the tendering requirements of the Procurement code in order to award the contracts as set out in Appendix B.
- 2.12. To award the contracts as set out in Appendix B from 6 January 2014 to expire on 31 March 2016.

- 2.13. To agree to the mapping and reshaping of these services based on council priorities and enable the development of the marketplace to improve competition for providing these services.
- 2.14. To note the recommendations for LBHF and WCC.

#### **For Westminster City Council**

- 2.15. To waive the tendering requirements of the Procurement code in order to award the contracts as set out in Appendix A.
- 2.16. To award the contracts as set out in Appendix A on local authority terms and conditions from 1 April 2014 to expire on 31 March 2016.
- 2.17. If current suppliers refuse to accept these terms, to extend the contracts on current terms and conditions and give a higher priority to the reprocurement of these services.
- 2.18. To waive the tendering requirements of the Procurement code in order to award the contracts as set out in Appendix B.
- 2.19. To award the contracts as set out in Appendix B from 6 January 2014 to expire on 31 March 2016.
- 2.20. To agree to the mapping and reshaping of these services based on council priorities and enable the development of the marketplace to improve competition for providing these services, as defined in the procurement timeline.
- 2.21. To note the recommendations for LBHF and RBKC

### **3. REASONS FOR DECISION**

- 3.1. The current contracts' portfolio was inherited from the former PCT. This means that the portfolio reflects NHS spending priorities; with limited strategic commissioning and minimal integration with other Council functions.
- 3.2. Directly awarding new contracts to some of the incumbent suppliers, as an interim measure, enables the mapping and reshaping of these services based on council priorities, and at a pace that ensures financial security through the process. It also moves the contracts onto Local Authority terms and conditions and provides an opportunity to improve the contract documentation.
- 3.3. This reshaping will include understanding where public health services overlap with other services being commissioned elsewhere across Triborough Councils. It also presents an opportunity to develop the marketplace to improve competition for these services. Failure to do this work properly could result in recommissioning services that may no longer be needed or be ineffective, resulting in wasted money, so we wish to do this at an appropriate pace.

#### 4. BACKGROUND

- 4.1. The Triborough Councils of the London Borough of Hammersmith & Fulham, Royal Borough of Kensington & Chelsea and Westminster City Council are now responsible for commissioning a range of public health services including sexual health services, school nursing, NHS health checks and substance misuse services.
- 4.2. As part of the transfer of Public Health the three Tri-Borough councils inherited circa 150 contracts from the former Inner West London Primary Care Trust. These contracts were normally let for 12 months. Around 90 contracts were due to expire on 31 March 2013.
- 4.3. Mike More, Chief Executive, Westminster City Council, wrote to Daniel Elkeles, Accountable Officer Designate, CWHH CCGs, on 14 February 2013 to advise that members had confirmed their agreement to the NHS extending current contracts for a further 12 months until 31 March 2014 to ensure continuity of service.
- 4.4. Contract extensions, draft transfer schemes and supporting function handover documentation for the contracts were prepared by the PCT staff. These were signed off by Daniel Elkeles with the NHS North West London Cluster Contract Novation Team on 11 March 2013. None of this documentation included baseline financial information.
- 4.5. Subsequent to this the Department of Health has synthesised that the NHS Standard Contract format is for the NHS internal market and cannot be used for contracts with councils. This means that the three boroughs do not have a formal contract in place with an NHS Provider.
- 4.6. Services provided through the NHS provider were first reported as a risk in part B of the Cabinet report 'Public Health: 2013-14' presented in February/March 2013. A key risk to the Triborough Councils associated with these services is listed below

- The risk of not having contracts with the provider.

We are addressing this risk through the recommendations within this paper.

- 4.7. The Public Health service has transferred successfully into the three boroughs. In addition to the development of the proposed PH commissioning and procurement timetable, procurement activity has either been undertaken or is underway on the following services:
  - GUM (genito-urinary medicine) – underway

- Stop Smoking Services – contract award decision
- Local Enhanced Services - underway
- Reduce Reoffending in Men – contract awarded
- Reduce Reoffending in Women – contract awarded
- Community Champions and Health Trainers - underway
- Substance Misuse Group Work - underway
- Substance Misuse Primary Care - underway
- Dietetics contract – underway

## **5. PROPOSAL AND ISSUES**

- 5.1. It is a priority for us to establish contracts with the NHS Provider; to make arrangements for the remaining contracts that expire on 31 March 2014; and re-commission as soon as appropriate thereafter in accordance with the PH Commissioning & Procurement Plan.
- 5.2. As much of the spend was within the NHS internal market, there was a less rigorous approach to contract management than boroughs require to demonstrate value for money.
- 5.3. Through the Health and Wellbeing Board we will try to co-ordinate our intentions with the CCGs to ensure we do not adversely affect this NHS Provider's financial footing resulting in destabilisation or unplanned cessation of services. Not only could this have a detrimental effect on residents, it could also be of reputational risk to the Council.
- 5.4. Contract monitoring of all contracts will be substantially improved from now onwards through tighter specifications and greater emphasis on quality assurance. We are in the process of recruiting a member of Commissioning staff with a remit to visit providers and conduct quality assurance inspections.
- 5.5. New contracts are proposed for the NHS Provider contracts instead of extending the current arrangements so as to formalise the contract documentation and move the suppliers on to Local Authority Terms and Conditions.

## **6. OPTIONS AND ANALYSIS**

- 6.1. The Triborough Cabinet Members for Adults and Public Health have agreed an approach to prioritise a number of procurement projects over the entire Public Health portfolio. They have agreed an overall PH Commissioning and

Procurement Timetable for the period 13/14 through to 15/16, subject to a 6 monthly review. The timetable is set out in Appendix C.

6.2. We do not want to recommission new services in a silo. We are looking to map and reshape services based on overall Council priorities. This will include understanding where public health services overlap with other services being commissioned elsewhere in the council. If we fail to do this properly we could end up wasting money. We wish to do this at an appropriate pace.

6.3. All procurement activity has been considered against the principles agreed with Cabinet Members:

- **Legal Risk** – where contracts, such as Local Enhanced Services need to be brought into line with local authority documentation. Local Enhanced Services are individually low spend but important contracts with frontline healthcare businesses, such as GPs and Pharmacies, to provide services emergency contraception, stop smoking and NHS Health Checks.
- **Reputational risk** – this is where a needed service might be discontinued in an unplanned way, and responsibility ascribed to the council rather than the NHS.
- **Financial risk** – primarily this will be where there is significant poor performance on the part of the provider. However, this could also cover under-performing or over-performing services/contracts
- **Cost effectiveness and evidence base.** For example this could be where the current performance of the provider is adequate in relation to the service model, but where the service model is not delivering the best value for money or is not in-line with current and emerging evidence and best practice. It also covers the areas where high value contracts are expiring and there is the opportunity to review and redesign services to maximise outcomes and value for money.
- **Exploiting opportunity.** This will cover areas where it is believed that we can make efficiencies or improve a service either by:
  - Moving from individual contracts in each borough to a single tri-borough contract; or
  - Identifying potential overlap or duplication with another local authority services which may benefit from joint-commissioning
  - Exploiting the synergy with Clinical Commissioning Groups (CCGs) so that they invest in areas of relevance to us, such as prevention and early years. For example, a 1% shift in CCG spending towards prevention would be worth approx. £20m.

6.4. Further prioritisation took place considering three constraints

- **Commissioning capacity.** This approach has considered the resources of the strategic procurement team and public health commissioners. The prioritisation ensures these resources are focussed on those areas that represent the most risk, or the greatest opportunity, across Triborough.

- **Marketplace development.** For some of the clinical contracts commissioned, for example, sexually transmitted infections testing and treatment, there is little competition in the marketplace apart from acute hospital providers. We plan to develop this marketplace in the medium term.
- **Performance.** As mentioned in paragraph 3.2 above, we will focus on improving performance where there are areas of concern. We will co-ordinate and plan our intentions with CCGs in relation to reprocurement or decommissioning services.

6.5. The direct award of contracts with the NHS Provider due to expire on 31 March 2014, lets us focus on reviews by service, rather than look at establishing new contracts only.

6.6. The flexibility this provides will establish whether commissioned service contracts are reviewed, redesigned and re-procured or de-commissioned. Whilst considering the need to redesign services, address poor supplier performance where it exists and establish improved specifications and more robust contract management, there needs to be a balance between re-commissioning with an eye on delivering savings but ending up with services we don't need or want.

6.7. There is a significant risk that accelerating this work would deliver suboptimal outcomes or poor value for money. The market is weak in some areas and will require development if we are to ensure that value for money is maximised through competitive procurement. A structured, risk-based procurement timetable should be pursued as it is most likely to deliver the biggest improvement to local public health services and value for money.

## 7. CONSULTATION

7.1. It is planned that each service review, redesign and procurement will fully engage with residents.

7.2. Cllrs Ginn (LBHF), Weale (RBKC) and Robathan (WCC), as Cabinet Members with Public Health responsibilities, fully discussed and agreed the Commissioning and Procurement Timetable in September 2013.

## 8. EQUALITY IMPLICATIONS

8.1. The services are currently provided and equality implications have been considered. A full EIA will be completed as part of new proposals for service provision.



## 9. LEGAL IMPLICATIONS

- 9.1. Health Services are Part B services for the purposes of the Public Contracts Regulations 2006 (Regulations). Currently Part B services are subject only to a few provisions of the Regulations – namely, obligations relating to technical specifications and post contract award information.
- 9.2. Due to the value of the contracts, the Council will need to ensure that it complies with the requirements for Part B services as set out in the Regulations, in the event that the recommendations are agreed. Further the Council should still comply with the general EU principles such as non-discrimination, transparency, proportionality and mutual recognition.
- 9.3. As a general rule, the Council should undertake a degree of advertising even for Part B services, in particular, where the contracts have a connection with the functioning of the EU internal market.
- 9.4. It is noted that for the reasons set out in the report there is considered to be justification for the waiver of the Councils contract standing orders to award the proposed contracts.
- 9.5. It is essential that the necessary contract documentation is completed in the event the recommendations are agreed so that the Councils are fully protected.
- 9.6. Implications verified/completed by: Rhian Davies, Corporate Lawyer, Westminster City Council and Tasnim Shawkat, Bi-Borough Director of Legal.

## 10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1. The budget for each borough will be held within the respective borough. The provider will be paid by the three boroughs separately. The budget holder for the project is Peter Brambleby, Interim Director Public Health.
- 10.2. The budget is formed of monies from the Public Health Grant and is apportioned as follows:

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- 10.3. The share of Triborough contracts is attributed by the percentages agreed in the finance protocol within the s113 agreement between the boroughs.
- 10.4. The Public Health Service is wholly funded through the Department of Health grant, there is no net financial impact to Triborough budgets.
- 10.5. Monthly contract monitoring is carried out within the service and supported by tri-borough finance officers to ensure compliance with tri-borough financial regulations.
- 10.6. Implications verified/completed by: Anna D'Alessandro, Deputy Director Corporate Finance, Westminster City Council

## 11. PROCUREMENT IMPLICATIONS

11.1. Procurement advice has been provided by Westminster City Council's Strategic and Commercial Procurement Team. In line with agreed protocols for Public Health services, Westminster procurement processes have been followed. The report has been agreed by officers of the Tri-Borough Contracts Approval Board, where colleagues at Hammersmith and Fulham and Kensington and Chelsea provided input and advice in its formulation.

### 11.2. Approvals

Delegate for approval	Date report sent	Confirmed
WCC Legal	18/10/13	R Davies,  R Davies verification 221013.msg 22/10/13
Bi Borough Legal	18/10/13	K Chan, 22/10/13

		 K Chan Legal Verification 221013.r
Public Health Finance, after consultation with Bi-borough colleagues (H Jolapara)	21/10/13	A D'Alessandro, 21/10/13  A D'Alessandro verification 211013.r
LBHF Cabinet Member	22/10/13	Cllr M Ginn
RBKC Cabinet Member	22/10/13	Cllr M Weale
WCC Executive Member	22/10/13	Cllr R Robathan
Triborough Contracts Approval Board	21/10/13	A Oliver, 21/10/13
LBHF Cabinet – Forward Plan	21/10/13	For H&FBB on 30 Oct 13 Cabinet 9 Dec 13
RBKC Cabinet- Forward Plan	22/10/13	Not before 22 November 2013 and ref 04126/14/A/A
WCC – Forward Plan	22/10/13	20 November 2013 and Executive Decision Ref 557

Dr Peter Brambleby  
Interim Director of Public Health

**Local Government Act 1972 (as amended) – Background papers used in the preparation of this report - None**

**Contact officer(s):** Lynne Horn, Interim Business Change Manager, Triborough Public Health Service [lhorn@westminster.gov.uk](mailto:lhorn@westminster.gov.uk) 07715 170640

**APPENDIX A** - Separate Spreadsheet with Details of Contracts for Extension

**APPENDIX B** - Separate Spreadsheet with Details of Contracts for Award

**APPENDIX C** - Separate Spreadsheet with the Public Health Commissioning & Procurement Timetable