




# 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>	For Decision by: Full Cabinet Date of decision: 6 <sup>th</sup> July 2015	 h&f hammersmith & fulham
	Cllr Mary Weale Cabinet Member for Adult Social Care, Public Health and Environmental Health	 THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
	Cllr Rachael Robathan, Cabinet Member for Adults and Public Health	 City of Westminster
<b>Report title (decision subject)</b>	<b>Public Health 0 – 5 years services , Direct Award Report</b>	
<b>Reporting officer</b>	Eva Hrobonova, Acting Director of Public Health, Westminster	
<b>Key decision</b>	Yes	
<b>Access to information classification</b>	Public. <i>A separate report on the exempt Cabinet agenda provides exempt information in relation to risks, legal, financial and resource implications.</i>	

## **1. EXECUTIVE SUMMARY**

- 1.1. In April 2013, the commissioning responsibilities for 0-5 Public Health services transferred nationally from individual Primary Care Trusts to NHS England.
- 1.2. From 1<sup>st</sup> October 2015, the commissioning responsibility for the Public Health Services for 0-5 year olds, Health Visiting and FNP (Family Nurse Partnership), will transfer from NHS England to individual local authorities.
- 1.3. NHS England's current contracted supplier for all three boroughs is Central London Community Healthcare NHS Trust (CLCH).
- 1.4. This report seeks approval (by Westminster City Council, London Borough of Hammersmith and Fulham and the Royal Borough of Kensington and Chelsea) to continue the same provision and award service contracts on local authority terms and conditions to Central London Community Healthcare (CLCH), effective from 1<sup>st</sup> October 2015 till 30<sup>th</sup> September 2017 (24 months). The service provision will continue to be delivered on the existing service specification requirements.
- 1.5. The contract award will benefit the three authorities as it will give time for Public Health officers to work with CLCH, children's services and other stakeholders to review the existing service arrangement, review the existing performance, review the finances of the services across the three authorities and present a service review plan and re-commissioning proposal which would plan to meet future demands and un-met needs.

## **2. RECOMMENDATIONS**

- 2.2. To note the recommendations for Westminster City Council, London Borough of Hammersmith and Fulham and The Royal Borough of Kensington and Chelsea (contained in the exempt report on the exempt Cabinet agenda).

## **3. REASONS FOR DECISION**

The commissioning responsibility for the PH 0-5 services presently contracted by NHS England will transfer to the three boroughs, the agreed funding allocations for each borough's service will also be transferred to local authorities as part of the Public Health grant, from 1<sup>st</sup> October 2015.

NHS England Commissioning Guidance (November 2014) requires that clear and robust contractual arrangements must be in place between commissioners and service providers to ensure safe transfer and continuity of service from 1<sup>st</sup> October 2015.

Consequently, new local authority contracts are required to be in place from this date.

A 24 month sovereign contract (ending 30<sup>th</sup> September 2017) is proposed for each borough to allow sufficient time to review and re-commission and procure services, incorporating a new integrated early years model and in line with Best Start in Life strategy.

The new contract terms and conditions will include provision of a fixed cost over the 24 months period, a three month notice period, enabling notice to be issued before the end contract date if required.

#### **4. BACKGROUND**

- 4.1 In April 2013, the three borough councils of the London Borough of Hammersmith & Fulham, Royal Borough of Kensington and Chelsea and Westminster City Council took responsibilities for the hosting arrangement to commission a range of public health services including sexual health services, school nursing, NHS health checks and substance misuse services. This was in accordance with the legislation abolishing Primary Care Trusts whereby their commissioning functions for Public Health services transferred to local authorities.
- 4.2. A Public Health Procurement strategy was developed and presented to the ASC Contracts and Commissioning Board in November 2013, and also to other senior officers in the three borough authorities. This report had set out the commissioning intentions for the range of services inherited from the NHS. The strategy also documented the approach to be taken to re-commission the services through a programme of competitive re-tendering, whilst also acknowledging all inherited contracts should be extended for a period of 2 years from April 2014.
- 4.3. Now that the 0-5 Public Health services are also transferring to local authorities, when these new services transfer to the local authority, the Public Health Procurement Strategy will be updated to account for the inclusion of this new provision.

#### **5. PROPOSAL AND ISSUES**

- 5.1 It is a priority for the three authorities to ensure a seamless service for children under 5. As there is an existing contract between CLCH and NHS England for the three authorities, the best course of action, as further analysed below, is to continue the relationship with the current provider under an interim arrangement and re-tender or re-commission as soon as appropriate, thereafter in accordance with the PH Commissioning & Procurement Plan.
- 5.2 This involves a direct award of contract which carries risk of procurement challenge as set out below.

- 5.3 Contract monitoring of all contracts will be substantially improved from now onwards through tighter specifications and greater emphasis on quality assurance.

## **6. OPTIONS AND ANALYSIS**

- 6.1 The responsibility for delivering the Public Health 0-5yrs services will transfer from NHS England to the three borough public health teams from 1<sup>st</sup> October 2015. While some preparatory work can be done before this, the authority officers will only then be able to engage with the service provider, wider stakeholder to complete an extensive service review. This will review all aspects of service delivery, service performance, finance and future demands. The service review report will then inform the re-commissioning/ tendering for the new service model. We therefore recommend award of an interim contract to NHS England's current provider CLCH for a period of 24 months for these services.

- 6.2. This timeline will ensure that:

6.2.1. the Public health officers are able to complete a comprehensive programme of service review working closely with children's commissioning directorate officers;

6.2.2. procurement category officers have sufficient time to analyse whether there is a market in these services;

6.2.3. procurement category officers are able to complete the tender process through to award decision across the three boroughs.

- 6.3. We do not want to re-commission 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 three councils.

The Cabinet Members for Adults Social Care 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 2015/16, subject to a 6 monthly review.

- 6.4 At this stage only a limited analysis has been done to ascertain the extent of the markets for these services. It is highly likely that across all London boroughs, the Primary Care Trusts (and subsequently NHS England) commissioned these services from a local NHS Trust, such as a nearby hospital or a community healthcare NHS Trust such as CLCH. It is therefore considered that there is a limited market at present while current providers focus on transfer to new commissioners. A supplier engagement event will be hosted during the procurement phase in 2016.

- 6.5 The current contract between NHS England with CLCH across the three boroughs is for one year from 1<sup>st</sup> April 2015. However, on the basis of the three boroughs' decision, this contract will be ended on 30<sup>th</sup> September 2015.

The local authorities considered the following before a decision to direct award was made.

- Novate the NHSE contract to the three boroughs, to cover for the period of 1<sup>st</sup> October 2015 – 31<sup>st</sup> March 2016. However this approach has been rejected for the following reasons:
- It would only cover for the first 6 months, and a new contract would still be required from 1<sup>st</sup> April 2016 on the basis of direct award (there being insufficient time to tender a contract now to get a service in place for 1<sup>st</sup> April 2016)
- Legal advice has confirmed that novation of a contract can only occur between one outgoing client and one new client; it is therefore not possible for NHS England to novate part of its existing contract to each of the three boroughs
- Even if novation were legally possible, the transfer of the contract under a novation would have to be on the existing terms. The lack of familiarity of officers across the three boroughs in working with the NHS Standard Terms of Contract, especially its monitoring and payment framework, means that this option would not be preferred.

6.6 In light of paragraph 6.5, it is proposed that there is a new contract on local authority terms and conditions from 1<sup>st</sup> October 2015. The three boroughs will be asking NHS England to terminate its contract with CLCH on 30<sup>th</sup> September 2015. However, the three authorities will be required to use the same pricing structure as currently appears in the NHS England contract, at least initially.

## **7. RISK OF PROPOSED INTERIM APPROACH**

7.1 These are in the exempt report on the exempt Cabinet agenda.

## **8. RISK OF PROCUREMENT CHALLENGE**

8.1 These are in the exempt report on the exempt Cabinet agenda.

## **9. CONSULTATION**

9.1 It is planned that each service review, redesign and procurement will fully engage with residents, Council stakeholders and external stakeholders. Preparation for the service review has already started, incorporating the three authorities “Best Start in Life” strategic commissioning intentions to develop a new integrated early years’ service model.

9.2 Procurement and Public Health officers will host a supplier engagement/meet the supplier workshop. This will allow suppliers to meet with the authority officers engage with other suppliers at the event. This always ensure voluntary /small, medium enterprise/organisation have the opportunity to discuss consortia/partnership with other organisation that they can potentially work with as and when the services are tendered.

## **10. EQUALITY IMPLICATIONS**

- 10.1 The services are currently provided by the NHS. The transfer of functions may have equality implications. A full EIA will need to be completed as part of new proposals for service provision prior to starting a tender process.

## **11. LEGAL IMPLICATIONS**

- 11.1 These are in the exempt report on the exempt Cabinet agenda.

## **12. FINANCIAL AND RESOURCES IMPLICATIONS**

- 12.1 These are in the exempt report on the exempt Cabinet agenda.

## **13. PROCUREMENT IMPLICATIONS**

- 13.1 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 Strategic Procurement report for Public Health has been agreed by officers of the Contracts Approval Board, where colleagues at Hammersmith and Fulham and Kensington and Chelsea provided input and advice in its formulation.

Director name

Eva Hrobonova  
Deputy Director of Public Health, Westminster

**Local Government Act 1972 (as amended) – Background papers used in the preparation of this report** - December 2013, The “Public Health Procurement Plan and Contract Award or Extension Report” Executive Decision Report (EDR)

**Family and Children’s Public Health Commissioner:** Julia Mason,  
jmason@westminster.gov.uk, 0207 641 4653

**Sunil Panchal, Commercial Contracts Manager,** [spanchal@westminster.gov.uk](mailto:spanchal@westminster.gov.uk), 0207 641 4043