Executive Decision Report

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	Cabinet Date: 12 October 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
Report title (decision subject)	**Public Health, Sexual Health, Community based services, Direct Award**	
Executive Director	Liz Bruce Executive Director of Adult Social Care and Health liz.Bruce@lbhf.gov.uk	
Reporting officer	Gaynor Y. Driscoll Head of Commissioning Substance Misuse, Sexual Health and Offender Health Public Health Department	
Key decision	Yes	
Access to information classification	Public. *A separate report on the exempt Cabinet agenda provides exempt financial information.*	

1. EXECUTIVE SUMMARY

1.1. The current map of community sexual and reproductive health services is complicated with significant levels of duplication in provision including multiple small providers. This results in confused pathways for access to services. Full redesign is required to deliver efficient and effective sexual and reproductive health services that are responsive to the needs of our residents and promote the positive culture of good sexual health. To ensure the reprocurement project can be completed we are recommending that approval to make a direct award to a reduced number of community sexual and reproductive health service contracts for a 12 month period from 1st April 2016 is given. Community sexual and reproductive health existing contracts do not have an extension option that can be exercised.

1.2. The sexual health service review has identified efficiencies of £1,605,870 for 2016-17; 26% of the community sexual health budget in H&F, 17% in RBKC and 24% in WCC. This relates to ending 16 provider contracts across the three boroughs. These efficiencies can be made prior to re-procurement. There is a requirement to extend the Relationship and Sex Education (RSE) services within this document, the RSE will be commissioned separately with the schools health programme.

1.3. The majority of contracts for Public Health services transferred from the Primary Care Teams in line with the process set out in report 'Public Health: 2013-14' (considered by the 3 cabinets in February and March 2013). This report recommended the existing NHS contracts were to novate to the local authorities for a one year period, effective from 1st April 2013. This was to allow public health commissioners to plan and submit a direct award of contract report, using local authority terms and conditions for a period of two years effective from 1st April 2014. This formed the Executive Decision report "Public Health Procurement Plan and Contract Award or Extension Report" which was approved for implementation in December 2013.

1.4. 36 providers were contracted to deliver community sexual and reproductive health services in 2015-16. These services are contracted into themes as shown in Appendices A and B (in the exempt report on the exempt Cabinet agenda). Within these themes there are a number of duplicated services. The sexual health service contracts total spend is £7,009,845 per annum across the three Authorities. This budget includes financial allocations around key priorities, where no specific contract has been identified.

1.5. An extensive service review across the broad spectrum of sexual health services has been completed. This exercise has informed a re-commissioning and re-tendering case for change which is to be presented in accordance with the governance structures for the three boroughs in a separate procurement project plan.

1.6. The review highlighted the duplication of the services across the three boroughs and where commissioned services are no longer aligned with need. A small number of services have relied heavily on Local Authority funding and there is the potential to destabilise these organisations (please see Appendix C, in the exempt report on the exempt Cabinet agenda). This impacts on three services currently available in H&F, two are signposting and advice services that are duplicated elsewhere. The third service, Opportunity for All, is also duplicated by other local providers and has not been able to demonstrate meeting local need, outcomes nor financial sustainability. We will support these agencies to mitigate risk and exit plans will be implemented. The system as a whole is inconsistent and pathways to the appropriate services to meet the needs of

residents lacks clarity. In addition the prevention agenda has become diluted and does not address the increase of Sexually Transmitted Infections (STIs).

1.7. Council Officers have faced a number of delays in the implementation of procurement plans including a lack of commissioning capacity. Commissioning intentions and approval to progress the procurement strategies were deferred to allow for further discussions with a number of strategic stakeholders.

1.8. This report requests the direct award of contracts to a reduced number of organisations until 31st March 2017. In adopting this approach it will benefit the three authorities as it will allow the re-commissioning project to align with the GUM Transformation Project and allow sufficient time to engage with adult's services, children's services and other stakeholders around the future model. An option analysis, equalities impact assessment and analysis of risks have been carried out and are outlined from section 6 onwards.

1.9. An outline of the procurement timetable for the community sexual health services is outlined below.

1.10. **Revised Timeframe for Procurement**

Key milestones

1. Business case agreed — July 2015
2. User engagement (on-going)
3. Waiver of contracts to be extended
4. Decommissioning of contracts no longer required
5. Redesign of current model
6. Procurement plans developed
7. Publish Pre-Qualification Questionnaires (PQQ)
8. Issue Invitation to Tenders (ITT)
9. Bids submitted
10. Redesign of the service delivery model, Transition for the contracts and staff (TUPE, Restructure etc.)
11. Bid scoring/moderation
12. Contracts awarded
13. Mobilisation

Service goes live — March 2017

2. RECOMMENDATIONS

2.1 To agree Option 3, detailed in section 6, to make direct award to a reduced number of contracts to align with GUM transformation programme, and allow a full procurement exercise to be completed for community and reproductive health services.

2.2 That Hammersmith and Fulham Cabinet and the Cabinet Member for Adult Social Care and Public Health, for each of sovereign authority agrees that the Executive Director of Adult Social Care and Health may approve the recommendation made by the Contract Approval Board to direct award contracts.

2.3 To agree the total spend for the community and reproductive sexual health services, including young people across the three boroughs, for the 12 month period from 1st April 2016 to 31st March 2017 is £5,403,975.

2.4 Appendices A, B and C be exempt from disclosure on the grounds that it contains information relating to the financial or business affairs of a particular person (including

the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972, and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

For Hammersmith and Fulham Council Cabinet is requested:

2.5 To approve a waiver in accordance with paragraph 3 of the Contract Standing Orders 11 (officer responsibilities) for the requirement to complete a competitive tendering exercise and (a) advertise the opportunity and (b) seek public quotations using the e-tendering system.

2.6 To waive the requirement to carry out a competitive exercise as set out in table 12.3 of the of the Contract Standing Orders in order to allow the local authority to directly award the contracts to the providers listed in Appendix B (in the exempt report on the exempt Cabinet agenda).

2.7 To approve the direct award of the contracts, as defined in H&F contract standing orders (waivers and exemption) sovereign contracts as listed in Appendix B (in the exempt report on the exempt Cabinet agenda) effective from 1st April 2016 to expire on 31st March 2017.

For Royal Borough of Kensington and Chelsea the Cabinet Member is requested:

2.8 To approve a waiver in accordance with paragraph 2.09 of the RBKC Contract Regulations to waive the requirement to seek tenders in accordance with paragraph 2.28 in order to allow the local authority to directly award the contracts to the providers listed in Appendix B (in the exempt report on the exempt Cabinet agenda) in accordance with Contract Regulation 2.36.

2.9 To approve the direct award of the contracts to the providers listed in Appendix B (in the exempt report on the exempt Cabinet agenda) and for the values set out in the same appendix, effective from 1st April 2016 to expire on 31st March 2017.

For Westminster City Council the Cabinet Member is requested

2.10 The Chief Procurement Officer approve a waiver in accordance with section 2.2 of the Westminster Procurement Code to allow the local authority to directly award the contracts to the providers listed in Appendix B (in the exempt report on the exempt Cabinet agenda)

2.11 To approve the direct award of the contracts to the providers listed in Appendix B (in the exempt report on the exempt Cabinet agenda) and for the values set out in the same Appendix, effective from 1st April 2016 to expire on 31st March 2017.

3 REASONS FOR DECISION

3.1 The recommendations for the direct award of 19 providers to supply community sexual health contracts across the three boroughs for a period of 12 months is proposed in order to:

- allow sufficient time to re-procure and redesign community sexual health services in alignment with wider GUM transformation.

- engage with adults services, children's services and other stakeholders around the future model

3.2 In the event that the Councils wish to terminate the existing contracts for any reason, the terms and conditions of the contract include provision for the Council to terminate the contract upon three months' notice.

4 BACKGROUND

4.1 Reshaping the provision of community and reproductive sexual health service is a priority for the three local authorities in order to ensure services are sustainable and best meet the needs of our residents by adopting innovative approaches. The ambition of the three boroughs will is to improve the sexual health of residents by:

- reducing inequalities and improving sexual health outcomes
- building an open and transparent model where everyone is able to make informed and responsible choices about relationships and sex
- recognising that sexual ill health can affect all parts of society, often when it is least expected
- providing accessible services in a way that meets the need of the local population and those at highest risk

4.2 In April 2013, Hammersmith and Fulham Council, Royal Borough of Kensington and Chelsea and Westminster City Council took responsibility for the hosting arrangement to commission a range of public health services including sexual health. This was in accordance with the legislation abolishing Primary Care Trusts whereby their commissioning functions for Public Health services transferred to local authorities.

4.3 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 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 direct awards for a period of 2 years from April 2014.

4.4 Community sexual and reproductive health contracts are due to end in March 2016. The London wide transformation of GUM (Genito Urinary Medicine) services is due to be completed by March 2017 with part of the GUM transformation business case advocating that local areas innovate and develop integrated treatment pathways between community and GUM provision.

4.5 Change within the system is required and a forward plan has been developed to safeguard future resourcing of sexual health services. A new model will meet current and future demand, be high quality and deliver value for money. Whilst prioritising the types of services that are required to make a difference for the three borough residents.

4.6 The design principles for a new model are set out below will require engagement with a broad range of stakeholders, the principles have been derived from the review where the key components (detailed below) are essential for a sexual health system, and where to date services have not been clear in their remit of delivery of sexual health service:

- sexual health promotion
- partnerships with secondary care, community and primary care providers

- high quality sexual health services targeting priority populations.
- engagement with affected populations and other stakeholder groups.
- incorporation of new technologies into service delivery.
- accessible, clearly signposted services, part of a joined-up pathway for sexual and reproductive health needs.
- working with commissioners in CCGs and NHS England responsible for other sexual health services.
- services delivered by a well-trained, informed workforce.
- development and implementation of a communication strategy

4.7 An impact assessment has been completed for the contracts which this report recommends end in March 2016. The evaluation considered the following criteria:

Criteria	Definition
Interventions	Level of intervention and how this supports local residents
Duplication	Provided elsewhere across the three boroughs
Outcomes	Links to Public Health Outcomes Framework, and locally defined KPIs
Sustainability	The financial viability of the organisation

4.8 The review identified a small number of organisations that may be at financial risk due to the reliance on Local Authority Funding. The potential financial impact of these contracts ending have been outlined in Appendix C (in the exempt report).

4.9 The location, access and responsiveness of services are also factors in transforming community sexual health services. Local services have provided better outcomes for residents and those that are flexible to their needs. However a number of services are located out of borough or commissioned by a number of Local Authorities resulting in residents of the three boroughs not always benefitting therefore it is difficult to evidence the value for money or the outcomes.

4.10 Commissioning capacity during 2013/2014 impacted on the timeframe to re-procure the community and reproductive sexual health services by March 2016. In discussions it was agreed the timetable proposed for the reprocurement of community sexual health services needed to be slowed to reflect the GUM transformation timetable and to allow for the project to include contingency for slippage. A full review, stakeholder and service user engagement, and an equalities impact assessment has been completed and found that:

- a number of duplicated services that are not cost effective identified
- contracts and service level agreements are not aligned to the statutory public health outcome framework.
- the majority of providers have been contracted since the late 1990s with no re procurement activity carried out
- there were contracts transferred from PCTs with an inconsistent approach to performance measures.

- an inconsistent approach to prevention that became diluted with evidence of increasing numbers of Sexually Transmitted Infections (STIs) reported
- lack of clarity on pathways

5 PROPOSAL AND ISSUES

5.1 Current contracts are commissioned to March 2016, if no decision is made there is a risk that no provision will be in place for residents while the procurement project is progressed.

5.2 There are significant opportunities to make efficiencies through reducing and consolidating contracts. The direct award of fewer contracts allows the local authorities to align the procurement of community sexual health services with the re-procurement timetable of GUM services.

5.3 Health inequalities are not addressed in the current system due to the inconsistency of the configuration of the contracts. Contract monitoring will be substantially improved through tighter specifications and greater emphasis on quality assurance.

5.4 The proposal is to make direct awards of sovereign contracts to the 19 suppliers and one inter-authority transfer as listed in Appendix B (in the exempt report). This approach is taken as the current contracts do not contain any provision to extend the term and as such the proposal carries some risk of challenge, which is set out further below.

6 OPTIONS AND ANALYSIS

6.1 No decision has been made about the commissioning of community sexual health service contracts for 2016-17. Direct Awards of contracts will ensure that the public health commissioners are able to complete a comprehensive programme of stakeholder engagement and confirm the re-designed models to be re-tendered.

6.2 An options appraisal has been completed and this is detailed below. The preferred option is Option 3.

Option 1: do nothing – Direct Award no community sexual health contracts.

Benefits of option 1

- There are no identified benefits for not extending the contracts for community sexual health services.

Challenges presented by option 1

- Short term savings with more GUM and NHS costs.
- The community sexual health contracts end in March 2016 with no alternative.

Option 2: Direct Award : all 2015-16 community sexual health contracts for 2016-17

Benefits of option 2

- avoids disruption of current services.
- avoids the needs to informally consult with stakeholders.

Challenges of option 2

- full efficiencies will not be delivered given the number of contracts the local authorities hold.
- could not guarantee the longevity of services post the removal of the ring fence on the public health grant.

Option 3: Direct award a proportion of 2015-16 sexual health service contracts for 2016-17

Benefits of option 3

- efficiencies can be achieved.
- reduces the number of commissioned services therefore management of these contracts is more efficient and less staff resources required.

Challenges of option 3

- Providers challenge the decisions made about the service review and the decision taken to end certain contracts.

7 RISK OF PROPOSED INTERIM APPROACH

Issue Identified	**Risk**	**Potential impact**	**Likelihood**	**Mitigating factors**
Budget: Funding Received is Insufficient to cover Direct Award Contract Prices for this period of award.	The contract pricing structure is that already paid to the supplier. We may have suppliers who may request an uplift for the 2016/17 period	Medium	Medium	ASC, children and family services and PH officers to work with the suppliers to examine the cost of staffing, service delivery cost for each of the borough services. This will establish if the existing contractual pricing structure deliver value for money within the funding received from the Department of Health. We will robustly push back where supplier challenges on the financial envelope. There will be an expectation to see cost reduction as per implication of direct award of contracts.
Demand and Quality	The size of the client group increases due to changes in demographics, leading to increased demand. This places	Medium	Medium	The demographic needs across the three borough needs to be better understood for this client group, whilst ensuring the quality of service outcomes continue to align with the service specification. An extensive service review has been completed for these services, to

Issue Identified	Risk	Potential impact	Likelihood	Mitigating factors
	pressure on the budget (see above) and quality.			identify if the existing service arrangement deliver customer needs and to identify any gaps. Wider stakeholder input will also inform the new service model, when re-tendered, or influence other approaches for continued service delivery.
Timeline	There is a risk the 12 months period requested for contract award may not be sufficient.	Medium	Medium	Service review for this cohort of services has already been completed, incorporating the three authorities strategic commissioning intentions to develop integrated community based service model. A tender time table is planned for this three borough provision by the category manager; so 12 months should be sufficient. The “project team” will consist of representatives from commissioning directorate and they will work closely with and a wide range of stakeholders for this service area. This service has synergies with provision managed by ASC, and the Children’s directorate services.
Timeline (2)	There is a risk that the 12 month period requested for contract award is too long, leading to “drift”. Why not immediately re-tender	Medium	Medium	Preparation for the service review programme is in part concluded with recommendation and business case for the re-procurement duly submitted/presented to the wider authority stakeholders for information and approval. However, an end to end tender (to award decision) will take a further 12 months. Experience to date has indicated that this time line cannot be reduced. An extensive service review has identified that some of the existing provision can deliver to

Issue Identified	Risk	Potential impact	Likelihood	Mitigating factors
				residents needs and support identified gaps. Wider stakeholder input will also inform the new service model when re-tendered or influence an 'other approach'. The "other" approach may then have to consider associated risks.
Procurement Challenge	Risk of Procurement Challenge by a potential bidder for such services	High	Low	See section 8 below
Contract length	The contract length is not sufficient to complete the tender to award			To ensure we mitigate the risk the contract will not be re-tendered within the allocated contract length, The Strategic Procurement team will use the PIN route when re-tendering

8 RISK OF PROCUREMENT CHALLENGE

8.1 The Public Contracts Regulations 2015 (the Regulations) came into force at the end of February and implement revisions to the European public procurement regime as it applies in the UK.

8.2 The services that are the subject of this report used to be classified as "Part B" services under the previous Regulations of 2006; this meant that they were exempt from the requirement to tender them in accordance with those previous regulations, provided that there was not likely to be cross-border interest.

8.3 This distinction has now been abolished. Health and social services are now classified as Schedule 3 services which are subject to a regime known as the "the Light Touch Regime", (LTR) if the value of the contract exceeds the current threshold of £625,050.00. One of the main requirements under the LTR is the obligation to advertise the opportunity on OJEU.

8.4 Where the authorities are at increased risk is where - the Authorities propose a direct award of more than 12 months and do nothing. The risk of challenge for not complying with the Regulations would therefore be reduced if a shorter contract period is proposed. However, whilst there is a potential challenge of risk, authority officers will have started the re-procurement for these services to mitigate the risk of non-compliance.

8.5 Despite this risk of challenge, it is considered in the best interest of the authorities to proceed with a direct award of contracts, and that there are exceptional circumstances to suggest that the appropriate waivers / exemptions from tendering should be granted.

9 CONSULTATION

9.1 It is planned that at each stage of the service review, redesign and procurement commissioners will fully engage with residents, Council stakeholders and external stakeholders. Preparation for the service redesign has already started, incorporating the three authorities' sexual health strategic commissioning intentions to develop a new integrated community based service model.

9.2 Procurement and Public Health officers will host a supplier engagement/meet the supplier workshop. This will allow providers to meet with the authority officers and engage with other suppliers at the event. This also ensures voluntary /small, medium enterprise/organisation has the opportunity to discuss consortia/partnership with other organisations.

10 EQUALITY IMPLICATIONS

10.1 The services are currently provided by the independent sector and NHS trusts . The transfer of functions may have equality implications. A full EIA has been completed as part of the review and will be revisited and updated as part of new proposals for service provision prior to starting a tender process.

10.2 The community sexual health services are non-mandatory unlike GUM services where Local Authorities are responsible for commissioning GUM services for their residents due to the open access legislation. The EIA highlighted the current service delivery is to provide psychosocial support for residents, these services are not open access and will be commissioned in the future for local resident's needs.

10.3 The EIA indicated the services over the years and prior to the move to Local Authorities a number of services had been commissioned by other Local Authorities to ensure fair access similar to a pan London approach. However the way in which resident's access services has changed and the current model needs to reflect this, the services where they work with a small number of three borough residents will not be extended.

10.4 The current make up of commissioned community and reproductive sexual health services is inconsistent. There is duplication of services, not aligned with current need and contracts and service level agreements no longer fit for purpose.

10.5 A number of the current services are out of borough and therefore making it difficult for residents to access, the proposed services requesting an extension are within the three boroughs and therefore can be more accessible and responsive to local residents and identified needs.

11 LEGAL IMPLICATIONS

11.1 Health and Social Services are Schedule 3 services for the purposes of the Public Contracts Regulations 2015 (Regulations). Schedule 3 services are subject to the "light touch regime", if the value of the contract exceeds the current threshold of £625,050.00.

11.2 As the value of some the proposed contracts set out in Appendix B (in the exempt report) exceed the current threshold for Schedule 3 services, the authorities are required to comply with the requirements set out in the Regulations, which include the requirement to advertise the contract opportunity on OJEU. Consequently, the proposed recommendations will result in the contracts being at risk of being declared ineffective.

11.3 It cannot be said with certainty that there is no risk of challenge, however, on the basis of the information provided by council officers, it is felt that a risk of challenge in this particular case is low. In mitigation, the proposal to extend the term of the identified current contracts is to enable the Council to carry out a service redesign and a re-procurement of the contracts.

11.4 In respect of those contracts below the threshold for Schedule 3 contracts, Part 4 of the Regulations applies. This requires that all contracts should be advertised on the Contracts Finder website where the value of the contract exceeds £25,000, unless the authority's standing orders specify a higher value for advertisement. Regulation 114 of the Regulations state that a material failure to comply with Part 4 of the Regulations does not itself affect the validity of a public contract. As such, the proposed contracts cannot be set aside on grounds of non-compliance.

Implications completed by: Kar-Yee Chan, Solicitor (Contracts), Tri-borough Shared Legal Services, 020 8753 2772.

12 FINANCIAL AND RESOURCES IMPLICATIONS

12.1 The sexual health service review report has offered efficiencies of £1,605,870 as shown below. The 2016/17 budget (outlined in Appendix A, in the exempt report) will be reviewed as part of the re procurement of community sexual health services. The table below identifies the savings to be made if option 3 is agreed, the table also includes those budget lines where there has been no spend or contract since the move into local authorities.

Table One : Adult and Young Peoples Efficiencies				
Borough	**2015-16 Budget**	**Proposed Efficiencies**		**Proposed 2016-17 Budget**
		£	%	
H&F	£2,479,570	£638,784	26%	£1,840,786
RBKC	£1,815,126	£309,773	17%	£1,505,353
WCC	£2,715,149	£657,313	24%	£2,057,836
Total	**£7,009,845**	**£1,605,870**	**23%**	**£5,403,975**

The higher proportion of savings in Hammersmith and Fulham is a result of higher levels of investment in HIV support initiatives historically through grant based arrangements which has led to greater levels of duplicated services. Previously many of these services were not routinely commissioned on need. It is proposed that we streamline all contracts to redress this imbalance of investment.

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

Liz Bruce

Executive Director of Adult Social Care

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

List of appendices: (contained in the exempt report on the exempt Cabinet agenda)

Appendix A

Appendix C

Appendix