


Grants Determination (Cabinet) Sub-committee 24th October 2017	 TOWER HAMLETS
Report of: Denise Radley, Corporate Director, Health, Adults and Community	Classification: Unrestricted
Substance Misuse Prescribing Costs – LBTH / THCCG	

Lead Member	Councillor Jones, Cabinet Member for Adults and Health
Originating Officer(s)	Rachael Sadegh, Service Manager – Substance Misuse
Wards affected	All wards
Key Decision?	No
Community Plan Theme	Healthy and Supportive Community

Reasons for Urgency

Please note this report must be considered at this meeting as costs have already been incurred and an agreement is required urgently regarding Council contribution towards these costs.

Executive Summary

LBTH currently commissions a number of treatment interventions for individuals who misuse drugs / alcohol. The primary service providing such interventions is Reset drug / alcohol treatment service currently contracted to East London Foundation Trust (ELFT). The cost of this service is met via the Public Health Grant. An important element of the treatment of drug / alcohol addictions is pharmacological therapy. A number of different drugs are used though many will be familiar with Methadone and Buprenorphine used to substitute illicit Opiates (mainly Heroin). In Tower Hamlets, these drugs are prescribed by Reset treatment service (ELFT) practitioners and by GPs.

The costs associated with prescribing these drugs have been shared over time with both LBTH and Tower Hamlets Clinical Commissioning Group funding this resource. Due to the recommissioning undertaken across the drug / alcohol treatment system and to ensure transparency, a grants agreement is required to reimburse THCCG a proportion of these prescribing costs on an annual basis.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve an annual grant to THCCG to the value of £210k to fund drug costs associated with substance misuse treatment interventions for the

duration of the current Reset contract with ELFT (due to end on 30th October 2018 or 30th October 2019 if the option to extend is exercised).

2. Delegate authority to Corporate Director Health, Adults and Community to approve risk share agreement between THCCG and LBTH.
Note that payment of the grant will be made in arrears at the end of the year in which expenditure was incurred. The first payment will therefore be for the contract year 31st October 2016 to 30th October 2017.

1 REASONS FOR THE DECISIONS

- 1.1 To facilitate service delivery as per the service specification for Reset drug / alcohol treatment service and to ensure appropriate clinical governance.
- 1.2 To ensure a transparent transfer of funds to Tower Hamlets Clinical Commissioning Group (THCCG) to reimburse drug costs incurred by the Reset service.

2 ALTERNATIVE OPTIONS

- 2.1 LBTH to transfer liability for prescribing costs to Reset drug / alcohol treatment service. This would require a contract variation agreeable to both parties and would limit control over prescribing costs within the service. Such an arrangement would require discussions with THCCG in relation to whether an agreed funding contribution would be forthcoming. In the event that the contract was let to a non-NHS provider in the future, such an arrangement would need to be reconsidered.
- 2.2 No contribution to be made. This would jeopardise the significant sum currently resourced by THCCG and result in a funding gap.

3 DETAILS OF REPORT

- 3.1 LBTH currently commissions a number of treatment interventions for individuals who misuse drugs / alcohol. The primary service providing such interventions is Reset drug / alcohol treatment service currently contracted to East London Foundation Trust (ELFT) from 31st October 2016 to 30th October 2018 (30th October 2019 if the option to extend by one year is exercised). The cost of this service is met via the Public Health Grant.
- 3.2 An important element of the treatment of drug / alcohol addictions is pharmacological therapy. A number of different drugs are used though many will be familiar with Methadone and Buprenorphine used to substitute illicit Opiates (mainly Heroin). In Tower Hamlets, these drugs are prescribed by Reset treatment service (ELFT) practitioners and by GPs.

- 3.3 Prior to the transition of Public Health (and the Public Health Grant) into the Local Authority, the majority of funds for substance misuse treatment interventions were held by Tower Hamlets PCT. Upon the transition of Public Health in 2013, funding associated with public health initiatives (including substance misuse) were amalgamated and allocated to LBTH via the Public Health Grant. Whilst this included all funding associated with treatment service contracts, it did not include funding associated with prescribing costs and other non-discreet services such as diagnostic testing.
- 3.4 At the point of transition in 2013, substance misuse services were structured and contracted very differently to the current treatment system which was implemented in October 2016. Prescriptions for the drugs concerned were written by GPs with a special interest in substance misuse (GPwSIs) who worked in treatment services, ELFT practitioners working in the Specialist Addictions Unit (SAU) and General Practitioners within their own surgeries. GPwSIs and GPs used THPCT / THCCG prescription forms to prescribe and therefore these costs were picked up by THPCT / THCCG. ELFT practitioners prescribed on ELFT prescriptions and the costs of these drugs were included in the contractual value for the SAU service. Hence in 2013, the PHG allocated to LBTH included provision for SAU prescribing costs but not for the costs incurred for prescriptions written by GPs and GPwSIs. However, up until the point of implementing new services in October 2016, funding arrangements remained the same with THCCG paying for GP / GPwSI costs and LBTH funding the SAU service (including prescribing costs).
- 3.5 When treatment services were recommissioned in October 2016, the GPwSI function and the SAU contract was terminated. All prescribing is now undertaken by Reset drug / alcohol treatment service (ELFT) and GPs within their own practices. In 2015, an agreement was reached with THCCG that they would continue to fund all prescribing costs with the exception of the cost previously included within the SAU contractual value.
- 3.6 As drug costs were explicitly excluded from the contract value for Reset, it has been agreed that ELFT (or any future providers of the service) will prescribe on THCCG prescription forms. This means that THCCG will be billed for all prescribing costs associated with the service and reimbursement is required from LBTH to cover the costs that would have previously been incurred by the SAU service. Previous prescribing data (Appendix 1) has been analysed for the SAU service which shows that there was an average cost of £190k, with a minimum annual cost of £179k and a maximum annual cost of £208k.
- 3.7 After much deliberation within LBTH and with THCCG colleagues, LBTH legal services have recommended that this annual payment is made as a grant and thus requires approval by the grants sub-committee.
- 3.8 LBTH officers are currently working with THCCG to develop a Memorandum of Understanding to outline the operating framework for this arrangement. The agreement will include matters relating to:

- Risk share relating to any potential budget overspend.
- Agreed contribution in the event of a shared underspend.
- Clinical governance
- Development and co-ordination of a substance misuse prescribing sub-committee
- Agreed prescribing guidelines
- Drug inventory
- Budget management controls
- Performance management of ELFT in relation to prescribing spend
- Agreed procedures / responsibilities for approving prescribers, ordering prescription forms etc.

This document requires more discussion between both organisations and it is requested that delegated authority be given to the Corporate Director, Health, Adults and Community to sign off this agreement.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report recommends grant awards of £210k per annum for the period October 2016-October 2019 to the THCCG to fund drug costs associated with substance misuse treatment interventions. The reasons for this are detailed within the body of the report above and the cost of this award will be funded through the Public Health Grant.

5. LEGAL COMMENTS

- 5.1 The arrangement described in this report is a grant. Under the law there is no set definition of a grant. However, there are certain circumstances described where a grant ceases to be a grant and therefore, generally, a grant arrangement remains provided that these circumstances are not present in the arrangement.
- 5.2 A grant is based in the law of trusts and is essentially a gift. However, as in this report the gift is being given with a particular purpose in mind and the grant should only be used for that purpose. Should the grant recipient use the grant in contravention of the conditions the grantor may feel aggrieved and wish to seek recourse and therefore, grants for a purpose are often mistaken for legally binding contracts.
- 5.3 One of the significant circumstances that cause a grant to cease being a grant is if the recipient has a pecuniary interest in the grant arrangement. For example, the ability to make profit. Under the Public Contracts Regulations 2015 the example of gaining a pecuniary interest is used to determine when a grant ceases to be a grant and becomes commercial contract activity that requires tendering.
- 5.4 In this specific example, the grant is being made for the purpose of reimbursing the CCG for costs it has incurred for the purchase of the pharmacological therapy items. However, the CCG is not making a profit from the transaction, nor is it operating as some form of resale to the Council

(albeit with the products used by the service users). On a practical basis the Council is merely making a contribution towards the cost of the service in line with its statutory obligations under the National Health Service Act 2006. It is therefore right that the arrangement be regarded as a grant rather than a contractual purchase which would attract the need to submit the process to a competitive exercise.

- 5.5 From the information provided it appears that the payments to the CCG are capable of being supported under the Council's powers, specifically section 1 of the Localism Act 2011 which provides the general power of competence. In summary, this power enables the Council to do anything that any ordinary human being may do, unless statute specially restricts the Council from acting in the way it wishes. Therefore, in the absence of specific legislation to the contrary it would appear to be within the Council's power to issue the grant payments to the CCG, subject to oversight of the Commissioners.
- 5.6 The Council has a duty under Section 3 of the Local Government Act 1999 to ensure that it makes arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. The CCG's overall contribution to the arrangements and the MoU that is intended to be incorporated should assist the Council in substantiating best value in the circumstances.
- 5.7 When considering making grants, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty - PSED). Officers should continuously consider, at every stage, if there may be any impacts in respect of the Council's PSED. This includes, where appropriate, completing an equality impact assessment which should be proportionate to the function in question and its potential impacts.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 Substance misuse services are subject to annual needs assessments and service equity audits. There are no impacts on equality as a result of this funding arrangement.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The exclusion of prescribing costs from the service specification ensures an additional control measure on the cost of the treatment service and safeguards investment in frontline staff.
- 7.2 The contribution of THCCG is well received and alternative arrangements would be challenging to resource.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 No impacts

9. RISK MANAGEMENT IMPLICATIONS

9.1 The risks within this proposal are primarily related to the variable budget. Whilst the prescribing budget in recent years has been relatively stable, the impact of the new service model cannot accurately be estimated.

9.2 Whilst the new service is anticipated to be more effective in facilitating service users to complete treatment earlier and hence incur lower prescribing costs, it is also expected to increase the total cohort in treatment.

9.3 There is also the risk of new pharmacological technologies being developed for the treatment of addiction which could be expensive. There are no known developments anticipated currently. Any future risk would be managed via discussion within the prescribing sub-committee as to the merits and affordability of such drugs in the first instance. This would be followed by agreed addition to the approved formulary of prescribable drugs if possible, with or without prescribing restrictions. If an increased budget was required to meet costs, this would be discussed with both organisations to determine whether resource was available prior to authorising prescribing of the relevant medications.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 The use of Opiate Substitution Therapy and successful engagement in drug treatment has demonstrated effectiveness in reducing crime and is an essential element of the National Drug Strategy as well as Tower Hamlets Substance Misuse Strategy.

11. SAFEGUARDING IMPLICATIONS

11.1 Successful treatment of drug / alcohol misuse has many benefits for affected families, safeguarding both vulnerable adults and children of drug / alcohol users. Much of this treatment relies upon effective pharmacological therapies alongside psychosocial interventions.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix 1: Specialist Addiction Unit Prescribing Costs.

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE.

Officer contact details for documents:

N/A