

MAYOR'S EXECUTIVE DECISION MAKING

Tuesday, 4 February 2014


Mayor's Decision Log No. 48

1. **DRUG AND ALCOHOL COMMISSIONING FROM 2014 (Pages 1 - 12)**

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Individual Mayoral Decision Proforma Decision Log No: 48	 TOWER HAMLETS
Report of: Report of Steve Halsey Head of Paid Services and Director of CLC	Classification: Unrestricted
Drug / Alcohol Commissioning from 2014	

Is this a Key Decision?	Yes
Decision Notice Publication Date:	23 December 2013
General Exception or Urgency Notice published?	Yes – General Exception Notice Required
Restrictions:	N/A

Reasons for Urgency:

As part of the transfer of Public Health Duties to Local Government in April 2013, a large number of NHS contracts novated to the Council, including drug / alcohol treatment service contracts. The process was complex and involved protracted negotiations with health organisations to determine terms and conditions and values. Now that there is a clear schedule of agreed contracts in operation, we are in a position to consider the continuity of services throughout a period of re-procurement and are now issuing notice of the decision to be taken.

All drug / alcohol treatment service contracts come to an end in March 2014. A re-procurement process is required to secure services post this date and reduce risk to legal challenge. In consideration of the size and complexity of the services involved, this will be a reasonably lengthy process. In order that this process may begin as soon as possible, ensure procurement within the timescales proposed, and reduce risk of legal challenge, a decision is required as soon as possible.

EXECUTIVE SUMMARY

1 EXECUTIVE SUMMARY

1.1 On 1st April 2013 all Public Health contracts and responsibilities were transferred to the Local Authority under the Health and Social Care Act. Some of these involved substance misuse treatment services which the Drug and Alcohol Team (DAAT) in CLC now commission (alongside the services previously managed). The Public Health contracts (and especially

those regarding substance misuse services) were a complex element of transfer arrangements. This was largely due to their previous joint working arrangements between the Primary Care Trust (PCT) and DAAT (with the former mainly responsible for commissioning services and the latter for monitoring performance). Under the transfer, these various roles and duties were required to be disaggregated for legal reasons.

- 1.2 The Council now has two groups of contracts which are due to be re-procured. The first set are the DAAT contracts previously procured and extended by LBTH and the second are those transferred by the PCT when the Council took on responsibility for Public Health. The majority of the PCT contracts were extended for 12 months by the PCT immediately prior to transfer to allow time for the services to be re-procured. Whilst the Council was familiar with the services in the contracts it had procured, it has taken some time to establish exactly what was included in the PCT contracts so a substantial amount of work has been undertaken on these and robust terms and conditions have been put in place. The next task is to examine what efficiencies can be achieved in the re-procurement.
- 1.3 This report sets out the options available to the Council. It should be noted that this report is *only* concerned with contracts commissioned via the DAAT.

DECISION

The Mayor is recommended to:

- approve the phased approach to re-procuring all DAAT contracts over the next year ensuring that all the contracts are in place or have mobilisation dates set by 1st January 2015.
- agree to the procurement process outlined in the report which will provide sufficient time to review the current treatment system achieve efficiencies and reconfigure to suit local needs whilst at the same time achieving local economy and community benefits.
- agree to grant new fixed term contracts to existing suppliers on their current terms and conditions to maintain continuity of service delivery while procurement processes are conducted and to ensure that vulnerable local residents are appropriately protected throughout the process.
- authorise the Corporate Director Communities Localities and Culture in consultation with Legal Services to finalise the terms of the limited fixed term contracts to existing suppliers.
- authorise the Head of Legal Services to execute the contracts on behalf of the Council.

APPROVALS

1. Corporate Director proposing the decision or his/her deputy

I approve the attached report and proposed decision above for submission to the Mayor.

MS
Signed  Date *3²/14*
[Steve Halsey: Head of Paid Services and Corporate Director: CLC]

2. Chief Finance Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

Signed  Date *4/2/14*

3. Monitoring Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

I confirm that this decision:-


- (a) ~~has been published in advance on the Council's Forward Plan OR~~
- (b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

Signed  Date *4/2/14*

4. Mayor

I agree to the decisions stated in the "Decision" paragraph above for the reasons set out in the above "executive summary" and the attached report.

Signed  Date *4/2/14*

Individual Mayoral Decision 7 th October 2013	 TOWER HAMLETS
Report of: Report of Steve Halsey Head of Paid Services and Director of CLC	Classification: [Unrestricted or Exempt]
Drug / Alcohol Commissioning from 2014	

Lead Member	Councillor Ohid Ahmed
Wards affected	All wards
Community Plan Theme	Healthy and supportive/ Safe and Cohesive Community
Key Decision?	Yes

1 EXECUTIVE SUMMARY

- 1.1 On 1st April 2013 all Public Health contracts and responsibilities were transferred to the Local Authority under the Health and Social Care Act. Some of these involved substance misuse treatment services which the Drug and Alcohol Team (DAAT) in CLC now commission (alongside the services previously managed). The Public Health contracts (and especially those regarding substance misuse services) were a complex element of transfer arrangements. This was largely due to their previous joint working arrangements between the Primary Care Trust (PCT) and DAAT (with the former mainly responsible for commissioning services and the latter for monitoring performance). Under the transfer, these various roles and duties were required to be disaggregated for legal reasons.
- 1.2 The Council now has two groups of contracts which are due to be re-procured. The first set is the DAAT contracts previously procured and extended by LBTH and the second is those transferred by the PCT when the Council took on responsibility for Public Health. The majority of the PCT contracts were extended for 12 months by the PCT immediately prior to transfer to allow time for the services to be re-procured. Whilst the Council was familiar with the services in the contracts it had procured, it has taken some time to establish exactly what was included in the PCT contracts, so a substantial amount of work has been undertaken on these and robust terms and conditions have been put in place. The next task is to examine what efficiencies can be achieved in the re-procurement.

- 1.3 This report sets out the options available to the Council. It should be noted that this report is *only* concerned with contracts commissioned via the DAAT.

2 RECOMMENDATIONS

- 2.1 The Mayor is recommended to:
- approve the phased approach to re-procuring all DAAT contracts over the next year ensuring that all the contracts are in place or have mobilisation dates set by 1st January 2015.
 - agree to the procurement process outlined in the report which will provide sufficient time to review the current treatment system achieve efficiencies and reconfigure to suit local needs whilst at the same time achieving local economy and community benefits.
 - agree to grant new fixed term contracts to existing suppliers on their current terms and conditions to maintain continuity of service delivery while procurement processes are conducted and to ensure that vulnerable local residents are appropriately protected throughout the process.
 - authorise the Corporate Director Communities Localities and Culture in consultation with Legal Services to finalise the terms of the limited fixed term contracts to existing suppliers.
 - authorise the Head of Legal Services to execute the contracts on behalf of the Council.

3 BACKGROUND

- 3.1 All borough substance misuse services are commissioned and/or delivered by LBTH via the Drug and Alcohol Action Team (DAAT), the Drug Interventions Programme (DIP) and Children's Commissioning with annual funds for the DAAT (and DIP) in the region of £11m for 2013/14 which is derived from three funding streams:
- PH Grant (£8.8m which includes £865k for DIP),
 - LBTH mainstream (£1,5m)
 - and the Mayor's Office for Policing and Crime (£613k for DIP).
- 3.2 The Council's contracts for the provision of DAAT services were put in place a number of years ago and have been extended on two previous occasions. They currently expire in March 2014. Where the contracts have been transferred from the PCT, the Council's Legal team are currently regularising existing contractual arrangements creating robust T & Cs. The majority of these contracts also expire in March 2014.

- 3.3 The DAAT have been engaged in re-procurement preliminary activity for the transferred contracts for many months. The process has been dogged with significant delays. The main reasons for the delay centred on securing sufficient transparency with various health providers regarding contract values. This problem is not unique to Tower Hamlets.
- 3.4 Extending the procurement timeline beyond 31st March 2014 offers an opportunity to:
- Glean a more detailed understanding of the contracts to better align with Member's wishes for all Public Health contracts to be effectively reviewed to ensure they are efficient and responsive to local need, make the most of available local expertise
 - Properly inform decisions regarding local treatment service provision and configuration.
 - Provide sufficient room to enhance service improvements and generate potentially greater cost efficiencies which can be reinvested to enhance local priorities and deliver community benefits.

4 REPORT

- 4.1 It is recommended, that all borough substance misuse services should be re-procured over the next year to be fully mobilised by January 2015. This would address the concerns identified within the borough treatment system and enable the delivery to be reconfigured to provide a holistic approach to better serve the needs of local, vulnerable residents. It should be noted, the extension requested will also assist maintaining existing service delivery while the re-procurement is delivered – and therefore protect vulnerable local residents while in the process.
- 4.2 Over the last year, work has progressed to ensure that all contracts are LBTH compliant and there is sufficient synergy between the Public Health and existing borough arrangements (i.e. identification of service duplication, gaps and efficiencies). To inform decision making, the DAAT has developed (where possible) common performance monitoring standards to provide adequate and early management oversight of emerging issues. In addition, work has also been conducted to introduce robust budget forecasting requirements to claw back under spend and a break clause to minimise financial risks to the Council if Public Health Grants were to be rationalised in 2015/16. It should be noted that the re-procurement of existing DAAT contracts was delayed due to the extensive work required to ensure the novated Public Health contracts were fit for purpose and LBTH compliant.

- 4.3 However, there is currently scope for further rationalisation and refinement of the contracts and associated treatment system which would deliver sizeable cost savings that could be reinvested to develop new approaches to tackling local issues or contribute to the MTFP efficiency programme if so desired. Work to deliver efficiencies will also have the added benefit of possibly neutralising potential future cuts in central PH funding and enhancing flexibility in the delivery of the future local treatment system. There is also more that could be achieved to enable a stronger focus on the new procurement requirements in future contracts to ensure local people are considered for the employment opportunities arising from them etc.
- 4.4 Extending the procurement timetable (as described above) would also allow more time to better understand PH contracts and their performance to align the wider borough Treatment System to deliver greater efficiencies to generate future cost savings. This timeline is also helpful as it aligns with the Public Health grant cycle, allowing resource allocation to be robustly factored in to the new arrangements.

5 THE WAY FORWARD

- 5.1 In the light of the work that needs to be conducted to align the services and achieve efficiencies, it is recommended that the way forward should be to re-procure all contracts on a phased basis over the next year to enable appropriate completion of the procurement process – with final mobilisation in January 2015. Taking such an approach has the benefit of reducing the risk of challenge, by limiting the periods fixed term contracts would be awarded in order to achieve the re-procurement on a phased and planned basis.
- 5.2 The phased approach would involve re-procuring the contracts in a specific order prioritised by the degree of competition, complexity and risk envisaged. For example, specialist service (i.e. pharmacy and GP special interest) contracts have no or very limited opportunities for competition and could be re-commissioned quickly with negligible risk of challenge. It should be noted that some other PH contracts have termination notice periods of up to a year.
- 5.3 It should also be noted that the proposed approach provides sufficient time to examine efficiencies and alignments of all the services across the treatment system and review the opportunities relating to the local economy – and if approved the required timeline will provide adequate time for this political imperative to be pursued. An initial benchmarking exercise comparing treatment service arrangements, spends and outcomes with other London boroughs has indicated there is significant scope for efficiencies and improved performance – which will offer the

opportunity of reinvesting the savings generated into an array community projects. If this approach is not taken the opportunity may be lost for up to another three years.

6 WORK TO BE CONDUCTED AND TIMELINES

- 6.1 Following Mayoral approval to proceed, it is proposed that the following work be conducted to deliver the re-procurement of all DAAT contracts to time and realise the opportunities for the local economy.
- 6.2 In order for the re-procurement exercise to deliver the intended aims the first tasks to be completed will be a needs assessment and a service review of existing provision. The former will establish the borough treatment evidence base while the latter will assess the appropriateness of the service arrangements against local needs to determine future configuration (this work will also encompass service and user consultation). This work will take about 12 weeks to finalise with a target date in January 2014. This will be followed by service modelling work which will be used to inform the development of a commissioning plan prior to the formal tendering process (starting in mid-February 2014).
- 6.3 Once this work has been delivered the procurement plan will be activated. This process will be programmed and delivered according to the EU advertising test and the commission plan (derived from the needs assessment, service review and service modelling exercises). This work will start in mid-February 2014 and end with the contracts being awarded at the end of the year. Subject to the strategic decisions outlined in this report a detailed procurement plan will be developed which will highlight the planned sequence/phases of contract re-procurement and associated timelines to replace all the contracts over the various phases outlined.

7 SWOT Analysis

- 7.1 To assist the decision making process a SWOT analysis has been conducted (which highlights the strengths, weaknesses, opportunities and threats with the proposed approach). The points below summarise the key issues identified in relation to the project.

Strengths:

- Provides ample time to review the local treatment system and deliver improved outcomes, service efficiencies and community benefits.
- Negligible chance of successful challenge given that the procurement process in play and other boroughs have made similar decisions and as such minimises financial risks associated with any challenge.
- Opportunities to enhance the local economy are embedded in the approach.
- Maintains essential service delivery to vulnerable local residents while re-procurement process is delivered – offering savings, reinvestments and value for money.

Weaknesses:

- Completion of procurement process will extend beyond 1st April 2014 deadline and could potentially be subject to challenge.
- New limited fixed term contracts for existing providers will be required to ensure there is sufficient time provided for the procurement process to be completed without any loss of service to service users .

Opportunities:

- Realising significant cost savings which could be used for reinvestment in community projects.
- Delivering improved and more effective borough treatment system
- Current treatment system arrangements can be reviewed with a view of identifying efficiencies increase performance and to be reinvested to improve community resources.

Threats:

- Mayoral approval not being granted meaning there is insufficient time to re-procure the contracts by deadline.
- Delay in the termination of the current contracts held by the DAAT.

8 COMMENTS OF THE CHIEF FINANCE OFFICER

8.1 The report sets out the phased approach to be undertaken in the re-procuring of the DAAT contracts to ensure that they are all in place, or have mobilisation dates set by 1st January 2015. The recommendation in the report is for a fixed term contract extension to be agreed with the existing suppliers on their current terms and conditions to maintain the continuity of service delivery during the period up to when the new contracts are procured.

8.2 The current contracts under the DAAT service and the contracts that transferred to Council from the PCT are due to expire on the 31 March 2014. The contract extension is sought for up to 12 months to cover the period 1st April 2014 to 31 March 2015 to allow for sufficient time for all

outstanding issues to be mitigated including the regularising of the current transferred contracts, and review adjacencies with those related activities transferred as part of the public health responsibilities by the former PCT. There is sufficient provision within the DAAT budget set out in Para. 4.1 to cover the cost of the contracts.

9 COMMENTS OF THE HEAD OF LEGAL SERVICES

- 9.1 Section 3 of the Local Government Act 1999 requires best value authorities, including the Council, to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”.
- 9.2 The Public Services (Social Values) Act 2013 requires the Council to consider how the services it commissions and procures might improve the economic, social and environmental well being of the area.
- 9.3 Whilst it is not ideal for the Council to issue limited fixed term contracts effectively extending current arrangements, the particular circumstances of the transfer of functions and the need to align the services are unusual and the length of those contracts will be contained to the shortest periods necessary to allow for the procurements of new contracts. There is also the consideration that these services are delivered to vulnerable people and service disruption needs to be avoided. Whilst it is possible that the Council may receive a legal challenge to this course of action, the procurement plan has been devised in such a way to minimise both the risk and the effect of such a challenge.
- 9.4 Most health and social care services covered in the Market position Statement are for Part B services which are the non-priority services of limited cross border interest set out in Schedule 3 of the Public Contract Regulations 2006 and therefore the provisions of those regulations do not apply. As part of the procurement process officers will establish that that is the case and whether an advert in OJEU is required.
- 9.5 In any event, the Council does need to take into account the EU principles of proportionality, mutual recognition, transparency, non-discrimination and equal treatment by virtue of the Treaty on the Functioning of the European Union. In 1998 this was been interpreted by the European Court of Justice as requiring a “degree of advertising sufficient to enable the market to be opened up to competition”.
- 9.6 Also in undertaking any procurement the Council should 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 don't.

10 ONE TOWER HAMLETS CONSIDERATIONS

10.1 The report highlights necessary changes in the borough substance misuse treatment system to ensure that the local arrangements are responsive and configured to local need. One of the key tasks to be delivered will be to improve treatment outcomes with focus on recovery and ultimately quality of life – to individuals and communities – via reductions in crime and ASB and wider health improvements. Services will also be tailored to respond effectively to the needs of specific client groups to assist improvements in their quality of life and post recovery opportunities.

11 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

11.1 A key deliverable of the work will be the realisation of cost savings and efficiencies to allow future reinvestment in to community projects to assist addressing local needs. This is also designed to maximise improvements to the local economy and generate employment opportunities – therefore reducing the need for labour and businesses to be sourced from other areas.

12 RISK MANAGEMENT IMPLICATIONS

12.1 The report highlights the need to maintain services to the most vulnerable residents while project is in transition. One of the key recommendations is to extend the contracts, for up to a 12 month period which should be sufficient to ensure business continuity is maintained. We are taking a robust project management approach to identify risks and controls to mitigate the risks and have planned for key stakeholders and partners to be involved in all stages of the project to provide transparency and offer insights.

12.2 There is also the risk that the Council may receive a legal challenge given the course of action undertaken. The procurement plan provides the way forward ensuring the risk is mitigated.

13 CRIME AND DISORDER REDUCTION IMPLICATIONS

13.1 Substance misuse is a key driver to increased crime and disorder. By improving the configuration of local services designed to address these problems crime and ASB should be positively impacted. A key focus of the arrangements will be to deliver a more recovery based approach to assist residents exiting problem lifestyles and behaviours. In doing so, drug markets can be weakened and removed from their entrenched locations

with resulting benefits to local residents and retailers. Focus on reducing drug related crime (which is time consuming for the police and other services) allows more time to be expended on other local priorities.

14 EFFICIENCY STATEMENT

- 14.1 The re-procurement exercise has been designed to deliver efficient and effective local service provision, reduce duplication in the treatment system and extract maximum cost-savings – to be reinvested into community based projects. The gains generated will be cost neutral and service performance should increase and outcomes improved.

Appendices

- NONE

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

- NONE