Committee/Meeting:	Date:	Classification:	Report No:
Cabinet	09 January 2013	Unrestricted	CAB 60/123

Report of:	Title:
Corporate Director: Isobel Cattermole; Interim Corporate Director: Children, Schools and Families **Originating officer(s)**: Deborah Cohen; Service Head: Commissioning and Strategy	**Future Commissioning Arrangements for Public Health services** **Wards Affected:** All Wards

Lead Member	Cllr Abdul Asad; Health and Wellbeing
Community Plan Theme	A healthy and supportive community; One Tower Hamlets
Strategic Priority	Reduce health inequalities and promote healthy lifestyles; Reduce inequalities Work efficiently and effectively as One Council

1. SUMMARY

1.1 From 01 April 2013 responsibility for the delivery of a range of Public Health services in Tower Hamlets will transfer from the NHS to the Council as a consequence of the enactment of the Health and Social Care Act 2012. As part of this transfer, the Council will become responsible for commissioning public health services from a range of NHS, voluntary and private sector providers. The NHS currently has 83 contracts for public health services which have been identified for transfer to the Council, with a combined annual value of c£17.76million. Included within this number are adult drug / alcohol treatment contracts, the commissioning of which is managed by the Drug and Alcohol Action Team (DAAT) and the young people's substance misuse contract managed within Children's Schools and Families.

1.2 The purpose of this paper is to set out the proposed arrangements for managing this commissioning activity in 2013/14 and subsequent years, and to seek approval for a procurement programme commencing in January 2013 for those contracts scheduled to expire in 2013/14. The proposed arrangements have been developed in full collaboration with the Public Health colleagues who will transfer to the Council's employment in April 2013, and who will manage the procurement programme with support from Council officers. Drug and alcohol services will continue to be commissioned by the Drug and Alcohol Action Team (DAAT).

1.3 Approval is also sought for a proposed approach to managing a series of contractual relationships with GPs and Pharmacists for the purpose of delivering services currently delivered through NHS Locally Enhanced Service arrangements.

1.4 The amount of funding that will be transferred to the Council in respect of the public health contracts for 2013/14 was scheduled to be confirmed by the Department of Health on the 19th of December 2012. This announcement has now been delayed until January 2013. Once the confirmed level of funding is known the proposed procurement programme will be reviewed with regards to affordability, and adjusted as necessary.

1.5 If work on procurement activity and contract extensions is not started in January there are serious risks to continuation of service delivery from 1st April 2013

2. DECISIONS REQUIRED

The Mayor in Cabinet is recommended to:-

2.1 Approve the commencement of competitive tender processes for the following contracts:

- (See section 1a of appended spread sheet); (Please note contracts will not be awarded if insufficient funding is allocated by the DoH and the matter will be brought back to the Mayor)

2.2 Approve the extension, for up to 12 months, and subsequent procurement during 2013/14, of the following contracts:

- (See section 1b of the appended spread sheet)

2.3 Approve the procurement, during 2013/14 of the following contracts scheduled to expire on 31 March 2014:

- (See section 1c of the appended spread sheet);

2.4 Note the contracts currently held by the NHS where the services are already provided by the Council. These will become directly provided services from 01 April 2013, and therefore no further commissioning is required:

- (See section 1d of the appended spread sheet);

2.5 Note the contracts which the NHS will not maintain beyond 31 March 2013 and will be decommissioned by the PCT. Therefore no commissioning activity is required by the Council:

- (See section 1e of the appended spread sheet);

2.6 Approve the transfer of responsibility to the Council for the elements of the current contracts with Barts Health NHS Trust and the East London Foundation Trust (ELFT) which pertain to services delivered to residents of Tower Hamlets and note that the Barts contract expires on 31 March 2014 and the ELFT contract on 30th June 2014. The services currently provided to Tower Hamlets residents under these contracts are:

- (See section 2a of the appended spread sheet);

2.7 Note the intention to work with the Tower Hamlets Clinical Commissioning Group, neighbouring Councils and their respective Clinical Commissioning

Groups who have an interest in the contracts with the Barts Health NHS Trust during 2013/14 to determine longer term commissioning arrangements which balance local flexibility and priorities with a prudent approach to risk sharing;

2.8 Delegate authority to the Corporate Director responsible for the functions being exercised in the contracts in accordance with the Council's constitution in consultation with the Cabinet Member for Health and Wellbeing and Assistant Chief Executive (Legal Services), and subject to final approval by the Mayor, to enter into various agreements to give effect to the recommendations detailed above and also to enter an agreement with the Tower Hamlets Clinical Commissioning Group for the management of contractual arrangements with GPs and Pharmacists currently delivered under NHS Local Enhanced Services arrangements or direct employment contracts with the NHS, for the period 1 April 2013 to 31 March 2014. This is subject always to establishing adequate funding and satisfactory terms that protect the Council and deliver local objectives and or other appropriate providers. In particular the services currently provided to Tower Hamlets residents under these Local Enhanced Services arrangements are:

- (See sections 2c and 2e of the appended spread sheet);

2.9 Approve the proposed joint commissioning arrangements for the commissioning of sexual health services with the Commissioning Support Unit (who will commission health services on behalf of the Tower Hamlets Clinical Commissioning Group) acting as lead commissioner. The services currently provided to Tower Hamlets residents that fall within the remit of the proposed joint commissioning arrangements are:

- (See sections 2b and 2d)

2.10 Delegate authority to the Corporate Director responsible for the functions being exercised in the contracts in consultation with the Cabinet Member for Health and Wellbeing and other relevant Lead Member(s) and chief officer(s),and the Assistant Chief Executive (Legal Services), and subject to final approval by the Mayor, to approve the award of contracts to the most economically advantageous tenderers following the completion of the procurement processes referred to in recommendations 2.2, 2.3 and 2.4 above subject always to the establishment of appropriate terms and appropriate measures to safeguard local priorities.

2.11 Delegate authority to the Corporate Director responsible for the functions being exercised in the contracts to undertake and to enter into all appropriate arrangements relating to Equality Impact Assessments and consideration of the Public Sector Equality Duty in accordance with the Equality Act 2010 prior to any decisions being taken on commissioning or de-commissioning of services .

3. REASONS FOR THE DECISIONS

3.1 To ensure continuity of provision for public health services delivered under contracts which the Council will become responsible for, as a consequence

of the enactment of the Health and Social Care Act 2012, from 01 April 2013 and which contribute to maintaining and improving the health of the population of Tower Hamlets.

3.2 The Council's Constitution, and the scheme of delegation to officers contained therein, do not currently incorporate the public health functions that will transfer to the Council from 01 April 2013. Up until the transfer date it is necessary, therefore, to seek Cabinet approval for all of the contracts relating to the discharge of those functions irrespective of value.

3.3 There are a number of drug / alcohol contracts (set out in section 1.b of the appended spread sheet) which are currently scheduled to expire on 31 March 2013. In order to provide sufficient time to plan a redesign of the treatment pathway for drug and alcohol services, to revise service specifications to reflect the planned redesign, and to undertake competitive procurement processes existing services will need to be maintained for a period of up to twelve months from the current expiry date.

4. ALTERNATIVE OPTIONS

4.1 The Mayor in Cabinet could require officers to consider alternative approaches to, or timescales for, the procurement plans set out in this report. This option is not recommended as it would lead to delays in the award of new contracts that may lead to discontinuity of service delivery.

4.2 The Mayor in Cabinet could instruct that specific contracts not be reprocured. It should be noted, however, that officers have worked closely with public health colleagues, over an extended period of time, to determine the benefits for health and wellbeing in the population of the borough of each of the services that it is recommended here be reprocured. For this reason this alternative option is not recommended.

4.3 The Mayor in Cabinet could instruct that specific contracts, and / or contracts above a particular value are brought back to Cabinet for the contract award decision to be made, in preference to delegating authority to award those contracts to officers. However care needs to be taken to ensure delay in award does not impact on service delivery

4.4 The Mayor in Cabinet could choose not to extend the contracts managed by the Drug and Alcohol Action Team and instruct that notices of termination be issued to existing providers. This alternative option is not recommended as it would leave a particularly vulnerable group of residents of the borough at risk of significant deterioration in their health and wellbeing, and of increasing levels of crime.

5. BACKGROUND

5.1 From 01 April 2013 responsibility for the delivery of a range of Public Health services in Tower Hamlets will transfer from the NHS to the Council as a consequence of the enactment of the Health and Social Care Act 2012. As

part of this transfer, the Council will become responsible for commissioning public health services from a range of NHS, voluntary and private sector providers. The NHS currently has 83 contracts for public health services which have been identified for transfer to the Council, with a combined annual value of c£17.76million. Included within this number are adult drug / alcohol treatment contracts, the commissioning of which is managed by the Drug and Alcohol Action Team (DAAT) and the young people's substance misuse contract managed within Children's Schools and Families.

5.2 Officers of the council, in partnership with public health colleagues, have undertaken a significant amount of work to understand the nature of these contracts and to determine the role the services provided via these contracts play in contributing to maintaining and improving the health and wellbeing of the borough's population.

5.3 A statutory transfer order will be made before April 2013 and this will set out details of the contracts to be transferred from Primary Care Trusts to other bodies including local authorities in respect to public health commissioning. The statutory order will transfer any contracts with a contract term that extends beyond March 2013. Councils will be able to agree changes with providers subject to the terms of the contract. It is currently understood that the NHS contracts within the scope of this report will all be covered by this statutory transfer order.

6. BODY OF REPORT

NATIONAL GUIDANCE ON NEW LOCAL AUTHORITY PUBLIC HEALTH COMMISSIOING RESPONSIBILITIES

6.1 National guidance issued in December 2011 set out the proposed split of public health functions between Public Health England, the national agency, the NHS Commissioning Board, and local authorities which will be responsible for most local services and programmes. The division of responsibilities will be enacted through Regulations under the Health and Social Care Act.

6.2 Public Health England will lead on the national development of public health services, including public health surveillance, intelligence and knowledge management, expert and specialist health protections services and leading on emergency response. They will also have a duty to support local authorities in their local public health role, including the appointment of local Directors of Public Health.

6.3 The NHS Commissioning Board (NCB) will commission national health protection services such as screening and immunisation and will be responsible for commissioning services for 0-5 year olds, including the Family Nurse Partnership, Healthy Child Programme, Child Health Information System and Health Visiting, until 2015, overseeing a significant increase in health visitor numbers and a revitalisation of the service before it is transferred to local authorities.

6.4 Local authorities will be responsible for commissioning most of the public health services that are delivered locally, with the exceptions of screening, immunisation and services for under 5s as detailed above. The mandatory areas of local authority service provision under the Act are:

- Comprehensive sexual health services, including testing and treatment for STIs and contraception outside of the GP contract, and sexual health promotion and disease prevention
- National child measurement programme
- National health check programme for 40-74 year olds
- Population healthcare advice for clinical commissioners
- Putting in place local health protection plans

The latter two obligations will be delivered by the Director of Public Health and the public health team within the Council directly but the first three groups of services will need to be commissioned from clinical providers.

6.5 The other major non-mandatory areas of commissioning that local authorities will be responsible for are drug and alcohol services, nutrition and obesity reduction, increasing physical activity, tobacco control and smoking cessation, health improvement services for 5-19 year olds, oral health services, public mental health, behavioural and lifestyle campaigns, reducing environmental risks, community engagement and tackling social exclusion, the public health element in community safety and the local role in responding to health emergencies.

RING-FENCED PUBLIC HEALTH GRANT

6.6 The greatest area of risk at this point is the uncertainty about the level of ring-fenced public health that local authorities will receive from 2013. All local authorities are extremely concerned about taking over public health responsibilities without a clear understanding of the budget that will be available. This is particularly so in respect to contractual responsibilities that are proposed to be transferred to the local authority with significant financial liabilities attached. This concern is acknowledged by the Department of Health but no definitive announcement of the actual public health grant levels for 2013-14 is anticipated before 19 December 2012. To provide reassurance the Department has stated that

"To give local authorities as much certainty as possible when planning to take on public health services, the DH has committed that the actual allocation for each LA in 2013-14 is no less in real terms than the 2012-13 baseline spending estimate for that LA published in February 2012, other than in exceptional circumstances where for example there has been a gross error in the reported spend. The real terms uplift will be based on the GDP deflator forecast as estimated by the independent Office for Budgetary responsibility."

6.7 The most recently available baseline figure, provided to the Department of Health in October 2012, for the amount of funding to be transferred via the ring-fenced public health grant to the Council is £25,814,209. This figure includes staffing and other costs which do not fall within the scope of this report.

6.8 Through a separate process the Department of Health has issued a consultation paper on the future allocation of public health grant using a formula method of allocation. In addition it is proposed that part of the public health grant be paid in the form of a "health premium" which will be performance related on a range of health related (rather than health) indicators yet to be identified. Projections by London Councils suggest that application of the ACRA grant as proposed would tend to move funding away from London generally and particularly disadvantage areas with higher historic levels of public health expenditure such as Tower Hamlets. The NHS (Public Health) and the Council have both responded to the consultation and expressed concerns about the potential impact. It is not clear how quickly the Department of Health intends to move to the proposed formula basis for the grant although initial indications are that the pace of change is likely to be fairly slow.

6.9 To summarise the budget position in respect to the Council`s new commissioning role, it is currently understood that the confirmed ring-fenced public health grant will not be known until the 19th of December 2012. There is reassurance that the level of grant for 2013-14 will not fall below the estimated level for 2012-13 in real terms, although it is not quite clear what this means in practice. It would be prudent to assume that the £25,814,209 might be adjusted through the removal of non-recurrent funding and for NHS savings applied in 2011-12 and 2012-13. It would also be advisable to make provision for the top slice proposed to fund the Mayor of London`s Health Improvement Programme, although this is not now anticipated as being more than 0.5%.

COMMISSIONING INTENTIONS FOR 2013-14

6.10 The contracts spread sheet appended to this report provides detail of current services provided under contract, and the organisations with whom those contracts are currently placed. At the point when these contracts are transferred to the Council, on 01 April 2013, they will become subject to the Council's Financial Regulations and Procurement Rules. All of the contracts to be transferred will have an expiry date no later than the 31 of March 2014, and it is therefore intended that a substantial programme of retendering these services be undertaken in 2013/14.

6.11 The commissioning intentions for the various groups of contracts set out in the appendix are summarised in the table below:

Cat.	Type of Contract	No of contracts	Total value (£)	End date	Proposed Action
1A	Various public health	6	216,125	31.3.13	Extend NHS contracts for

					four months; start reprocurement
1B	Various drug treatment	15	3,373,064	31.3.13	Extend contracts 12 months - reprocure
1C	Various public health	28	2,825,085	31.3.13	Extend NHS contracts by 12 months and reprocure during 2013-14
1D	Public health contracts with LBTH	10	1,148,774	31.3.13	Service continued by LBTH – no action required
1E	Contracts being discontinued by PCT	10	194,600	31.3.13	Service discontinued by PCT
2A	Block Contracts with Bart`s Health or East London Foundation Trust	3	9,096,789	31.3.14	Transfer current contracts to LBTH and reprocure during 2013-14
2B	Additional sexual health contracts	2	172,872	31.3.13	Extend NHS contracts by 12 months and reprocure during 2013-14
2C	Primary care contracts with GPs and pharmacies	12	1,908,371	31.3.13	Recommission through the CCG support service
2D	Pan London Sexual Health Contracts	4	168,000	31.3.13	Await guidance on pan London approaches

6.12 In order to manage the significant workload associated with this tender programme, it is proposed that a number of tender processes be commenced before 01 April 2013, and the contracts covered by this proposal are set out at section 1a of the appended spread sheet.

6.13 The contracts it is proposed be retendered during 2013/14 are set out at section 1c of the appended spread sheet. Council officers and Public Health colleagues are continuing to work closely to develop a detailed procurement plan for these contracts that will enable the programme to be managed in the most efficient way possible.

6.14 In addition to the contracts referred to in paragraphs 6.12 and 6.13 above, there are a number of contracts currently let to NHS providers, primarily Barts Health NHS Trust and the East /London Foundation Trust, or in the case of Local Enhanced Services, with GPs and Pharmacists. These contracts are detailed in sections 2a, 2c and 2e of the appended spread sheet. It is currently planned that the elements of the current contracts with Barts Health NHS Trust and the East London Foundation Trust which pertain to services delivered to residents of Tower Hamlets will transfer to the Council on 01 April 2013. Cabinet should note that these contracts expire on 31 March 2014. Given the complex nature of the contractual arrangements pertaining to Local Enhanced Services, officers are currently working with the Tower Hamlets Clinical Commissioning Group (CCG) and the Commissioning Support Unit (CSU) that will support the CCG to agree an arrangement whereby the CSU manages these contracts on the Council's behalf in 2013/14.

6.15 A number of the services covered by the contracts referred to at paragraph 6.14 above involve aspects of demand driven activity, such as prescribing of drugs, which are not currently capped. For the contracts with Barts Health NHS Trust and the East London Foundation Trust in particular this presents a financial risk which is currently managed through risk-sharing agreements that allow costs occurring in one part of the contract to be offset by efficiencies achieved in other areas. Officers are therefore proposing to continue working with the CCG, CSU and neighbouring boroughs during 2013/14 to determine how similar risk sharing approaches can be maintained beyond 2013/14.

6.16 Proposals are also being developed with a number of other local authorities to jointly commission a range of sexual health services with one of the authorities acting as the lead commissioner from 2014/15 onwards. For 2013/14 it is proposed that the CSU manage these contracts on behalf of the boroughs and that during 2013/14 tender processes are undertaken to put new contracts in place for 2014/15. The contracts covered by these proposed joint commissioning arrangements are set out in sections 2b and 2d of the appended spread sheet.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

7.1 Subject to confirmation by the Government as part of the financial settlement, the transfer of Public Health services from the NHS to the Council will result in the Council inheriting an estimated £25.814m along with the responsibility for delivering a variety of Public Health services.

7.2 £17.760m of the above indicative total funding envelope relates to 83 contracts currently in place to deliver the range of Public Health services that are due to transfer from the 1st April 2013.

7.3 There are financial risks associated with the uncertainty with regards level of funding and ring-fenced services and these are detailed in section 6.6.

7.4 The procurement strategy detailed within this paper will enable the contracts to be managed and services to be delivered in an efficient manner and within the financial envelope.

7.5 Alternative options, detailed within section 4, are not recommended as they are likely to have a negative impact on service provision as well as increase financial risk to the authority.

8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

8.1 The Council has the power and the obligation stemming from the National Assistance Act 1948 (in particular Sections 21 and 29 and also through subsequent amending legislation) to provide community care based

services. Essentially, the main aim of the current changes detailed in this report are to remove community style care services that are currently being provided by the Health Authority from the Health Authority and to ensure the same service provision is provided now by the Council. However, some of the services are specifically health orientated (for example, some services require the commissioning of services from General Practitioner doctors. In order to assist with the difficulty surrounding the Council's powers central government is also setting up the Clinical Commissioning Group. This is an organisation with which the Council can enter into contracts and the CCG will then commission such services on our behalf.

8.2 The main area of risk for the Council is that it is taking on these contracts without subjecting the purchase (in the first instance) to competition. However, the Council is seeking itself to reduce the risk itself by procuring the services that can be procured prior to the 1st April 2013 and also where we are forced to extend existing arrangements, entering into the extensions but showing a firm commitment to reprocure the services in the not too distant future.

8.3 Central Government also is driving the process and the transfer of contracts caused by legislation and not by choice also reduces significantly the effect of any challenge a provider who is excluded from providing the services at this stage would have.

8.4 Currently the Council is in constant discussion with the Health Authority to facilitate a smooth transition of the legal contracts. Also, it is critical that the services transfer seamlessly (without waiting for new procurements to occur) to ensure that continuity of services are received by Tower Hamlets local residents. The Council has been informed by the PCT that 10th January 2013 is the last date on which we can elect to have the PCT extend the contracts for the borough and have those contracts transferred to the Council. This transfer is to be done by Statutory Order made by the Secretary of State so there is a long lead in time for it. It is therefore essential that a decision is taken by 10th January or this opportunity will be lost and the Council could be left without any contractual provision of services. The report outlines the position and the difficulties regarding the procurement of new contracts in time for 31st March 2013 so without the statutory transfer there is a real risk no service will be available. as the Statutory Order is the only way to get the benefit of the existing contracts

8.5 The majority of the contracts for public health services will be Part B services under the European Directive, 2004/18/EC, and subsequently the UK Public Contracts Regulations (2006). These set out a clear set of requirements on the Council. Part B tenders must comply with the regulations in that they must be "adequately advertised", must include a technical specification, and feedback must be available. The Treaties of Maastricht and Lisbon and UK competition law require that nothing be done which in any way prevents,

restricts or distorts competition. In addition these services need to be procured in line with the Council's procurement procedures and the body of the report sets out how that has been achieved.

8.6 In carrying out any procurement the Council has a duty under section 3 of the Local Government Act 1999 to achieve best value. It is required to consider social, economic and environmental value in the Best Value Statutory Guidance published in September 2011

8.7 In addition the EU procurement framework makes it clear that social requirements can be fully embraced in procurement practice providing certain criteria are met. These criteria are:
• Social requirements should reflect policy adopted by the public body
• Social requirements should be capable of being measured in terms of performance
• Social requirements drafted in the specification become part of the contract
• Social requirements should be defined in ways that do not discriminate against any bidders across the European Union

9. ONE TOWER HAMLETS CONSIDERATIONS

9.1 Equalities Impact Assessments for each of the contracts covered by recommendation 2.1 above (those recommended for immediate procurement) have been completed, and service specifications reviewed and amended as required to address any equalities issues identified;

9.2 Equalities Impact Assessments for each of the contracts covered by recommendations 2.2, 2.5, 2.7 and 2.8 above will be completed prior to the commencement of procurement and service specifications reviewed and amended as required to address any equalities issues identified;

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

10.1 A number of the services provided under the contracts covered by this report contribute to the improvement of the environment as well as improving the health and wellbeing of the population. Examples of these include smoking cessation services, services that promote healthier travel, and services which promote healthier eating (local produce).

11. RISK MANAGEMENT IMPLICATIONS

11.1 The contractual arrangements to be transferred to the Council on 01 April 2013 will be funded in 2013/14 by ring-fenced Public Health grant from the Department of Health. The Council will be notified of the funding settlement for 2013/14 on 19 December 2012 (TBC) and the proposals set out in this report, as they relate to 2013/14, are made on the basis that they can be funded from the settlement amount.

11.2 All contracts let following the procurement programmes set out in this report will include clauses that allow the Council to vary the contract value in response to changes in the level of funding provided by central Government to the Council for the provision of public health services in 2014/15 and beyond.

11.3 A number of the services funded under contracts covered by this report involve activity which is demand driven, and not currently capped, and this presents a financial risk to the Council. Examples of such activity include health screening and the provision of medication and other clinical interventions on prescription. Prior to the reprocurement of any services that incorporate activity of this nature a risk mitigation plan will be developed and agreed. For the contracts with the Barts Health NHS Trust, the opportunities to manage risk across the totality of the contract, as NHS commissioners do currently, will be an important factor in making decisions about any future joint commissioning arrangements.

12. CRIME AND DISORDER REDUCTION IMPLICATIONS

12.1 The drug and alcohol services provided under contracts which fall within the scope of this report contribute to the reduction of crime and disorder by providing services and treatment which seek to reduce the usage of illegal substances.

13. EFFICIENCY STATEMENT

13.1 The procurement programmes covered by recommendations 2.1, 2.2 and 2.3 above will be managed in full compliance with the Council's Financial Regulations and Procurement Rules, and individual tenders will be designed to ensure that contracts are awarded to the bidder or bidders submitting the most economically advantageous tender(s), taking account of economy, efficiency and effectiveness.

14. APPENDICES

Appendix 1 – Public Health Procurement Plan Spread sheet

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

No background papers