

<p>Cabinet</p> <p>4 April 2017</p>	
<p>Report of: Denise Radley, Corporate Director of Health, Communities and Adult Services</p>	<p>Classification: Unrestricted</p>
<p>Public Health GP Enhanced Services</p>	

Lead Member	Councillor Whitelock-Gibbs, Cabinet Member for Health and Adult Services
Originating Officer(s)	Rachael Sadegh – Drugs and Alcohol Action Team (DAAT) Co-ordinator Chris Lovitt – Associate Director of Public Health
Wards affected	All wards
Key Decision?	Yes
Community Plan Theme	Safe and Cohesive, Healthy and Supportive

Executive Summary

Tower Hamlets General Practitioners (GPs) provide a range of Public Health enhanced services to address substance misuse, provide for sexual health, reduce smoking and undertake NHS Health Checks. Locally these are called Network Improvement Services (NIS). These services are in addition to the GP core contract commissioned by NHS England.

Commissioning responsibility for substance misuse, sexual health, NHS Health Checks and stop smoking services were transferred to the council as part of the 2012 Health and Social Care Act reforms and are funded from the Public Health grant.

Following changes in local commissioning arrangements, and having explored a range of contracting methods, a proposal is made for a direct contract award of the contract to provide these services for a three year period commencing April 2017.

Direct contract award is only considered in exceptional circumstances. This is felt to be justified as it has not been possible to undertake a competitive procedure as the services to be provided are to residents registered with GPs. As such only GPs and other staff employed are the sole providers of the services to be provided as they need to be undertaken with residents who are registered with General Practice.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the recommendation for a direct award to the Tower Hamlets GP Care Group for the delivery of the Public Health NIS services.
2. Authorise the Director of Public Health, after consultation with the Interim Corporate Director, Governance, to execute and enter into all necessary agreements for a three year period.
3. Note that funding for the Public Health NIS Services will be met within the Public Health Grants budgets for the next three years.

1. REASONS FOR THE DECISIONS

Primary care has an essential role in improving the health and wellbeing of Tower Hamlets residents. This decision will enable public health services funded from the public health grant and provided by GPs to continue for the next three years and in doing improve the health and wellbeing of local residents.

2. ALTERNATIVE OPTIONS

- 2.1 Section 75 Agreement – these agreements are used between Local Authorities and Clinical Commissioning Groups (CCG) to pool resources in driving the integration between health and social care. The CCG is undertaking a direct contract award for the NIS services they are responsible for to the GP Care Group. It is proposed that the Council enter into a direct contract to the GP Care Group for public health NIS services. As there are no benefits for in exercising these functions jointly, this does not meet the criteria where a section 75 agreement would be appropriate.
- 2.2 Competitive procurement- following previous recommendations made by the Council's Competition Board this option was extensively explored. However, it was found not to be possible as the NIS are provided as an addition to the GMS contract to patients registered with local GPs. Competition is not possible as only the local GP networks are able to provide these services to their registered patients.
- 2.3 Direct contract award to the 8 primary care networks- this would significantly increase the amount of council administration, requiring an individual contract with each network and reduce the opportunity to centralise NIS administration functions in a single organisation, the GP Care Group. The network structures are also under review and are likely change in the next few years necessitating novation of contracts.

3. DETAILS OF REPORT

- 3.1 General Practitioners are commissioned to provide primary care services to local communities on a list based system by NHS England. This contract is called the General Medical Services (GMS) and since its inception in 2003 there has been provision for additional or enhanced services to be commissioned from individual practices either on a national or local level.
- 3.2 Core GP contracts are based on a capitated payment where each patient registered attracts an annual fee known as the 'pounds per patient'. This amount varies depending on the individual contract held by the practice and the characteristics of the patients at the practice. In Tower Hamlets practices receive between £77 per patient up to £140 per patient. GMS contract holders receive the national global sum (which will be approximately £85 in 17/18) per weighted patient, the weighting reflects factor such as age, prevalence and deprivation. Some of the practices in Tower Hamlets are funded by an alternative contract: the Personal Medical Service (PMS) or Alternative Medical Service APMS with both types of contract holders receiving payment based on raw list size – e.g. actual numbers of registered patients.
- 3.3 GPs and community pharmacists are essentially the front door into the NHS providing a very wide range of urgent, routine and preventive services to local residents and where necessary onward referral to more specialist services. Local residents are required to register with a local GP practice and this provides the "list" of patients.
- 3.4 Over the past 13 years Tower Hamlets GPs have provided a wide range of enhanced services to reflect local needs of their patient's on their list and these were commissioned by the Health Authority and the successor organisation the Primary Care Trust (PCT).
- 3.5 However, since the 2012 Health and Social Care Act the commissioning responsibilities for certain enhanced services including substance misuse, sexual health, smoking and NHS Health Checks were transferred to the Local Authority. Existing contracts for the provision of these services were also transferred from the PCT to the council.
- 3.6 Clinical Commissioning Groups (CCGs) replaced PCTs in 2013 and were set up to enable significantly more clinical involvement in contracting of NHS services with GPs being members of the CCG. CCGs are not able to commission enhanced services directly from GPs and so this was undertaken by NHS Commissioning Support Units (CSUs).
- 3.7 Following the transfer of responsibilities to the local authority in 2013 substance misuse enhanced services have been delivered under the terms of a Business Transfer Agreement (BTA) with Tower Hamlets Clinical Commissioning Group (CCG) for the provision of GP delivered drug and

alcohol services (Shared Care Scheme). These include opiate substitute prescribing and alcohol identification and brief advice (IBA).

- 3.8 The GP based sexual health enhanced service, NHS Health Checks service and smoking referral service have also continued since transfer of responsibilities to the council. These have been contracted, along with other non-Public Health funded enhanced services, from the eight local networks of GP practices by the CSU and then recharged via the CCG to the council. Locally the enhanced services are referred to as network improvement services (NIS).
- 3.9 All of the council funded NISs are regularly performance managed by council officers in partnership with the CCGs. The NIS service specifications are reviewed annually by the CCG, council officers and the Local Medical Committee (LMC) to ensure they meet best practice and provide value for money. The funding for the enhanced services has been reduced following the cuts to the Public Health Grant.
- 3.10 The council funded NISs makes a significant contribution to improvements in local residents health and wellbeing by identifying underlying health/ lifestyle conditions (NHS Health Check NIS and Smoking NIS); providing for the testing, treatment of STIs and provision of contraception (Sexual Health NIS) as well undertaking substitute prescribing of methadone for substance misusers and improving the physical and mental health of alcohol/ drug misusers by regular health checks (drugs and alcohol NIS).
- 3.11 Further national changes to the commissioning arrangements of the NHS have led to the setting up of a provider arm of GPs. Locally this is called the Tower Hamlets GP Care Group Community Interest Company.
- 3.12 The Tower Hamlets GP Care Group is one the UK's largest GP federations, whose members comprise all 37 GP practices in Tower Hamlets, caring for a registered population of about 280,000 people. They are a partner in Tower Hamlets Together, an umbrella organisation for all the public and voluntary sector health and social care organisations in the Borough. Tower Hamlets Together is an NHS Vanguard that oversees the design and delivery of new models of care for our community.
- 3.13 In 2017/18 the CCG have decided to commission their NISs via a direct contract award to the GP Care Group who will then sub contract to the eight primary care networks as this is more and efficient and effective than commissioning via the CSU.
- 3.14 Enquires were made to neighbouring boroughs and both Hackney and Newham have commissioned enhanced services, within Tower Hamlets these are called NIS services, from their GPs using a direct contract award. These boroughs recognise that as the enhanced services are to be provided to "list" patients of the GP as an enhancement to current service then this removes the potential for other providers to compete for these services.

- 3.15 To enable the continuation of the Public Health funded NIS services it is proposed that a similar arrangement is adopted by the council for 2017/18 and that a single contract to cover the provision of the NHS Health Checks, sexual health, tobacco control and substance misuse enhanced services is directly awarded to the GP Care Group for a period of three years. Key to the success of the Public Health services is early identification, assessment and where appropriate referral to specialist services. Many GPs and their other clinical and non-clinical staff have undergone bespoke national and local training to enable them to undertake the enhanced services.
- 3.16 There are a number of issues which support the delivery of primary care based substance misuse, sexual health, smoking referral and NHS Health Checks:
- Identification – as General Practice is the first point of contact for patients experiencing any health related problems they are in a unique position to identify substance misuse, smoking or sexual health issues early and intervene appropriately
 - Appropriateness of intervention – some patients do not require the specialist and intensive interventions of either the specialist substance misuse provider, Reset, or the acute sexual health services and are more suited to less intensive support that can be effectively offered in General Practice
 - Mainstreaming – patients being managed in General Practice reduces the dependence on specialist treatment and support services. The patient's substance misuse and sexual health needs can be considered more in the context of their overall health and wellbeing
 - The recording of opiate substitution therapy via general practice offers an important safeguarding mechanism against individuals accessing multiple prescriptions for controlled drugs
 - Capacity - there is insufficient capacity in the specialist Reset treatment service or within the specialist sexual health services to offer all interventions to all individuals requiring treatment
 - Cost effectiveness- the core costs of running GP services are funded via the GMS contract commissioned by NHS England. The NIS services are funded as additional services.
- 3.17 The Drug and Alcohol Action Team (DAAT) and Public Health Department currently commission a range of interventions from Tower Hamlets General Practitioners.
- 3.18 The annual budget for the GP based Substance Misuse Shared Care Service is £469,431.
- 3.19 The newly specified NIS drugs and alcohol has been redesigned to:
- Maximise identification of substance misuse and referral to specialist treatment
 - Improvement in overall health outcomes for the patient cohort through the introduction of a Specialist Annual Health Check

- Provide Opiate Substitution therapy alongside psychosocial intervention delivered by Reset Drug and Alcohol Treatment Service
- 3.20 The annual budget for the other Public Health NIS services is £280,000 for sexual health, £46,000 for smoking referral and £206,887 for NHS Health Checks. The budget for all of the NIS services has been reduced to enable the medium term financial savings (MTFS) to be met.
- 3.21 In May 2016 Cabinet agreed to commission the substance misuse NIS services using a competitive procurement approach. A restricted procurement procedure commenced and three possible providers were identified - individual GPs, network providers or the GP Care Group.
- 3.22 After consideration by Competition Board a number of issues were identified with the procurement approach. Namely, that it is not possible to exercise any element of competition due to the service link with practice based lists. Whilst it is feasibly possible for an external provider to provide these services, it is only possible with the agreement of GPs due to records access, patient list definition and the requirement to be based within the GP practice. Therefore, practices must agree the provider whom they wish to support in advance of the bidding process. As they may only be party to one bid, this effectively eliminates competition. For these reasons, the proposals were rejected by Competition Board as there was no opportunity to exercise competition.
- 3.23 Furthermore, the contracts being offered are based on the 8 geographical network areas so even contracting with individual GPs, there would have to be prior agreement between GPs at locality level as to who would deliver the service, also eliminating competition. It is therefore not possible to exercise competition which leaves two options.
- 3.24 Section 75 Agreement – these agreements are used between Local Authorities and Clinical Commissioning Groups to pool resources in driving the integration between health and social care. The CCG is undertaking a direct contract award for the NIS services they are responsible for to the GP Care Group. It is proposed that the Council enter into a direct contract to the GP Care Group for public health NIS services. As there are no benefits for in exercising these functions jointly, this does not meet the criteria where a section 75 agreement would be appropriate.
- 3.25 Direct Award to the GP Care Group- this approach aligns with the CCGs commissioning approach to the other NIS services.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The funding for the Public Health GP Enhanced Services will be met within the Public Health Grant. For 2017/18 the Public Health Grant totals £35.974m.

The Public Health draft budget for 2017/18 includes £1.002m for the direct award to Tower Hamlets GP Care Group for the provision of the NIS services.

This is a saving of £0.094m against the 2016/17 costs of the NIS Services.

It is proposed that future funding for the Public Health GP Enhanced Services for 2018/19 and 2019/2020 will be met within the Public Health Grant for both years.

5. LEGAL COMMENTS

- 5.1 This report concerns a proposal for the Council to enter into a direct contract with Tower Hamlets GP Care Group Community Interest Company (GP Care Group) for the provision of Network Improvement Services which focus on preventative measures for substance misuse, sexual health and smoking cessation (NIS Services).
- 5.2 At paragraphs 3.22 and 3.23 of this report, it is suggested that the NIS Services are not capable of being procured and competition is not achievable in the ordinary sense given that:
- a) only local GPs have access to patient lists which directs service provision to residents in need and therefore, competition is not possible in the ordinary sense as other organisations cannot access or acquire the lists;
 - b) GPs would need to agree with each other as to which NIS Services they would each provide thereby creating unavoidable collusion casting doubt on principles such as transparency and fairness; and
 - c) alternative providers wishing to supply the NIS Services within a GP's practice (assuming the GPs and patients would agree to release of the patient lists and use of premises) could only be party to one tender which would effectively negate competition.
- 5.3 Regulation 32(2)(b) of the Public Contracts Regulations 2015 (Regulations) provides an exemption for competition in the scenario where 'services can only be supplied by a particular economic operator' where 'competition is absent for technical reasons, where no reasonable alternative or substitute exists'. This is predicated on the absence of competition not being the result of an artificial narrowing of the parameters of the procurement.
- 5.4 Similarly, the Council's procurement rules (Procedures), at paragraph 12.1(a) dictates that waivers to the Procedures may be applied where 'the nature of the market for the services to be provided has been investigated and has demonstrated that only a single source of supply is available, or it is clearly in the Council's best interests to do so'. It was noted by officers that the approach taken under European Law as identified in paragraph 5.3 significantly reduces the risk of an anti-competitive based challenge. The Council also has extensively explored the alternative options and in particular the potential for there to be alternative providers and concluded on a reasonable and evidence led basis that no reasonable alternative provider would be found in the event that a tender process was followed. This is because the nature of the service requires GP input in the main and a joint approach with the CCGs contractor (being the Forum) is likely to be the only cost effective mode of delivery. It is further noted that these circumstances

are not unique to the Council and that a substantial number of other Local Authorities have arrived at the same conclusion acting reasonably.

- 5.5 In the light of paragraphs 5.3 and 5.4 together with the preparatory steps taken, it could be demonstrated that the Council's intention is not to avoid procurement or narrow competition. As such, the Council is entitled to consider itself satisfied that 12.1(a) of the Council's Procedures together with the Regulations have been complied with in the circumstances.
- 5.6 It is noted that an alternative to directly contracting with the GP Care Group would be to enter into agreements with each of the local GPs within the borough. This alternative would not alter the considerations taken into account with respects the Regulations or the Council's Procedures. Also, it is likely to introduce contract management inefficiencies and detract from the overall Value For Money of the whole scheme. Therefore contracting directly with the GP Care Group is preferable given that it represents greater efficiencies in respect of resource, capacity and central administration. However, any contract entered into with the GP Care Group should contain robust contract management mechanisms to ensure that the arrangements for the NIS Services remain fit for purpose and Best Value is delivered.
- 5.7 The Council has power to enter into a contract for the GP Care Group to deliver the NIS Services which arises by virtue of section 111 of the Local Government Act 1972 whereby the Council may to 'do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions'. Under section 1 of the Localism Act 2011, the Council has the power 'to do anything that an individual may do' 'for the benefit of the authority, its area or persons resident or present in its area'. The Council may be satisfied that it has the enabling power(s) to enter into a contract for the NIS Services with GP Care Group.
- 5.8 The Council has an obligation as a best value authority under section 3 of the Local Government Act 1999 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." Compliance by the Council with its own Procedures and the Regulations should assist to satisfy these requirements. However, the Council would also need to be satisfied that entering into a contract with GP Care Group for the NIS Services would represent best value.
- 5.9 When considering its approach to contracting, 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). Officers are expected to continuously consider, at every stage, the way in which procurements conducted and contracts awarded satisfy the requirements of the public sector equality duty. 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 Primary Care services are a core part of mainstream services. By providing Public Health services as part of primary care local residents are better integrated into local provision and reduces barrier to access.
- 6.2 The monitoring of the uptake of the NIS services in primary care against the nine protected characteristics will be enhanced with a single contract enabling better performance management and equity of access.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The Public Health NIS services are reviewed annually in partnership with the CCG and LMC. This review includes seeking increased efficiency, effectiveness and ensuring medical best practice is implemented.
- 7.2 Since the transfer of the Public Health responsibilities to the council in 2013 there has been a significant reduction in the cost of the NIS services and ongoing robust performance management. The changes proposed will further enhance the performance management of the services by having a single contract in place enabling centralisation of administration. Savings identified as part of the MTFs have been made against the NIS budgets and this contract value reflects the revision.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 Providing Public Health services from GPs reduces the amount of travel required by providing services locally and so contributes to a greener environment whilst reducing air pollution from travel.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There is currently no appropriate legal agreement or contract in place for these services leaving the Council exposed to risk. Placing a single contract with the GP Care Group will enable appropriate contractual arrangements to be put in place which will reduce risk and improve performance.
- 9.2 Many of these patients accessing the substance misuse service present with complex needs and a single contract will enable improved service safety through increased centralisation of administration.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 Effective early identification and treatment of patients by Primary Care for substance misuse issues will reduce crime and disorder by enabling opiate substitution therapy and recovery from addiction.

11. SAFEGUARDING IMPLICATIONS

- 11.1 Within the sexual health and substance misuse enhanced services there are already clear requirements for GP practices to receive and maintain children and adult safeguarding training.
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Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- NONE

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

- NONE

Officer contact details for documents:

N/A