



Although a formal committee of Brighton & Hove City Council, the Health & Wellbeing Board has a remit which includes matters relating to the Clinical Commissioning Group (CCG), the Local Safeguarding Board for Children and Adults and Healthwatch.

Title:	Commissioning of Sexual Health Services
Date of Meeting:	23rd July 2019
Report of:	Executive Director of Health and Adult Social Care
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Wards Affected:	All
FOR GENERAL RELEASE	
Executive Summary	
This paper describes options for the arrangements for the future provision of sexual health services and seeks approval from the Health and Wellbeing Board for a two year extension of the current contract	
Glossary of Terms	
<i>BHCC</i>	<i>Brighton & Hove City Council</i>
<i>HIV</i>	<i>Human immunodeficiency virus</i>
<i>JSNA</i>	<i>Joint strategic needs assessment</i>
<i>MSM</i>	<i>Men who have sex with men</i>

<i>PCR</i>	<i>Public contract regulations 2015</i>
<i>PreP</i>	<i>Pre-exposure prophylaxis (HIV medication to prevent the sexual acquisition of the infection)</i>
<i>SHAC</i>	<i>sexual health and contraception (service)</i>
<i>STI</i>	<i>Sexually transmitted infection</i>
<i>TUPE</i>	Transfer of Undertakings (Protection of Employment) Regulations

1. Decisions, recommendations and any options

The purpose of this report is

- 1.1 To seek approval from the Health and Wellbeing Board to a two year extension of the current contract for the provision of statutory sexual health services required under the Health and Social Care Act 2012 and Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013.
- 1.2 For Health and Wellbeing Board to note the new requirements to adopt a co-commissioning model and to jointly develop a local sexual health plan.

2. Relevant information

Nature of the service requirement

- 2.1 Good sexual and reproductive health and wellbeing is an important contributor to our overall wellbeing. The quality of sexual and reproductive health and HIV services rely in part on effective commissioning¹.
- 2.2 There is a high burden of poor sexual health in Brighton and Hove with the 20th highest rate of new sexually transmitted infections (STIs) of 326 local authorities in England and the highest rates in South East region. Gay and other men who have sex with men (MSM), younger people, under 25 and those with a black ethnicity are at highest risk of STIs.
- 2.3 Brighton and Hove has the 7th highest prevalence of diagnosed HIV in England and the highest outside of London. In 2017 the prevalence was 8.5/1,000 aged 15-59 compared to 2.32/1,000 in England. The vast majority (83%) of people (91% of males) probably acquired the infection through sex between men. Eighty six per cent of people living with HIV in Brighton and

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/640578/Sexual_health_reproductive_health_and_HIV_a_survey_of_commissioning.pdf

Hove are white but over half of women living with HIV locally are black African.

- 2.4 The under-18 conception rate in Brighton and Hove is 19.3/1,000 females aged 15-17 while in the South East region the rate is 13.9/1,000 and in England the rate is 17.8.8/1,000. Teenage conceptions have been on a long term downward trend.
- 2.5 More detail on the local picture of HIV and sexual health is available from the JSNA summaries:
<http://www.bhconnected.org.uk/content/needs-assessments>

Statutory requirement

- 2.6 Local authorities assumed the responsibility for commissioning most sexual health services as part of the transfer of the public health function from the NHS to local authorities in 2013. Services are funded from the ring-fenced public health grant provided by central Government. The mandated function requires each local authority to secure the provision of open access sexual health services in its area including: preventing the spread of STIs (inc HIV); testing, treating and caring for people with STIs and partner notification; the provision of contraceptive services including advice on, and reasonable access to, a broad range of contraceptive substances and appliances and advice on preventing unintended pregnancy. Local authorities are not responsible for the provision of HIV treatment services as these are commissioned by NHS England. Brighton and Sussex University Hospitals Trust (BSUH) is the local provider of HIV outpatient and inpatient treatment services.
- 2.7 Prior to April 2015, services for STI testing, treatment and care and community contraception in Brighton and Hove were provided independently by separate NHS trusts in different locations. This meant that female patients often required multiple appointments at different services.

Current Contract and Services

- 2.8 Following approval from BHCC Policy and Resources Committee in March 2014, a lead provider contract was awarded (in accordance with the then current public contract regulations) to Brighton and Sussex University Hospitals NHS Trust (BSUH) for an integrated sexual health and contraception (SHAC) service. BSUH established a partnership agreement with the Sussex Community Foundation NHS Trust (SCFT) to provide some elements of the service. The contract was for three years from 1 April 2015 with an option to extend for an additional 2 years. The contract extension was subsequently agreed together with savings targets. As part of the savings plans the partnership agreement was dissolved in 2018 and the SCFT staff were transferred under TUPE into BSUH.

- 2.9 The contract value for 2019/20 is £3,035,000. This represents a 13% reduction in value from contract inception. These reductions have been made in response to year on year cuts to the public health budget by central Government. Following the reversal of sexual health budget cuts at budget council we are discussing options with the provider to ensure the best use of the resource. This will include ensuring access to PrEP and reducing waiting times.
- 2.10 The integrated SHAC service is currently delivered from three 'one stop shop' sites across the City with a mix of walk-in and booked appointments as well as the provision of on-line self-testing kits. SHAC also provides a chlamydia screening programme, condom distribution and sexual health promotion for young people (<25). The service is well regarded. Despite budget reductions positive and productive joint working between commissioners and the provider have ensured that quality has been maintained.
- 2.11 The provision of integrated sexual health services is supported by guidance from the relevant professional bodies including the Faculty of Sexual and Reproductive Health (FSRH), British Association of Sexual Health and HIV (BASHH), the British HIV Association (BHIVA), the Medical Foundation for AIDS and Sexual Health (Medfash), The Royal College of Obstetricians and Gynaecologists (RCOG) and NICE. National policy and guidance endorsing the approach is issued by the Department of Health and Public Health England (PHE).
- 2.12 The current contract will come to an end on 31st March 2020.

Future Contract and Services

- 2.13 Arrangements need to be made for the future provision of the service from the 1st April 2020. This can be achieved by extending the current contract or by awarding a new contract in accordance with the Public Contract Regulations (PCR) 2015.
- 2.14 There has been significant uncertainty regarding the longer term responsibilities for the commissioning of sexual health services. The NHS Long Term Plan, published in January 2019, announced that the Government was to review the future commissioning arrangements for sexual health with a view to extending the role of the NHS in this area. Subsequent statements by the Secretary of State for Health and Social Care confirmed that the Government was considering structural changes between the NHS and local authorities with regard to the commissioning responsibility for sexual health services.
- 2.15 The effect of the uncertainty has been to delay the development of local commissioning plans.

- 2.16 In June 2019, the Secretary of State for Health and Social Care announced the outcome of his review and confirmed that there would be no change in the commissioning responsibilities for sexual health services. There are however, additional requirements of local authorities in this regard.
- 2.17 Every local area is now required to adopt a co-commissioning model and to jointly develop a local sexual health plan with local and national NHS partners. No timescale for the delivery of these arrangements has been announced.

Available options

- 2.18 The options to extend or to procure have both been considered and the recommendation to H&WBB is that the current contract be extended for a period of 2 years for the reasons set out below.

Re-procure

- 2.19 In order to continue to ensure the most cost effective service and that best value continues to be achieved a tender issued to the market would need to be for the medium to longer term, probably for a minimum of 5 years with the option to extend for a further period of up to 2 years. In light of the current uncertainties it is considered that it would be pragmatic to delay re-procurement and avoid significant procurement costs at the present time and that a two year extension to the current contract would be the best way forward until plans are developed and a clearer picture of the commissioning landscape is available.

Directly Award a new contract

- 2.20 The PCR provides at Regulation 12(7) as follows

7 Contracts which establish or implement co-operation between contracting authorities

A contract concluded exclusively between two or more contracting authorities falls outside the scope of this Part where all of the following conditions are fulfilled: -

- (a) the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common.
- (b) the implementation of that co-operation is governed solely by considerations relating to the public interest; and
- (c) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.”
- 2.21 Expert legal advice is that there is limited and contradictory case law on the application of PCR 12 and whilst there is merit in the argument it is ambitious to rely on it in order to justify a direct award in the circumstances where there

is a history of service delivery on a commercial basis. It is necessary to distinguish how the arrangement is other than a simple arrangement for one party to supply services to another pursuant to a commercial arrangement particularly where official guidance is very much based on the securing of service through a commissioning model

- 2.22 Other local authorities are currently examining the proper circumstances in which Regulation 12(7) may be applied and in this regard it may be prudent to await clearer authority when an alternative route is available in the shorter term to secure the services.

Extend current contract

- 2.23 The PCR 2015 permits contracts to be modified (which includes the ability to extend the term) in circumstances permitted in accordance with PCR Regulation 72. Regulation 72 (1)(e) permits contracts to be modified without a new procurement procedure where the modification, irrespective of value, is not substantial within the meaning given to the term substantial set out in Regulation 72(8). A substantial modification is one which renders the contract materially different to in character from the one initially concluded in that the changes would not have attracted additional candidates in the procurement process, or there is a change in the economic balance in favour of the contractor not initially provided for, or the scope of the contract is extended considerably or a new contractor is being appointed.
- 2.24 The proposed contract extension does not modify the contract substantially within the provisions of the Regulation.
- 2.25 Contract Standing Order 19 allows for modification of contract provided the finances are in place and the PCR are not breached. The CSO permits Executive Directors to authorise an extension but the value of these services (£3,035,000 per annum) is out-with the delegated authority of Executive Directors and Committee approval is therefore required.
- 2.26 Significant savings have been realised in the provision of these services. A procurement exercise at the present time when the future commissioning arrangements for the service is under review may not result in a tender which represents the best value as those involved in the provision of the services factor in potential risks arising by reason of the uncertain future.
- 2.27 In order to secure the continued good value of the service in the short term ensuring that the services are delivered efficiently and without disruption to the service users this report recommends that the Health and Wellbeing Board authorise the extension of the contract for the provision of integrated sexual health services for a period of two years at an annual cost not exceeding £3,035,000.

3. Important considerations and implications

Legal:

The legal implications are included in the body of the report

3.1

Lawyer consulted: J Fisher

Date: 22nd June 2019

Finance:

3.2 The overall Public Health Grant is £19.559m for 2019/20 which includes funding for Sexual Health services. Any re-provision of this service will need to be managed within the overall grant.

Finance officer consulted: Sophie Warburton

Date 20th June 2019

Equalities:

Gay and other men who have sex with men (MSM), younger people, under 25 and those with a black African ethnicity are most at risk of sexual ill-health. Rates of new STIs are higher in more disadvantaged areas.

A full equalities impact assessment will be undertaken as part of the process to award a new substantive contract. This will ensure that the commissioning decisions are underpinned by a thorough assessment of the equality considerations and impact, using the most up to date and relevant data

3.3 Equalities officer consulted: Anna Spragg

Date 21st June 2019

Supporting documents and information

N/A

