

**Executive**

**16 March 2023**

Report of the Director of Public Health

Portfolio of the Executive Member for Adult Social Care and Public Health

## **Re-procurement of Sexual Health and Contraception Services**

### **Summary**

1. Since 1<sup>st</sup> April 2013, local authorities have been mandated to ensure that free comprehensive, open access and confidential sexual health and contraception services are available to all people in their area. The requirement for Genito-Urinary Medicine (GUM) and Contraception and Sexual Health (CaSH) services to be provided on a free, open access basis is stipulated in the Health and Social Care Act 2012 and associated regulations. Since 2020/2021 local authorities are also required to ensure access to Pre-Exposure Prophylaxis (PrEP) to reduce the risk of HIV.
2. Sexual health and contraception services are funded out of the Local Authority Public Health Grant Allocation.
3. During 2013/14 and again in 2018/19 the council's public health team, together with colleagues in finance, legal and procurement, invested considerable time and effort on the redesign and re-procurement of an integrated sexual health service with the contract being offered to the sole bidder on each occasion, York and Scarborough Hospital NHS Trust (the "Trust"). The current Integrated Sexual Health Services ("ISHS") contract is in place until 30<sup>th</sup> June 2024.
4. In addition, the council's public health team jointly commission Long Acting Reversible Contraception ("LARC") in GP Practices with the NHS Humber and North Yorkshire Integrated Care Board (formerly NHS Vale of York Clinical Commissioning Group) under a Section 75 Partnership Agreement. The Council is the lead

commissioner under this agreement. The Council currently hold a contract with Nimbuscare Ltd for the provision of these LARC services. This contract is in place until 30<sup>th</sup> June 2024.

5. Under the proposals set out in this report, the Council will give notice to the NHS Humber and North Yorkshire Integrated Care Board to end the Section 75 Partnership Agreement for provision of LARC and not renew the contract with Nimbuscare Ltd when it is set to end on 30<sup>th</sup> June 2024. The Council's ongoing LARC responsibilities will then be integrated into a single Integrated Sexual Health Services contract for the provision of a full range of contraception.
6. The report sets out three options for Executive Members to consider with the preferred option the Council entering into a Section 75 Partnership Agreement with York and Scarborough Hospital NHS Trust as the current provider. This is considered to be the best option that will lead to the Council obtaining best value for money whilst meeting its statutory duties and securing a sustainable, clinically safe and effective sexual health and contraceptive service across the York health and public health system for the future. It will also allow for efficiencies by having just one contract for the Council to manage.
7. Whichever option for re-procurement Members choose the proposal is to enter into new contractual arrangements for up to 10 years to ensure stability and sustainability of this crucial public health service. Annual reviews of performance and delivery of outcomes will be built into the contract to ensure that the service continues to offer the council value for money. The contract will also have appropriate clauses in place to end the contract early if there are significant concerns about performance or other reasons.
8. Local authorities have a statutory responsibility to commission specialist sexual health services for their population. This includes HIV prevention, sexual health promotion, open access genitourinary medicine and contraception services.
9. The proposal is for the Council to enter into a contractual agreement with the Trust for an initial 4 year term with the option to extend for 4 years and an option to extend for a further 2 years up to a maximum of 10 years. Extensions will be based on

performance related quality measures and delivery of key health outcomes. This is considered the option which will lead to the Council obtaining best value for money whilst meeting its statutory obligations and provide a clinically safe and effective service for its residents.

## **Recommendations**

10. Executive Members are asked to:
  - a) Approve Option Three to commence negotiations and enter into a Section 75 Partnership Agreement with York and Scarborough Hospital NHS Trust under Section 75 of the National Health Services Act 2006 and to delegate to the Director of Public Health (in consultation with the Director of Governance or his delegated officers) the authority to take such steps as are necessary to agree, award and enter the resulting agreement to commence from 1<sup>st</sup> July 2024.
  - b) In the event that the Section 75 arrangements at (a) cannot be agreed or are not viable, in consultation with the Executive Member for Adult Social Care and Public Health, to approve the carrying out of an appropriate procurement process and to delegate to the Director of Public Health (in consultation with the Director of Governance or his delegated officers) the authority to take such steps as are necessary to procure, award and enter into the resulting contract.
  - c) Approve the establishment of a Joint Management Board between the Council and the Trust to oversee the development of the Section 75 Partnership Agreement and develop a joint accountability framework.
  - d) Delegate authority to the Director of Public Health to manage the contract, monitor performance and outcomes including any variations and planned extensions in consultation with appropriate council officers and the Executive Member with the portfolio for Public Health as per City of York Council policy and procedures.
11. Reason: Entering into a Section 75 Partnership Agreement with York and Scarborough Hospital NHS Foundation Trust will allow the Council to continue to work collaboratively to deliver a high quality and trusted sexual health service that meets the needs of

residents. This approach will secure the future of the service provision at a time of constrained budgets and workforce challenges and ensure that the service is sustainable over the next 10 years.

## **Background**

12. City of York Council became responsible for commissioning sexual health and contraception services when responsibilities for public health functions were transferred to the council in April 2013.
13. Sexual health and contraception services are funded by the local authority ring-fenced Public Health Grant Allocation. The Department of Health sets out a number of conditions for use of the public health grant. Local authorities are required to submit performance monitoring reports on sexual health outcomes as part of the Public Health Outcomes Framework.
14. Sexual health is an important area of public health. Most of the adult population are sexually active, including many young people, so access to high quality, safe and effective sexual health services improves the health and wellbeing of individuals, families and communities, for example by the prevention and management of sexually transmitted infections.
15. Access to safe and effective contraception provides people with a choice when it comes to their reproductive health and family planning and again helps to promote good health and wellbeing.
16. Sexual ill-health is not equally distributed within the population. Strong links exist between deprivation and sexually transmitted infections, teenage conceptions and terminations of pregnancy with the highest burden borne by women, men who have sex with men (MSM), young adults and black and minority ethnic groups. Some groups at higher risk of poor sexual health may experience stigma and discrimination which can affect their ability to access services.
17. An integrated sexual health and contraception service aims to improve sexual health by providing non-judgemental and confidential services, to people of all genders and sexuality, through open access and in settings where sexual health and contraception needs can be met at a single site, often by one health professional in a single visit.

18. The national guidance for sexual health services that local authorities are mandated to provide include:
  - Promotion of good sexual health through primary prevention
  - The provision of a full range of contraceptives
  - Rapid access to open access testing, treatment and management of sexually transmitted infections
  - Reducing late diagnosis of HIV
  - System leadership across the sexual health economy

### **Long Acting Reversible Contraception (“LARC”)**

19. The responsibility for LARC is complex with local authorities responsible for the fitting of LARC for contraception purposes and the NHS responsible for fitting LARC for gynaecological reasons i.e. heavy menstrual bleeding.
20. The Council currently has a Section 75 Partnership Agreement with NHS Humber and North Yorkshire Integrated Care Board (ICB), formerly the NHS Vale of York CCG, by which the Director of Public Health acts as the lead commissioner for LARC. The Council holds a contract with Nimbuscare Ltd for this service, this is set to end on 30<sup>th</sup> June 2004.
21. Under the proposals set out in this report, the council will give notice to the ICB on the Section 75 Partnership Agreement for LARC and the ICB will take back responsibility for LARC for gynaecological reasons. This will allow the Council to enter into a Section 75 arrangement for all integrated sexual health and LARC statutory duties and simplify the process for collaboration with the Trust for a fully integrated sexual health and contraception service.

### **Consultation**

22. Extensive consultation has been undertaken during the period September 2022 to January 2023 involving service users, the public, soft market testing with potential service providers and wider stakeholders. This includes:
  - Local Sexual Health Needs Assessment
  - Engagement event held on 25 October 2022 with potential providers together with a market survey

- A service user survey
  - Stakeholder survey
  - Health and Social Care Policy and Scrutiny Committee
23. The key findings show overall support for an integrated sexual health and contraception service and support for commissioning the service through putting in place a Section 75 Partnership Agreement. Stakeholders have also highlighted the advantages of a system wide partnership approach across primary care, community pharmacies, schools and the hospital etc on the development of shared care pathways and referral to improve access to and uptake of the service.

## Options

24. There are three options for Members to consider:
- Option 1:** Do not approve either a re-procurement process or Section 75 approach.
- Option 2:** Approach the market to re-procure sexual health services for York through competitive tender.
- Option 3:** Give approval for City of York Council to enter into a Section 75 Partnership Agreement with York and Scarborough Hospital NHS Trust for provision of an integrated sexual health and contraception service, with approval to run a procurement in the event a Section 75 agreement is unable to be concluded with the Trust.

## Analysis

25. **Option 1:** Do not approve the re-procurement process or a Section 75 approach.

This option would mean that the Council will not fulfil its statutory duty as set out in the Health and Social Care Act (2012). Failure to ensure that the York has safe and effective sexual health and contraception services would have negative consequences for the health of residents. Some of the consequences include increasing levels of sexually transmitted infections, increasing numbers of unplanned and unwanted pregnancies including teenage pregnancies, increase in long-term preventable health conditions and preventable deaths.

Therefore, this option is not recommended.

26. Option 2: Approach the market to re-procure sexual health services through competitive tender.
27. The advantage of this option is that it will allow the Council to assess the market and seek to ensure that the sexual health and contraception service is value for money through the tender process.
28. However, this option also has a number of disadvantages and risks. The Council has gone out to the market to re-procure an integrated sexual health service on two occasions, in 2013/2014 and 2018/2019 since the commissioning responsibility transferred to local authorities in April 2013. On both occasions York and Scarborough Hospital NHS Trust has been the only provider to submit a bid to deliver the service. Although other potential providers expressed an interest initially, they pulled out of the process stating that the budget available was insufficient. The budget has not increased since the last time the market was approached. The feedback from the most recent engagement with the market indicated the same concerns about the budget and so the same situation is highly likely to occur.
29. There is a significant risk that the process could result in the council being unable to award a contract thus preventing the council from delivering its statutory duties.  
Therefore, this option is not recommended.
30. Option Three: Give approval for City of York Council to enter into a Section 75 Partnership Agreement with York and Scarborough Hospital NHS Trust for an integrated sexual health and contraception service, with a fall back approval to conduct a procurement process in the event a Section 75 is unable to be concluded with the Trust.
31. There are a number of advantages to this option. The Trust has been a trusted provider of sexual health services in York for more than 10 years and has an excellent track record for performance delivery and positive health outcomes within the budget envelope available. There is a great deal of confidence that the current service delivers value for money.
32. Entering into a Section 75 Partnership Agreement with the Trust will allow the Council to build on the collaborative arrangements we already have across partners in the York health and care system and enable the delivery of a high quality, effective and

sustainable sexual health and contraception service for the next decade.

33. The establishment of a Joint Management Board between the council and the Trust, involving other partners as appropriate, to oversee the development of the partnership agreement and a joint accountability framework will allow for the council to be assured about ongoing performance, quality and value for money.
34. Finally, it is useful to note that the Trust has been the provider of sexual health services in North Yorkshire over the same time period as York and North Yorkshire County Council have had a Section 75 Partnership Agreement with the Trust since 2020 which is reported to be working well.
35. In conclusion there are no perceived disadvantages to this option and so it is the recommended option being put forward for Executive decision.

### **Council Plan**

36. The proposal directly relates to the Council Plan 2019-2023 priorities and will particularly support the aspirations for good health and wellbeing.

### **Specialist Implications**

#### **Financial**

37. York is one of the lowest funded local authorities in the Country (£37 per head compared to £55 per head average of population) and, like other authorities, the Public Health Grant received from the Government reduced by approximately 2.6% each year from 2016/17 through to 2019/20 and these grant reductions have not been restored. In these circumstances, the Council is facing difficult decisions when service contracts are renewed.
38. A benchmarking exercise has shown that York spends just under 24% of our Public Health Grant allocation on sexual health services compared with the England average of 16.44%. It should be recognised, however, that York has one of the largest proportions of 15 to 24 year olds in its population who are the highest users of sexual health services and so it is reasonable that York spends a higher proportion than the national average.
39. The total spend on sexual health and contraception services in 2002/23 was £1.89 million which includes £330,000 for LARC delivered in GP surgeries. There are no savings agreed for sexual



health services as part of council budget proposals. However, it is not anticipated that the local Public Health Grant will be increased and so efficiencies will need to be found against the sexual health services because of inflationary pressures on other areas of public health.

40. Overall, the proposed budget available to commission sexual health and contraception services and award a contract from 1st July 2024 onwards will be in the region of £1.8 million per annum rising to a maximum of around £18 million over the proposed 10 years of the contract. At the time of writing the actual amount of the Local Authority Grant Allocation for 2023/24 and for future years has not been announced. However, the Director of Public Health has received verbal assurances that the grant allocation will be sustained at the current value. Any contractual inflationary uplifts will be indexed to the Public Health Grant annual inflationary uplifts to minimise the financial risk of awarding the contract for ten years.
41. Given the importance of sexual health and contraception services provision it is not currently proposed to seek further service reductions to be made over the contract term.

### **Human Resources (HR)**

42. The implications for employers will be determined by the results of the procurement process and could potentially have Human Resources impacts for the Provider delivering services. This will be for the Provider to manage. There are no Human Resources impact for the Council.

### **Equalities**

43. The Council needs to take into account the Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment and victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations, between those who share a relevant protected characteristic and those who do not share it).
44. It is crucial that the differing needs of men and women and people of all genders are considered when planning sexual health services and interventions. An Equality Impact Assessment has

been completed and is annexed to this report at Annex A which shows that the overall impact on equalities is positive.

## Legal

### **Proposed s75 Agreement for ISHS and LARC arrangements with York and Scarborough Teaching Hospitals NHS Foundation Trust**

45. Section 75 arrangements are subject to the requirements of the NHS Act 2006, the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 and related law.
46. Section 75 of the NHS Act 2006 can enable partners (certain NHS bodies and Councils) to collaborate in respect of defined "Prescribed Functions". This can (subject to also meeting other criteria) enable partners to collaborate including as below:
  - a) *by contributing to a common fund which can be used to commission health or social care related services;*
  - b) *for a local authority to commission health services and NHS commissioners to commission social care; and*
  - c) *for joint commissioning and commissioning of integrated services.*
47. The power to enter into section 75 agreements is also conditional on meeting the following:
  - i. *The arrangements are likely to lead to an improvement in the way in which those functions are exercised; and*
  - ii. *The partners have jointly consulted people likely to be affected by such arrangements.*
48. If a section 75 route is approved, CYC and the Trust will need to agree arrangements and jointly consult people likely to be affected by the proposals.
49. Legal, finance, procurement and other officers where necessary will support and advise the Public Health Team in relation to any section 75 agreement process and format.

## **Procurement legal considerations**

50. Any ISHS and LARC services are subject to the Public Contracts Regulations 2015 (“PCRs”) and the Council’s Contract Procedure Rules (“CPRs”).
51. Any elements of section 75 arrangements that would attract competition under the PCR and CPR will also be subject to competition rules.
52. For the purposes of the PCRs, the ISHS and LARC services are subject to the PCR Light Touch Regime (“LTR”). LTR services are subject to a threshold of £663,540 inclusive of VAT (as at February 2023). The proposed ISHS and LARC arrangements will be above threshold.
53. Regulation 12(7) of the PCRs provides an exemption to PCR competition requirements for “Contracts which establish or implement co-operation between contracting authorities”. This is known as the “Horizontal Exemption”. It is subject to any contractual arrangements meeting the tests at Regulation 12(7) and Regulation 12(8) of the PCRs. Any s75 arrangements between CYC and the Trust will need to meet these tests.
54. In the event the section 75 process was not to conclude and a procurement process were to be conducted instead an above threshold competition would be required in compliance with the PCRs (or any successor laws) and CPRs.

## **Existing LARC s75 with the Integrated Care Board (“ICB”)**

55. CYC has an existing Section 75 agreement with the Integrated Care Board (“ICB”) (that transferred to the ICB for the Vale of York CCG on 1<sup>st</sup> July 2022). Under this S75 agreement, CYC currently has an obligation to commission a LARC service that covers both NHS Gynaecological LARC and CYC’s Contraceptive LARC services until 31<sup>st</sup> March 2026.
56. This ICB section 75 agreement will need to end before the commencement of a new section 75 agreement with the Trust. Legal officers will support Public Health officers accordingly with this process and termination provisions in the section 75 agreement.

## **Crime and Disorder**

57. There are some shared links to crime and disorder, the service offer will include occasional contact with victims of sex crime, domestic violence as well as illegal sex working, modern slavery and child sexual exploitation cases.

## **Information Technology (IT)**

58. There are no IT implications.

## **Property**

59. There are no property implications.

## **Other – Procurement**

60. The Council must comply with the Public Contracts Regulations 2015 (“PCRs”) and the Council’s Contract Procedure Rules (“CPRs”) The focus for Procurement is to ensure we engage with the market of providers of Sexual Health Services and ensure we obtain Value for Money for the council and deliver the best outcomes for our customers with the right quality services through a suitable contract/agreement with a suitable provider(s) for a statutory function of the council. The Sexual Health Service and LARC would be subject to the PCRs Light Touch Regime (“LTR”). LTR services are subject to a threshold of £663,540 (as at October 2022). It is understood these services will be above this threshold.
61. The proposed budget for the commissioning of the Sexual Health Service and LARC (Long-Acting Reversible Contraception) from 1st July 2024 would be in the region of £1.8 million per annum and therefore for the proposed 10 years of the contract would total around £18 million. This contract value requires, as per the CPR’s and PCR’s, a full Invitation to Tender to be advertised and Contract Notice published to invite suitable, interested provider(s) to bid for this contract.
62. The project team consisting of representatives from Public Health, Legal, Finance, Procurement for these commissioned services established a twin track approach to developing the strategies, timetables for the options for an advertised competitive tender exercise or to establish a Section 75 partnership agreement with the current provider of this service, York Teaching Hospital Trust without advertising a competitive tender. It should be noted that

North Yorkshire County Council have previously entered into a Section 75 agreement with their Hospital Trust for provision of their sexual health service.

63. The Public Contracts Regulations 2015 Clause 12 stipulates the conditions for the establishment of public contract between entities within the public sector. A Section 75 partnership agreement would establish a co-operation between the participating contracting authorities, City of York Council and York Teaching Hospital Trust, with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common. Therefore, this would be a legally permitted method to commission this service, subject to certain tests and conditions being met.
64. It is anticipated efficiencies will need to be found against the sexual health services because of uncertainty over the total value of the future local Public Health Grants and inflationary pressures. Therefore, it is imperative that for the option that is approved for the commissioning of the Sexual Health Service and LARC that Value for Money for the council is embedded and received and that the right quality of services are commissioned services as part of the contract/agreement awarded.
65. The council has a statutory obligation to commission specialist sexual health services including HIV prevention, sexual health promotion and contraception services for our citizens. It is therefore key that an appropriate contract/agreement is awarded through a legally compliant route. There should also be the consideration to include other benefits, in addition to Value for Money and ensuring the right quality of services, that could be derived through the award of this contract/agreement i.e. Social Value, Environmental considerations, Carbon reduction, Employment and Skills opportunities, paying the Living Wage.

## **Risk Management**

66. There are risks associated with securing a safe and effective service within the budget available. These key risks and mitigations are set out below:
  - Failed tender procedure
  - Inability to provide mandated sexual health service

- Poor sexual health outcomes for the population of York including -
    - Reduced clinical safety leading to an increased risk of uncontrolled sexually transmitted infection outbreaks including a rise in HIV and late diagnosis of HIV
    - Increased risk of drug resistant gonorrhoea
    - Future negative financial impact on CYC through increase in demand on social care
    - Negative social impact on the population of York e.g. a rise in under 18 conception rates leading to an increased demand on children's services
    - Increase in morbidity and premature mortality rates
    - Reputational damage to the Council for not meeting its statutory duty to ensure free and open access to sexual health services for its residents
67. These risks are being mitigated through partnership working and system wide public health leadership and ongoing clinical engagement with partners. Identifying areas of joint working and seeking to establish shared care pathways.
68. The risk of a failed tender procedure is being mitigated by the proposal to enter into a Section 75 Partnership Agreement between the council and York and Scarborough Hospital NHS Trust as the current services provider
69. With these mitigations in place the overall risk is assessed as being low.

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**Report  
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**Date** 23/02/2023

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**Wards Affected:** *List wards or tick box to indicate all*

**All**

**For further information please contact the authors of the report**

**Glossary of Terms**

CYC – City of York Council

CCG – Clinical Commissioning Group

EU – European Union

HIV – Human Immunodeficiency Virus

ICB – Integrated Care Board

MSM – Men who have sex with Men

NYCC – North Yorkshire County Council

PrEP – Pre-exposure prophylaxis to reduce risk of HIV

STI – Sexually transmitted infection

SW – Sex worker

TUPE – Transfer of Undertakings (Protection of Employment)

**Background Papers:**

None

**Annexes:**

Annex A - Equality Impact Assessment