

Meeting:	Executive
Meeting date:	13 June 2024
Report of:	Peter Roderick, Director of Public Health
Portfolio of:	Cllr. Lucy Steels-Walshaw, Executive Member for Health, Wellbeing and Adult Social Care

Decision Report: Re-procurement of Sexual Health and Contraception Services

Subject of Report

1. On 16 March 2023 Executive approved the negotiation, development and entering into of a Section 75 partnership agreement with York and Scarborough Hospitals NHS Trust (the “Trust”) from 1 July 2024 for the provision of Specialist Sexual Health Services (“SSHS”) across the city. Executive also granted related approvals regarding the SSHS Section 75 arrangements and permission to re-tender in the event a Section 75 process was not able to conclude. The related report is set out in Annex A.
2. For residents in York, a SSHS Section 75 agreement would bring together the ‘offer’ in York around an integrated model of sexual health services, encompassing sexual health advice, prevention and promotion, contraception, and Sexually Transmitted Diseases (STIs) testing. In the context of challenging finances for sexual health services nationally (recently highlighted by a report from the Women and Equalities Parliamentary Select Committee into ‘The prevalence of sexually transmitted infections in young people and other high-risk groups’), this arrangement constitutes the best possible model for delivering value and increasing quality in sexual health services in the city. This in turn will affect a large number of residents, in terms of good sexual health, prevention of infection, family planning, and the key preventative roles of these services in other areas such as healthy relationships, safeguarding, and domestic abuse.

3. Since the Executive approval in 2023 however, the complexity of the negotiations for this Section 75 arrangement, together with the challenging financial envelope available for the service, has led to delays in the process which means that the deadline of completion by 1 July 2024 is now considered highly unlikely. As such, to ensure Sexual Health provision in York continues and to allow analysis and negotiation regarding the SSHS Section 75 agreement to continue this report seeks approval to enter an interim service contract arrangements for up to 12 months.
4. The interim service arrangements proposed are:
 - (a) to vary and extend the current Integrated Sexual Health Service (ISHS) contract with York and Scarborough NHS Trust (the "Trust") for 6 months from 1st July 2024, with a further 6 months extension option up to 30th June 2025;
 - (b) to conduct review, consultation, and related steps in connection with the proposed staged service changes to the ISHS contract set out at paragraph 5 below; and
 - (c) to enter into a further service contract for the provision of Long-Acting Reversible Contraceptive ("LARC") contraceptive matters for 6 months from 1st July 2024, with a further 6 months extension option up to 30th June 2025. This report proposes this be provided by Nimbuscare Limited who currently provide LARC services.
5. In order to deliver the proposed 6 months + 6 month extension for the Integrated Sexual Health Services (ISHS) contract with York and Scarborough NHS Trust (the "Trust"), the Trust have identified that some efficiencies would need to be made to the service. These would be proposed to be done by a "staged approach" during the 12 month extension period, to ensure robust impact assessments, inclusive consultation processes, diligent monitoring and evaluation can be carried out to understand the potential ramifications of the proposed service reductions. Based on the findings of the impact assessments and the outcomes of the consultation process, the negotiation and any resulting staged implementation of service reductions would commence. This phased approach would allow for a gradual transition, minimizing disruptions and allowing sufficient time for potential adjustments to

be made as needed. The Trust have assured the Council they would be committed to implementing these changes as part of the 6 month + 6-month extension in a responsible and sustainable manner.

The proposed staged service reductions process for ISHS contract over this period would be as follows:

- Maintain existing services on 2024/25 Q2
 - Work with CYC on impact assessment and public consultation in 2024/25 Q2
 - Depending on the outcome of the bullet point 2 above, the proposed approach would then be to negotiate and introduce service changes during 2024/25 Q3 and with Q4. Without prejudging the outcome of the consultation (and subject to contract), this could potentially include:
 - A reduction in the number of clinic hours the service is open for
 - A cap on activity relating to PreventX (online STI testing)
 - A cap on activity relating to LARC (Long-Acting Reversible Contraception)
 - The Council and the Trust would then continue negotiations, due diligence and analysis and work towards potential commencement of a S75 in 2025/26 Q1 or 2025/26 Q2.
6. In the event Parties were able to conclude propose Section 75 arrangements early it is envisaged the full 6 month plus 6-month extension periods may not be required. The time is requested to ensure flexibility for both commissioners and providers in achieving the best outcome. The aim is (subject to the successful outcome of due diligence, negotiations and consultation) to (if possible) to put in place a S75 by 1 April 2025 to bring the arrangements in line with the financial year.
7. In the event Parties were not able to conclude a S75 agreement an alternate provision will be required. This report therefore also seeks approval to conduct a tender process for S75 services, in the event this was needed.

Benefits and Challenges

8. A benefit of extending the current Integrated Sexual Health Services contract with the Trust is that the Trust have a proven

track record and have been a provider of sexual health services in York for over 10 years. The existing tendered contract contains a CYC option to extend for 2 years from 1st July 2024. The Trust have previously worked with CYC to secure the provision of a high quality, effective and sustainable service within the particularly challenging budget envelope allocated for this service. Previous invitations to tender for this service have only resulted in a single bidder (the current provider).

9. The financial challenges faced by the trust in relation to the existing ISHS contract stem from a number of areas, including increased virtual activities that are not regionally funded, increased online activity for PreventX and demand for specialist fitted LARC. For example, in contracting year 2017/18 the specialist sexual health service fitted 1281 LARC devices. In year 2022/23 that figure was 1592. As well as the increase in activity the costs associated such as staff salaries, device costs and general utilities have also risen.
10. York has higher levels of activity in its sexual health services than other local authority areas, due to its demographics and population, and already spends a higher proportion of its public health grant on these services than any other council in the region (24% in 2022/3).
11. Specific areas where costs are escalating have been evaluated, and as part of the staged approach to service change both commissioner and provider are committed to working to find efficiencies / manage demand, and effectively manage costs to fit the budget envelope while maintaining strong relations with stakeholders and delivering high-quality services to CYC residents tailored to their needs and preferences.
12. The provision of LARC in primary care services is complex with local authorities having the responsibility for the fitting of LARC for contraceptive purposes and the NHS responsible for the fitting of LARC for gynaecological purposes.
13. CYC currently jointly commission "LARC" in GP Practices alongside the NHS Humber and North Yorkshire Integrated Care Board ("ICB") under a Section 75 Partnership Agreement. The

Council is the lead commissioner under the LARC Section 75 agreement. The Council currently hold a contract with Nimbuscare Limited for the provision of these LARC services. Both the LARC Section 75 agreement and Nimbuscare Limited contract ends 1st July 2024.

14. Due to the delays in developing the SSHS Section 75 agreement and given the authority's responsibility for LARC provision this report seeks approval for CYC enter into a new contract with Nimbuscare Limited for contraceptive services to maintain the provision of LARC in primary care.

Policy Basis for Decision

15. The provision of sexual health and contraception services aligns to the Core Commitments within the Council Plan:
 - a) Equalities and Human Rights – sexual ill health is disproportionality affected by those who are at risk from coercion, violence, stigma, and discrimination.
 - b) Affordability – contraception and access to sexual health care is “free for all”. Sexual Health Inequalities are unfair and avoidable differences in sexual health across the population and between diverse groups in society. Those living in poverty are experiencing higher rates of sexually transmitted infections (STIs), the same is true of those from ethnic minority communities, those that are gender diverse and sex workers.
 - c) Health Inequalities – access to contraception and sexual health services will disproportionately benefit those in health inequalities groups.

Financial Strategy Implications

16. The Executive in March 2023 agreed to pursue a ten-year s75 agreement with York and Scarborough Hospital NHS Trust for the provision of the Integrated Sexual Health service (Annex 1). The cost was agreed at £1.8m per annum. We have subsequently budgeted for annual inflationary uplifts indexed to Public Health Grant percentage increases following discussion with the Trust.

17. It is likely that the increases in Public Health Grant will be outstripped by the costs of providing the services, so the provider has been tasked to work within the set financial envelope. There may therefore be some re-specification of outcomes needed throughout the contract life and thus we have not built any additional savings into the contract value.
18. The cost of these contracts and annual uplifts has been built into Public Health's five-year financial plan and we have set aside budget to reflect this course of action. The cost of this "bridging" proposal is in line with the previous estimated cost of the pooled arrangement being in place from 1st July 2024.

Recommendation and Reasons

19. Executive Members are asked to accept the recommendation of Option 2 within the Options Appraisal and Evidential Basis section of this report, and:
 - a. Approve a 6 month + 6-month variation and extension to the existing Integrated Sexual Health Services contract with York and Scarborough NHS Hospitals Trust from 1st July 2024 and 1st January 2025 and to delegate to the Director of Public Health (in consultation with the Head of Procurement and the Director of Governance or their delegated officers) the authority to take such steps as are necessary to agree, award and enter the resulting variation and extension agreement.
 - b. Approve the proposed staged approach in relation to service changes to the Integrated Sexual Health Services contract as set out in this report at paragraph 5 and to delegate to the Director of Public Health (in consultation with the Head of Procurement and the Director of Governance or their delegated officers) the authority to take such steps as are necessary to conduct review, consultation and negotiations and subsequent authority to agree and enter into any resulting variation agreement(s) agreed.
 - c. Approve the award (subject to the satisfactory conclusion of any related procurement processes) of a 6 month + 6 month contract from 1st July 2024 and 1st January 2025 for a LARC Service contract to Nimbuscare Limited and to delegate to the Director of

Public Health (in consultation with the Head of Procurement and the Director of Governance or their delegated officers) the authority to take such steps as are necessary to agree, award and enter any resulting agreement.

- d. Approve the continuation of negotiations and (in the event of successful negotiations and review) the entry 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 Head of Procurement and the Director of Governance or their delegated officers) the authority to take such steps as are necessary to agree, award and enter the resulting agreement to commence on or before 1st July 2025.
- e. In the event that the Section 75 arrangements at (d) cannot be agreed or are not viable, to delegate authority to the Director of Public Health 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 Head of Procurement and the Director of Governance or their delegated officers) the authority to take such steps as are necessary to procure, award and enter into the resulting contract.

Reason: The above will secure the sexual health service and LARC provision in the short term whilst negotiations continue to potentially enable a Section 75 partnership agreement to be agreed and put in place. The Section 75 agreement is proposed to last for up to 10 years, the requirement to ensure that this is completed in the most robust way is essential as over the lifetime of the Section 75 agreement the budget allocation will be more than £18 million. In the event of Executive approving the above recommendations officers will conduct all necessary review and procedure in accordance with the Contract Procedure Rules ("CPRs"). This will include the undertaking of a CPR 26 waiver process internally (in accordance with CPR 26.2).

Background

18. Approval for CYC to enter into a Section 75 agreement with York and Scarborough NHS Trust was agreed at the executive meeting held on 16 March 2023. A copy of this paper is set out at Annex A.
19. At that time the proposal was 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 was unable to be concluded with the Trust.
20. On 16 March 2023 executive approved the proposal 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.”*
21. Since then, however, the complexity of the negotiations for this Section 75 arrangement, together with the challenging financial envelope available for the service, has led to delays in the process which means that the deadline of completion by 1 July 2024 is now considered highly unlikely. As such, to avoid a gap in Sexual Health provision in York and to allow analysis and negotiation regarding the SSHS Section 75 agreement to continue this report seeks approval to enter into interim service contract arrangements for up to 12 months.
22. The provision of free, comprehensive, open access sexual health and contraceptive services is a mandated Public Health function of local authorities as part of the Health and Social Care Act 2012. Sexual health is an important part of public health and is funded via the ring-fenced Public Health Allocation. The decision to seek to extend the current ISHS contract and enter into a further LARC contract is important to the health of the population of York so there is no gap in service provision as this would increase health inequalities, increase in sexually transmitted infections and unintended pregnancies all of which have long term health impacts on our residents.
23. The commencement of negotiations to provide the Specialist Sexual Health Service (SSHS) through a Section 75 arrangement was agreed by Executive on 16 March 2023. The request to

extend the current contracts is intended (subject to successful completion of due diligence, negotiations, and consultation) to provide sufficient time to enable CYC to, enter into a Section 75 Partnership agreement, to take place with a considered approach to the changes required to the service, the impacts these may have on the service users and for a full consultation to be completed. The aim (if ultimately possible) is to achieve the successful completion of entering into a partnership agreement (Section 75) with “The Trust” within the next year.

24. In the event Parties were however not able to conclude a SSSH Section 75 agreement alternate provision will be required. This report therefore also seeks approval to conduct a tender process for SSSH services, in the event this was needed.

Consultation Analysis

25. Extensive consultation took place regarding the re-procurement of sexual health services prior to the 16 March 2023 executive meeting – see Annex A.
26. Consultation regarding the proposal to extend the current contract with York and Scarborough NHS Trust and Nimbuscare Limited has recently taken place via the Joint Management Board, involving all key parties. Wider consultation, including with service users and with key sectors (such as schools, further and higher education) will be completed once the changes to the service provision are known. Both NHS organisations have expressed agreement to proposals in principle (subject to contract) to extend/review current contracts in line with the explanations above to secure continuation of sexual health service provision across the city.

Options Analysis and Evidential Basis

27. **Option 1:** Do not approve variation and extension to the current contract with the Trust or a short-term contract with Nimbuscare Limited, for up to one year (6+6 months).
28. This option would mean that the Council will not fulfil its statutory duty as set out in the Health and Social Care Act (2012) and so could be subject to a judicial review. Given ongoing negotiations

and the process required to set up a SSHS Section 75 agreement it is highly unlikely to be resolved by 1st July 2024. 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.

29. Therefore, this option is not recommended.
30. **Option 2:** Give approval for City of York Council to enter into a variation and contract extension period for up to 12 months (6+6 months) with the Trust and an up to 12-month (6+6 months) LARC contract with Nimbuscare Limited. These arrangements are sought with a view to continuing negotiations regarding a SSHS Section 75 Partnership Agreement with the 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.
31. There are several advantages to this option. Both the Trust and Nimbuscare Limited have (subject to contract) informally agreed to proposals in principle and are committed to ensuring that sexual health services continue with no detriment to the service users. 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. In conclusion there are no perceived disadvantages to this option and so it is the recommended option being put forward for Executive decision.

Organisational Impact and Implications

33. **Finance** - The paper is documenting several recommendations which could have financial implications, namely:
 - Extending the ISHS contract for between six and twelve months

- Extending the LARC contract for between six and twelve months
- Further varying the ISHS Contract to include PrEP services for between six and twelve months (Pre-exposure prophylaxis (PrEP) medication was added to the SSHS contract in October 2020 and it is for people who are HIV-negative but at high risk of HIV exposure and it is funded via the Public Health Grant)
- Integrate all the above in a s75 agreement with the Trust.

34. The table below the financial impact of these proposals for six, nine and twelve months to reflect the options to:

- implement the proposal at the earliest opportunity
- to implement the agreement to align with the financial year
- a fallback position should concord around the s75 agreement take longer than expected.

<u>NHS Integrated Sexual Health</u>	<u>July 2024 - Dec 2024</u>	<u>July 2024 - March 2025</u>	<u>July 2024 - June 2025</u>
<u>Core tendered contract *</u>	<u>748</u>	<u>1,121</u>	<u>1,495</u>
<u>PrEP Variation</u>	<u>23</u>	<u>35</u>	<u>46</u>
<u>Contract inflation @ 1.8%</u>	<u>14</u>	<u>21</u>	<u>28</u>
<u>Total</u>	<u>785</u>	<u>1,177</u>	<u>1,569</u>
<u>LARC: Nimbuscare Ltd</u>	<u>122</u>	<u>182</u>	<u>243</u>
<u>Overall Total</u>	<u>907</u>	<u>1,359</u>	<u>1,812</u>
<u>Pro Rata'd budget</u>	<u>916</u>	<u>1,374</u>	<u>1,832</u>
<u>Balance for variable LARC element</u>	<u>9</u>	<u>15</u>	<u>20</u>

*Contract value includes £100k annual variation that has been paid since Aug 2019

35. The Public Health budget has £1,832k set aside in 2024/25 and all of the varying timescales are affordable within this envelope. The difference between the budget and proposal reflects what is set aside for the variable aspects of the LARC element.

36. No further savings are expected from the contract given the inflationary increases built into the annual uplifts will be tied to the annual percentage increases in Public Health Grant which are

highly likely to be less than the corresponding increase in the cost of running the contract.

37. **Human Resources (HR):**

There may be HR implications of service changes to the specialist service, which will be the responsibility of the provider to manage within their own HR processes.

38. **Legal:**

CYC has statutory duties in relation Sexual Health matters under the Health and Social Care Act 2012 and related legislation and regulations including the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013.

Legal implications of the recommendations made to Executive in this paper have been assessed and are presently below:

A. Proposed 12 month (6+6 months) variation and extension of existing ISHS Services contract with the Trust

40. CYC holds an Integrated Sexual Health Service (“ISHS”) contract with the Trust dated 19th August 2019. This was tendered with potential to extend to 30th June 2026. CYC previously extended the contract to 30th June 2024. As such, the contract has 2 years unused extension remaining from 1st July 2024.

41. A proposed 6 month plus 6-month extension would therefore fit within the previously tendered timescale. It is understood CYC proposes to make variations including:

- i.) adding further Pre-Exposure Prophylaxis (“PREP”) Services;
- ii.) using a tendered contractual uplift mechanic to add £100k
- iii.) to add a degree of inflationary additional value on top of the annual sum; and
- iv.) Potentially introducing staged service reductions during the extended service period, including potentially:
 - a) A reduction in the number of clinic hours the service is open for
 - b) A cap on activity relating to PreventX (online STI testing)

c) A cap on LARC (Long-Acting Reversible Contraception)

42. Regulation 13 of the Provider Selection Regime 2023 (“PSRs”) sets out the allowable parameters for such changes. CYC Legal Services and Procurement will work with public health colleagues to analyse and advise accordingly, including from the requirements of CYC’s Contract Procedure Rules (“CPRs”).

B. Proposed 12 month (6+6 months) contract with Nimbuscare for LARC Services

43. CYC holds a LARC services contract with Nimbuscare Limited dated 25th February 2021. As noted above, CYC is currently the lead commissioner for both CYC and ICB LARC responsibilities via this service contract (as agreed under a LARC Section 75 agreement dated 30th October 2019). Both the contract and Section 75 commissioning responsibilities end on 30th June 2024.
44. It is noted the proposal is enter into a further arrangement with Nimbuscare Limited, solely for CYC LARC responsibilities (so not including the current ICB LARC responsibilities). The proposed 6 month plus 6 months contract will be subject to the PSRs and CPRs.
45. The PSRs set out the allowable parameters for Direct Awards, including potential Direct Award C awards to existing providers (PSR Regulation 9). CYC Legal Services and Procurement will work with public health colleagues to analyse and advise accordingly, including also on the requirements of CYC’s CPRs.

C. Proposed SSHS 75 Agreement with York and Scarborough Teaching Hospitals NHS Foundation Trust

46. 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.
47. 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.
48. 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.
49. If the section 75 agreement route is ultimately able to proceed, CYC and the Trust will need to agree arrangements and jointly consult people likely to be affected by the proposals.
50. Legal, finance, procurement and other officers where necessary will continue to support and advise the Public Health Team in relation to ongoing section 75 agreement negotiation, analysis and process.

D. Procurement legal considerations in relation the proposed SSHS Section 75

51. Any SSHS related services are subject to the PSRs, the Public Contracts Regulations 2015 (soon to be replaced by a new Procurement Act 2023) (“PCRs”) and the Council’s CPRs.
52. Any elements of section 75 arrangements that would attract competition under the PSRs, PCRs and CPRs will also be subject to meeting competition rules. This is the subject of ongoing analysis between the Trust and CYC representatives. There has been change to the Healthcare procurement regime since this matter came to Executive in March 2023 as the Provider Selection Regime came into force on 1 January 2024. Parties are in the process of discussing and analysing proposals, in light of the new PSRs coming into force.

E. Procurement process in event SSHS Section 75 not able to be conclude/ proceed

53. In the event a SSHS section 75 process was not able to be concluded and a procurement process needed to be conducted instead, any competition and process will be subject to the the

PSRs (or any successor laws and/ or PCR's where relevant) and the CPR's. Legal, procurement and other officers where necessary would provide support and advise the Public Health Team accordingly.

54. Procurement

To successfully negotiate and enter into a Section 75 Agreement to incorporate both the Sexual Health Services and LARC, the council requires additional time to manage and implement this process.

- Due to changes within the procurement legislation, additional work is required to ensure the correct legislation is being relied upon to ensure the council remains transparent and compliant.
- Therefore, the recommendation is for a waiver to be submitted following the Councils internal process to extend the contracts held with NHS and Nimbuscare Limited. for a maximum term of 12 months (6 months + 6 months). The recommendation of "breaking" the 12 months in two is to ensure the council and both suppliers have an appropriate timeframe to resolve negotiations. This does not tie the council in to a full 12-month term. Provisions will be built into the extension to reflect this need.
- Any extension and waiver process will be subject to the councils Contract Procedure Rules (CPR's), and where applicable the Public Contract Regulations 2015 (PCR's), (soon to be Procurement Act 2023) and the Provider Selection Regime Regulations 2023.

55. Health and Wellbeing

The provision of a sexual health service across the city has a major impact as most of the adult population are sexually active, including many young people, so access to high quality, safe and effective sexual health services improve the health and wellbeing of individuals, families and communities, for example by the prevention and management of sexually transmitted infections.

56. Environment and Climate action

There are no direct Environment and Climate action implications of this report.

57. Affordability

There are no direct affordability implications of this report – these services will remain free at the point of use.

58. Equalities and Human Rights

The Council recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, 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 persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions). An updated EIA has been completed incorporating additional elements of this new report in Annex B.

59. Data Protection and Privacy

Data protection impact assessments (DPIAs) are essential part of our accountability obligations and is a legal requirement for any type of processing under UK data protection and privacy legislation. Failure to carry out a DPIA, when required may leave the council open to enforcement action, including monetary penalties or fines.

60. DPIA's helps us to assess and demonstrate how we comply with all our data protection obligations. It does not have to eradicate all risks but should help minimise and determine whether the level of risk is acceptable in the circumstances, considering the benefits of what the council wants to achieve. The DPIA screening questions were completed for this report and as there is no personal, special categories or criminal offence data being processed for the options set out in this report, there is no requirement to complete a DPIA at this time. However, this will be reviewed where required, on the approved options from this report.

61. Communications

Communications and consultation are planned as part of the Trust and Council negotiating and implementing a service delivery model. A working group between partners has formed to oversee this, and will incorporate a strand of work around health promotion and prevention of STIs and use of contraception, which will in turn seek to reduce demand on statutory services through better public

understanding of sexual health support / advice, targeting (for instance) the student-age population in the city.

62. Economy

There are no direct economic implications of this report.

Risks and Mitigations

63. The level of risk associated with the recommendation in this report to extend and review the contracts held with the Trust and NIMBUSCARE respectively is low as both organisations have been consulted prior to this option coming to executive for approval and both have agreed to work together so there is no gap in service provision.

64. The key risks associated with this report lie within the service changes which will commence in Q3 of the extension year, which will be consulted on beforehand. The Trust have informed us that some level of service change is unavoidable, given their financial pressures and the financial envelope within which they are commissioned to deliver. Rates of STIs have been increasing nationally and in York recently, for instance gonorrhoea diagnoses have risen 9-fold in York over the last decade (however rates of other STIs have not increased to the same extent). It needs to be acknowledged that there is a potential risk that the changes necessary within this service will lead to:

- a further increase in rates of common STIs such as syphilis, chlamydia, and gonorrhoea, as well as (potentially) later detection of HIV
- increased unwanted pregnancies / terminations
- reduced detection rates of safeguarding, domestic abuse, and violence / safety issues.

This risk will be further explored in the impact assessments to be completed in the extension year before signing the Section 75, as well as through a live and ongoing EIA for this procurement.

Wards Impacted

65. All wards will be affected.

Contact details

For further information please contact the authors of this Decision Report.

Author

Name:	Peter Roderick
Job Title:	Director of Public Health
Service Area:	Public Health
Telephone:	07511 160283
Report approved:	Yes/No
Date:	07.05.2024

Co-author

Name:	Philippa Press
Job Title:	Public Health Specialist
Service Area:	Public Health
Telephone:	01904 555756
Report approved:	Yes/No
Date:	07.05.2024

Background papers and annexes.

- **Annex A** – Re-procurement of Sexual health and Contraception Services paper received at Executive meeting on 16 March 2023.
- **Annex B** – Equalities Impact Assessment

Annex A.



CMT	15 February 2023
PH/CMT	28 February
Executive	16 March

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 1st 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 30th 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 Limited for the provision of these LARC services. This contract is in place until 30th 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 30th 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.
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 in to 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 of his delegated officers) the authority to take such steps as are necessary to agree, award and enter the resulting agreement to commence from 1st 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.

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

11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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.
17. 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”)

18. 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.
19. 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 Limited for this service, this is set to end on 30th June 2004.
20. 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

21. 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
22. 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

23. 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

24. **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.

25. Option 2: Approach the market to re-procure sexual health services through competitive tender

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.

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.

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.

26. 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.

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.

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.

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.

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.

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

27. 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

28. 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.
29. 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.

30. 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.
31. 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. The 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.
32. 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)

33. 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

34. 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).

35. 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

36. 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.
37. 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.*
38. 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.*
39. 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.
40. 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

41. Any ISHS and LARC services are subject to the Public Contracts Regulations 2015 (“PCRs”) and the Council’s Contract Procedure Rules (“CPRs”).
42. Any elements of section 75 arrangements that would attract competition under the PCR and CPR will also be subject to competition rules.
43. 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.
44. 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.
45. 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”)

46. 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 1st 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 31st March 2026.
47. 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

48. 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)

49. There are no IT implications.

Property

50. There are no property implications.

Other – Procurement

51. 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.
52. 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.
53. 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.

54. 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.
55. 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. The Sexual Health Service and LARC are specialist services within a limited provider market place and with the twin track approach to consider the options of either an advertised competitive tender exercise or to establish a S75 partnership agreement with the current provider Public Health, Commercial Procurement colleagues will ensure that Value for Money will be a focus and incorporated into the option selected.
56. 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

57. 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
58. 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.
59. 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

60. With these mitigations in place the overall risk is assessed as being low.

Contact Details

Authors:

Anita Dobson,
Nurse Consultant Public Health
Anita.dobson@york.gov.uk

Philippa Press
Public Health Specialist Practitioner
Advanced
Philippa.press@york.gov.uk

Sharon Stoltz
Director of Public Health
Sharon.stoltz@york.gov.uk

Chief Officer Responsible for the report:

Sharon Stoltz
Director of Public Health
Sharon.stoltz@york.gov.uk

Report
Approved

✓

Date

Specialist Implications Officer(s)

Finance – Steve Tait, Finance Manager

Legal – Ryan Bell, Solicitor

Procurement – Mark Woolford, Category Manager

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

Annex

Annex A Equality Impact Assessment

Annex B 2024 EIA sexual health changes to service