

APPROVAL TO ENTER A S.75 AGREEMENT WITH REGARD TO (1) THE JOINT PROCUREMENT OF CHILD AND ADOLESCENT MENTAL HEALTH SERVICES; AND (2) THE COUNCIL'S FINANCIAL COMMITMENT TO THE PROCUREMENT

Councillor Wayne Fitzgerald, Cabinet Member for Integrated Adult Social Care and Health

Date: March 2017

Deadline date: April 2017

Cabinet portfolio holder: Responsible Director:	Councillor Wayne Fitzgerald Cabinet Member for Integrated Adult Social Care and Health Wendi Ogle-Welbourn – Corporate Director for People and Communities
Is this a Key Decision?	YES If yes has it been included on the Forward Plan : YES Unique Key decision Reference from Forward Plan : KEY/03APR17/02
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO
Is this a project and if so has it been registered on Verto?	NO Verto number: N/A

R E C O M M E N D A T I O N S

The Cabinet Member is recommended to:

- 1) Approve the entry by the Council into a section 75 agreement with Peterborough Clinical Commissioning Group, as part of the joint procurement of Child and Adolescent Mental Health services; and
- 2) Approve the Council's financial commitment to the procurement.

1. SUMMARY OF MAIN ISSUES

- 1.1 Nationally, there has been an emphasis on increasing the awareness and understanding of Mental Health and Emotional Wellbeing issues and a subsequent focus on enhancing service

provision. Transforming child and adolescent mental health services (CAMHs) is a priority within the Sustainability and Transformation Plan (STP).

- 1.2 As part of this transformation, the Cambridgeshire and Peterborough Clinical Commissioning Group (CCG) have agreed to make available an annual investment of £240,000 pa for 3 years, towards a projected annual budget of £740, 652 for a shared service provision to children and young people with mental health and emotional wellbeing issues. See 9 below for full budget contributions.
- 1.3 Through the Joint Commissioning Unit (JCU), Peterborough City Council (PCC), Cambridgeshire County Council (CCC) and the CCG intend to undertake a joint procurement for a mental health and emotional wellbeing service for children and young people, to be funded as set out in paragraph 9 below.
- 1.3.3 PCC will lead the procurement and award a contract to the successful bidder/s on behalf of the 3 organisations.
- 1.4 The entering by PCC into a short form section 75 Agreement” at this stage of the negotiations, has been advised by PCC’s Legal Services, to ensure PCC is indemnified against losses and wasted resources arising from any party withdrawing its funding during the period leading up to contract award.

2. PURPOSE OF THIS REPORT

- 2.1 This report is for Councillor Wayne Fitzgerald, Cabinet Member for Integrated Adult Social Care and Health to consider under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (b).

3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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4. DETAILS OF DECISION REQUIRED

- 4.1 To (i) approve entry into a s.75 Agreement with Cambridgeshire County Council and Cambridgeshire and Peterborough NHS CCG regarding the joint procurement of Child and Adolescent Mental Health services, and (ii) approve Peterborough City Council’s financial commitment of £1.1m to the procurement.

5. CONSULTATION

- 5.1 The section 75 Agreement is sought now on the advice of Peterborough City Council Legal Services who are part of the Project Board for this procurement. The proposed tender has also been approved by Peterborough’s Commissioning Board and has executive level support across the three organisations.
- 5.2 Approvals to undertake a joint tender and enter the section 75 Agreement, have already been secured by the other two organisations via their internal governance processes.

6. ANTICIPATED OUTCOMES

- 6.1 The following outcomes are anticipated:
 - Codify the contributions and responsibilities of the organisations by bringing into effect the short form section 75 agreement (as the other two parties have already signed the agreement. This will later be followed by a long form section 75 agreement.

- Peterborough will lead the procurement exercise commencing in April 2017 and award a contract to the successful bidder on behalf of the 3 organisations.
- The procurement exercise will generate innovation and increased capacity in services for children and young people with mental health and emotional wellbeing issues.

7. REASONS FOR RECOMMENDATIONS & ANY RELEVANT BACKGROUND INFORMATION

Reasons for recommendation

7.1 1. Reduce risk of loss and liability to PCC as lead organisation

By leading the procurement and contracting with the successful bidder on behalf of the 3 parties PCC is taking on a significant liability. In the event CCC or the CCG reduce funding or pull out of the procurement (or post award) PCC would be left with financial and legal liabilities as the contracting body. Therefore a s.75 is essential to set out the parties' financial contributions and responsibilities in a legally binding agreement. Both CCC and CCG have signed the s.75 agreement already.

7.2 In addition, without a s.75 in place at this stage in the contractual process (i.e. leading up to the ITT and subsequent contract award) there is a greater risk that the procurement exercise may fail if funding is withdrawn, resulting in wasted costs to PCC as the organisation leading the procurement. The s. 75 Agreement provides that any party withdrawing its funding during the process leading up to procurement, must give at least six months written notice to the others and indemnify the others for wasted costs/losses which they have incurred. Given the financial pressure and uncertainty across all three organisations there is a real risk this could occur.

7.3 2. Reduce the risk to the procurement and the service

Having a s.75 agreement in place prior to issuing the Invitation to Tender (ITT) is good practice. Should the procurement fail it would also have a significant impact on service provision in Peterborough and Cambridgeshire. Current providers are contracted up until the 'go live' date of the new service. Last minute extensions to these services are problematic firstly as it is dependent on the willingness of the current provider to extend and secondly it would require both local authorities to act outside of the Public Procurement Regulations (PCR 2015), thus creating significant risk of legal challenge. Any disruption or break in service will also adversely affect staff and service users who are particularly vulnerable.

7.4 3. Prevent reputational damage to PCC

A failed procurement exercise as a result of a funding party's withdrawal (- less likely to occur with the s.75 agreement in place -) would cause reputational damage to PCC in a number of ways:

- Reduce the market's confidence in Peterborough as a procurer of services given the wasted time and cost of bidding for a contract that is not awarded
- Reduce partner organisation's confidence in Peterborough's ability to procure services and lead on joint commissioning
- Reduce the public's confidence in Peterborough's ability to procure and deliver services that are high profile and in great demand

7.5 4. Support the Sustainability and Transformation Plan (STP)

One of the priorities within the STP is the system wide development of a new model for child and adolescent mental health (CAMH) services based on the IThrive framework. This joint procurement is a key part of the CAMH transformation and the first service element to be tendered. Therefore, ensuring the success of the joint procurement is of political and financial importance.

Background Information

7.6 Details of the tender

7.6.1 A Project Board was created into October 2016 to oversee the procurement exercise. The pre-tender phase is almost complete and the procurement scheduled to begin in April 2017.

7.6.2 The proposed service falls in the 'Getting Help' grouping of the iThrive model and delivers a range of brief evidence-based talking therapies to children and young people across Cambridgeshire and Peterborough with mild-moderate mental health conditions or significant emotional wellbeing problems. It will also contribute to the 'Getting Advice' and 'Thriving' aspects of iThrive through the provision of information and signposting and the training of wider professionals in mental health literacy.

7.6.3 The joint procurement is intended to bring:

- **Increased service capacity** to address the gaps in current provision and meet the increasing prevalence of diagnosable mental health conditions amongst those aged 5-25 over the next 5 years.
- **Greater value for money** achieved by economies of scale
- **Innovation in service provision** as a result of market competition and specification development
- **Enhanced accessibility** by increasing the capacity, skills and efficiency needed to meet such a geographically disparate and growing demand.
- **Reduction in future demand** by ensuring that more children and young people have the resilience and self-help skills and abilities to support and maintain good emotional, mental health and wellbeing.
- **Reduction in inappropriate demand on specialist child and adolescent mental health services** (CAMHs)

7.7 Context

7.7.1 Nationally, there has been an emphasis on increasing awareness and understanding of Mental Health and Emotional Wellbeing issues and a subsequent focus on enhancing service provision. This is illustrated by The Five Year Forward View for Mental Health which makes the case for transforming mental health care in England. This states that, by 2020/21, there will be greater access to NHS funded community services to meet the needs of at least 35% of those with diagnosable mental health conditions (increasing from an estimated 25%). Future in Mind (2015) also proposes to transform the design and delivery of a local offer of services for children and young people with mental health needs. This renewed national focus on Mental Health and Emotional Wellbeing services and the increasing need for such services has prompted PCC, CCC and the CCG to pool, and increase, their funding. This will increase access to services and ensure that future service provision is of consistent quality across both regions.

7.7.2 The Cambridgeshire Health and Wellbeing Strategy (2015-17) seeks to improve the mental health of local communities. The draft Peterborough Health and Wellbeing Strategy (2016-19) also prioritises the development of a child and adolescent mental health pathway that better meets need and manages demand and reduces pressures on specialist services. Plus, the three organisations have a statutory responsibility to provide Mental Health and Emotional Wellbeing services, which they presently provide individually. The three organisations recognise the benefits of procuring and managing the services collaboratively and have thus established this project.

8. ALTERNATIVE OPTIONS CONSIDERED

8.1 Option 1 - Progress the procurement without any 3 way agreement. This option was excluded

as formal agreement between the 3 parties is necessary to indemnify Peterborough against any liabilities arising from partners reducing or withdrawing funding.

- 8.2 Option 2 - Enter into a non-legally binding agreement such as a memorandum of understanding. This option was excluded for the same reason as option 1.
- 8.3 Option 3 - Each organisation procure the service independently of each other. This option was excluded as the joint procurement brings significant benefits to all parties including economies of scale, innovation, increased market interest and equity of provision across the area.

9. IMPLICATIONS

Financial Implications

- 9.1 Budget contributions to the procurement are set out below.

£240,000 pa from Cambridgeshire and Peterborough NHS CCG (75% to Cambridgeshire and 25% Peterborough)
£280,652 pa from Cambridgeshire County Council
£220,000 pa from Peterborough City Council

The total budget is split on a c.60-40 basis across Cambridgeshire and Peterborough:

Cambridgeshire	£460,652	comprised £240,652 Local Authority funding (all ages), £40,000 LA funding for mental health literacy workforce development training and £180,000 CCG funding
Peterborough	£280,000	(comprised £220,000 Local Authority funding and £60,000 CCG funding)

- 9.2 Peterborough will commit up to £1.1m over the 5 year contract period (£220,000 pa). This equates to the existing spend on service provision plus an additional £100,000 pa from Troubled Families which is guaranteed until the end of Year 3 of the contract. Accordingly, the contract length is 3 years plus an extension period of up to 2 years.
- 9.3 The contributions of each organisation and the length of commitment is stipulated in the Section 75 agreement to ensure sufficient funds are available to cover the contract duration of 3 years. Possible extension of the service will depend upon funding negotiations between the 3 parties toward the end of Year 3.

Legal Implications

- 9.4 Legal Background - Statutory

The s. 75 Agreement is to be entered into pursuant to s. 75 of the National Health Service Act 2006. The parties have statutory responsibilities within the Peterborough City area and Cambridgeshire (respectively) for the provision of mental health and emotional wellbeing targeted services, which they have been delivering under separate contractual arrangements. The parties each recognize the potential benefits of procuring and managing a combined integrated service collaboratively.

- 9.4.1 The Health and Social Care Act 2012 (HSCA 2012) changed the organisation of the NHS in England, including the abolition of Primary Care Trusts (PCTs). Their commissioning

functions transferred to GP consortia (clinical commissioning groups (CCGs) from 1 April 2013). The HSCA 2012 amends the NHA 2006 such that Clinical Commissioning Groups are added to the NHS bodies who are able to enter into section 75 agreements.

9.4.2 There is a duty on both local authorities and CCGs to consider, when forming their Joint Health and Well-being Strategy (JHWS), how the needs identified in their Joint Strategic Needs Assessment (JSNA) could be met more effectively through section 75 arrangements rather than in any other way.

9.4.3 Under s. 75 Agreement NHS bodies can carry out a number of functions previously reserved to local authorities and vice versa i.e. local authorities can carry out the health functions of the NHS body, as here.

9.5 Legal Background - Contractual

The section 75 Agreement in its current short form sets out the following:

- The financial commitments of the parties for the minimum three year term
- The requirement to give six months' notice, should a party wish to withdraw from the procurement
- The requirement to indemnify the other parties against "wasted costs" should it withdraw its funding commitment.

9.6 Please note:

- (1) That the s.75 Agreement is not just binding on the Clinical Commissioning Group (Cambridgeshire and Peterborough) and Cambridge County Council, but on Peterborough City Council also; and
- (2) That due to the timing of its signing (as recommended by Legal Services) it is necessarily a short form and the more detailed issues of whether and how the funding contributions of the parties will be ring-fenced, how Peterborough City Council will be paid for its procurement and management services have yet to be addressed contractually; and
- (3) The joint Service Specification (which would usually be cross referenced in the s. 75 Agreement, is still being finalized.

Equalities Implications

9.6 An Equality Impact Assessment will be undertaken as part of the procurement exercise.

10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

10.1 None.

11. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

None.