

Contract novation in respect to Peterborough City Council's integrated drug and alcohol treatment service contract.

Leader of the Council and Deputy Mayor of the Cambridgeshire and Peterborough Combined Authority

November, 2018

Deadline date: December, 2018

Cabinet portfolio holder: Responsible Director:	Leader of the Council and Deputy Mayor of the Cambridgeshire and Peterborough Combined Authority
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/26NOV18/01
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

RECOMMENDATIONS

The Cabinet Member is recommended to approve the contract novation of Peterborough City Council's Integrated Drug and Alcohol Treatment Service contract from the charity Change Grow Live to the wholly owned subsidiary of the charity, Change Grow Live Services Limited.

1. PURPOSE OF THIS REPORT

- 1.1 This report is for the Leader of the Council to consider exercising authority as set out in the constitution under Part 3, Delegations Section 3 - Executive Functions, "The Leader retains responsibility for the functions so delegated and may exercise those functions in person regardless of the further delegation."

2. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
---	-----------	----------------------------------	------------

3. BACKGROUND AND KEY ISSUES

- 3.1 Following a procurement exercise Peterborough City Council awarded the Integrated Drug and Alcohol Treatment contract to the registered charity Change Grow Live (CGL) and the

contract commenced on the 1st April 2016 for a period of 5 years, with the option to extend for a further period of 3 years. The annual value of the contract is £2.6 million.

3.2

The Public Health Grant has seen a cash reduction in Peterborough for the past three to four years. This has necessitated savings being made in the commissioned services. The Peterborough contract was procured on a downward trajectory resource envelope, meaning that CGL have to find approximately £75,000 worth of efficiencies year upon year during its five year contract period. The Integrated Drug and Alcohol Treatment Service has experienced an increase in demand for services, this has put increasing pressure on the tight budget. All overspends to date have been met through the service.

3.3

Additionally, in May 2018, the provider made the Council aware of a national supply issue with regards to generic buprenorphine; an essential medication used to treat service users with opioid dependence. Approximately 31% of CGL's prescribing cohort is in receipt of Buprenorphine. Since May 2018 the price of the generic medication has unexpectedly jumped with unpredictable monthly price swings of up to 789% higher than pre April rates. Consequently CGL have seen a cumulative pressure to date (April to October 2018) from the price rise of Buprenorphine of £57k with an estimated pressure of £100k by the end of this financial year if the current trajectory continues. Hence, these external factors have contributed to severe pressure being placed on service delivery, therefore innovation is required in order to alleviate these financial pressures and ensure continued delivery of service outcomes.

3.4

As a registered charity, the majority of CGL's services are deemed exempt from VAT as they are classed as health and welfare services by HMRC. Therefore, CGL is not allowed to charge VAT on these services which then means that CGL is unable to reclaim the VAT it pays to its suppliers in the provision of those services. In order to alleviate financial pressures, a corporate restructure is proposed whereby CGL shall contract through its wholly owned, non-charitable trading subsidiary CGL Services Limited. This restructure shall allow CGL Services to charge VAT on the contract, which shall be recoverable by the Council, and allow the reclaim of VAT charged by the provider's suppliers. This shall allow the provider to focus spend on areas that shall improve and maximise service delivery and ensure it continues to deliver effective service outcomes.

3.5

Novation will result in the Integrated Drug and Alcohol Treatment Service agreement being between the Council and CGL Services Limited and the delivery of the services under the agreement shall be subcontracted to CGL. CGL Services Limited shall be legally responsible for delivering the contract and whilst the Council consents to CGL Services Limited subcontracting to CGL, this shall not relieve CGL Services Limited of its liability to the Council for proper performance of any of its obligations under the agreement.

3.6

Charity Commission guidance permits charities to consider different structures to ensure funds are maximised for delivery of their charitable purposes. The proposal does not require HMRC approval, however the provider has notified HMRC of the intention of CGL Services Limited. The council has undertaken due diligence in respect of this.

4. CONSULTATION

4.1 Consultation has taken place within the directorate, between the service provider and the commissioners, with Finance and Legal.

5. ANTICIPATED OUTCOMES OR IMPACT

5.1 The outcome of the novation shall be that the delivery of the services under the agreement shall be subcontracted to CGL, contracting through its wholly owned, non-charitable trading subsidiary CGL Services Limited. This restructure will allow CGL Services to charge VAT

on the contract, which shall be recoverable by the Council, and allow the reclaim of VAT charged by the provider's suppliers. This shall allow the provider to focus spend on areas that shall improve and maximise service delivery and ensure it continues to deliver effective service outcomes.

- 5.2 Savings will vary during the course of the existing contract due to potential changes to VAT rules and the varying VAT position of the mix of supplies into CGL. These savings will only be realisable within the duration of the existing contract. It is anticipated that the VAT reclaim will generate an additional yearly income of between £30-40k which will be re-invested into local services and offset current drug cost pressures.
- 5.3 The additional yearly income shall be reflected within the Specification, including variation to service delivery/outcome, key performance indicators and monitoring and reporting.

6. REASON FOR THE RECOMMENDATION

- 6.1 The Public Health Grant has seen a cash reduction in Peterborough for the past three to four years. This has necessitated savings being made in the commissioned specialist treatment service.
- 6.2 The Integrated Drug and Alcohol Treatment Service, due to the downward trajectory resource envelope, has limited resilience against unprecedented cost pressures. The financial pressure is particularly acute in Peterborough where the Public Health Grant benchmarks very poorly against its comparator areas.
- 6.3 Factors detailed within this report have contributed to severe pressure being placed on service delivery, therefore the novation shall alleviate these financial pressures and ensure continued delivery of service outcomes. The corporate restructure shall allow the provider to whom the agreement is novated to charge VAT on the contract, which shall be recoverable by the Council, and allow the reclaim of VAT charged by the provider's suppliers.
- 6.4 Through the ability to reclaim VAT monies the service provider shall be able to focus spend on areas that shall improve and maximise service delivery and ensure it continues to deliver effective service outcomes

7. ALTERNATIVE OPTIONS CONSIDERED

- 7.1 Not to novate the agreement. An innovative solution is required in order to alleviate financial pressures and reduce the severe pressure being placed on service delivery largely due to external factors which include mitigation against recent drug cost pressures. Therefore, not novating the agreement would have an impact on the delivery of service outcomes, savings will not be delivered and other efficiency savings may need to be identified.

8. IMPLICATIONS

8.1 Financial Implications

- 8.1.1 Finance have considered the novation proposals and recommended the following actions in advance of the novation being completed:

(i) The council would require evidence of HMRC acceptance of the proposed VAT treatment prior to agreeing to novation;

(ii) A parent company guarantee would be required for the novated contract.

(evidence and documentation has been requested from the provider on both recommendations)

8.2 Legal Implications

8.2.1 In accordance with the terms of the agreement, the provider may novate the contract with prior written consent of the Council and this shall be documented within a Novation Agreement. Amendments to the Specification subsequent to the savings from VAT re-investment, KPI's, reporting etc. shall be documented within a Deed of Variation.

8.2.2 The modification of this contract is compliant with Regulation 72 (Modification of contracts during their term) of the Public Contracts Regulations 2015. In accordance with Reg 72(d) the council is permitted to modify this contract without a new procurement where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of corporate restructuring.

8.2.3 CQC registration status of the novated contract has been considered. The provider must hold and maintain a valid registration for the duration of this contract with the CQC in respect of relevant services, and ensure that all sub-contractor's providing services under this contract shall hold the same.

8.2.4 The Council would consent in writing to CGL Services Limited's appointment of the sub-contractor and approve the sub-contract arrangements. The Council's consent to sub-contracting will not relieve the provider of its liability to the Council for the proper performance of any of its obligations under the contract.

8.2.5 In order to maintain clinical quality and compliance it will be expressly stated in the contract novation and subcontracting documentation that any organisation delivering regulated activities are registered and compliant with CQC regulations as required by law and good clinical practice.

8.2.6 Contract Rules have been complied with.

8.3 Equalities Implications

8.3.1 There are no equalities implications arising from this decision.

9. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

9.1 None.

10. 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.

10.1 None.

11. APPENDICES

11.1 None.