

Decision maker:	Cabinet member health and wellbeing
Decision date:	20 December 2017
Title of report:	Community Learning Disability Service
Report by:	Adult social care commissioning manager

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose and summary

To approve the learning disability community health service contract currently commissioned by the council naturally expires on the 31 December and responsibility to commission the service is transferred back to the Clinical commissioning group (CCG) from the 1 January 2018.

The council currently commissions the learning disability community health service on behalf of Herefordshire Clinical Commissioning Group (CCG). The report proposes that this function, along with the associated budget, be returned to the CCG from 1 January 2018. The service is currently

provided by 2gether NHS Foundation Trust. The learning disability community health service is a clinical service for which the CCG has statutory responsibility. When the former Primary Care Trust was abolished, responsibility for commissioning the service, along with the associated budget, remained with the council. This arrangement continued for historical reasons rather than from an assessment of where commissioning of the service and its functions would be best positioned. The proposed return of the function and budget to the CCG will simplify governance and facilitate synergies with other clinical services commissioned by the CCG from 2gether.

Recommendation(s)

That:

- (a) lead commissioning responsibility for the learning disability community health service is transferred to Herefordshire Clinical Commissioning Group (CCG), along with the base budget of £970k, on 31 December 2017;**
- (b) a one off payment of £30k is paid to 2gether NHS Foundation Trust due to additional service cost pressures from 1 April to 31 December 2017.**

Alternative options

1. The council could retain commissioning responsibility for the service, and undertake a re-procurement exercise with the intention of having a new contract in place on 31 December 2017. This approach is not recommended as it has become increasingly clear that the services being commissioned are primarily centred on the delivery of healthcare, with significant medical aspects, and the council does not have the necessary clinical expertise to ensure appropriate clinical standards are met. There are also synergies with the mental health services already commissioned by the CCG from 2gether. In addition, continuation of the current arrangement would mean that risks associated with cost pressures in the service remained with the council.
2. The service could be decommissioned, with no further extension or reprocurement of the current contract. This would result in a gap in service during the time from when the council decommissioned it until the point where the CCG was able to recommission it. This is not recommended as this would prevent a smooth handover of responsibility from the council to the CCG, resulting in a significant loss of support for some of our most vulnerable residents. There is an ongoing need for the service to be delivered.
3. The council could decide not pay the additional £30,000 to support the financial pressures identified by 2gether. This is not recommended as 2gether have not received any contract inflationary increase during the time the council has commissioned the service.

Key considerations

4. The learning disability community health service is a commissioned service comprising a multi-professional team of 16 staff, including learning disability nurses, a physiotherapist, a psychiatrist, psychologists, an occupational therapist, and a speech and language therapist. This professional team offers clinical support to individuals who have a diagnosed learning disability. The team operates an open referral system, accepting referrals from individuals and families / carers, as well from health professionals and provider agencies.

5. The service undertakes assessment and long term case management, co-ordination and liaising with other services, alongside a specialist mental health team, incorporating psychiatry, clinical psychology and counselling. It works with people with a learning disability in diverse ways, including diagnostics, group and individual programmes, medication reviews and specialist programmes.
6. The CCG has a statutory responsibility under the Health and Social Care Act 2012 to put arrangements in place to ensure that there is the capacity and capability to commission health services and improved health outcomes for all the people it serves, including those with learning disabilities. The NHS has for some years delegated this responsibility to the council, through an agreement under Section 75 of the NHS Act 2006. First established under the Primary Care Trust (PCT), this arrangement was maintained following the creation of the CCG for historical reasons rather than from an assessment of where commissioning of the service and its functions would be best situated. Since it was a continuation of a historical arrangement, no formal decision to retain the function was made by the council at the time when the PCT was abolished. The section 75 will be amended to reflect the commissioning changes.
7. The service is currently delivered by 2gether NHS Foundation Trust under a council commercial contract. If the commissioning responsibility were to remain with the council, commissioners would need to engage in an open market tender exercise to let a new contract, once the current contract expired on 31 December 2017. Initial work has indicated that the market of potential providers is very limited, and the contract is not of sufficient financial value to encourage new providers to the county. There is therefore a significant risk that no provider would bid for the contract. By transferring the service to the CCG, it could be aligned to other health contracts currently delivered by 2gether for the CCG, to ensure flexibility and a joined up approach to service provision.
8. The current total annual value of the contract is £970k. £640k of this is funded by the council base budget from funds originally transferred from the Primary Care Trust in 2008, with this sum supplemented by £330,000 from the Protection of Adult Social Care funds (PASC) within the Better Care Fund (BCF). This arrangement is a legacy of the relationship with the former Primary Care Trust. When the PCT was dissolved in 2013, the funding remained with the council rather than being included in the new CCG's base budget. This appears to have been the result of managerial actions to disentangle what had become a very complex relationship, rather than through any direct decision. It should be noted that the contract value has been maintained in cash terms, despite significant reductions in the funding available to the council. At the same time, 2gether has been clear that it has been facing strong cost pressures and that continuation of the service will be dependent upon these being fully addressed by commissioners. The CCG is aware of these issues and has indicated that it will consider making additional funding available if necessary.
9. People with a learning disability have the same right and entitlement to be supported effectively in their own communities as do other residents, therefore the NHS and council must respond to this proactively. The ongoing challenge of health inequalities for people with a learning disability is recognised as an unacceptable deficit to which local services must respond by ensuring there is an equitable level of health support from generic services for everyone, often known as 'reasonable adjustment'.
10. Although the lead responsibility for commissioning the learning disability community healthcare service will transfer to the CCG, the council and CCG will work together to develop and implement a single strategic approach to supporting people with a learning disability, in order to ensure coherence and consistency across the full range of services. It

is recognised by all parties that the model of service currently provided by 2gether requires extensive modernisation and far better integration into mainstream mental health and primary health care services. The improved outcomes of a modernised service would have a positive impact on the lives of residents with learning disabilities in Herefordshire, who are the shared responsibility of both the council and CCG.

11. It is proposed that the council lets the current contract with 2gether naturally expire on the 31 December 2017 and the CCG will commission and redesign the service from the 1 January 2018 with the existing annual budget of £970,000 moving back to the CCG for 2018. The CCG will take the lead role in any subsequent re-procurement process and ensure appropriate clinical monitoring is in place. An agreement will be finalised to address the ongoing funding of the service, ensuring there is no cost pressure on the council. This is likely to involve either the establishment of a pooled budget for all learning disability-related services, with agreement over the relative contributions from the council and the CCG, or else the transfer of responsibility from the CCG to the council for other social care-related contracts, with an equal value to the current cost of the learning disability service.
12. The council has recognised the significant financial pressure on the current provider to deliver the service including the fact that the service has not received any inflationary increase in the contract value during the period the council has commissioned the service. Therefore to support these pressures, the Director of Adults Wellbeing has agreed to contribute towards the financial pressures.

Community impact

13. Herefordshire Council's corporate plan has four priorities, one of which is the improvement of the health and wellbeing of people in Herefordshire to 'enable residents to live safe, healthy and independent lives'. The council will be proactive in helping and encouraging people to live healthier lifestyles and developing resources that offer more choice and control in remaining independent, therefore reducing or delaying the need for formal social care. The council will work with the CCG to ensure this service and wider approach to learning disability services is delivered through a joint programme of work, which will target those with a learning disability to ensure the corporate priority is met.
14. The service is designed for adults only, so there is not expected to be any impact on the council's responsibilities for children.
15. Since the transfer of function will not involve any council staff moving to the CCG, and the operational staff will continue to be employed by 2gether, it is not expected that there will be any HR or health and safety implications.

Equality duty

16. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
17. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our providers will be made aware of their contractual requirements in regards to equality legislation.
18. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.
19. For further detail refer to Appendix 1 - Equality Impact Assessment.

Resource implications

20. At present, £330k of the total cost of the 2gether service is funded from the Protection of Adult Social Care (PASC) element of the Better Care Fund (BCF). The minimum level of PASC is fixed by NHS England as a national condition of the BCF. It will therefore be necessary for other adult social care services to be attributed to the PASC element in order to maintain the minimum value. Rebadging services in this way will enable the release of the full £970k to be transferred to the CCG. An agreement will be finalised to address the ongoing funding of the service, ensuring there is no cost pressure on the council. This is likely to involve either the establishment of a pooled budget for all learning disability-related services, with agreement over the relative contributions from the council and the CCG, or else the transfer of responsibility from the CCG to the council for other social care-related contracts, with an equal value to the current cost of the learning disability service
21. £30,000 has been agreed with 2gether as an acceptable sum to help support the service pressures during the first three financial quarters of 2017/18, which have been assessed by the trust at a larger figure. Following this, the CCG will discuss ongoing financial pressures directly with 2gether from 1 January 2018. This has resulted in a budget pressure for AWB during 2017/18 and will be included in the financial forecast for 2017/18.
22. Council officers will continue to work with the CCG to review the current contracted service in line with national and local priorities, which will derive through both the learning disability needs assessment and strategy, in line with continued integration with health. The service is integral for supporting people with learning disabilities and services need to support wider integration into the community.

Legal implications

23. Health and Social Care Act 2012 provides that CCGs are responsible for commissioning health services for people with learning disabilities. This statutory responsibility has been

delegated to the council by the CCG under an agreement under Section 75 of the National Health Service Act 2006.

24. Section 75 of the National Health Service Act 2006 contains powers enabling NHS bodies (as defined in section 275 and 276 of the NHS Act 2006) to exercise certain local authority functions and for local authorities to exercise various NHS functions. The parties entered into a section 75 agreement in exercise of those powers under and pursuant of the NHS Regulations 2000. The existing Section 75 agreement is due to end on 31st March 2018. The agreement can be extended for a period up to 18 months. Legal services are instructed to advise on drafting amendments to the Section 75 agreement.
25. With regard to the additional funding, Paragraph 10.7 of the Section 75 agreement provides that the Partners are not precluded from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent payments shall be explicitly recorded in Joint Commissioning Board minutes and recorded in the budget statement as a separate item. Additionally Section 1(1) Localism Act 2011 gives the council the power to do anything that individuals may do (a general power of competence). The power may be used in conjunction with other powers.
26. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) apply in circumstances when a “relevant transfer” takes place. The recommendation will not constitute a relevant transfer for the purpose of the Regulations as the transfer of function will not include any council staff moving to the CCG and operational staff will continue to be employed by 2gether.
27. Given there will be no changes to the services (from the perspective of service users), there is no requirement for the council to consult with service users. However, if (as a result of the council’s redesign activities) service users are likely to be affected (e.g. there are changes to the services to be provided to them), then a proportionate consultation would be required. This should be addressed when the redesign activities are completed.

Risk management

28. By transferring responsibility for the learning disability community health service, both the CCG and council will need to agree arrangements managing and addressing risks that arise from the review of the service, and for learning disability health and care services more widely.

Risk	Mitigation
The service is not reviewed and continues in its current format.	A project board with stakeholders is developing a comprehensive programme of review and development to ensure the service will meet needs now and in the future and is aligned to strategy for both the council and NHS.

Projects such as the learning disability needs assessment are not complete within the current timescales.	A project board with both council and health representation will lead the learning disability work portfolio and report progress to senior officers from both organisations on a bi-monthly basis.
2gether NHS Foundation Trust will not provide the service to the CCG for the current value.	Active negotiations are being held between commissioners (the council and the CCG) and 2gether, in order to identify possible solutions that might reduce the immediate cost pressure on the provider. This has included an agreed additional 30k funding to the provider, whilst the CCG supports in the redesign of the service.

Consultees

29. Consultation has taken place with both 2gether and the CCG. No changes to the current service are planned during this transition. Any changes to the service will be incorporated as part of the review and engagement with service users and other key stakeholders will be included at this stage. It should be noted that 2gether has flagged ongoing serious concerns regarding the funding of the service. Work is ongoing to identify a resolution to these issues, with the council and the CCG working closely together to secure an approach that minimises any additional costs and facilitates a smooth transfer of the commissioning function. The political groups have been consulted but no comments have been received.

Appendices

Appendix 1: Equality Impact Assessment

Background papers

None identified