

Decision maker:	Cabinet member children and families
Decision date:	Friday, 13 September 2019
Title of report:	Children's social care out of hours emergency duty service
Report by:	Commissioning officer, Childrens joint commissioning manager

Classification

Open

Decision type

Key

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in areas comprising of one or more wards in the county.

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 recommendations for provision of an out of hours emergency duty service for children's social care from October 2019.

As a result of Worcestershire County Council transferring their children services to Worcestershire Children First on 1 October 2019, it is proposed that the current contract for the Herefordshire Emergency Duty Team (EDT) service with Worcestershire County Council is terminated and a new contract is awarded to Worcestershire Children First. This proposal will ensure continuity of this business critical service.

Recommendation(s)

That:

- (a) the existing contract with Worcestershire County Council be terminated early by mutual agreement on 30 September 2019,**
- (b) a contract be awarded to Worcestershire Children First to deliver Herefordshire's children's social care out of hours emergency duty service for a maximum period of 42 months from 1 October 2019 at a total cost of not more than £440,000;**
- (c) Authority be delegated to Director of Children and Families (in consultation with Legal Services) to settle the final form of contract with Worcestershire Children First**

Alternative options

- 1 Do nothing. Worcestershire County Council will cease to provide the service in-house from 30 September 2019, making the existing contract redundant. Doing nothing is not recommended as the Council has a statutory duty to safeguard and promote the welfare of children within their area who are in need. This duty continues during out of office hours and contracting with Worcestershire Children First will ensure compliance with this duty.
- 2 Herefordshire could seek to deliver the function from within its own social care resources. This is not recommended as it would create an additional workforce pressure and would require children's social care to recruit additional social workers and/or change terms and conditions of current children's social workers to enable them to work the unsociable hours required to deliver an out of hours service. As of July 2019, of the 66 full time equivalent (FTE) front line social worker posts within children's social care, 35% (23 out of 66) were vacant, with 13 of the 23 vacant posts being filled by agency staff.
- 3 Competitive tender of the service to appoint an external provider. In June 2019, a survey of the Children's Services Commissioning and Procurement Group for council commissioners and procurement professionals was undertaken via the government's 'Knowledge Hub' to understand how other councils deliver their emergency duty services. Responses received suggest children's emergency services in other areas have only been externalised as part of wider externalisation of children's social care services. During the first 12 months of the contract, a market test will be undertaken to identify the provider market. The outcome of this exercise will identify whether there is an option to join with a different Council or undertake a tender exercise. The decision of Worcestershire County Council to transfer their children's services to the new entity has resulted in insufficient time to undertake the market test, as intended.
- 4 Worcestershire County Council novate or sublet the existing contract to Worcestershire Children First. This is not recommended as the existing contract expires on 31st March 2020 and so any novation or subcontracting could not extend to the delivery of services beyond that date. This would still not give sufficient time to carry out a market test of the provider market to examine procurement options. In any event the existing contract was originally approved by the Director of Children's Wellbeing on 1st April 2015 as a delegation of the relevant function under S101(b) of the Local Government Act 1972. A delegation of function to another local authority can only be made by Council Meeting (Constitution Part 3 Section 1 Table of Functions para 12). Further reliance on the existing

contract is therefore not recommended.

- 5 Herefordshire Council could delegate the function (under S101(b) of the Local Government Act 1972) to Worcestershire County Council, in order for Worcestershire County Council to commission Worcestershire Children First to deliver the service under a third party arrangement. This is not recommended as it would result in Herefordshire Council having no direct oversight and influence of the provider without first having to go through Worcestershire County Council.

Key considerations

- 6 Section 17(1) of the Children Act 1989 states that it shall be the general duty of every local authority to safeguard and promote the welfare of children within their area who are in need. This duty continues during out of office hours and the recommendation will enable the council to continue to ensure that it meets its duties and obligations in relation to safeguarding children outside of normal working hours, including overnight, weekends and public holidays.
- 7 The Emergency Duty Team (EDT) service exists to provide an emergency social care response for children and young people believed to be at risk of significant harm and for whom delay until the next working day would be detrimental to their welfare and safety. The service ensures that they continue to be safeguarded in the immediate term.
- 8 Herefordshire's current EDT service has been delivered by Worcestershire County Council since 1997, when Herefordshire and Worcestershire became individual councils. During the period April 2015 to March 2019, the service has responded to c 109 contacts per month from various referral sources and supported between 40 to 85 Herefordshire families each month.
- 9 Children and young people are safeguarded by the out of hours service by addressing statutory emergencies that cannot be safely left until the following working day, including:
 - a. Child Protection assessments – S47 of the 1989 Children Act (including strategy discussion/meetings)
 - b. Emergency Child in Need Assessments – S17 of the 1989 Children Act
 - c. Investigation of the need to provide services for a child in need
 - d. Investigation of the need to accommodate a child
 - e. Investigation of the need for an emergency protection order
 - f. Emergency assessments under the NHS & Community Care Act 1990
 - g. Request from police for a joint visit
 - h. Coordinate and provide information for SUDIC (Sudden Unexpected Death In Infants And Children)
- 10 In 2016, Ofsted undertook an inspection of Worcestershire County Council's services for children in need of help and protection, children looked after and care leavers overall safeguarding arrangements, which were judged to be inadequate. However the report stated, 'The out-of-hours emergency duty service is well resourced, and is led by an established team manager and experienced social workers. Handovers and information sharing with daytime social workers are prompt and well recorded. Responses to children who go missing and child protection episodes arising overnight or at weekends are timely, thorough and clearly documented'. The most recent Ofsted inspection in June 2019, stated, "Progress has been made in many areas of children's services in Worcestershire since the last inspection" and were given a judgement of "requires improvement to be good".

- 11 Ofsted's 2018 inspection of Herefordshire's children's social care found that 'an effective out-of-hours emergency duty service (EDS) provides timely and appropriate responses to children and families. Information sharing, contact with daytime services and access to the electronic database enables EDT staff to make informed decisions and take any immediate actions to protect or help children'.
- 12 In September 2017, the Department for Education directed Worcestershire County Council to move the operational delivery of social care services for children to an alternative delivery model. In response to this Worcestershire County Council will be transferring their children's social care services, including EDT, to Worcestershire Children First as of 1 October 2019.
- 13 Formal notification of Worcestershire County Council's intention to transfer their children's services to Worcestershire Children First from 1 October 2019, was received by Herefordshire Council on 27 June 2019. To ensure continuity of this critical service it is proposed that the current contract for the Herefordshire EDT service with Worcestershire County Council is terminated from 30 September 2019 and a new contract is awarded to Worcestershire Children First from 1 October 2019.
- 14 Worcestershire Children First is a 'not for profit' company and wholly owned by Worcestershire County Council. It will be operationally independent and have a single focus on children and young people.
- 15 Herefordshire Council has been satisfied with the quality and responsiveness of the EDT service provided by Worcestershire County Council. The transfer of the operational EDT from Worcestershire County Council to Worcestershire Children First is not anticipated to have any negative impact. There are clear operational protocols in place between Herefordshire Council and EDT and any emerging issues are addressed through regular contract management meetings and quarterly submission of performance data, which will continue to be required under the new contract with Worcestershire Children First.
- 16 A review of potential alternative options will be undertaken within the first 12 months of the contract to inform the decision to exercise the option to renew or recommission the contract. The review will further explore the potential and opportunities to jointly commission the service with the council's Adult services or a neighbouring council. The recommendation includes provision to exercise an option to extend the initial 18 month contract period by up to 24 months.

Community impact

- 17 The awarding of the contract for the out of hours service supports Herefordshire's overarching vision for all children and young people – that we keep them safe and give them a great start in life. It will also make best use of the resources available in order to meet the council's priorities.
- 18 During the period April 2017 to March 2019, the service dealt with an average of 109 contacts with safeguarding cases per month. Most referrals to the service come from care providers (children's homes and fostering agencies), the police, or are anonymous. The most common reasons for contacting the service are to share information/ access advice or report a missing child. Most cases are dealt with through telephone consultation, and when necessary, the service will arrange for a social worker to undertake an emergency site visit in Herefordshire.

Equality duty

19 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.

20 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.

21 The equality duty covers the following nine groups with protected characteristics: age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The decision does not discontinue services and has no detrimental impact for those eligible to access the service.

22 This proposal pays due regard to the public sector equality duty by ensuring that children and young people who are believed to be at significant risk of harm remain safeguarded outside of normal working hours.

23 Children and/or their families/carers, who require out of hours services will share a number of the protected characteristics, which are set down in the Equality Act 2010 and towards, which public bodies such as Herefordshire Council, have statutory/legal duty.

24 An equality impact assessment has been undertaken (see appendix 1) and no negative impact has been identified. Children and their families will continue to receive the same out of hours services.

25 Within the contract, there will be an obligation for Worcestershire Children First to monitor equality and diversity. They must have in place (at all times whilst providing any services and in relation to its activities within the United Kingdom) appropriate policies, procedures and systems to monitor and enforce those procedures, to ensure its compliance with relevant UK law relating to equalities and anti-discrimination, including the Equality Act 2010

Resource implications

26 The total contract value is £434,000 equivalent to £124,000 per annum. This is the same value as the current contract with Worcestershire County Council. However this is subject to a price review at point of first renewal option being exercised (March 2021), which it is anticipated would be in line with the consumer price index.

- 27 Funds are in the approved budget to March 2020 within the base budget.
- 28 During the initial 12 month period of the contract, Herefordshire commissioners will undertake a market test, the outcome of which will inform whether to, subject to approval, undertake a tender exercise or exercise the option to renew the contract. If the outcome is to recommend exercising the option to renew the contract with Worcestershire Children First for up to 24 months, potentially from 1 April 2021 up to 30 March 2023, Herefordshire's commissioners will negotiate with Worcestershire Children First to ensure any requested price increase is appropriate and delivers value for money before seeking approval to renew contract.

Legal implications

- 29 Section 3.3.11 of the council's constitution delegates key decisions to Cabinet Members which relate to their portfolio but provides that they cannot take a decision contrary to the advice of the chief executive, monitoring officer, s.151 officer or relevant director(s) (section 3.3.12)
- 30 Herefordshire Council has a statutory duty to provide the service under the Children Act 1989 which is currently provided on our behalf by Worcestershire County Council (WCC). From 1 October 2019 WCC intends to outsource the service to Worcestershire Children First, a not for profit company wholly owned by WCC.
- 31 The total estimated value of the contract over the initial 18 month period and any extension period would be a maximum of £440,000. This is below the threshold of £615,278 for Social Value contracts under schedule 3 of the Public Contracts Regulations 2015 ("the Regulations") so the Regulations do not apply.
- 32 Although the Regulations do not apply, the council is still under a duty to follow EU Treaty principles of transparency, proportionality and non-discrimination in general terms. Therefore the council's contract procedure rules (CPR para 4.6.12) require contracts of this value to be let following an open tendering procedure unless the application of CPR has been waived pursuant to CPR para 4.6.17. It is proposed that a Exemption be approved using the procedure set out in CPR para 4.6.19 on the grounds that
- a. The price achieved represents a fair market price and best value (CPR para 4.6.17).
 - b. This will give more time to review options around retendering the service at the end of the initial 12 month period of the contract.
 - c. The direct award of the contract in the current circumstances is a proportionate response to the need to maintain continuity in respect of this critical service (CPR para 4.6.20) in circumstances where the deadline for a direct award (1st October 2019) has been imposed on Worcestershire County Council by the Department of Education. In any event it is believed that the risk of challenge is low because the availability of such specific services are unlikely to be available in the open market

Risk management

- 33 If the decision is not approved, Herefordshire would not have access to an out of hours emergency duty services for children's social care.

- 34 If the decision is not approved, there will be a significant reputational and legal risk to the council in not meeting its statutory/legal obligations. There would also be risk to the children and their families/carers who require this service and damage to the council's reputation and strategic relations with Multi-Agency Safeguarding Hub's (MASH) partners and Worcestershire County Council. MASH is a partnership between the Council's children's social care, police, health, probation, education and Women's Aid. It provides a single point of contact for all safeguarding concerns. It is a confidential unit in which information is shared securely in order to make sure children and young people in Herefordshire are kept safe.
- 35 There is a risk with regards sharing of data. This will be mitigated by the contract with Worcestershire Children First incorporating a data sharing agreement and EDT will be included in the MASH partnership data sharing agreement.
- 36 There is a risk EDT service staff will be unable to access Mosaic on 1 October 2019. Herefordshire Information Governance will work with the provider to ensure EDT staff who require access to Mosaic as part of their role, sign a third party agreement with the council. Herefordshire's Infrastructure team will also work with the EDT service manager to ensure that staff have access to the relevant software required to access to Mosaic; this will be tested prior to service transferring.
- 37 There is a risk that people with concerns about a child are unable to make contact with the service from 1 October 2019. Whilst formal confirmation is yet to be received, Worcestershire County Council have verbally stated there will be no changes to the EDT service contact details. If the contact details do change, Herefordshire commissioners will work with the provider to ensure that all contacts automatically transfer to the EDT service.
- 38 As this will be a direct award, there is a risk of supplier challenge. It is believed that the risk of challenge is low because the availability of such specific services are unlikely to be available in the open market. Due to the need to maintain continuity of this critical service, there was insufficient time to undertake a review and a potential procurement process. The review will therefore be undertaken in the first 12 months and options considered. The new contract can be terminated by the council on 3 months' notice to give greater flexibility in delivering any favoured option.

Consultees

Political groups have been consulted with and a comment has been received enquiring if the service could be delivered locally and why this service is outsourced; the reasons for this are contained within the report above.

Appendices

Appendix 1 - Equality Impact Assessment

Background papers

None identified.