

Report to: **SINGLE COMMISSIONING BOARD**

Date: 17 January 2017

Officer of Single Commissioning Board: Clare Watson, Director of Commissioning, Single Commissioning

Subject: **NEW CONTRACTUAL AND PARTNERSHIP RELATIONSHIP BETWEEN TAMESIDE AND GLOSSOP'S CARE TOGETHER SYSTEM AND PENNINE CARE IN RELATION TO THE DELIVERY OF MENTAL HEALTH SUPPORT**

Report Summary: This report sets out the current position in relation to commissioning of mental health services in Tameside and Glossop. The proposal, in line with a number of other Greater Manchester Clinical Commissioning Groups (CCGs) is that the Single Commissioning Function (SCF) move from its current Multi-Lateral Mental Health Contract with Pennine Care NHS Foundation Trust to a Bi-Lateral with the current provider Pennine Care NHS Foundation Trust with effect 1 April 2017.

The report explains the position currently faced in securing a long term Mental Health partner for the Care Together system, working with the ICFT. It proposes a way forward over the next two years that allows the continuation of mental health services in the area whilst a review and redesign an all age mental health service is undertaken to deliver savings, and work towards integrating mental health within the ICFT.

Recommendations: That Single Commissioning Board:

1. Approve the approach set out in the report with Pennine Care NHS Foundation Trust resulting in a bi-lateral contract for the delivery of mental health services for a two year period from 1 April 2017.
2. Approve the review and redesign of mental health services within the Care Together Programme as part of journey towards integration within the ICFT.

Financial Implications: The CCG funding for this contract is within the Section 75 agreement of the Integrated Commissioning Fund (ICF). It should be noted that the Single Commissioning Board will make decisions on the Section 75 funding which are binding upon the CCG and the Council. The finance group support the progress of negotiations with Pennine Care to establish a bilateral contract for a period of 2 years. However, it is recommended that a collaborative approach is taken across the economy in respect of the provision of mental health services and the ICFT are involved in the negotiations to facilitate the development of the longer-term Care Together vision with the ICFT being the prime provider of services for the T&G economy. It is also important that those individuals charged with making decisions fully understand the requirements of Parity of Esteem for mental health services and the impact this proposal may have upon meeting this requirement.

(Authorised by the statutory Section 151 Officer & Chief Finance Officer)

For contextual purposes, it is important to note that the Integrated Commissioning Fund also includes funding relating to mental health services within the Council. The 2016/2017 budget

allocation for these services is £4.873m, of which £3.710m is within the Section 75 agreement and £ 1.163m is within the Aligned agreement of the fund. In addition to Section 75 agreement decisions previously mentioned, the Single Commissioning Board will also make recommendations on the utilisation of Aligned agreement funding. All recommendations will require ratification by the relevant statutory organisation, which would be the Council in this instance.

**Legal Implications:
(Authorised by the Borough
Solicitor)**

Under Regulation 32 (2) (c) of the Public Contracts Regulations 2015 a contracting authority can utilise the negotiated procedure without the prior publication of a contract notice where insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

To rely on such an exemption the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

The report details that as a result of actions of other commissioners; the current contract became financially unviable for the remaining parties and was brought to an end by agreement. It would not therefore be unreasonable to rely on Regulation 32 (2) (c) in the circumstances. This approach is not without risk of procurement challenge however given the intention to redefine the service (which cannot immediately be achieved) the risk is not seen as significant and it is more important that the commissioners get the right and most expedient service for service users.

Board Members should be aware that the transitional provisions under Regulation 120 of the Public Contracts Regulations 2015 which exempted certain NHS Procurements from the application of the Regulations ceased to apply to procurements commenced after 18 April 2016. As a result, any NHS Procurement (which will mostly amount to Social and Other Specific Services or what are known as Light Touch Regime procurements which are not covered by the full application of the Regulations) which exceeds the current threshold of £589,148 must unless a specific exemption contained in Regulation 32 (Use of the negotiated procedure without prior publication) applies be advertised through the Official Journal of the European Union, and be let by procedures which shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.


**How do proposals align with
Health & Wellbeing Strategy?**

The development and negotiation of a new Bi-Lateral Mental Health Contract will include an assessment of whether or not the contracted services align with the Health & Wellbeing Strategies.

**How do proposals align with
Locality Plan?**

The development and negotiation of a new Bi-Lateral Mental Health Contract will include an assessment of whether or not the contracted service aligns with the Tameside & Glossop Locality Plan and the agreed Model of Care for our locality.

How do proposals align with the Commissioning Strategy?	Any proposals/negotiations set out in this paper will be carried out in the context of the priorities included in the Single Commission's Commissioning Strategy. Mental Health is one of the SCF's top priorities.
Recommendations / views of the Professional Reference Group:	PRG supported the paper and the 2 recommendations, which are the ones presented to SCB. The Committee did not support 2 others recommendations: to ratify the decision made by the SCMT on the 26 July 2016 to formally withdraw from the multi-lateral contract, because the SCB is the decision making body. NB, the paper stated 'supports the recommendation of SCMT'. It also felt that the recommendation, to note the intention to undertake a procurement exercise in accordance with the Public Contracts Regulations 2015 was inconsistent with the rest of the paper, PRG discussions and Care Together programme.
Public and Patient Implications:	Commissioners leading on the newly proposed Bi-Lateral Mental Health Contract will be required to ensure that any patient and public implications of the contract/services are considered in the on-going monitoring and any proposals for redesign/recommissioning.
Quality Implications:	Commissioners leading on the development of the contract proposed in this paper will be required to ensure that quality implications are considered in the ongoing monitoring and any proposals for redesign / recommissioning. Quality Impact Assessments will be completed.
How do the proposals help to reduce health inequalities?	The Single Commissioning Function will ensure that the review of any new contractual arrangements include consideration of the impact on health inequalities.
What are the Equality and Diversity implications?	We will ensure that Equality Impact Assessments are carried out to support any contracting or commissioning decision arising from the proposals within this paper.
What are the safeguarding implications?	We will ensure that any new contract that is commissioned by the Single Commissioning Function is supported by the necessary safeguarding requirements, and that any service or service redesign complies with the appropriate safeguarding requirements.
What are the Information Governance implications? Has a privacy impact assessment been conducted?	Privacy impact assessments will be carried out for any recommissioning or service review processes.
Risk Management:	Risk management will be part of any contract management/performance management process for the contract identified in the attached paper, and will be monitored via the appropriate Single Commissioning governance processes.
Access to Information :	The background papers relating to this report can be inspected by contacting Clare Watson, Director of Commissioning, by:

 Telephone: 0161 304 5827

 e-mail: clarewatson2@nhs.net

1. INTRODUCTION

- 1.1 NHS Tameside and Glossop has been a partner in a multi-lateral contract arrangement with Pennine Care NHS Trust since 2002 when the organisation came into being as a Mental Health Trust, and additionally contracted with its predecessor organisations for the provision of mental health services. Heywood, Middleton and Rochdale CCG have acted throughout the agreement as lead commissioner.

2. CURRENT SITUATION

- 2.1 The current multi-lateral contract term was scheduled to come to an end on 31 March 2017 however the contract includes provision to extend for up to 2 years. As a number of GM commissioners have served notice to withdraw from the contract the resultant arrangements are no longer viable.
- 2.2 It is our understanding that no other CCG in Greater Manchester Pennine Care Footprint has currently gone to the market with their proposed new mental health contracts and are believed to have approached Pennine Care NHS Foundation Trust to make a direct award through a negotiated process.
- 2.3 In line with the reviews undertaken by other CCGs, Tameside & Glossop Single Commissioning Function has made the decision to withdraw from the existing multi-lateral contractual arrangements. The decision in effect has been forced as the various withdrawals have meant the existing arrangements cannot continue beyond 31 March 2017. This decision will benefit the arrangements in relation to commissioning mental health services as Tameside and Glossop CCG have over the years held an excessive and disproportionate share of the costs of provision and risk share – all of which would be resolved in any bilateral contract. The break from the existing arrangement will also enable the single commissioning function to progress the CCG QUIPP for Recovery Plan in relation to mental health which has identified a saving of £500k for 2017/18 – the ability to achieve this saving as part of the existing multi-lateral arrangements would have proved difficult to deliver given the complexity of the agreement.
- 2.4 A recommendation to formally withdraw from the multi-lateral contract and move to a bilateral contract with effect from 1 April 2017 was made by the SCMT on the 26 July 2016. This recommendation needs formal approval under single commissioning governance arrangements.
- 2.5 The plan is to establish a programme budget approach to mental health services during 18/19 as part of the ICFT's provider agenda.

3. PROPOSAL

- 3.1 The Single Commissioning Function needs to manage its position with regards to the provision of mental health services from April 2017. An additional consideration is the requirement from NHS England to have contractual agreements in relation to Mental Health signed up by December 2016.
- 3.2 Advice received is that progressing anything other than a procurement exercise for a long term arrangements would need to be reconciled with the requirements of the Public Contracts Regulations 2015 which apply to NHS procurements which commence after 18 April 2016. A failure to do so would:
- Breach of the 2015 Public Procurement Regulations 2015;

- Could result in challenge from other service providers i.e. other NHS Trusts, private providers who have not been afforded the opportunity to bid for the work;
- Fail to provide value for money.

This will be considered in accordance with the economy's position whereby T&GICFT will become the lead provider of health and care services for Tameside & Glossop, and the SCF will manage a transfer of all contracted activity to the ICFT in line with appropriate due diligence.

- 3.3 The proposal is therefore that the Single Commissioning Function progress a negotiation with Pennine Care NHS Trust with a view to awarding an outcome based contract for two years from 1 April 2017. The basis of the contract would be that Pennine Care would continue to deliver the core service that it provides to the residents of Tameside and Glossop currently under the multi-lateral contract. In addition, the Single Commissioning Function and ICFT will work with Pennine Care over 2017/19 to progress the assimilation of mental health contracts into the overall Care Together programme, as part of the ICFT.
- 3.4 There is a high level of assurance in the proposal to continue with Pennine Care for the two years proposed as all monitoring undertaken indicates delivery of a high level of performance.
- 3.5 Under Regulation 32 (2) (c) of the Public Contracts Regulations 2015 a contracting authority can utilise the negotiated procedure without the prior publication of a contract notice where insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. To rely on such an exemption the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.
- 3.6 The decision of other commissioners to withdraw from the multi-lateral contract has left insufficient time for the Single Commissioning Function to determine and consult upon requirements and run an open, transparent procurement exercise in time to meet NHS England's December deadline. Whilst a period of 2 years is longer than is required to undertake the tasks in isolation, the extension period and service to members of the public is commensurate with the terms of the multi-lateral contract and will enable the Single Commissioning Function to:-
- To re-negotiate its contract accordingly whilst ensuring the contract can be performance managed with a total focus on Tameside and Glossop;
 - To consolidate mental health services into a single approach and build stronger relationships primarily between mental health provision, the Integrated Care Foundation Trust and the Single Commissioning Function;
 - Align its commissioning plans to developments progressing under the GM Devolution Agenda;
 - To redesign in a considered way an all age mental health service for the benefit of its population;

4. OTHER OPTIONS AVAILABLE

- 4.1 Due to the short timeframe under which arrangements must be put in place there is insufficient time to undertake an open and transparent procurement exercise and to potentially transfer the service to a new provider. Therefore the only reasonable option is to make a direct award to Pennine Care NHS Foundation Trust.
- 4.2 The Single Commissioning Function could look to extend a contract in excess of 2 years however this would increase the risk of a procurement challenge due to a failure to comply

with the Public Contracts Regulations 2015. A two year contract term is the minimum period considered necessary to undertake the tasks referred to in paragraph 3.6. This period is consistent with the terms of the current multi-lateral contract and would not impose significant procurement risk. The prospect of further developments alongside the ICFT for a long term contractual arrangement will also mitigate the risk of the award of a two year contract.

5. RECOMMENDATION

5.1 As stated at the front of this report.