

## **ADULT SOCIAL CARE AND PUBLIC HEALTH COMMITTEE**

**11 JANUARY 2023**

<b>REPORT TITLE:</b>	<b>UPDATED POSITION REGARDING SOCIAL CARE DELIVERY REVIEW (INTEGRATED SOCIAL WORK ARRANGEMENTS)</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF CARE AND HEALTH</b>

### **REPORT SUMMARY**

Adult Social Care and Public Health Committee received a report on 24 October 2022, regarding how Social Work functions are currently (since 2017) delivered through two key contractual arrangements. These are held with Wirral Community Health and Care NHS Foundation Trust (WCHCFT) and Cheshire and Wirral Partnership NHS Foundation Trust (CWP). These arrangements contract out the Council's statutory duties to assess the needs of people who may need social care and support services and functions including assessment, support planning, safeguarding, mental health assessment and professional case management. Notwithstanding this, the responsibility and accountability for the delivery of these duties remains with Council. Accountability is held by the Director of Adult Care and Health, and constitutionally through the delegated duties of the Adult Social Care and Public Health Committee.

On 24 October 2022, the Committee resolved, amongst other matters, to:

1(a) extend the contract with WCHCFT for the provision of social care services on substantially the same terms and conditions for a period of 1 year, ending 30 September 2024 [with the option to extend];

1(b) extend the contract with CWP for the delivery of All Age Disability and Mental Health Services on substantially the same terms and conditions for a period of 1 year, ending 30 September 2024 [with the option to extend]; and

3. [approve] that a further report be brought to this Committee setting out the considerations involved in moving towards returning the provision of social care services and all age disability and mental health services to the Council's direct delivery.

The intention behind the proposed extension agreement was that it would enable both NHS Trusts to continue to provide Social Work services on behalf of the Council, within the current contract to 30 September 2024. This would enable more detailed work and consideration of the issues involved in moving towards return of provision to the Council whilst maintaining the best aspects of integrated provision.

This report presents an update of the current position with regard to contractual arrangements following receipt of correspondence from the contracted NHS organisations regarding the decision of the Committee.

The report supports the following priorities from the Council's Wirral Plan:

- Working for safe and vibrant communities where our residents feel safe and are proud to live and raise their families.
- Working to provide happy, active and healthy lives for all, with the right care, at the right time to enable residents to live longer and healthier lives.

This is a key decision that affects all wards.

## **RECOMMENDATIONS**

The Adult Social Care and Public Health Committee is recommended to determine the preferred option from the range of options set out in section 2 of the report, in light of WCHCFT's rejection of the offer of a further contract extension and purported termination of the current contract by 1 April 2023.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 One of the Council's two contractors for social care has rejected the Council's offer of a further one-year contract extension from September 2023 until September 2024. The Trust has advised that this is specifically due to perceived risk to the Trust. WCHCFT has subsequently notified the Council of its purported termination of the current contract and intention to return the provision of social care services to the Council by 1 April 2023. Written notice was provided by WCHCFT on 6 December 2022, with a request that the Council considers an option to extend a five-year contract to WCHCFT as an alternative.

### **2.0 OTHER OPTIONS CONSIDERED**

#### **2.1 Option One**

To agree to WCHCFT's reduced notice period and complete transfer of staff based upon the deadline of 1 April 2023. This option recognises that the Trust has made a decision to withdraw based upon the risks that they have identified. Return by April 2023 is a very tight deadline and would present risk to the Council in terms of deliverability. Human Resources' advice regarding delivery of the deadline is being sought.

#### **2.2 Option Two**

Require WCHCFT to provide a longer period of notice to comply with the contractual requirement which provided for 12 months' notice of termination from either party. As the current contract will expire in less than 12 months it would have reasonably been expected by the Council that at minimum, notice would be given to the end of the current contract extension, which is 30 September 2023.

#### **2.3 Option Three**

To accept WCHCFT's offer of a longer contract extension period of up to 5 years. This would take the contract period up to 30 September 2027, depending upon negotiation.

### **3.0 BACKGROUND INFORMATION**

- 3.1 On 30 May 2017, the Council entered into a contractual arrangement with WCHCFT for the provision of social care services, and on 17 August 2018 a contract with CWP for the delivery of All Age Disability and Mental Health Services. Both contracts included the delegated responsibilities for statutory assessment and provision as defined by the provisions of the Care Act 2014. The employment of all Social Workers, Occupational Therapists, Managers, and frontline staff working in the areas transferred under TUPE. 332 staff transferred in total.
- 3.2 The contract price for the services is almost fully related to direct staffing costs, with a minor element associated with support functions. Annual contract price uplifts therefore reflect the impact of annual pay rises.
- 3.3 There have been changes in relation to commissioning arrangements since contracts were put in place. The Council had been focussed upon developing its

role as a service commissioner with the former NHS Wirral Clinical Commissioning Group (CCG). The NHS has moved on with a new Regionalised structure through Integrated Care Systems (ICS) and Boards.

- 3.4 The Care Market is failing to meet demand and we have had the Covid pandemic, which has led to a number of potential approaches to resolve this being reviewed.
- 3.5 In relation to the new ICS infrastructure, it has become clear that the relationship between providers and commissioners has shifted significantly, with providers collaborating closely in the development of care pathways and working methods. The CCG of course no longer exists, and Wirral is one place of nine within the Cheshire and Merseyside footprint.
- 3.6 At its meeting of 24 October 2022, this Committee found good evidence of positive outcomes of the integrated service model in many areas but noted that areas of potential opportunity had not been fully realised and that at times, the Council's priorities were not reflected in the trusts. The role of provider working alongside other providers to deliver joint outcomes is one that the Adult Social Care and Public Health Committee has recognised as being of high importance.
- 3.7 WCHCFT has indicated to the Council that its focus is on service quality and the ability to continue to deliver services safely. The Board has set out concerns regarding:
- the integrity of the integrated service quality and safety;
  - the continued recruitment and retention of social care staff;
  - the need to communicate with compassion and support to social care staff during this period,
  - the integrity of the Trust's relationship with the Council.
- 3.8 WCHCFT considers that the risks associated with all of these issues are too high to continue in a short to medium term contractual relationship. Its Board has resolved to seek to terminate the contract by 1 April 2023, and to make the offer of a five-year contract as an alternative.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 The transfer would necessitate staff transfer arrangements under TUPE legislation. Any additional costs over provision made within the £10M contract will be identified through the transfer process. It should be noted that the primary cost is staffing, and that pay and conditions have been subject to annual review and uplift by the Council throughout the contractual period. Costs will need to be ascertained regarding work bases which are currently mainly provided by the NHS under the contract. It is expected that there may be some pension costs, which will be identified as part of the process.

#### **5.0 LEGAL IMPLICATIONS**

- 5.1 The duties contracted out currently include the Council's statutory duties under the Care Act 2014 to assess the needs of people who may need social care and support services. The duties include a range of functions including assessment, support

planning, safeguarding, mental health assessment and professional case management.

- 5.2 Responsibility and accountability for the delivery of these duties remains with the Council. Accountability is held by the Director of Adult Care and Health, and constitutionally through the delegated duties of the Adult Social Care and Public Health Committee.
- 5.3 The Council and WCHCFT are parties to a legally binding contractual agreement under S75 of the NHS Act 2006, which requires 12 months' notice from either party, unless both parties agree to an earlier termination. In this case, the Council has not agreed to earlier termination, and the Trust by way of its purported early termination of the contract, would be in breach of the contractual requirement.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

- 6.1 There are implications related to the TUPE for staff returning to the Council should the contract be returned. The impact is being considered within the formal transfer exercise which is commencing imminently.
- 6.2 The Council has brought together a programme team to undertake transfer work with due diligence, to minimise risk and to effectively support staff through the transfer the team is made up of;

a. Senior Officer	Assistant Director – Adult Care and Health
b. Project Support	Organisational Design Partner Programme Manager, Strategic Change
c. Workforce	Assistant Director HR/OD HR Business Partner
d. ICT, Digital & Data	ICT and Digital Solutions Manager
e. Legal, Pension & Contract	Senior Lawyer – Property & Contracts Senior Lawyer – Employment
f. Service Delivery & Staff Liaison	Head of Integrated Services – Adult Care and Health
g. Finance & Audit	Senior Finance Business Partner
h. Communication & Engagement	Head of Communications
i. Assets	Senior Manager – Asset Management

## **7.0 RELEVANT RISKS**

- 7.1 Risks primarily relate to the retention of staff during a transfer period and the potential to have reduced capacity to respond to assessment and support planning requirements.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 Engagement exercises for staff are being planned between the Council and WCHCFT. Staff will have a key role in defining which aspects of integrated service delivery need to be retained.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 An Equality Impact Assessment (EIA) was completed with regard to the original proposal and is located: - <https://www.wirral.gov.uk/communities-and-neighbourhoods/equality-impact-assessments/equality-impact-assessments-january-202-6>

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

- 10.1 Both service providers co-locate staff in some of the services. This reduces staff travel and utility costs and has a positive impact on the climate and environment by reducing carbon emissions. Both Trusts have their own green action plans which will have a positive impact on the environment and climate.

## **11.0 COMMUNITY WEALTH IMPLICATIONS**

- 11.1 The current service offer is delivered within Wirral, offering employment opportunities to local people. The services enable local people attain qualifications and job stability.

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## **APPENDICES**

N/A

## **BACKGROUND PAPERS**

DHSC Care Act 2014.  
NHS Wirral Community Health and Care Foundation Trust (WCHCFT) contract for the provision of social care services.  
NHS Cheshire and Wirral Partnership Foundation Trust (CWP) contract for the delivery of All Age Disability Services.  
Performance Data.  
Lived Experience Report.  
Healthwatch Report (Staff Engagement).

LGA/NWADASS Peer Review.  
WCHCFT lived experience feedback.  
CWP lived experience feedback.

## **TERMS OF REFERENCE**

This report is being considered by the Adult Social Care and Public Health Committee. In accordance with Section 2.2 e (ii) of its Terms of Reference, the issue relates to:

“undertaking the development and implementation of policy in relation to the Committee’s functions, incorporating the assessment of outcomes, review of effectiveness and formulation of recommendations to the Council, partners and other bodies, which shall include any decision relating to” [amongst other matters] “functions under or in connection with partnership arrangements made between the Council and health bodies pursuant to Section 75 of the National Health Service Act 2006 (“the section 75 Agreements”)”

## **SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
Adult Social Care and Public Health Committee	24 October 2022
Adult Social Care and Public Health Committee	3 March 2022