

West Yorkshire & Harrogate Joint Committee of Clinical Commissioning Groups

Summary report			
Date of meeting: 5 June 2018		Agenda item: 55/18	
Report title:		Commissioning Out of Hours Primary Medical Care Services across West Yorkshire	
Joint Committee sponsor:		Carol McKenna	
Clinical Lead:		Dr Adam Sheppard	
Author:		Martin Pursey, Head of Contracting, Greater Huddersfield CCG	
Presenter:		Ian Currell, Chief Finance Officer, Greater Huddersfield CCG and Martin Pursey	
Purpose of report: (why is this being brought to the Committee?)			
Decision	✓	Comment	
Assurance			
Executive summary			
<p>This paper provides background to the commissioning of Out of Hours Primary Medical Care Services across West Yorkshire. The paper considers the current situation and future options in the context of commissioners' compliance and/or risk in respect of both regulatory and legislative requirements.</p>			
Recommendations and next steps			
<p>The Joint Committee is asked to:</p> <ol style="list-style-type: none"> a) note the contents of the paper; b) consider the options, associated risk and mitigation of risk; and c) approve the recommended option and provide authority to negotiate an extension to the current contract with Local Care Direct (LCD) to expire on 31 March 2020 and publish a VEAT notice stating the commissioners' intentions to reprocure the services from 2020 and enter into market engagement on service design in due course. 			
Delivering outcomes: describe how the report supports the delivery of STP outcomes (Health and wellbeing, care and quality, finance and efficiency)			
<p>Health and Wellbeing:</p> <ul style="list-style-type: none"> • Reducing mortality rates • Increase in self-care <p>Care and Quality:</p> <ul style="list-style-type: none"> • Improve patient experiences substantially, including patient choice • Provision of high quality and safe care across all seven days of the week • Reduce ambulance conveyances to ED • Reduce avoidable emergency admissions • Management of demand and expected growth of ED attendances 			

- Reduction in average length of stay
- Reduction in avoidable readmissions

Finance and Efficiency:

- Integrated urgent and emergency care services that manage demand more effectively have the potential to be significantly more cost-effective than existing arrangements
- Providing a stronger urgent care offer outside of hospital

Impact assessment (please provide a brief description, or refer to the main body of the report)

Clinical outcomes:	The paper recommends the continuation of the service
Public involvement:	The intention to undertake engagement is set out within the paper
Finance:	The 2018/19 contract value is £18.7m
Risk:	The risks associated with the recommendation are set out within the paper
Conflicts of interest:	LCD employs GPs on a sessional basis to provide clinical advice and assessment

Commissioning of Out of Hours Primary Medical Care Services across West Yorkshire

1. Introduction

- 1.1 This paper provides the background to the commissioning of Out of Hours Primary Medical Care Services across West Yorkshire and Minor Injury Units (MIU) in Leeds, commonly referred to as 'West Yorkshire Urgent Care' or WYUC. In addition the paper considers the current situation and future options in respect of WYUC.
- 1.2 The paper will consider the future options in the context of commissioners' compliance and/or risk in respect of both regulatory and legislative requirements.

2. Background

- 2.1 Historically practices across West Yorkshire have opted out of providing primary medical care during the Out of Hours period on weekdays from 6.30pm overnight to 8.00am, weekends and bank holidays. This service has been covered by a contracted service since 2009. Since 2013 the Contract has been held by Yorkshire Ambulance Service NHS Trust as part of the overall contract for the Yorkshire and Humber & Bassetlaw NHS111 Service. The WYUC service has been delivered since then by Local Care Direct (LCD) as sub-contractor to YAS across the whole of West Yorkshire (then 10 CCGs prior to the Leeds CCGs merger).
- 2.2 The Contract let in 2012 for a 5 year period commencing 15th March 2013 did not include a provision to extend. In 2017 it was clear that commissioners were not in a position to go to the market to re-procure a service to replace either NHS111 or WYUC, consequently following the agreement of commissioners Greater Huddersfield CCG placed a Voluntary Ex Ante Transparency (VEAT) Notice advising the market that an 'interim' contract would be negotiated with the incumbent provider and put in place for a period of 12 months to allow for the design and initiation of a procurement process to re-commission the services.
- 2.3 The interim contract for both NHS111 and WYUC has subsequently been put in place until the end of March 2019, however this contract does have a provision to extend for a further 6 months should this be required.
- 2.4 The procurement process to commission an Integrated Urgent Care and Core Clinical Advisory Service (IUC & CAS) is underway. Commissioners in agreeing to the scope and model of what is to be procured have agreed that the contract for WYUC will not be part of the future contract let for the provision of IUC & CAS. WYUC from April 2019 will be commissioned and contracted for separately. Clearly there is a need for WYUC to be integrated effectively with IUC & CAS service to ensure safe services continue to be provided to patients with minimal disruption.

3. Current position

- 3.1 The WYUC element of the interim contract is based on the original specification commissioned in 2012 although there have been a number of modifications to the operational model the service specifications remain largely the same. The service has been under operational pressure since it started primarily as a result of higher than forecast demand. It was originally envisaged that the service (excluding MIU activity) would deal with 160,000 cases, in its first year it dealt with 239,000 cases and in each of the subsequent year's annual activity has been around 260,000 cases. The cost of the service in 2018/19 will be £18.7m.
- 3.2 The detachment of WYUC from the current contract model requires it to be commissioned and contracted for separately from April 2019 and therefore requires a procurement decision to be made about how best to do this.

4. Procurement considerations

- 4.1 The re-commissioning of WYUC with an estimated annual value of £16.8m clearly falls under the purview of the Public Contracts Regulation 2015 (the "PCR") and in particular the 'Light Touch Regime' (LTR) as the threshold is £615k. In addition given that it is a CCG commissioned service the NHS Procurement, Patient Choice and Competition Regulations (No.2) 2013 (the "NHS Regulations") will also apply. The EU Treaty Principles of transparency, equal treatment and non-discrimination must also be complied with.
- 4.2 The WYUC commissioners are in principle under an obligation to undertake some form of process in respect of the commissioning of the WYUC services under the LTR which involves: (i) issuing a contract notice to advertise the opportunity; (ii) structuring the procurement process in compliance the EU Treaty Principles; and (iii) issuing a contract award notice on award of the contract.
- 4.3 Under the LTR, there is provision for an alternative procedure to be used without prior advertisement of the opportunity (i.e. a direct award of a contract) to the extent that the commissioners could demonstrate that *"the services can be supplied only by a particular economic operator for any of the following reasons: [...] (ii) competition is absent for technical reasons"*. Given the existence of other potential providers of the WYUC services, it is unlikely that this option could be used without a risk of legal challenge.
- 4.4 Similarly, the NHS Regulations provide for the award of a new contract to a single provider without advertisement where the commissioners are satisfied that the services are capable of being provided only by that provider. Again, given the existence of other potential providers, it is unlikely that this option could be taken without risk of successful challenge. The risk of a challenge actually being brought is however dependent on a number of factors, including the market for these services and whether or not there is an alternative provider who would be interested in providing the services such that they would want to bring a challenge, notwithstanding that there is likely to be an opportunity to bid for the services in the medium term.

4.5 With this in mind commissioners are required to consider this paper and decide which of the following options they wish to pursue in respect of the WYUC services:

- Undertake a procurement process for a replacement provider for the WYUC services from April 2019. This is not a desirable approach for the reasons set out in this paper, as well as being extremely challenging from a time and resource perspective given the need to allow a mobilisation period pre-service commencement.
- Exercise the option to extend the interim contract for 6 months (as already provided for in the interim contract) and undertake a procurement process with a view to awarding a short-term contract thereafter (i.e. 6 months from 1 October 2019). This whilst technically possible would be challenging in respect of the time and resources available, and from a service continuity perspective would present risk in the event that a new provider had to mobilise the service in a short period, before a further potential provision change in 2020.
- Extend the current WYUC service to April 2020 as above by way of negotiating a direct award with LCD without advertising the opportunity, contrary to the LTR and the NHS Regulations and publish a VEAT notice setting out commissioners' reasons for doing so and their intentions to procure the service from April 2020.

5. Commissioning considerations

5.1 There are a number of issues the commissioners will need to address in order to fully shape the future configuration and specification of WYUC services before being in a position to start a procurement process for a longer term solution, including:

- The timing and mobilisation of the re-procurement of the IUC & CAS which is underway and is intended to be in place by April 2019. There is the possibility that a different provider may be selected for this service (other than the incumbent, YAS), which may require a period where the system 'settles down' and links with existing services are developed to minimise disruption to patients. Ensuring stability for the whole urgent care / OOH pathway will be essential during this time to ensure a safe service is provided to patients.
- The revision of the model commissioned in respect of the provision of clinical advice in line with national policy expectations. An Independent Review of WYUC concluded that changes to the way in which the service operated, as required by the commissioned model, would require to be addressed.
- The extent, scope and scale of what is to be commissioned are unclear at the moment. This lack of clarity is essentially due to the individual commissioners having slightly differing approaches to delivering extended/improved access in primary care; the development and mobilisation of urgent treatment centres, their capacity and how these will operate in the out of hours period.

- Whether the intention remains to commission on a West Yorkshire or STP basis after April 2020. There is broad agreement that there is merit in commissioning a service collaboratively up to that point
- Another core part of the IUC provision is GPOOH services. Currently these are commissioned by individual CCGs with the exception of West Yorkshire where Local Care Direct (LCD) is a subcontractor of the YAS NHS 111 contract. Y&H CCGs have indicated that they do not want the commissioning of GPOOH services to move from sub-regionally/locally commissioned to a regionally commissioned service. There is, therefore, no intention to directly change the commissioning arrangements for GPOOH as part of this programme of work.
- Comparative low cost of the existing service when compared to benchmark data and the relative benefit that would derive from undertaking a procurement for a further interim contract for WYUC.
- Determining the appropriate length of the contract that would be put in place as a result of a procurement exercise. Without this it is difficult to assess the return on the significant investment required to undertake such an exercise.

6. Consideration of the options

6.1 From considering where commissioners are at this point in time in relation to the issues identified above there would be a number of areas that would suggest that commissioners are not in a position to embark on a procurement process in the short term, namely:

- No clear understanding as to what is required in respect of: future service model; volume and type of activity to be commissioned; definitive agreement as to which commissioners would be included in the contract
- Uncertainty as to the anticipated impact of local commissioners' plans in respect of extended/increased access to primary care and urgent care arrangements
- Uncertainty as to what impact the movement from the traditional NHS111 service to the Integrated Urgent Care model will have on the future configuration of WYUC
- The availability, level and affordability of resource required to undertake a procurement exercise without clarity as to what to procure and for how long – to undertake this procurement in the time available would require external resource with an anticipated cost of £100k plus.

6.2 On this basis the most pragmatic option would be to extend the provision of service for 12 months with the current provider, such that a new contract would be entered into from April 2020 following a procurement process. This would require negotiation and the direct award of a contract to LCD. This approach would be taken for the following reasons:

- Commissioners require more time to fully work up what the future WYUC opportunity will be, information and activity to help form this view will not be available until late 2018/19
- In respect of the mobilisation of IUC & CAS Commissioners recognise that this approach will also mitigate against the risk of potential instability in the

integrated service from having two newly configured services and potentially new providers commencing at the same time, minimising any risk to patients.

- The commissioners fully intend to advertise the procurement opportunity once it is developed to comply with the LTR.
- The commissioners will act transparently by placing a VEAT Notice setting out its reasons with regard to the direct award in the short term and intention to procure in the medium term. The VEAT notice could also set out a clear intention to commence pre-procurement market engagement with all potential providers as soon as possible.
- That this approach presents the least risk to patients and users of the service in terms of disruption and integration with the new IUC / CAS and represents the most appropriate use of resources in terms of commissioner workload, return on investment and value for money

7. Risks and mitigation

- 7.1 As previously noted the recommended approach is not without risk primarily around potential challenges from the market on the basis that the directly awarded short term contract ought to have been advertised, in line with the PCR and the NHS Regulations. This may be compounded by the fact that this will be the second occasion on which a short term direct award has been made and alerted to the market by way of the VEAT notice. Such a challenge could be brought either as a complaint to NHS Improvement as a breach of the NHS Regulations, or through the Courts on the basis of a breach of the LTR and/or the EU Treaty Principles.
- 7.2 The potential sanctions following a successful challenge would include an instruction to undertake a procurement process, reputational damage to the commissioners and a possible claim for damages for the lost opportunity to bid for/win the contract depending on the case made by the challenger(s).
- 7.3 Whilst there is no guarantee that commissioners will receive a complaint and/or formal challenge, the risk of this being successful is mitigated by the following:
- Commissioners will place a VEAT Notice advising the market of its intention to directly award a contract to the current provider as well as the intention to advertise the opportunity once it is clear what that is. This could also include the clear intention to commence pre-procurement market engagement with all potential providers as soon as possible, allowing all potential providers to input into ideas as to the options for the service design. The publication of the VEAT will not prevent a challenge being brought, but would reduce the time limits for bringing a claim of ineffectiveness (cancellation of the contract that has been awarded) and in effect reducing the time limit for a claim for damages to 30 days following publication of the VEAT.
 - The CCGs and key stakeholders will have the opportunity to undertake market engagement to understand what other providers may be available and how they could provide innovation in the service provision, alongside more focused intelligence gathering and patient involvement activities to understand the local 'place' position within our STP footprint and design services accordingly.

- The clear intent of the Commissioners to test the market in due course will mean that potential providers of a re-commissioned service will see the opportunity advertised within the next 12 months.
- Legal advice has been sought via Hill Dickinson to ensure we understand the risks in the options available to us and document our reasons for the recommended approach in an appropriate way.
- NHSE and NHSI would be fully apprised of this intent with supporting rationale.

8. Support of recommended option

- 8.1 The position relating to the impact of re-commissioning IUC & CAS without WYUC as part of the contractual structure and the potential future options for WYUC has been considered by the West Yorkshire & Harrogate Urgent and Emergency Care Programme Board (Commissioners only). The recommended option was discussed at their meeting of 21st May 2018 where it was given their full support.

9. Recommendations

- 9.1 That the Joint Committee:

- a) **note** the contents of this paper;
- b) **consider** the options, associated risk and mitigation of risk; and
- c) **approve** the recommended option and provides authority to negotiate an extension to the current contract with LCD to expire on 31 March 2020 and publish a VEAT notice stating the commissioners' intentions to reprocure the services from 2020 and enter into market engagement on service design in due course.