

**Forward Plan reference number:** (if applicable)

<b>Report title:</b> Mental Health Employment services proposal to increase activity	
<b>Report to:</b> Nick Presmeg: Director Adult Social Care	
<b>Report author:</b> Chris Martin; Director, Strategic Commissioning and Policy, Children and Families	
<b>Date:</b> 1 <sup>st</sup> October 2018	<b>For:</b> Decision
<b>Enquiries to:</b> Emily Oliver; Head of Commissioning, people Emily.oliver@essex.gov.uk	
<b>County Divisions affected:</b> All Essex	

## **1. Purpose of Report**

- 1.1 ECC commission employment services through a contract with the Essex Mental Health Trust, EPUT (Essex Partnership University Trust) on behalf of itself and the 5 Essex CCGs. However, these arrangements have not been formalised into a section 75 agreement. Please see legal section below.
- 1.2 The CCGs have been given a grant by NHS England to increase the capacity of these services.
- 1.3 ECC wish to vary the S256 agreements between ECC and the CCGs and the contract with the provider to accommodate this additional funding.

## **2. Recommendations**

### **2.1 To agree:**

- to amend the service contract for Employment Services with the provider EPUT to secure the additional activity to be delivered by EPUT within the existing service contract using the grant awarded by NHS England. This will be done without a re-procurement pursuant to Regulation 72.1 (c) of the Public Contract Regulations 2015 ; and
- to amend the S256 agreement with the 5 CCGs to transfer the grant from the 5 CCGs to ECC and include the statutory elements of s 75 of the NHS Act 2006 for the delegation of functions from the CCGs to ECC for it to commission these services on behalf of itself and the 5 CCGs.

### **3. Summary of issue**

- 3.1 Essex County Council commissions a Mental Health Employment service through a contract with EPUT. This is a separate contract to the S75 Partnership Arrangements.
- 3.2 By increasing the numbers of people with Mental Health problems in employment and supporting others to retain their employment, this plays a key role in contributing to outcomes within the Essex Mental Health Outcomes Framework:
  - People have good Mental Health
  - People with Mental Health problems recover
  - People with Mental Health problems achieve the best possible quality of life
- 3.3 The contract includes funding from the CCGs under S256 arrangements.
- 3.4 This contract was originally let using an EU compliant process under the Public Contract Regulations 2015.
- 3.5 The contract was initially let for a 3 year period with an option to extend for a further 2 years. This option has already been taken up and the contract now expires on 31<sup>st</sup> March 2020
- 3.6 The annual contract value is £599,810 and is £2.99m over the 5 year contract term.
- 3.7 The CCGs have been given a grant totalling £905,937 from NHS England to increase the capacity of these services for the period 1<sup>st</sup> April 2018 – 31<sup>st</sup> March 2020 (The final 2 years of the ECC contract)
- 3.8 The CCGs wish to transfer this money to ECC to include in our current arrangements with EPUT rather than let a separate contract.
- 3.9 The Public Contract Regulations 2015 only allow for contract amendments in certain circumstances. These are all covered by regulation 72. This procurement is subject to the light touch regime.
- 3.10 This supports the Council's Organisational Strategy in the following areas:
  - *Help people in Essex prosper by increasing their skills*
  - *Enable more vulnerable adults to live independent of social care*

### **4. Options**

#### **4.1 Option 1 – Preferred option**

To amend the S256 agreement and the service contract with EPUT to fund additional activity in line with the extra funding from NHS England.

The Section 256 agreement should be widened in scope to include the necessary delegation of functions to legitimise ECC commissioning these services on behalf of itself and the 5 CCGs.

The variation of the service contract with EPUT can be done under Regulation 72.1 (c) of the Public Contract Regulations 2015 as ECC is able to meet all of the conditions specified:

- i) *“The need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen.”*  
Neither the CCGs nor ECC were aware of or could have foreseen this additional resource at the time they procured the contract.
- ii) *“the modification does not alter the overall nature of the contract”*  
The additional funding is for the same services just at an increased activity level.
- iii) *“any increase in price does not exceed 50% of the value of the original contract or framework agreement”*  
50% of the original contract value would be £1.5m and the additional funding is less than this value

Therefore all of the conditions are met and this is a viable option.

#### **4.2 Option 2**

To amend the S256 agreement with the CCGs and then run a compliant procurement to meet the requirements.

This is not the preferred option because we can rely on the exemption in regulation 72.1(c).

#### **4.3 Option 3**

Do nothing. Don't amend the S256 or the contract and let the CCGs either individually or collectively award their own contract(s) to deliver the activity.

This is not the recommended option because it will as a minimum duplicate effort in terms of contract management across the system and mean that the supplier would be duplicating management activity and therefore delivering less service.

### **5. Next steps**

Subject to formal agreement on the recommended option:

- Legal Services to amend the S256 agreement between ECC and the CCGs with changes required.
- ECC commissioning and contract management to start discussions with the provider, EPUT, to define the additional activity requirements.
- Contract between ECC and EPUT to be amended to reflect the above once legal have confirmed the S256/75 agreement is executed in place.

### **6. Issues for consideration**

## **6.1 Financial implications**

There are no financial implications for ECC as we will only be increasing the contract by the amount of funding given to us by the CCGs. The timing of additional payments will be arranged to ensure the change does not impact adversely on the council's cash flow. This additional one off investment will not create any ongoing commitments beyond March 2020.

## **6.2 Legal implications**

### **Background**

- EPUT is delivering the Services to ECC and the CCG/s under an extended contract due to expire in March 2020. This contract was procured by ECC on behalf of itself and the CCG/s
- The funding from the CCG/s to ECC are transferred by virtue of a s256 agreement
- The overall value for the contract based on a five years duration is in the region of £3m (£599,810 per annum made of contributions from CCG/s and ECC).
- NHS England has transferred to the CCG/s an additional £905,937 to be used to commission employment support services. Neither the CCG/s or ECC were aware of this additional resource at the time they procured the contract awarded to EPUT
- You have confirmed that you have not seen the conditions of the grant but it is your understanding that the money must be used for the commissioning of the employment support services

### **Legal Requirements**

As the proposed variation to the service contract with EPUT exceeds the procurement threshold (currently set at £615,832), the Public Contracts Regulations 2015 will apply and ECC and the CCGs will need to consider possible procurement of the additional services for the value of £905,937.

Exemptions to procurement are set out in regulation 72 of the Public Contracts Regulations 2015 which states the grounds of which contracts and framework agreements may be modified without a new procurement procedure.

The variation of the service contract with EPUT can be done under Regulation 72.1 (c) of the Public Contract Regulations 2015 as ECC is able to meet all of the conditions specified:

- j) *“The need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen.”*  
Neither the CCGs nor ECC were aware of or could have foreseen this additional resource at the time they procured the contract.
- iv) *“the modification does not alter the overall nature of the contract”*

The additional funding is for the same services just at an increased activity level.

- v) *“any increase in price does not exceed 50% of the value of the original contract or framework agreement”*  
50% of the original contract value would be £1.5m and the additional funding is less than this value

ECC, the 5 CCGs and EPUT will need to enter into 2 deeds of variation to amend the s256 agreement and the service contract with EPUT.

The deed of variation to vary the s256 agreement will also need to incorporate the statutory elements needed under the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (as amended) to make this agreement into a section 75 agreement for the purpose of the NHS Act 2006.

This is needed as:

1. ECC led on the procurement on behalf of all of the CCG/s, and it commissions the services from EPUT on behalf of itself and the 5 CCGs and
2. A s256 agreement is a grant agreement which allows the NHS to transfer NHS money to local authorities, it is not used to delegate functions between NHS and local authorities

*Please also read the following page:*

## **7. Equality and Diversity implications**

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that ‘marriage and civil partnership’ is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

**8. List of appendices**

Equality Impact Assessment.

**9. List of Background papers**

None

<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b>
<b>Nick Presmeg, Executive Director, Adult Social Care</b>	

**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Nick Presmeg, Executive Director, Adult Social Care</b>	
<b>Executive Director for Corporate and Customer Services (S151 Officer)</b> <i>Please send to your Head of Finance/Finance Business Partner who will arrange S151 sign off.</i> <b>Margaret Lee</b>	
<b>Director, Legal and Assurance (Monitoring Officer)</b> <b>Paul Turner</b>	