

To: **Executive**
19th March 2024

**Long-Acting Reversible Contraception, and Emergency Hormonal Contraception
reprocurement process
Director of of People, Place & regeneration**

1. Purpose of Report

- 1.1. To seek approval to complete a compliant procurement process through the Provider Selection Regime (PSR), which came into force legally from 1st January 2024, for the Long-Acting Reversible Contraception (LARC) service, and for the Emergency Hormonal Contraception (EHC) service.

2. Recommendations

- 2.1. To agree the procurement route for of provision of Long-Acting Reversible Contraception (LARC) service, and the Emergency Hormonal Contraception (EHC) service.
- 2.2. Bracknell Forest currently hosts the contracting of LARC and EHC for the 3 local authorities across Berkshire East (Bracknell Forest, Slough and Royal Borough of Windsor and Maidenhead) and it is proposed that this continues.

3. Reasons for Recommendations

- 3.1. Local authorities commission LARC and EHC services as part of their responsibility for commissioning sexual health services (part of the public health grant functions). LARC includes the fitting and removal of Intra-uterine devices and systems and the EHC service is targeted to women aged 15-24 to ensure provision of a sexual health consultation alongside the provision of emergency contraception. The cost of the services are free to the patients.
- 3.2. These services are offered in addition to the specialist integrated sexual health service provision to increase patient choice in the settings through which patients can access contraception. GPs are the main provider outside of specialist sexual health settings to provide LARC and pharmacies are the main provider commissioned to provide an EHC service. This is because of the staffing and facilities needed to provide these services. These services are intricately linked to the provision in the specialist setting because insufficient provision in either service area could impact patient flows into the specialist setting.
- 3.3. Bracknell Forest Council is the commissioning authority for the specialist sexual health service, and it has been agreed by the Chief Executives of Bracknell Forest Council, Slough Borough Council and the Royal Borough of Windsor and Maidenhead that the current public health shared team functions for leadership, commissioning and contract management of this service area remains in Bracknell Forest. It is on this basis that the Royal Borough of Windsor and Maidenhead and Slough Borough Council have agreed to continue the arrangement with Bracknell Forest Council hosting if Bracknell Forest are willing. This is advantageous all round as the EHC and LARC service provision impacts the flow of patients requiring the specialist service, so having oversight across supports governance and oversight of this service area.

3.4. Local authorities are one of the relevant authorities (RA) required to follow PSR when procuring health care services, irrespective of whether the providers are from the NHS, independent or the voluntary sector. PSR replaced Public Contracts Regulations 2015 when arranging health care services. Services within scope include sexual health services arranged by local authorities.

3.5. While the LARC and EHC primary care services (meaning in primary care settings) have previously been commissioned with primary care providers, the provision through PSR will mean that any provider that meet the requirements can request a Contract (i.e., including both private and community sector providers). Current providers will be notified to register their Expression of Interest on the portal. A Prior Indication Noticed (PIN) will be issued to the marketplace to notify all potential providers of the opportunity.

3.6. The opportunity will be advertised on the following websites:-

- 3.6.1. Find A Tender
- 3.6.2. Contracts Finder
- 3.6.3. South East Business Portal

3.7. The provisions of the Transfer of Undertakings (Protection of Employment) Regulations will not apply on expiry of the current contractual arrangements

4. Alternative Options Considered

4.1. To not complete and leave Berkshire East without a LARC provision is not an option as providing access to contraception is part of the prescribed functions of the local authority grant. Providing access to EHC for women aged 13-24 is important to reduce the risk of teenage pregnancy and encourage adoption of contraception to reduce the risk of unplanned pregnancy.

4.2. Table 1 details the options.

Table 1: alternative options

Options	Advantages	Disadvantages	Recommendation
Do nothing	None. The contract will end without replacement	The services will cease to operate.	Not recommended
Extend current contract via a tender waiver	Maintains service delivery	Service specification updating would not be possible. Non-complaint contract – tender waiver would continue a non-compliant process – with risk of challenge	Not recommended
Tender a framework under PCR 2015	Compliant route in principle. Can issue an updated specification	neither general practice nor pharmacy will tender, so we would lose all service delivery	Not recommended
PSR category B	Compliant process, all possible providers can deliver.	PSR designed to provide a compliant process for	Recommended

	Can issue an updated service specification	multiple providers to deliver health services.	
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5. Supporting Information

- 5.1. No tenders would be completed as these will be direct awards to any and all providers that meet the requirements and wish to deliver LARC and EHC services, in line with PSR Category B requirements on a qualification basis. This means that there will be no qualitative or commercial evaluations required as part of the process.
- 5.2. For LARC, when a Contract is signed, Providers will be required to submit to commissioners the Letter of Competency for the staff able to deliver the service – this is a requirement for all practitioners who deliver LARC.
- 5.3. For EHC, the service provider will have to complete the training required and provide evidence to that effect through the PharmOutcomes portal which will process evidence of all claims.
- 5.4. For both EHC and LARC, providers will also need to evidence they meet requirements for facilities, clinical governance procedures and data governance.
- 5.5. As these Contracts are payable on unit price for services delivered, there is no assessment of provider costs as these are reimbursed at a fixed price, based on the activity, as standard for all providers.

6. Consultation and Other Considerations

Legal Advice

The identified route to market will be compliant with the Healthcare Services (Provider Selection Regime) Regulations 2023 (PSR) and the Council's Contract Standing Orders.
 Alex Gillard Contracts and Procurement Locum Solicitor

Financial Advice

Details of the current budget/costs are contained within the body of the report. It is important to note that this contract operates on an activity-based model meaning costs will be dependent on actual activities undertaken during the contract period. The current and future contract is funded by the Public Health ringfenced grant, the 2024-25 grant allocations were published on the 5th February and the Council has received an uplift of 2.25%.

6.1. Other Consultation Responses Head of Corporate Procurement

The Provider Selection Regime is a new piece of legislation delivering substantial procedural change in how we can procure services, whilst due to its newness we unfortunately lack prior examples or case law that demonstrate and support its application. However the guidance released by central government regarding the application of the PSR has been very clearly written. Based upon the PSR itself and

the current guidance, LARC services do fall under Family Planning services which is within the scope of the PSR – though future case law may adjust this, therefore this should be reviewed under future contract awards.

As the PSR does apply, this provides the potential routes to market allowed for under the PSR. The Category B Direct Award route is to be applied where there are a variety of potential providers, and the intention is to support patients in obtaining individual choice in how they select their own care. The nature of LARC, where an individual can select where they wish to obtain care and where any GP surgery is able to provide that care, meets those requirements.

It should be noted that, as identified by the commissioner, when utilising a Category B Direct Award, we are required to award a contract to any and all providers who express interest in delivering the service, due to the intention to enable patients to freely select their own care. Therefore there will be no restrictions regarding award of this contract.

Within these parameters, this represents a compliant route to market.

Equalities Impact Assessment

- 6.2. EIA screening undertaken and no full screen required (see Appendix A as background paper).

Strategic Risk Management Issues

- 6.3. This is a compliant route to market so procurement risk is minimal.
- 6.4. As any 'eligible' provider can deliver the service the delivery risk is minimal.
- 6.5. The budget is based on out-turn figures which is costed into the Public Health grant. The likelihood of activity for EHC and LARC increasing substantially beyond that forecast is low but could create a cost pressure. Activity and budgets for EHC and LARC are monitored quarterly and regular communication with providers is maintained to encourage timely invoicing and reporting. Any significant changes to activity that may pressure the budgets within a financial year will be reported to the relevant Director of Public Health (whichever local authority the cost pressure was arising in) to explore feasibility within the public health grant. A mitigation would be to prioritize access for service users with greater capacity to benefit from these services, such as those living in more deprived areas who may find alternative means of accessing such services more challenging to access. However this isn't recommended since both LARC and EHC are cost effective interventions that reduce the risk of unplanned pregnancies, which incur health care and welfare service costs. Another mitigating action would be to explore co-commissioning options / funding arrangements with NHS commissioners who would benefit from increases in LARC use in particular such as the Termination of Pregnancy service, maternity services and other local authority services such as 0-19s as the anticipated impact of increased LARC use is reduced pregnancies and reduced live births.

- 6.6. TUPE does not apply so there is no staffing risk.

Climate Change and Ecological Impacts

- 6.7. The recommendations in Section 2 above are expected to:

Have no impact on emissions of CO₂.

The reasons the Council believes that this will have no impact on emissions are that there will be no change to the current delivery model.

Health & Wellbeing Considerations

- 6.6 Not securing continued provision of the LARC and EHC services could impact the number of unplanned pregnancies in Bracknell Forest and would limit patient choice. Since Bracknell Forest Council currently host the contracts for these services for Slough and the Royal Borough of Windsor and Maidenhead, it would also impact this for the communities living in those local authority areas.

Background Papers

EIA screening form (Appendix A).

Contact for further information

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