
Meeting: Children Families & Learning Overview & Scrutiny Committee

Date: 14 July 2009

Subject: **BEDFORDSHIRE AND LUTON PARTNERSHIP NHS TRUST TENDER PROCESS - NEXT STEPS**

Report of: Director of Children Families & Learning

Summary: The report summarises the process and next steps on the proposed 'As Is' transfer of Bedfordshire and Luton Partnership NHS Trust to another NHS organisation.

Contact Officer: Martin Pratt, Assistant Director, Specialist Services (01462 611484)

Public/Exempt: Public

Wards Affected: All

Function of: Executive/Council

RECOMMENDATIONS:

- (a) the committee are asked to note the contents of this report and agree arrangements to ensure that they review progress in relation to new management arrangements for local mental health services later in the year**
- (b) Members are also requested to comment on how best they can continue to engage in this process going forward.**

1. Introduction

- 1.1 This paper relates to the proposed 'As Is' transfer of Bedfordshire and Luton Partnership NHS Trust¹ (the Trust) to another NHS organisation. The need for this transfer follows a decision taken by the board of the Trust that due to a combination of factors, not least internal senior staffing changes and existing service improvement programmes, the Trust would not achieve the deadline of December 2009 set by the NHS East of England for all non Foundation Trusts to be ready for the Department of Health's approval process.

In January 2009 the chair of the Trust approached the NHS East of England with a proposal to seek an existing Foundation Trust to transfer the Trust to ensure that the best possible outcomes could be preserved for the local population.

¹ BLPT provides both health and social care services to individuals with mental health problems and those who have learning disabilities, serving a population of all ages totalling about 566,000.

Table 1

Action	Completed by
Receive Expressions of Interest	24 April 2009
Prequalifying Questionnaire Stage	22 June 2009
Invitation to Tender Returned	24 August 2009
Recommendation of Award	16 September 2009
Contract Award	27 November 2009
Implementation and Transfer	1 December 2009 to 31 March 2010
Service Commencement	1 April 2010

- 1.2 The term ‘As Is’, referred to in 1.1 highlights a commitment on the part of all parties to ensure that the services transferred to the new provider are done so in a safe and timely manner, see Table 1. The transfer of services will be undertaken within the parameters of the existing service contracts and obligations under the s75 Agreement in place between the former Bedfordshire County Council and the Trust.
- 1.3 It is recognised that some areas, notably, areas of social care and inpatient services, delivery of mental health services has in the opinion of the Commissioners (i.e. Central Bedfordshire Council, local authority partners and NHS Bedfordshire) historically fallen short of the contractual obligations. A significant programme of improvement is well underway led by the interim Chief Executive. In these areas the tender process will adopt the principle of specifying services as they “should be” delivered. This approach seeks to ensure that the new provider is clear about the areas where rapid improvement is required and is immediately able to build on the existing service improvement work to bring the underperforming services to a level of delivery that meets the contractual requirement of safe and effective service delivery within the current contract.
- 1.4 Beyond the transfer period, commissioners have signalled a desire to engage in discussions with the new provider about developing and improving mental health and learning disability services into the future. Where appropriate we will engage in formal consultation proceedings in line with local commissioning strategies.
- 1.5 This change will primarily affect the NHS and Local Authority commissioners and population of Central Bedfordshire, Bedford Borough and Luton.
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- 1.6 The project seeks to deliver a number of key objectives that will benefit the people of Central Bedfordshire, Bedford Borough and Luton. Local Authority and NHS Commissioners will be leading the process of both selection and performance management of the new provider. We will ensure that the required outcomes are achieved and report upon the progress of the tender evaluation process and the selection of a new provider who will be required to present their plans to improve services to a meeting of the Children, Families & Learning Overview and Scrutiny Committee towards the end of this year. This will allow members to scrutinize the new arrangements and reassure themselves that both commissioners and the new provider organisation are effectively meeting the specific needs of the local populations.
- 1.7 The principal benefits of this project are:
- The establishment of a Foundation Trust Provider which delivers specialist mental health and learning disability health and social care for the people of Central Bedfordshire, Bedford Borough and Luton
 - Improved Organisational Governance and Learning
 - Synergy benefits and the freeing up of resources to improve direct service delivery
 - Improved safeguarding functions for vulnerable adults and other core functions delegated to the trust by the three local authorities within the context of their section 75 agreements.
- 1.8 Following the request from the Trust board to seek a new provider Foundation Trust to take over the running of their organisation and related contracts, the NHS East of England commenced the process for an NHS only tender, working to the timetable set out in table 1. This is the first time a project of this scale and type has been carried out within the NHS and it essential that the process is fair, clear, transparent and accountable. A governance structure has been established to oversee the project. The project is led by the NHS and the project board is chaired by Sir Neil McKay, Chief Executive of NHS East of England. However, all appropriate measures have been taken to ensure that the needs of the NHS and the three respective Local Authorities are being addressed within the parameters of this process. The Executive Director for Adult Services, Bedford Borough is the lead officer for all three unitary councils receiving mental health services under the current arrangements. Executive officers from Central Bedfordshire and the other parties are key members of the project board in addition to representatives from service user and carer organisations.
- 1.9 The transfer of the Trust's services are seen as an excellent opportunity for the 2 NHS and 3 Local authority commissioners to establish strong working relationships with an established Foundation Trust to ensure that the required standards are provided by the new organisation in a way that ensures the delivery of the respective commissioning strategies.

- 1.10 Under the new arrangements, the commissioners will benefit from having a legally enforceable Foundation Trust contract with a Trust that is committed to providing Quality, Productivity and Cost Effectiveness. It is anticipated that the new provider will be initially offered a three year contract by the NHS and that the 3 local Authorities of Central Bedfordshire Council, Bedford Borough Council and Luton Borough Council will enter into an extension of their section 75 agreements, to allow them sufficient time to evaluate the new providers performance prior to making any longer term commitment.

2. Conclusion and Next Steps

- 2.1 This tender process presents a ground breaking opportunity for the population and commissioners of Central Bedfordshire, Bedford Borough and Luton to seek a new provider of their Mental Health and Learning Disability services. Such a process is anticipated to improve the quality of services provided by the Trust and deliver better value for money for all those involved.

CORPORATE IMPLICATIONS

Council Priorities:

The outcomes of the tender process should make a contribution to the vision to improve the quality of life of all in Central Bedfordshire.

- The National Service Framework for Mental Health and the Mental Health Act 1983 places a joint duty on local authorities and the NHS to provide safe, sound and supportive services which deliver positive outcomes for people suffering from mental ill health and promote their independence and social inclusion.
- This process presents an opportunity for both commissioners and the new provider to refresh their commitment to local and national policy initiatives in relation to mental health and learning disabilities health and social care services.

Financial:

- The process is recognised as resource intensive. A dedicated project team has been put in place to manage most of the project work funded by the NHS. Whilst this process is being led by the NHS East of England and the Trust, there are significant requirements from both NHS and Local Authority commissioners in terms of officer time and specialist legal advice. The Executive Director for Adult Services is the lead officer on this project for Bedford Borough, Central Bedfordshire and Luton and at present is working with officers from the other unitary authorities to ensure that the required work is shared and completed within the available resources. It is, however, possible that specialist legal advice may be required and as yet the costs of this advice are not clear.

Legal:

- The process of securing a new Foundation Trust to take over the Trust will require the establishment of legally binding contracts with the new provider.
- The contracts will take the form of:
 - i. A Transaction Agreement with the New Provider that will govern the transfer of the BLPT undertaking assets and activities to the New Provider; and
 - ii. A Services Contract between Central Bedfordshire, Bedford Borough Council, Luton Borough Council and the New Provider.
- The NHS have taken legal advice to confirm that this initial process if done as an 'As if' transfer does not require a formal consultation as laid down in the Health and Social Care Act 2001 and the NHS Act 2006. However it is the stated aim of the organisations involved to ensure that this is a transparent process with both key stakeholders and the public.
- Appropriate consultation will take place following the appointment of a new provider in respect of future development of mental health services and the delivery methods.

Risk Management:

Given the requirements of this competitive process, prospective providers will need to give a clear commitment to the delivery of the current contractual requirements and to some extent this mitigates the risks to commissioners inherent within such a complex process. This process is not anticipated to increase each commissioner's respective financial exposure from its current baseline.

Staffing (including Trades Unions):

The former Bedfordshire County Council mental health officers were the subject of a Transfer of Undertakings (TUPE) arrangement. BLPT is, therefore, responsible for consultations with staff, including trades unions.

Equalities/Human Rights:

The new provider will be required to comply with all relevant legislation / regulations.

Community Development/Safety:

One of the outcomes of the work should be an improvement in the safety of both patients and the community as standards of service are enhanced.

Sustainability:

There are no direct implications

The following organisations have been consulted by the project team and have contributed to this report:

Bedfordshire and Luton Partnership Trust
NHS Luton
NHS Bedfordshire
Central Bedfordshire Council
Bedford Borough Council
Luton Borough Council
NHS East of England
Service User and Carer Representatives

Background Papers (open to public inspection):

Bedfordshire and Luton Partnership Trust Strategic Outline Case – May 2009
Local Authority Commissioner Requirements for Invitation to Tender Process – July 2009

Location of papers: Priory House, Chicksands