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Meeting:	ICS Board	
Report Title:	ICS approach to Best Value Decision Making	
Date of meeting:	Thursday 9 May 2019	
Agenda Item Number:	6	
Work-stream SRO:	Amanda Sullivan, Accountable Officer, Nottingham and Nottinghamshire CCGs	
Report Author:	Lucy Dadge, Director of Commissioning	
Attachments/Appendices:	None	
Report Summary:		
<p>At the 18 January 2019 meeting of the ICS Board, the Board considered a number of issues raised by Nottingham City Council; including that of Best Value Decision Making when securing sustainable services. The purpose of this short paper is to propose a consistent approach across all parts of the ICS, which can be applied to service changes as appropriate - from major service improvement, through to local supply chain decision-making. The principles sit within the current legislative framework and include criteria such as reducing transactional costs.</p> <p>Approval is requested for this approach, which sets out the expectations of the Strategic Commissioner and the relationship with the ICS to support decision making. The report also asks for agreement for an annual report of major commissioning intentions across the ICS.</p> <p>This approval is subject to the agreed approach being adopted by the CCGs and incorporated into procurement policy.</p>		
Action:		
<input type="checkbox"/> To receive <input checked="" type="checkbox"/> To approve the recommendations		
Recommendations:		
1.	Approve the approach to Best Value Decision Making and support the guiding best practice principles set out in paragraph 7 (subject to consideration by the Governing Bodies of the CCGs).	
2.	Note the legal requirements on statutory bodies in respect of fairness and competition.	
3.	Agree that the Board should receive an annual report to consider in detail the commissioning intentions for the following financial year.	
Key implications considered in the report:		
Financial	<input checked="" type="checkbox"/>	
Value for Money	<input checked="" type="checkbox"/>	
Risk	<input type="checkbox"/>	
Legal	<input checked="" type="checkbox"/>	
Workforce	<input type="checkbox"/>	
Citizen engagement	<input type="checkbox"/>	
Clinical engagement	<input type="checkbox"/>	
Equality impact assessment	<input type="checkbox"/>	



Engagement to date:

Board	Partnership Forum	Finance Directors Group	Planning Group	Workstream Network
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Performance Oversight Group	Clinical Reference Group	Mid Nottinghamshire ICP	Nottingham City ICP	South Nottinghamshire ICP
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Contribution to delivering the ICS high level ambitions of:

Health and Wellbeing	<input checked="" type="checkbox"/>
Care and Quality	<input checked="" type="checkbox"/>
Finance and Efficiency	<input checked="" type="checkbox"/>
Culture	<input checked="" type="checkbox"/>

Is the paper confidential?

- ☐ Yes
☒ No

Note: Upon request for the release of a paper deemed confidential, under Section 36 of the Freedom of Information Act 2000, parts or all of the paper will be considered for release.



ICS approach for Best Value Decision Making

9 May 2019

Introduction

1. There are a range of different approaches currently deployed across the ICS to ensure Best Value Decision Making when securing sustainable services; including the use of the Social Charter, and other approaches taken by the Local Authorities and CCGs. The NHS Long Term Plan published in January 2019 proposes that the regulations made under section 75 of the Health and Social Care 2012 should be revoked and the power in primary legislation under which they are made should be repealed and replaced by a best value test. This would allow NHS commissioners to choose either to award a contract directly to an NHS provider or to undertake a procurement process, with the aim of ensuring good quality care and value for money.
2. The purpose of this report is to recommend a consistent approach to commissioning decision-making across the health and care system; to seek the ICS Board's approval to adopt the principles; and commit to holding the system to account for delivery against these principles at each level of decision making in the ICS.
3. The approach requires that:
 - a. Benchmarking against Best Value Decision Making is undertaken to determine the most appropriate route to awarding contracts for new services. This will be set in the context of the current legislative framework.
 - b. Specifications, describing the way services are to be provided and the outcomes required, are to include enhanced aspects relating to social value
 - c. The ICS Board will ensure that strategic commissioning decisions in health and care are consistently set in the context of these principles for the delivery against both these elements.

General Approach

4. The Strategic Commissioners will develop and agree the desired population health and care outcomes for the system (and associated commissioning intentions) with the ICS Board on a periodic basis. The purpose of this report is to establish the role of the ICS Board in setting the parameters through which decisions are made, with specific reference to ensuring a more consistent approach to Best Value Decision Making. There are two components to this, delivered through the Strategic Commissioner:
5. Firstly, for significant service change the Strategic Commissioner will develop a process for undertaking benchmarking and best value assessment exercises in advance of deciding whether a procurement process is the optimal approach to deliver the desired population health outcomes. This will then be reviewed in the context of the prevailing legislation. This will be



adapted for any changes to the outcomes required. This benchmarking will assess the market provider landscape, innovation, the nature of need in the area and the volume of need, as well as the performance of the provider as compared to others in the marketplace.

6. The outcome of the benchmarking and legislative review will inform whether an open-market procurement route is required, or whether there are opportunities to vary current arrangements with an existing NHS or Local Authority provider to deliver.
7. Secondly, it is proposed that there is an enhancement to the range of best practice principles considered for inclusion into new service specifications as appropriate. These will be used consistently across the health and care system. The areas that may be included are listed below and there is no intended hierarchy. Possible weightings will be applied on a case by case basis to suit the desired population health outcomes:

Guiding Best Practice Principles

ECONOMIC: Supporting the local economy

- Increase spend within the local economy
- Create employment and training opportunities for citizens
- A strong and diverse local market

SOCIAL: Citizens at the heart of what we do

- Deliver safe, quality and innovative services that meet citizens' needs
- Secure social and community benefits
- Inclusive growth - Tackling deprivation, promoting social inclusion and improving health and wellbeing

ENVIRONMENTAL: Sustainable and responsible

- Air quality and climate change
- Resource efficiency, waste reduction and recycling
- Biodiversity, nature conservation and greening
- Source innovative and sustainable green solutions

Decision-making and Transparency

8. In terms of the ICS Board, there is an expectation that the ICS will guide the strategic direction of the system and where necessary make recommendations to the constituent organisations where this improves outcomes for the population. There are areas where collective agreement is already required (for example the System Control Total for NHS bodies) but it not anticipated that individual decisions around commissioning activities will be subject to that unanimous process.
9. It is appropriate that the ICS Board oversees and confirms commissioning intentions across the Nottingham and Nottinghamshire whilst respecting the role of the CCGs and the local authorities who have the statutory



responsibility for commissioning for their respective populations. It is also the case that the Health and Social Care Act 2012 gave Health and Wellbeing Boards (HWBs) a statutory role in reviewing CCG commissioning plans. This means that CCGs must liaise with the HWBs when preparing or making significant revisions to their commissioning plans, and to provide Boards with a draft plan. The HWB opinion on the final plan must be published with the commissioning plan. The HWB can refer the plan to NHS England if it thinks the Joint Health and Wellbeing Strategy is not being taken account of properly and must be consulted by NHS England when the annual performance of each CCG is drawn up. This is an area where the ICS and HWBs need to work closely together.

10. In addition to the Best Practice Principles above it is important to be aware of the constraints to any collective decision-making. The recent report to the City Council (16th April) spells out some of the legal constraints.

11. It is currently not legally possible to prevent any organisation from tendering for services. The CCGs and other entities who commission in the health sector are subject to the same procurement rules as the local authorities. Those rules are set out in the Public Contracts Regulations 2015 (the 'Regulations'). Health services are subject to the 'light touch regime' within the Regulations which gives greater flexibility to commissioners however there is an overriding principle in the Regulations that all suppliers must be treated equally. That prevents the ability to discriminate on the basis of legal status. It would not be possible to exclude from a procurement process suppliers on the basis that they are private companies.

12. The City Council report (16th April) goes on to say: -

"it is not possible to have an absolute veto on privatisation ...there is some flexibility in the Regulations. The financial threshold at which a contract for services is caught by the light touch regime and requires a competitive tender process is currently £615,278. Below that threshold level a contract for services does not have to be competitively tendered and can be the subject of a direct award. In addition the Regulations provide for the ability to reserve some contracts to qualifying organisations - essentially social enterprise but the scope is limited and subject to restrictions on duration of the contract.

Proposals to give greater flexibility for commissioners in the NHS are being considered which could give the ability to make direct awards which would assist in the selection of providers, although this seems to only apply to NHS providers not social enterprises and other entities that provide NHS services. (Ref: "Implementing the NHS Long Term Plan – proposals for possible changes to legislation", February 2019)."

13. The intention on the part of the ICS is to be transparent about the decision-making process that determines what needs to be commissioned on behalf of the population, what process is being followed to determine how it is being commissioned and the outcome and impact of commissioning decisions and



the award to contracts. For the ICS Board this must be at the level of the system rather than individual organisations or at a local level. A legal review of the Terms of Reference of the ICS Board is underway and this will provide clarity on the scope of powers that can be exercised.

14. In order to enhance transparency in this area it is proposed, that on an annual basis the Board receives a report on the major commissioning intentions across the system and the estimated value and the impact of any changes. The initial report should provide a summary of the balance of spend on different services across the health and social care system. This will help to provide clarity across the constituent organisations and greater confidence amongst stakeholders and the public. It would be the intention to align this report with the consideration and agreement of the system control total and operational plans for the NHS so that there is agreement across the whole system to these crucial plans.

Benefits of the Proposed Approach

15. Moving towards a more holistic, best value, approach for commissioning new services will drive a number of benefits e.g.
- a) Consistency of approach across the ICS and ICPs
 - b) Alignment with the future developments indicated in the NHS forward plan
 - c) Clarify the decision-making oversight of the approach to commissioning and procurement that will be provided by the ICS Board
 - d) Support stability and quality of provision for our local population, both public and private

Next steps

16. If agreed, the CCGs will take due consideration of the proposals and how when they can be incorporated in to Commissioning policies. A further report to the Board will confirm the implementation date.

Recommendations

The Board are asked to

- 1. Approve the approach to Best Value Decision Making and support the guiding best practice principles set out in paragraph 7 (subject to consideration by the Governing Bodies of the CCGs).
- 2. Note the legal requirements on statutory bodies in respect of fairness and competition.
- 3. Agree that the Board should receive an annual report to consider in detail the commissioning intentions for the following financial year.



**Integrated
Care System**
Nottingham & Nottinghamshire



**Nottingham
City Council**



**Nottinghamshire
County Council**



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