

Supporting Information

Reasons for the direct award of the Swindon Adult Community Services contract to Great Western Hospital Foundation Trust, covering February 2022 to February 2024.

Great Western Hospital NHS Foundation Trust (GWH) has been delivering Adult Community Health Services in Swindon since 2016, when it won the contract following a public procurement (OJEU reference 2016/S 054-090583). The current contract is due to end in February 2022.

Although Bath & North East Somerset, Swindon and Wiltshire (BSW) CCG is the lead commissioner, Swindon Borough Council (SBC) are also a co-commissioner to the contract, with some services delivered to support SBC needs (to the value of around £1m per year). The total combined value of the contract is £19.7m per year, or just under £40m over the two-year period.

After careful consideration, on 13 July 2021, the CCG made a decision to re-let the Swindon Adult Community Health Services contract to GWH for a further 2-year period until February 2024. On 1 December 2021, SBC made the decision to re-let their element of the contract for Swindon Adult Community Health Services to GWH for a further 2-year period until February 2024.

Use of the negotiated procedure without prior publication under Regulation 32 of the Public Contracts Regulations 2015 has been relied on due to reasons of extreme urgency that were unforeseeable by the contracting authority and due to competition being absent for technical reasons.

The Covid-19 pandemic has created exceptional circumstances leading the CCG and SBC to be unable to run a thorough and effective re-commissioning process for Adult Community Services in Swindon. The issues thrown up by the pandemic were unforeseeable to the CCG and SBC. Given that there is an urgent need to ensure Adult Community Services coverage from February 2022, and no time to run a full re-commissioning process by then, the CCG and SBC are relying on Regulation 32(2)(c) to make a direct award to the incumbent provider for the next two years while the CCG's future plans are able to be designed and commissioned. We have summarised exceptional circumstances that have given rise to the current urgency below:

- The Covid-19 pressures in Swindon have not only been significant but enduring. When most areas were recovering from Wave 1 Covid in May 2020, Swindon services were under winter-level pressures until June 2020.
- In August and September 2020, Swindon became a national area of concern following sustained Covid outbreaks in the community
- From November 2020 to February 2021, our local hospital and all other services came under severe pressure with a major critical incident declared in mid-January 2021 to support our response.

Understandably, in the context of our Covid-19 service pressures great care has been taken in Swindon to balance service delivery with not distracting the attention of our partners into a procurement process by pursuing our obligations to begin work on re-commissioning this contract.

During the period of the Covid response the CCG (as with all others across the country) was operating under guidance from NHS England around the suspension of normal business operations. This guidance supported our decision to defer the re-commissioning work:

NHS E letters published on 28 March 2020 & 6 July 2021 (ref: 0001559) confirmed that all efforts should be focussed on the Covid response and that performance monitoring/reporting and wider commissioning business as usual activities would be suspended or significantly reduced during this period.

Considering these directions, the re-commissioning process for the Services could not be started in 2020 as would have otherwise been the case. With the subsequent easing of the Covid pressures work re-commenced in 2021 on our re-commissioning options, resulting ultimately in the decision to directly award the contract for a further 2 years given the fact that there was insufficient time to commence a full re-commissioning process.

In addition, there are technical reasons related to the current management of the contracts that meant that it is currently not possible to put the opportunity out to procurement and so the CCG and SBC are also relying on Regulation 32 (2)(b)(ii) to re-let the contract to GWH.

As part of enabling the NHS response to Covid, in April 2020 all contracts with acute health NHS trusts were put into national block payment arrangements co-ordinated by NHS England (NHS E). In effect this has made NHS E the temporary contract holder for these services; these arrangements remain in place until March 2022. Equally, as part of the suspension of normal business and the move to block contract arrangements, performance reporting and contract monitoring meetings were suspended by the CCG in March 2020.

Touchpoint meetings have been set up with the BSW CCG's local Acutes which started in November 2021.

The challenge for the CCG has been that by virtue of being an integrated service with the acute trust, the Community Services financial and contract monitoring arrangements have also been moved into the NHS E national block arrangements. This means the CCG does not currently have a standalone financial breakdown for community services, nor do they hold the latest contract information – as a consequence they are unable to properly scope the services that they may wish to take to the market, nor enable new or the existing providers to run due diligence checks.

The CCG has also had regard to its obligations under the NHS (Procurement, Patient Choice and Competition) (No 2) Regulation 2013 and is of the view that GWH is the provider best placed to deliver the service, improving the quality of the services and improving efficiency in the provision of the service. In this respect, the CCG considered, amongst other things, the following points about the performance of the provider:

- The financial performance of the Adult Community Health Services contract has been stable since it was first let in 2017, despite increasing demand for services. Adult Community Health Services benefit greatly from being an integrated provider within GWH through shared back-office support and clear governance and quality assurance arrangements. An assessment of value for money has been undertaken by comparing the total spend on Adult Community Services across Swindon, BaNES and Wiltshire in 2019/20, 2018/19 and 2017/18 relative to their population sizes. The spend with GWH in Swindon represented ~21% of the total spend on Community Services across BSW, whereas Swindon represents ~25% of the population of BSW.

- GWH Adult Community Health Services are a strong performing provider. The Governing Body reviewed performance data for 2019/20 and noted strong performance across 6 (of 8) Key Performance Indicators (KPIs) covering chronic disease management, urgent response and patient

flow being fully met. The 2 remaining KPIs (relating to Community Parkinson's Nurse service and Community Matron Length of Stay) were on target for achievement in 2020/21.

- A report from the CCG's quality team noted that despite the unprecedented demand due to Covid-19 pandemic, GWH Adult Community Health Services had continued a priority focus on quality improvement, implementing a number of improvement projects across both the Acute and Community directorates. These projects are demonstrating excellent improvements for the people of Swindon, improving efficiency in the provision of service and improving the quality of service and are reducing patient harms and improving patient outcomes.

- There have been significant innovations by the service to respond to new ideas and needs. These include the SELECT service for End of Life Care, Discharge to Assess arrangements (which supported the national guidance development in this area), Virtual Ward and the establishment of Weekly Multi-Disciplinary Teams (MDT).

GWH is performing well and is a proactive and innovative partner within the Swindon Integrated Care Alliance.

This process is being managed by NHS South, Central and West Commissioning Support Unit (SCW) on behalf of the CCG and SBC.

1. Background and context

Swindon's Adult Community Health services were last tendered in 2016 through an OJEU competition process. The procurement process was initiated as the contract with the incumbent provider (SEQOL) was coming to the end of its term.

Great Western Hospital Foundation Trust (GWH) bid for the services and won. Only two bidders came forward for the procurement, SEQOL and GWH; SEQOL submitted a bid but withdrew from the process prior to the preferred bidder stage due to insolvency concerns. Prior to the tender, extensive soft market testing had taken place with a range of providers who in the end did not submit a bid.

The contract was let for three years with a possible extension of up to 24 months. The extension has already been enacted and the full contract is due to end in February 2022.

The success of the GWH bid rested on the innovative integrated provider model they proposed, linking acute and community services whilst maximising the benefits of shared clinical and corporate support functions.

Although Bath & North East Somerset, Swindon and Wiltshire (BSW) CCG is the lead commissioner, Swindon Borough Council (SBC) are also a co-commissioner to the contract, with some services delivered to support SBC needs (to the value of around £1m per year). The total combined value of the contract is £19.7m per year, or just under £100m over the 5 years.

2. Direct Award of this contract - what have we agreed?

After careful consideration the CCG's Governing Body have agreed to re-let the Adult Community Health Services contract to GWH **for a further 2 years to February 2024**. This decision is based on an exceptional set of circumstances, the performance of the current provider and a public interest test.

The decision was also considered in line with formal exemptions available in the Public Contracts Regulations 2015 (PCR) guidance, and specifically that there are technical reasons related to the current management of the contracts that means the CCG is not able to put the opportunity out to procurement. The CCG is therefore relying on Regulation 32 (2)(b)(ii) and 32(c) of the PCR (unforeseen urgency and the absence of competition for technical reasons) to re-let the contract to GWH.

3. How does procurement law apply?

The services are healthcare services falling within Schedule 3 to the PCR, and are not subject to the full regime of the Regulations but are instead governed by the "Light Touch Regime" contained within Chapter 3, Section 7 of the Regulations (Regulations 74 to 77). The CCG has fully considered its obligations in relation to this sub-set of the PCR in coming to the reasoned conclusion that there are technical reasons meaning that it is currently not possible to put the opportunity out to procurement. For this reason, the CCG is seeking to rely on Regulation 32 (2)(b)(ii) and 32(c) of the PCR – namely unforeseen urgency and that competition is absent for technical reasons.

The CCG has also had regard to its obligations under the NHS (Procurement, Patient Choice and Competition) (No 2) Regulation 2013 and is of the view that GWH is the provider best placed to deliver the service, improving the quality of the services and improving efficiency in the provision of the service.

4. Why are you awarding for 2 years?

A 2-year term was agreed rather than 1 year or 3 *or more* years for the following reasons:

- A 1-year term would not have provided sufficient time to consider the impacts of the national changes to procurement regulations or the implications of the new Health & Care Bill currently making its way through parliament. In reality, a 1-year term would mean having to commence the full re-commissioning process in July 2021 in order to be ready to let a new contract by February 2023. This would be very de-stabilising for Swindon Integrated Care Alliance and would have affected our preparations and resilience going into winter 2021/22, which is widely expected to place significant pressures on NHS services.
- Terms of 3 or more years were considered to be too limiting to the flexibility of the CCG (and subsequently the BSW NHS ICS Body) to consider further changes or opportunities that will arise from the Health & Care Bill changes.
- A 2-year term was therefore considered to provide the right balance between: time to consider the implications of the upcoming changes; maintaining a sufficient degree of stability for partners; ensuring flexibility for commissioners; and for re-assuring the provider market that we are committing to review the situation in the new regulatory environment.

5. Why has this contract been directly awarded?

One of the key reasons is exceptional circumstances created by the Covid pandemic. We have summarised these reasons below:

Covid-19 impact & system pressures in Swindon

- The Covid-19 pressures in Swindon have not only been significant but enduring. When most areas were recovering from Wave 1 Covid in May 2020, Swindon services were under winter-level pressures until June 2020.
- In August and September 2020, Swindon became a *national area of concern* following sustained Covid outbreaks in the community
- From November 2020 to February 2021, our local hospital and all other services came under severe pressure with a major critical incident declared in mid-January 2021 in order to support our response.

Understandably, in the context of our Covid-19 service pressures great care has been taken in Swindon to balance service delivery with not distracting the attention of our partners into a procurement process or with pursuing our obligations to begin work on re-commissioning this contract.

Covid-19 impact – suspension of business as usual national guidelines

During the period of the Covid response BSW CCG (as with all others across the country) was operating under guidance from NHS England and the Cabinet Office around the suspension of normal business operations. This guidance supported our decision to defer the re-commissioning work:

- NHS E letters published on 28 March 2020 & 6 July 2021 (ref: 0001559) confirmed that all efforts should be focussed on the Covid response and that performance monitoring/reporting and wider commissioning business as usual activities would be suspended or significantly reduced during this period.
- the Cabinet Office published a series of Procurement Policy Notes (PPNs) advising contracting authorities and providers that normal contracting and procurement practices could be re-considered, and more recently, guiding us to act proportionately in order to enable us to prioritise the Covid-19 response (refs: [PPN 01/20: Responding to Covid-19](#); [PPN 04/20: Recovery and Transition from Covid-19](#); and [PPN 01/21 – Procurement in an Emergency](#)).

In light of these directions, the re-commissioning process for the GWH Adult Community Health Services was not started in 2020 as we would otherwise have planned. With the subsequent easing of the Covid pressures work re-commenced early in 2021 on our re-commissioning options, resulting ultimately in the agreement to directly award the contract for a further 2 years.

Covid-19 impact – changes to financial and reporting arrangements

Another important consideration for the CCG has been whether we could run an effective re-commissioning process following the suspension of normal contracting arrangements.

As part of enabling the NHS response to Covid, in April 2020 all contracts with acute health NHS trusts were put into national block payment arrangements co-ordinated by NHS England (NHS E). In effect this has made NHS E the temporary contract holder for these services; these arrangements remain in place pending a full national review (Sept 2021). Equally, as part of the suspension of normal business and the move to block contract arrangements, performance reporting and contract monitoring meetings were suspended by the CCG in March 2020 and will last until March 2022.

The challenge for the CCG has been that by virtue of being an integrated service with the acute trust, the Community Services financial and contract monitoring arrangements have also been moved into the NHS E national block arrangements. This means a CCG we don't currently have the detailed financial breakdown for community services, nor do we hold the latest contract information – as a consequence we currently can't properly scope the services that we might wish to take to the market, nor enable new or the existing providers to run due diligence checks.

In other words, with this national development alone – regardless of all the other considerations we would want to take into account – the CCG is currently unable to run a thorough and effective re-commissioning process.

6. Are there other exceptional circumstances?

Yes. As part of the Health & Care Bill (2021) now passing through parliament there will be sweeping changes to the NHS Provider Selection Regime. Based on a national consultation document published in February 2021 (further details below) we expect the new rules to remove the legal requirement to automatically require the re-tendering of NHS commissioned-NHS provided services. Such changes are seen as essential for removing the barriers to integrated working and the bureaucratic burden of competition and tendering (key goals of the changes proposed in the Health & Care Bill).

BSW CCG believes it is in the public interest to directly award the contract with GWH **for a limited period** to enable a deeper understanding of the implications and opportunities arising from these changes and further, that it would be wasteful to undergo a lengthy procurement process just as the new rules come into force.

Further information on the proposals in the NHS Provider Selection Regime (Feb 2021) consultation document

NHS England's consultation document *NHS Provider Selection Regime* gives clear indications about the direction of travel for changes to the procurement rules. The following extracts which are highly relevant in the context of the CCG's direct award decision, are taken from the document:

- *1.6 In future, we want competitive tendering to be a tool that the NHS can choose to use where it is appropriate, rather than being an imposed, protracted process that hangs over all decisions about arranging services, drives competitive behaviour where collaboration is key and creates barriers where integrating care is the aim.*
- *1.7 Our proposed regime therefore provides significantly more flexibility than before to make decisions about arranging care in a streamlined way, including without competitive tendering, where this can be shown to be in the best interests of patients, taxpayers and the population.*

- *2.3 The main reason that the current procurement rules are so unhelpful in the NHS is that, combined with other policies and provisions of the Health and Social Care Act 2012, they can sometimes create an expectation that nearly all contracts for NHS services should be advertised and awarded following a competitive tendering exercise. This can create continual uncertainty, upheaval and disruption among providers.*

The guidance also contains the following section about transitional arrangements:

- *2.4 As we move away from this model, we want to make it straightforward for the system to continue with existing service provision where the arrangements are working well and there is no value in seeking an alternative provider. And, where the system wants or needs to consider making changes to service provision, we want there to be a flexible, sensible, transparent and proportionate process for decision-making that allows shared responsibility to flow through it, rather than forcing the NHS into pointless tendering and competition.*

We expect new rules to come into force in April 2022 with organisations preparing for the changes in the months leading up to this point.

7. Is the current provider performing well enough to retain this contract for 2 further years?

Yes. To support the decision around the direct aware we carried out a full assessment of the current provider, assessing financial performance, performance against key targets and quality and safety indicators. The following are some of the key findings of this assessment which provide assurance about the performance of the provider:

- The financial performance of the Adult Community Health Services contract has been stable since it was first let in 2017, despite increasing demand for services. Adult Community Health Services benefit greatly from being an integrated provider within GWH through shared back-office support and clear governance and quality assurance arrangements. An assessment of value for money has been undertaken by comparing the total spend on Adult Community Services across Swindon, BaNES and Wiltshire in 2019/20, 2018/19 and 2017/18 relative to their population sizes. The spend with GWH in Swindon represented ~21% of the total spend on Community Services across BSW, whereas Swindon represents ~25% of the population of BSW.
- GWH Adult Community Health Services are a strong performing provider. The Governing Body reviewed performance data 2019/20 and noted strong performance across 6 (of 8) Key Performance Indicators (KPIs) covering chronic disease management, urgent response and patient flow being fully met. The 2 remaining KPIs (relating to Community Parkinson's Nurse service and Community Matron Length of Stay) were on target for achievement in 2020/21.
- A report from the CCG's quality team noted that despite the unprecedented demand due to Covid-19 pandemic, GWH Adult Community Health Services had continued a priority focus on quality improvement implementing a number of improvement projects across both the Acute and Community directorates. These projects are demonstrating excellent improvements for the people of Swindon, and are reducing patient harms and improving patient outcomes.

- The Swindon Adult Community Health Services were last inspected by the Care Quality Commission (CQC) in 2018 in relation to adult services, inpatient services and end of life care. Each service area received a rating of 'Good' across all key questions in relation to the core domains measured by CQC, namely *safe, effective, caring, responsive* and *well-led*.
- The Governing Body also noted significant innovations by the service to respond to new ideas and needs. These include the SELECT service for End of Life Care, Discharge to Assess arrangements (which supported the national guidance development in this area), Virtual Ward and the establishment of Weekly Multi-Disciplinary Teams (MDT)

8. Is this decision in the public interest?

A public interest test was considered by the CCG and it was agreed that the direct award of the contract for 2 years maintained the right balance between sustaining the resilience of a key provider at a crucial time, whilst not over-committing our successor organisations to a decision that cannot be reviewed within a reasonable period.

The incumbent provider is performing well and is a proactive and innovative partner within the Swindon Integrated Care Alliance. Our view is that running a full re-commissioning process at this time would not be in the public interest – it would be costly, time consuming, disruptive to delivery at a time of great pressure, and would unduly interrupt the progress of service development.

Additionally, it was considered that such a re-commissioning process may be unnecessary in the new Integrated Care System environment, rendering a lengthy process now a waste of public funds. At the very least, it was agreed that it would be in the public interest to extend this contract for a limited period to maintain service delivery during the critical period of pandemic recovery and in order to better understand the implications and requirements of the Health & Care Bill and associated regulatory changes.

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