

## Legal Comments/Advice

### **Re: Acceptance of ICB Funding and Use of PHG to fund DACT/ Modification of Community Substance Treatment and Recovery Service Contract to add in the DACT service and funding**

It is understood time-limited funding for the purposes of the provision of DACT services is to be allocated to NCC by the ICB. This would be utilised alongside Public Health Grant (PHG) money to fund the new DACT services under the umbrella of the existing, Community Recovery & Treatment Services for Adults who use Alcohol & Drugs, contract recently procured and awarded to Nottingham Recovery Network (NRN) ("The NRN Contract").

The NCC element of the funding comprises Public Health Grant money, the grant must be used only for meeting eligible expenditure incurred or to be incurred by local authorities for the purposes of their public health functions as specified in Section 73B (2) of the National Health Service Act 2006 ('the 2006 Act'). This obligation stems from the s31 Local Government Act 2003 Grant Agreement NCC will have entered into to secure the provision of the PHG funding from the DHSC.

The functions mentioned in that subsection are:

- (a) functions under section 2B, 111 or 249 of, or schedule 1 to, the 2006 Act
- (b) functions by virtue of section 6C of the 2006 Act
- (c) the Secretary of State's public health functions exercised by local authorities in pursuance of arrangements under section 7A of the 2006 Act
- (d) the functions of a local authority under section 325 of the Criminal Justice Act 2003 (co-operating with the police, the probation service and the prison service to assess the risks posed by violent or sexual offenders)
- (e) such other functions relating to public health as may be prescribed.

Other obligations/ conditions under the Grant Agreement/s will include annual end of year reporting expectations, financial an external audit management arrangements and record keeping. Failure to comply with the conditions will risk clawback of the grant from the Authority. To ensure continuing grant condition compliance when spending the grant, the Authority will need to ensure that the relevant Grant Agreement conditions are cascaded down into future sub – grant agreements and that contracts and modified contracts with third parties have sufficient contractual safeguards to ensure NCC can comply with the PHG Grant Agreement obligations .

The ICB funding will need to be secured under a similar grant agreement to the PHG. That funding agreement will have similar obligations to the s31 PHG Grant Agreement, that will need to be abided by. As stated above, failure to ensure compliance with the obligations will risk clawback of the funding by the ICB. The ICB funding agreement will need to be entered into as a prerequisite to the commitment to spend the money on the service in question through the proposed contact variation/ modification.

The variation/ further variations to the NRN contract, will need to take place in accordance with the modification procedures set out in the contract. As the DACT qualifies as an in-scope relevant health care service, under the Health Care Services (Provider Selection Regime) Regulations 2023 and associated statutory guidance (to which the Authority must have regard), notwithstanding that the contract was originally procured under the Public Contract Regulations 2015, modifications may be dealt with under the Health Care Services (Provider Selection Regime) Regulations 2023.

A relevant “relevant” health care service is a service that:

- is provided as part of the health service, whether NHS or public health
- consists of the provision of health care to individuals or groups of individuals
- falls within one or more of the specified CPV codes.

Under regulation 13(1)(d) of these regulations, modification is permissible if the modification is attributable to a decision of the Authority and does not materially alter the character of the contract and the cumulative change in the lifetime value of the contract or framework agreement since it was entered into or concluded is—

- (i) below £500,000; or
- (ii) less than 25% of the lifetime value of the original contract when it was entered into or concluded.

As the Health Care Services (Provider Selection Regime) Regulations 2023 only came into force, alongside Statutory Guidance, on the 01.01.2024, absent any case law or other guidance on the meaning of the ‘lifetime value of the contract’ this has been interpreted by the Authority’s Legal and Procurement service as meaning the previously advertised maximum value of the contract. As the NRN contract advertised value was up to £83,818,475 when it was entered into and concerned drug treatment and recovery support in a primary care setting, the addition of up to £5523,477 in the period specified, would not materially alter the character of the contract, and comprise a within threshold cumulative change in the lifetime value of the contract since it was entered into. The modifications/s would therefore be permissible under regulation 13(1)(d) of the PSR Regulations 2023 in these circumstances.

NB any modification over and above those set out above must not exceed 25% cumulatively. This will require careful contract and financial management by the relevant commissioning department.

Notice of any modification under regulation 13(1)(d) valued at £500,000 or more must be published on the e-modification service within 30 days of the modification and in the form set out in Schedule 12 to the regulations, for reasons of transparency.

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21.02.2024