

Legal Comments/ Advice Re:

Grant funding for the provision of advice and assistance for people in financial difficulty to improve health and wellbeing outcomes

Value: £406,000

It is understood the Local Authority (LA) wishes to award time-limited funding (for the period 1 April 2024 to 31 March 2025) utilising ringfenced Public Health Grant (PHG) money for provision of advice and assistance to citizens experiencing or at risk of harm to their physical and mental health, social and economic wellbeing from financial difficulty, by a consortium of private charities and community organisations (known collectively as Advice Nottingham and lead by Citizens Advice Nottingham & District).

The funding comprises Public Health Grant money. This grant can be used for both revenue and capital purposes, but the LA must ensure it is 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 the above 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.

Local authorities (upper tier and unitary) are statutorily responsible for improving the health of their local population and reducing health inequalities, under Section 2B of the National Health Service Act 2006. This section provides that each local authority must take such steps as it considers appropriate for improving the health of the people in its area.

The steps that may be taken include—

- (a) providing information and advice;
- (b) providing services or facilities designed to promote healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way);
- (c) providing services or facilities for the prevention, diagnosis or treatment of illness;
- (d) providing financial incentives to encourage individuals to adopt healthier lifestyles;
- (e) providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment;

(f) providing or participating in the provision of training for persons working or seeking to work in the field of health improvement;

(g) making available the services of any person or any facilities.

The steps that may be taken under subsection (1) also include providing grants or loans (on such terms as the local authority considers appropriate).

A local authority may use the Public Health Grant to contribute to a fund made up of:

(a) contributions by the authority from both the public health grant and other sources of funding - for example, from other local authority funding, or from payments made by a private sector or civil society organisation; or

(b) contributions by the authority and one or more of any of the following bodies, provided the conditions specified in the Act are met:

(i) another local authority

(ii) an NHS or other public body

(iii) a private sector or civil society organisation

The conditions referred to above are that:

(a) the fund must be one out of which payments are made towards expenditure incurred in the exercise of, or for the purposes of, the functions described in Section 73B (2) of 'the 2006 Act'.

(b) if payments are made out of the fund towards expenditure on other functions of a local authority or the functions of an NHS body, other public body, or a private sector or civil society organisation, the authority must be of opinion that those functions have a significant effect on public health or have a significant effect on, or in connection with, the exercise of the functions described in Section 73B (2) of 'the 2006 Act'.

(c) the authority must be satisfied that, having regard to the contribution from the public health grant, the total expenditure to be met from the fund and the public health benefit to be derived from the use of the fund, the arrangements provide value for money

A local authority must, in using the grant:

- have regard to the need to reduce inequalities between the people in its area with respect to the benefits that they can obtain from that part of the health service provided in exercise of the functions referred to in Section 73B (2) of 'the 2006 Act'
- have regard to the need to improve the take up of, and outcomes from, its drug and alcohol misuse treatment services, based on an assessment of local need and a plan which has been developed with local health and criminal justice partners.

Pursuant to section 31(4) of the Local Government Act 2003 the Secretary of State has attached conditions to the payment of the Public Health Grant to Nottingham City Council, which are set out at Annex A of the agreement with the Department of Health and Social Care (DHSC). Greater detail on the obligations that the Council must comply with in using the grant are specified here:

<https://www.gov.uk/government/publications/public-health-grants-to-local-authorities-2023-to-2024/public-health-ring-fenced-grant-2023-to-2024-local-authority-circular - annex-a>

[determination-under-section-31-of-the-local-government-act-2003-of-a-ring-fenced-public-health-grant-to-local-authorities-for-2023-to-2024](#)

The DHSC's presumption is that the grant will be spent in-year. If at the end of the financial year there is any underspend, local authorities may carry these over, as part of a public health reserve, into the next financial year. In using those funds the next year, local authorities will still need to comply with the grant conditions. The department may consider reducing future grant amounts to local authorities that report significant and repeated underspends.

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 relevant Grant Agreement conditions are cascaded down into future sub – grant agreements with third-party organisations to ensure sufficient contractual safeguards are in place to ensure LA can comply with the PHG Grant Agreement obligations. To comprise a grant agreement, as opposed to a service contract, any grant agreement should document / confirm that there will be minimal obligations on the recipient to achieve the intended objectives /actually use the money for the purposes and that there is no liability arising to the Council from a failure to do so but there is simply an expectation that funding will be clawed back if it is not used or used inappropriately e.g :

- Misuses the grant.
- Fails to comply with the terms and conditions of the grant agreement.
- Acts negligently in delivering the project.
- Obtains duplicate funding from a third party.
- Provides the funder with misleading or inaccurate information.
- Commits fraud or bribery.
- Ceases to operate, is wound up, dissolved or becomes insolvent

It is understood that the consortium of organisations to be provided with the funding is led by a charitable company, Nottingham & District Citizens Advice Bureau, authorised and regulated by The Financial Conduct Authority as a registered charity no: 701259 and who's charitable purposes are:

BENEFIT OF THE COMMUNITY IN THE CITY AND COUNTY OF NOTTINGHAM BY THE ADVANCEMENT OF EDUCATION, THE PROTECTION AND PRESERVATION OF HEALTH AND THE RELIEF OF POVERTY, SICKNESS AND DISTRESS.

The decision maker must ensure there is alignment between the uses the source of funding can be put to and the purposes/ objectives of the organisations and their use of the funds.

It is understood that the consortium of organisation are not economic enterprises for the purposes of the Subsidy Control Act 2022 and its associated regime and the grant would not comprise a subsidy as the ringfenced grant is being given to a charity/ civil society organisation for their non-economic activities.

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