

## EXECUTIVE BOARD – 16<sup>th</sup> April 2019

<b>Subject:</b>	Nottingham City Council suspension from within the Nottingham and Nottinghamshire Integrated Care System (ICS)
<b>Corporate Director(s)/Director(s):</b>	Ian Curryer, Chief Executive; Alison Michalska, Corporate Director for Children and Adults
<b>Portfolio Holder(s):</b>	Councillor Sam Webster, Portfolio Holder for Adult Social Care and Health
<b>Report author and contact details:</b>	Colin Monckton, Director of Strategy and Policy <a href="mailto:Colin.monckton@nottinghamcity.gov.uk">Colin.monckton@nottinghamcity.gov.uk</a> Tel: 0115876 4832
<b>Subject to call-in:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Key Decision:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Criteria for Key Decision:</b>	
(a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision	
<b>and/or</b>	
(b)    Significant impact on communities living or working in two or more wards in the City <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Type of expenditure:</b> <input type="checkbox"/> Revenue <input type="checkbox"/> Capital	
<b>Total value of the decision:</b> n/a	
<b>Wards affected:</b> All wards	
<b>Date of consultation with Portfolio Holder(s):</b> 25 <sup>th</sup> March 2019	
<b>Relevant Council Plan Key Theme:</b>	
Strategic Regeneration and Development	<input type="checkbox"/>
Schools	<input type="checkbox"/>
Planning and Housing	<input type="checkbox"/>
Community Services	<input type="checkbox"/>
Energy, Sustainability and Customer	<input type="checkbox"/>
Jobs, Growth and Transport	<input type="checkbox"/>
Adults, Health and Community Sector	<input checked="" type="checkbox"/>
Children, Early Intervention and Early Years	<input type="checkbox"/>
Leisure and Culture	<input type="checkbox"/>
Resources and Neighbourhood Regeneration	<input type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>	
<p>The Integrated Care System (ICS) in Nottingham and Nottinghamshire is a national accelerator site for the integration of health and care. This was formally called the Sustainability and Transformation Partnership (STP). The purpose of the ICS is to deliver improved Health and Social Care in an integrated manner in order to achieve an efficient and effective use of resources to meet an agreed set of priority outcomes relating to Health and Social Care.</p> <p>Social Care is therefore an integral part of achieving this. The City Council suspended its role within the ICS on November 20<sup>th</sup> 2018.</p> <p>The suspension is for a period of up to 6 months, and can be lifted subject to the agreement of how to move forward with local partners.</p> <p>An agreement on how to proceed has now been reached with substantial changes made by the ICS partnership that resolve the primary issues raised by Nottingham City Council that resulted in the decision to suspend. These changes include the creation of a dedicated City Integrated Care Partnership (ICP) that matches the boundary of the City Council, inclusion of democratic representation on the ICS Board, enhanced engagement activities and the incorporation of enhancements to procurement as far as is possible within the legal constraints.</p> <p>The ICS and ICP represent a significant change to the way in which decisions will be made going</p>	

forwards. As a result of this, specific mention is made to a new condition for unanimous voting at the ICS and ICP levels on matters relating to proposals that may result in privatisation or outsourcing.

**Exempt information:**

None

**Recommendation(s):**

- 1 To note the strong desire shown from local NHS partners to find solutions locally that will result in the lifting of our suspension, in the interests of the population health and care for City residents
- 2 To agree that the changes to the ICS locally are of significant benefit to City residents and to lift the suspension from the ICS, and re-join as a full member of the ICS, with immediate effect, subject to an agreement for unanimous voting on proposals which could lead to outsourcing or privatisation of NHS services at ICS and ICP level
3. To confirm agreement to the ICS decision to have a three ICPs for Nottingham and Nottinghamshire, which includes the specific creation of an ICP for the City of Nottingham

**1 REASONS FOR RECOMMENDATIONS**

- 1.1 The City Council has suspended itself from the Nottingham and Nottinghamshire ICS and has been in active dialogue with local NHS partners, at the most senior level, in order to explore ways in which the issues that caused the suspension can be addressed.
- 1.2 The local NHS partners have been highly committed to work with us to resolve these issues and we are grateful for their demonstrable commitment to the importance of having the City Council within the ICS. Recommendation 1 notes this strong collaboration formally.
- 1.3 The ICS Board has addressed each of the issues raised by Nottingham City Council, making substantive changes as a result. The City Council is therefore now in a position to consider actively re-engaging with the ICS and lift the suspension.
- 1.4 One condition of the suspension being lifted is that the ICS agrees to move to a position where unanimous agreement is required around decisions that could result in privatisation or outsourcing of NHS services. The reason for adding this, is because the ICS and ICP's are not fully developed and will continue to evolve the way in which decision are made. In particular as the ICP in the City is not yet established, such a decision making process is not yet in place.
- 1.5 The major change agreed is the move to having a dedicated City ICP that matches the geography of the City Council. The re-engagement with the ICS will ensure that the focus on the City population is taken forwards through the new City ICP and that the City Council can be integral to the City Partnership and the way it makes decisions going forwards.
- 1.6 The other major changes agreed are the inclusion of democratic representation at the ICS Board going forwards, a significantly higher commitment to engagement of local plans with citizens, councillors and stakeholders, and the inclusion of significantly enhanced social value

elements to commissioning and procurement and adoption of wider best value decision making approaches in procurement.

- 1.7 The decision by the ICS to move to three Integrated Care Partnership (ICPs) for Nottingham and Nottinghamshire, which specifically includes the creation of an ICP for the City of Nottingham, is also attached to this report, for agreement (appendix 1).

## 2 **BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1 There are three things that the City Council wanted to see developed within the Nottingham and Nottinghamshire ICS. This report sets out those three things with an update on the changes agreed with the ICS partners over the period of the City Council suspension.
- 2.2 Firstly, the City Council wanted to see a change to the geography of the ICS that would retain a strong identity for the City area, to enable continued progress on the community health and social care integration work.
- 2.3 The ICS conducted an independent evaluation of the pros and cons of different approaches to the geography of the ICPs. The outcome of this evaluation was to recommend the creation of a full City ICP to align to the City Council boundaries.
- 2.4 This is a major change because a wider range of decisions will be taken at the level of the ICPs. Having a dedicated City ICP ensures that the decisions taken for the city will be by the City organisations, which will include the City Council in the event that suspension is lifted.
- 2.5 The ICS Board confirmed this approach on 15<sup>th</sup> February 2019, subject to ratification by individual partner organisation boards.
- 2.6 Recommendation 3 is to agree the ICS decision to create the City ICP as one of three ICPs in the Nottingham and Nottinghamshire. The report from the ICS is attached in appendix 1 for approval.
- 2.7 Secondly, the City Council wanted to see changes to the governance of the ICS, to include greater levels of democratic involvement and believe there can be more robust and meaningful engagement with citizens and stakeholders.
- 2.8 The ICS Board has addressed these with a new TOR and new Board make up that now includes democratic representation from the City and County Council areas. This is in addition to the membership of the Local Authority Chief Executive Officers from both Councils. The Board is comprised of statutory partners only.
- 2.9 These changes have already been implemented and the newly configured Board is now in operation. In addition, the new ICS Board will also move to be a public board from April 11<sup>th</sup> 2019.
- 2.10 The appointment of a new post of Director of Communications and Engagement at the ICS has resulted in fresh energy and new approaches to the engagement of councillors and citizens. The development of local plans will now include significantly more meaningful engagement work, building on that which has already been achieved.

- 2.11 The changes on governance and engagement have therefore been agreed and implemented by the ICS
- 2.12 Thirdly, the City Council wanted to agree the shared adoption of key principles in line with the Nottingham City Council Plan priorities, such as the development of local jobs, training and development of local people and a preference for investment in public services, local businesses, SMEs and voluntary sector organisations.
- 2.13 The ICS has received the Nottingham City Council Business Charter and is appreciative of the importance of supporting the local economy and local jobs. The City CCG has already installed social value expectations with its commissioning and is keen to further enhance them using experience from the City Council. The ICS has committed to a desire to work towards similar strategic ambitions to ours within the constraints of procurement legislation.
- 2.14 Furthermore the City Council has strongly held views on the benefits associated with public service delivery and would like unanimous agreement for any decisions that move away from this principle that are taken at ICS and City ICP level (i.e. not at the level of individual organisations). The reason why this is specifically mentioned is because the ICS and the City ICP will continue to develop and therefore it is considered helpful to be clear on this at this stage.
- 2.15 As a result of this, the City Council has asked for agreement to strengthen the role of the ICS board in ensuring these are delivered, going as far as possible to do so within the constraints of the law around procurement for both Local Authorities and the NHS. The ICS senior management have confirmed it is taking the following actions:
- Commissioning Intentions are signed off by the ICS Board on an annual basis
  - The enhanced approach on social value is being taken to the May 9<sup>th</sup> ICS Board under the heading of Best Value Decision Making, which will seek to move forwards with all commissioning and procurement adopting enhanced social value considerations – this is broader than the ICS and will likely include all organisational commissioning in the area too
  - Legal advice is being taken to adjust the draft ICS TOR in order to further clarify what decisions are taken where and how to manage conflicts of interest that may occur
- 2.16 Note that the decisions on procurement by the ICS cover a geographical area wider than the City, and other decisions regarding procurement will continue to be taken by individual organisations including by the City Council. The ICS Board has majority voting in place for all decisions currently.
- 2.17 The legal and procurement advice contained in this report sets out the parameters within which this can be achieved. It should also be noted that the NHS Long Term Plan has resulted in proposed legislation around procurement and contracting which is very much in line with the Nottingham City Council principles. (ref: document referenced at 11.3)

- 2.18 The three requests of the ICS that were made as a result of the suspension have therefore all be progressed and changes made.
- 2.19 Recommendation 2 is therefore that the City Council lifts its suspension and re-joins the ICP with immediate effect, subject to an agreement for unanimous voting on proposals which could lead to outsourcing or privatisation of NHS services at ICS and ICP level
- 2.20 Further background to the City Council suspension decision can be found in the City Council Executive Board report dated November 20<sup>th</sup> 2018:
- 2.21 The lifting of the suspension as a result of these agreed changes will enable us to ensure that the following risks do not materialise:
- Loss of the identity for the city agreed through having a dedicated City ICP. A lack of involvement from the City Council could put this agreement to have a City ICP at risk
  - Loss of focus on city residents and their needs through having a less coherent and weaker partnership representing their interests
  - Loss of ability to influence the wider health and care of the City residents through the City Council not being part of the decision making processes of the ICS and ICP

### **3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

#### **3.1 To remain suspended from the ICS**

This option was rejected. The City Council has been very reassured by the commitment of local NHS leaders to developing the local partnership.

There have been significant changes made as a result on all the areas that the City Council has been concerned about.

Furthermore the suspension report on 20<sup>th</sup> November made clear that it was the belief of the City Council that close integration between health and social care, as well as being required by statute, is very much in the interests of the citizens of Nottingham City

#### **3.2 To formally notify NHS partners that the City Council does not wish to have any part in the development of the ICS in its current form and to remove our name from the partnership**

This option was rejected because we are committed to the integration of health and social care and would wish to continue to strive towards closer integration where there are benefits to citizens of doing so. We know that the ICS will continue without the Local Authority if we were to leave now, and we would rather seek to influence changes to the ICS.

The local NHS partners have been keen to work with the City Council in a positive and constructive manner, building on the existing strong local relationships for the future benefit of citizens in the City.

To not be included in the ICS would prevent the City Council from being able to influence the decisions on behalf of the City population – one of the reasons for requesting democratic representation at the ICS Board.

#### **4 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

- 4.1 There are no direct financial implications from this decision but there is a potential for it to create material financial risks for the organisation if the recommendations are not approved.
- 4.2 Nottingham City Council receives significant levels of funding for social care either directly from Health or from central government. The national agenda could result in more funding being allocated for the social care system on an ICS basis; if Nottingham City Council are not part of the ICS this could put at risk not only the level of funding received but also being able to influence how the funding is allocated to needs and priorities of the City. It may also hinder the ability for the statutory officers to deliver on their roles and responsibilities.
- 4.3 The proposals of this report may need incorporating into the organisations constitution.

Ceri Walters – Head of Commercial Finance, 2 April 2019

#### **5 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

- 5.1 This report recommends that the City Council re-joins the ICS. Re-joining the ICS will enable the City Council to fully participate in the integration of health and social care. The requirement for integration is set out in legislation, for example, the Health and Social Care Act 2012 requires the City Council to establish a Health and Wellbeing Board for the purpose of advancing the health and wellbeing of the people in its area and to encourage persons who arrange for the provision of any health or social care services in that area to work in an integrated manner. The legal basis for the suspension from the ICS is set out in the Executive Board report dated 20<sup>th</sup> November 2018.
- 5.2 It is currently not legally possible for the City Council 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 City Council. 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.
- 5.3 Subject to the statement above that 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.

- 5.4 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)

Andrew James – Team Leader, Commercial Employment and Education  
Steve Oakley – Head of Contracting and Procurement, Strategy and Resources  
2<sup>nd</sup> April 2019

## **6 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)**

- 6.1 Not applicable

## **7 SOCIAL VALUE CONSIDERATIONS**

- 7.1 There are no specific changes to services that result from this decision, however in regard to social value, some of the reasons why the City Council suspended its role within the ICS were in order to try and promote the inclusion of additional ways to increase the way in which the social, economic and environmental benefits that can arise out of the mechanisms by which health and social care integration are developed. The City Council believes that improvements to the way in which health and social care integrate have huge potential for increasing social value, and the improvements outlined in appendix 1 take this forwards.

## **8 REGARD TO THE NHS CONSTITUTION**

- 8.1 The NHS belongs to the people and is there to improve our health and wellbeing, supporting us to keep mentally and physically well, to get better when we are ill and, when we cannot fully recover, to stay as well as we can to the end of our lives.
- 8.2 It works in partnership with other organisations in the interest of patients, local communities and the wider population. The NHS is committed to working jointly with other local authority services, other public sector organisations and a wide range of private and voluntary sector organisations to provide and deliver improvements in health and wellbeing.
- 8.3 The NHS is founded on a common set of principles and values that bind together the communities and people it serves – patients and public represented by the NHS constitution
- 8.4 Local authorities have a statutory duty to have regard to the NHS Constitution when exercising their public health functions under the NHS Act 2006. In making decisions relating to public health functions, we need to properly consider the NHS Constitution where applicable and take into account how it can be applied in order to commission services to improve the health of the local community.

- 8.5 The City Council intends to continue to support and abide by the Constitution in the exercise of its duties; the proposed suspension will not influence the carrying out of its statutory public health responsibilities, and towards improving health outcomes and reducing inequalities for our people and communities.

Alison Challenger, Director of Public Health, Nottingham City Council  
29th March 2019

## **9 EQUALITY IMPACT ASSESSMENT (EIA)**

- 9.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:  
(Please explain why an EIA is not necessary)

There are not any specific changes to service delivery proposed within this decision.

Yes

Attached as Appendix x, and due regard will be given to any implications identified in it.

## **10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)**

- 10.1 None

## **11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT**

- 11.1 "Nottingham City Council suspension from within the Nottingham and Nottinghamshire Integrated Care System (ICS)", 20<sup>th</sup> November 2018, Nottingham City Council Executive Board
- 11.2 The Nottingham and Nottinghamshire Sustainability and Transformation Plan (June 2016) <http://www.stpnotts.org.uk/>
- 11.3 "Implementing the NHS Long Term Plan – Proposals for possible changes to legislation", engagement document, February 2019, NHS England
- 11.4 NHS Long Term Plan, 7<sup>th</sup> January 2019, NHS England, [www.longtermplan.nhs.uk](http://www.longtermplan.nhs.uk)