

Report to Regulation, Audit and Accounts Committee

15 January 2024

Standing Order amendments – Provider Selection Regime

Report by Director of Law and Assurance

Electoral division(s): Not applicable.

Summary

The Council enters into a large number of contracts for health care services each year, largely in the areas where services for adults and young people overlap with those of Health and in the field of Public Health. The procedures for ensuring these are entered into properly and safely are set out in the Council's Standing Orders on Procurement and Contracts.

On the 1 January 2024 the Provider Selection Regime (PSR) came into force. The PSR is a new set of rules for procuring health care services in England by organisations including local authorities. The PSR was introduced by regulations made under the Health and Care Act 2022. The PSR has been designed to:

- introduce a flexible and proportionate process for selecting providers of health care services;
- provide a framework that encourages collaboration across systems; and
- ensure decisions are made in the best interest of patients and service users.

This new regime means that the Council will no longer have to procure health care services in accordance with the Public Contracts Regulations but instead in accordance with the new PSR regulations.

Recommendation

- (1) That the Committee endorses the proposed changes to Standing Orders on Procurement and Contracts for approval at a County Council meeting to enable the Council to utilise the processes as set out in the PSR when procuring contracts for health care services.
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Proposal

1 Background and context

1.1 On 1 January 2024, the Provider Selection Regime (PSR) came into force.

1.2 The relevant legislation is the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR) and it applies to the commissioning of NHS and public health services provided to individuals in England as part of the health service.

They must be followed when the Council is commissioning healthcare services for the purposes of the health service.

- 1.3 The regime must be applied as part of the commissioning and procurement process whenever contracts for health care services (whether being procured directly by the Council or jointly commissioned on behalf of the NHS via a Section 75 Agreement) are coming to an end, changing considerably, or being awarded for the first time. The Council can follow one of a number of selection processes to award contracts for health care services under the PSR.
- 1.4 The PSR has introduced three provider selection processes that relevant authorities can follow to award contracts for health care services. These are:
 - 1.4.1 Direct award processes (A, B, and C). These involve awarding contracts to providers when there is limited or no reason to seek to change from the existing provider or to assess providers against one another, because:
 - i. The existing provider is the only provider that can deliver the services (process A);
 - ii. patients have a choice of provider and the number of providers is not restricted by the relevant authority (process B); or
 - iii. the existing provider is satisfying its existing contract, will likely satisfy the new contract to a sufficient standard, and the proposed contracting arrangements are not changing considerably (process C).
 - 1.4.2 Most suitable provider process. This involves awarding a contract to providers without running a competitive process, because the relevant authority can identify the most suitable provider without a competitive process.
 - 1.4.3 Competitive process. This involves running a competitive process to award a contract in accordance with the Council's standard procurement routes and in compliance with the Public Contracts Regulations 2015.
- 1.5 The Council will need to comply with defined processes in each case to evidence the decision-making, including record keeping and the publication of transparency notices.
- 1.6 Contracts for health care services (as defined Health Care Services (Provider Selection Regime) Regulations 2023) will now need to be procured in accordance with this new regime. Procurements for all other services shall continue to be procured in the usual way i.e. in accordance with current Standing Orders and the PCR 2015.

2 Proposal details

- 2.1 Standing Orders will be updated to reflect the Health Care Services (Provider Selection Regime) Regulations 2023. The proposed amendments are set out at Appendix A. The Committee is asked to endorse them for onward approval at a Full Council meeting.
- 2.2 To ensure that Council officers are awarding contracts in accordance with the new legislation, the procurement support team and the commercial legal team will provide support on the decision routes taken, the internal governance

required and to ensure the Council is complying with the transparency obligations.

- 2.3 It is also proposed that, in accordance with the scheme of delegation, the Director of Law and Assurance will update those parts of the Standing Orders on Contracts and Procurement which require amendment to deal with internal changes to Council governance and officer role titles.

3 Other options considered (and reasons for not proposing)

- 3.1 No other options have been considered in relation to the PSR as this is a legislative requirement and procurements for health care services must now be awarded in accordance with this legislation.

4 Consultation, engagement and advice

- 4.1 Consultation has involved officers in Legal Services and Procurement Support.

5 Finance

- 5.1 There are no cost implications of the proposal in relation to changes to Standing Orders.

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
That officers do not utilise the new legislation effectively	Officers in the Procurement Support and the Commercial Legal Team will provide training and support and ensure that the correct governance and decision making processes are followed.

7 Policy alignment and compliance

- 7.1 There are no other policy implications.

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Appendices

Appendix A – Suggested amendments to Standing Orders in relation to the Provider Selection Regime.

Background papers

None