



**Brighton & Hove
City Council**

POLICY & RESOURCES COMMITTEE ADDENDUM

10.00AM, MONDAY, 17 NOVEMBER 2014

COUNCIL CHAMBER, HOVE TOWN HALL

ADDENDUM

ITEM		Page
79	PUBLIC INVOLVEMENT	1 - 2
	(a) Deputations: to receive any deputations submitted by the due date of 12 noon on the 10 November 2014.	
	(i) Deputation from UNISON & GMB concerning the Integrated Community Equipment Service (copy attached).	
81	INTEGRATED COMMUNITY EQUIPMENT SERVICE 2014	3 - 18
	Report of the Executive Director for Adult's Services (copy attached).	
	<i>Contact Officer: Anne Richardson-Locke</i>	<i>Tel: 01273 290379</i>
	<i>Ward Affected: All Wards</i>	

DEPUTATIONS FROM MEMBERS OF THE PUBLIC

A period of not more than fifteen minutes shall be allowed at each ordinary meeting of the Council for the hearing of deputations from members of the public. Each deputation may be heard for a maximum of five minutes.

Deputations received:

(a) Gary Palmer, Alex Knutson, Sue Beatty and Jo Viner – UNISON & GMB – Integrated Community Equipment Store

“At the P&R meeting in October both staff and unions ask for the consideration of an opportunity of assistance in both the provision of information and assistance in house bid, P&R heard how we requested information which when eventually forth coming proved to be a token summarisation of 12 bullet points not fit for purpose.

P&R voted in favour of an amendment which had been presented to be ruled as correct by the head of law for the council, only to find that when passed concerns from the same head of law has prevented the carrying out of the vote outcome, our arguments remain the same fairness has not been in place so far within this process and we demand that this is done.

Since that time we, and it was a lack of time which council officers went to great pains to point out endangered any bid from the private sector, staff and unions have received no further updates or information which would allow us to proceed with the creating of proposal which might mean ICES staying where everyone who cares about it, uses the service or works within it wants it to stay in the public sector except for the very people we all expected to defend it on our behalf. There may have been legal arguments but the information could have been gathered and issued to allow us the opportunity, but officers have blocked and mislead staff and unions from the start and appear to continue to do so in following their own agenda.

Our case remains the same, there is no evidence that the service can or would improve by this outsourcing, the council dismisses its obligation even as the minor stakeholder in the service provision to the residents and service users of Brighton & Hove by not carrying out a fair and unbiased survey of services users, by not considering the views of staff and public sector employees, who like two other outsourcing options which has resulted in attacks to both the service and staff terms and conditions as in the case of Mears and Mytime active.

We would not expect that the unpredicted surprise of NRS Nottingham Rehab Suppliers being awarded the contract in West Sussex, will mean anything else than detrimental changes to both the service and almost certainly the terms and conditions and working practices of loyal staff.

NRS will certainly be met by the joint unions with a robust defence of its members and in protecting essential services and P&R should be in no doubt that we will jointly use all resources to carry out that defence and to not rule anything type of action out.

Once again we ask that P&R honours its original vote, use any legal avenues in a positive manner and not in preventing what is right in this case. Allow with support from council officers access to resources which will provide staff and unions an even chance to put together a bid which will see services kept in house.”

Gary Palmer (GMB)
Alex Knutson (UNISON)
Sue Beatty (UNISON)
Jo Viner (GMB)

Subject:	Integrated Community Equipment Service		
Date of Meeting:	17 November 2014		
Report of:	Executive Director of Adult Services		
	Chief Operating Officer, Brighton & Hove Clinical Commissioning Group		
Contact Officer:	Name:	Anne Richardson-Locke	Tel: 29-0379
		Lisa Douglas	574838
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		Lisa.Douglas@nhs.net	
Ward(s) affected:	All		

FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were because of the need to collate the additional information necessary for the report and consult relevant partners. Any further delay in making the decision would compromise the Council's ability to make the necessary arrangements for the delivery of the service in time.

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The report provides further information on the future of the Integrated Community Equipment Service (ICES) following 16th October Policy and Resources Committee where a decision on the future provision of the service was deferred.
- 1.2 The equipment service is commissioned jointly between Brighton & Hove City Council (B&HCC) and the Clinical Commissioning Group (CCG). The service has been provided via a Section 75 agreement between the Council and Sussex Community Trust (SCT) since 2004.
- 1.3 SCT have given notice on the contract and will cease to provide the service on 30th September 2015. This report is therefore setting out options for the future of the service.
- 1.4 The CCG have indicated that their preferred option is to abide by the decision reached collectively at Health & Wellbeing Board on 9th September to work in partnership with B&HCC and the service commissioned by West Sussex County Council (WSCC).
- 1.5 If the Policy and Resources Committee agree a different option the CCG would actively pursue their preferred option to work with WSCC and potentially leave the

current ICES service as a stand-alone council service, as opposed to a joint health & social care service.

2. RECOMMENDATIONS:

- 2.1 That the Policy and Resources Committee agree to the Council entering into a tailored contract with the equipment provider selected by West Sussex County Council (WSCC) to meet the needs of the residents of Brighton & Hove as recommended by the Health & Wellbeing Board on 9th September 2014. The CCG have indicated their preferred option is to enter into a contract with the WSCC contractor.

3. CONTEXT/ BACKGROUND INFORMATION

Information about ICES

- 3.1 If an individual who lives in the community or in a care home requires a piece of equipment it is 'prescribed' by a nurse, occupational therapist, care manager etc within Health or Adult Social Care.
- 3.2 The equipment ranges from simple pieces that will aid independence, for example a raised toilet seat, to more specialist equipment such as a bariatric bed.
- 3.3 An equipment service is critical to help people maintain their independence at home, and to support them to have a timely discharge from hospital. Such a service has to consider both the health and social care needs of the individual.
- 3.4 ICES are a logistics service: They procure, provide, deliver, fit, collect, maintain, clean and recycle equipment. They have a fleet of vans for staff to deliver & collect equipment.
- 3.5 There have been four reports about ICES presented during the last year to committee:

23rd September 2013 Adult Care & Health Committee	A joint report by SCT, BHCC and the CCG asked Committee for permission to join the WSCC tender for an equipment service. Permission was not granted but Committee did agree that discussions could take place with WSCC.
20th January 2014 Adult Care & Health Committee	It was agreed that B&HCC could be named in the WSCC tender and that commissioners would continue to work closely with SCT to identify unit costs and the costs of an alternative building.
9th September 2014 Health & Wellbeing Board:	The Board was informed that SCT had given notice on the contract in June and at this time WSCC were in the final stages of the tender. The Board agreed to enter into a contract with the provider selected by WSCC after considering the detailed options appraisal.

	<p>The WSCC tender was advertised in January 2014 and the Board were informed that the contract would be awarded in October 2014, with a new contract start date of 1st April 2015.</p>
<p>16th October Policy & Resources Committee</p>	<p>As the decision regarding entering into a contract with WSCC involved externalisation (outsourcing) it was referred to Policy & Resources Committee for decision and an amendment to the report was carried: "That Policy and Resources Committee defer the decision on awarding the contract and request that the Executive Director Adult Social Care and Health investigate on an urgent basis the possibility of establishing a viable option around a local NHS or voluntary sector service employing existing staff, working in co-operation with other NHS Trusts in the city, and using capital receipts from the disposal of the current site to establish a new centre under local public or voluntary sector management."</p> <p>Whilst the amendment had been carried neither the CCG or the Health and Wellbeing Board had been consulted in relation to the amendment, and as the CCG is the majority partner in the contracting arrangements, Committee agreed to defer the final decision to allow further legal and financial information to be considered.</p>

ICES store

- 3.6 ICES run their business from a store in Portslade. The store currently operates 5 days a week. Previous reports have highlighted issues concerning the ability of the store to continue operating without significant investment.
- 3.7 The store does not meet the SCT minimal specification for inspection and storage. The Council's Estates Team have estimated that a minimum of £193,000 is required to meet the minimum standards necessary for the building alone.
- 3.8 The store also lacks sufficient space and further investment is necessary to address the lack of space for equipment, the poor decontamination facilities and the lack of space and facilities for staff.
- 3.9 B&HCC and SCT conducted reviews of their existing buildings and identified that there were no buildings within the estates of either organisation that would work as alternatives.
- 3.10 SCT therefore produced a specification that set out the requirements of an equipment store to service Brighton & Hove. They estimated the cost of renting an alternative building as £130,000 to set up with additional annual costs of £280,000. Over 3 years this amounts to a total of £970,000.

- 3.11 As an alternative B&HCC Estates Team have estimated the cost of building a stand-alone store to the specification set out by SCT would be £1m.

Technology

- 3.12 ICES do not have an up to date information technology system. As the service is primarily a logistics service it is vital that any provider in this business has the latest technology to ensure efficiency in running the service. Investment is needed for an IT system that would have the functionality provided by other equipment providers and that would meet the demands required. This would cost approximately £125,000 to set up with annual costs of £87,000.

Budget

- 3.13 The current budget for ICES is £1.452m, of which £805,000 (55%) is from the CCG and £647,000 (45%) from B&HCC. The budget has been overspent for each of the last 3 financial years and is forecasting a 2014/15 overspend of £250,000 (£220,000 for Health and £30,000 for Social Care). The budget pressures have predominately been against the Health budget and SCT have reported a growth in demand of 13% which mirrors other areas. SCT have, however, not been able to accurately report spend by individual teams or areas so it has not been possible to identify the exact reasons for the spend or to enable strategic planning.
- 3.14 There has been little scrutiny of the cost of equipment by Prescribers or ICES. A recent benchmarking exercise with other equipment suppliers has indicated that moving to an alternative equipment supply could feasibly yield savings of up to 30% on purchasing certain types of equipment.

Current joint commissioning & management arrangements for ICES

- 3.15 ICES is managed by SCT. There are 23 posts in total, with 4 B&HCC staff (and 4 vacancies) and 13 SCT staff (and 2 vacancies).
- 3.16 As SCT have given notice to withdraw from providing the service, the CCG & the council have no alternative but to consider alternative options for the service.
- 3.17 As more people are supported to live independently at home, the demand for equipment is increasing. Both the CCG and the council need an equipment service that can offer an innovative, flexible, efficient model that can track and trace equipment and be provided 7 days a week.
- 3.18 The CCG have indicated that they want to continue to work jointly with Adult Social Care to meet the needs of the population of the city in the most effective way.

Information about Equipment Services in other Local Authorities

- 3.19 Most of the authorities in the region have contracts with the 3 main providers: Nottingham Rehab Supplies (NRS), Medequip and Millbrook Healthcare with the exception of Kent, Croydon, Merton & Sutton.

Authority	Equipment provider	Type of Provider	Population (2011 census)
West Sussex	NRS	Commercial	806,892
East Sussex	Millbrook Healthcare	Commercial	526,671
Surrey	Millbrook Healthcare	Commercial	1,132,390
Portsmouth & Southampton	Millbrook Healthcare	Commercial	205,056 + 236,802 = 441,858
Croydon, Merton & Sutton	Croydon Care Solutions	Local authority trading company.	363,378 + 199,693 + 190,146 = 753,217
London boroughs	London Consortium - Medequip	Commercial	7,420,724
Kent	Integrated LA and Health service	Local authority and health provided service.	1,463,740

3.20 Most other authorities in this area have contracts with commercial providers. The other areas cover a population size of a minimum of 441,858. Brighton and Hove is therefore an outlier in terms of population coverage serving only 273,369 residents.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 Policy & Resources Committee on 16th October were asked to agree to the Council & the CCG entering into a contract with the equipment provider selected by West Sussex County Council (WSCC) in their recent tender as recommended by the Health & Wellbeing Board on 9th September 2014

4.2 There were other options suggested at Policy & Resources Committee and further analysis has taken place in order to consider these options:

4.2.1 **The Amendment to the Policy & Resources Committee report.** The amendment that was carried asked for time to investigate the option of a local NHS or voluntary sector service providing the service.

4.2.2 **The Trade Union representatives' proposal to Policy & Resources Committee.** Trade Union representatives also asked for the decision to be deferred to give them the opportunity to work with ICES staff to put in a bid for the service. Questions were raised at Policy & Resources Committee on 16th October about the status of the WSCC tender but the report made it clear that the contract between WSCC and the provider would be awarded, to commence in October 2015.

4.3 The analysis below has also taken into account the above considerations as well as the intentions of the CCG, as recommended at the Health & Wellbeing Board on 9th September 2014.

Health and Wellbeing Board recommendation - Rationale for the Preferred Option

- 4.4 The Health and Wellbeing Board that has representation from both Health and the Council, agreed to enter into a contract with the successful WSCC provider as this option presented the best value option within the timescales.
- 4.5 The decision was based on the fact that there was no capital to invest in the current service and there were no voluntary organisations locally that were likely to invest the necessary capital in the service either. It was agreed that working in partnership with WSCC would result in a more efficient & cost effective service for the local population, due to economies of scale.
- 4.6 WSCC equipment service has been contracted to an external contractor, Nottingham Rehab Supplies (NRS) since 2005 and NRS have been successful in gaining the contract again. The service is currently based in Littlehampton but under the new contract they will be setting up peripheral stores across the county and are keen to have a store in Brighton and Hove.
- 4.7 NRS are keen to commence discussions with B&HCC and CCG commissioners about how the service can be tailored to meet the specific needs of the population of Brighton & Hove. Consultation would also be carried out locally with current and potential customers to inform the specification.
- 4.8 The CCG's preferred option is to work in partnership with B&HCC and WSCC and for NRS to supply the service in Brighton & Hove. If the Policy and Resource Committee agree a different option this could potentially leave the current ICES service as a council only run service (as opposed to a joint health & social care service).
- 4.9 Having a council only run equipment service is not tenable. The service would reduce to 45% of the current size but would still have some of the fixed costs essential for running an equipment service. It would be staffed only with council staff (currently 4 people, with 4 vacant posts), as health employed staff would be TUPE transferred to NRS.
- 4.10 This would mean that the public would have their equipment needs met by 2 separate providers, depending on whether it was a health or a social care need. Any equipment service needs to respond to both the health & the social care needs of the population. Service users who are supported in the community have increasingly high needs. They need their equipment provider to offer them a joined up service.
- 4.11 The Better Care Programme has a range of schemes that demonstrate the benefits of health & social care working together to meet the needs of the population in a more joined up way. Supporting people in their homes and facilitating timely discharge from hospital are essential elements of the programme.

Information about NRS

- 4.12 WSCC have invested considerably in the tender process to ensure that they procure an efficient, modern equipment service. They used evaluation criteria based on 70% quality and 30% price as quality is crucial to the success of this service.
- 4.13 The WSCC procurement exercise was carried out with B&HCC as a named authority which means that it is possible to enter into a separate contract with the new provider without having to go through any further process.
- 4.14 NRS customers report extremely high levels of satisfaction with the service as do prescribers. Staffs are monitored on their customer care and are required to give customers plenty of opportunity to answer the door, and from April will offer timed delivery slots as requested by customers.
- 4.15 NRS have a good track record when it comes to TUPE and there are still staff working in the service that TUPE transferred from West Sussex County Council 9 years ago.
- 4.16 They have the technology to track equipment so their collection and recycling rates are high. They use 'Fleetmatics' technology to track vehicles and can track and contact a technician resulting in greater efficiency and a better customer experience.
- 4.17 WSCC have a very tight timeframe with their new service commencing in April 2015. They have made it clear that decisions about geographical locations of distribution centres and decontamination facilities are taking place now and for Brighton and Hove to benefit from a shared infrastructure these discussions need to include B&HCC and the CCG with immediate effect.
- 4.18 If WSCC go ahead without Brighton and Hove and set up facilities based on geography and demographics of West Sussex alone the savings due to the economies of scale anticipated may not occur and warehouse facilities may be located further from the city.

Alternative Options

- 4.19 If Policy & Resources Committee do not agree to the Council, alongside the CCG, entering into a contract with the WSCC contractor there are two alternative options:

Option 1: Tender locally for an equipment service

Option 2: Brighton & Hove City Council provides the service.

- 4.20 As the Policy and Resource Committee does not have any jurisdiction regarding decisions on health contracts it can only make a decision about the council element of the service. Therefore both options detailed relate to the B&HCC service provided by Adult Social Care only which accounts for 45% of the budget of the existing service and 4 members of staff (with 4 vacancies).

4.21 Both options require:

- A fully equipped modern building that will be able to clean/ recycle/ decontaminate equipment
- An up to date IT system
- The capacity to manage increasing levels of activity as more people are supported to live independently at home.
- The ability to generate efficiency savings suppliers through improved recycling, collections, deliveries, new technology and improved access to the service thereby supporting more users without a commensurate increase in resources.

4.22 **Option 1. Tender locally for an equipment service.**

- 4.22.1 Within this option there were two different suggestions made at Policy & Resources Committee - both of which could only be achieved by undertaking an open tender process with no guarantee that either option 1a or option 1b could be achieved. For example a local tender process could result in a commercial organisation being selected as the preferred bidder.
- 4.22.2 Both options would require that the service is procured in such a way as to be able to demonstrate value for money, and in accordance with the EU Public Procurement Directives and the UK Regulations.
- 4.22.3 There is likely to be interest from commercial providers in East or West Sussex. These organisations specialise in the provision of equipment and as a consequence have an extensive competitive advantage. They would also have an advantage over a local service in that they can share buildings and decontamination facilities and equipment across borders as well as administration and logistics. These savings would not be realised if the service was provided by a local service solely in Brighton and Hove.

Option 1a: Local ICES B&HCC staff tender to provide the service

- 4.22.4 In order for local ICES staff to deliver the service, as proposed by the Trade Unions they would need to be (or form) a legal entity capable of entering into a contract with B&HCC. This might be a company, co-operative or social enterprise.
- 4.22.5 Any bid by such a company would need to go through an open and transparent procurement process and would be considered alongside other competitors.
- 4.22.6 There is provision in the new EU Directive and UK Regulations (due to come into force early in 2015) to limit the competition in cases where staff from an organisation have 'spun out' to form a separate legal entity (see the legal implications section of this report). However this merely reduces the number of organisations that the newly formed body is required to compete against.

- 4.22.7 Moreover a contract in this category can only be awarded for a maximum of three years, following which the newly formed entity would need to take part in an unrestricted competition. This creates a risk for staff considering setting up a new entity and it is likely that that risk would be reflected in the cost of the service.
- 4.22.8 In addition to the risks at the end of the contract, if a newly formed entity were to be awarded the contract, there would be a TUPE transfer of staff to the new entity, which would create a pensions liability that might be costly. Again, it is likely that these additional costs would be reflected in the cost of delivering the service.
- 4.22.9 Since the first ICES reports in September 2013 there have been 4 meetings with ICES staff and commissioners to keep them apprised of the committee reports and any developments. Staffs were notified back in September 2013 that the preferred option was to go with the WSCC tender and at the time the tender had not actually been advertised. Staff did not, at that meeting or at any further meetings with commissioners, express an interest or ask any questions about a staff-led bid for the service.
- 4.22.10 The Leader of the Council visited the ICES store as part of his general visits to services on 16th September 2014. During that visit a GMB representative asked if Councillor Kitcat would consider a staff bid to run the service. Councillor Kitcat made it clear that the decision-making process could not be paused for this option as it was necessary to have a new provider in place before SCT withdrew. He did however want to give staff and unions the opportunity to express their views of what an in-house service may be able to offer.
- 4.22.11 Trade union representatives then asked for a meeting with managers and commissioners to discuss this and a meeting took place on 8th October 2014. There were no ICES staff present at the meeting. Union representatives asked commissioners for details of the specification for the service and any information about a building specification and the options and costs of an alternative building.
- 4.22.12 It was explained that West Sussex had produced the specification which is publicly available and that B&HCC and the CCG had produced a summary of the local expectations of an equipment service going forward which could be shared with staff. The following information was sent to the unions on the same day with a clear message that if they required any further information to ask :
- A summary of the local specification
 - An audit trail with details of the work that both SCT and B&HCC have carried out to find an alternative building
 - A specification for an alternative ICES building
 - The estimated costs of alternative buildings

Option 1b: Local NHS or voluntary sector service provide the service

- 4.22.13 This option was proposed in the amendment and asked for an investigation into the option that a local NHS or voluntary sector service establish a new centre and employ the existing staff.
- 4.22.14 There are no voluntary organisations locally who provide similar services. West Sussex carried out consultation with the market and there was no interest from NHS trusts or voluntary sector services, only commercial providers.
- 4.22.15 The local NHS trusts, Sussex Community Trust (SCT) and Sussex Partnership Foundation Trust (SPFT) work across Brighton, Hove and West Sussex already. SCT have given notice on the contract and SPFT have not expressed any interest in providing the service. As an acute trust Brighton and Sussex University Hospital Trust (BSUH) would not provide this service.
- 4.22.16 This option proposes using the capital receipt from the sale of the current premises to acquire new, more suitable premises. Even if this were possible in the time frame, any arrangement with the new provider to occupy the new premises would need to be on a commercial basis, and this would be reflected in the delivery costs. If the proposal is to make the new premises available as a subsidy to the service, the same subsidy would need to be made available to all potential providers.
- 4.22.17 Initial valuation advice indicates the site, including the day centre, has limited value based on its existing uses. Redevelopment of the site for residential use is considered financially unviable. Given the site's limited value and the requirement to relocate the day centre it is not anticipated that a capital receipt from the site would be sufficient to acquire a property for the re-provision of the ICES service elsewhere.
- 4.22.18 There are time limitations to carrying out a full tender. As Sussex Community Trust have given notice from October 2015 there is only 11 months to tender, select a provider and transfer the service from SCT. A tender exercise would need to involve resources from Procurement, Commissioning, Finance and Legal.
- 4.22.19 In the absence of any interested bodies, the option to tender locally could result in a delay in appointing a new provider which in turn could pose a real threat to the future of this service.
- 4.22.20 The benefits, challenges & risks are summarised below:

Benefits	Challenges
Benefit from expertise of existing staff	The size of the service would not make it economically viable and it would not meet the needs of the population.
B&H customers are very satisfied with the service.	Capital cost of the building (£970k over 3 years) and IT (£386k over 3 years)
	No capital investment identified.

	Time and resources taken to tender and if unsuccessful risk to the service, and the risk of delayed discharges from hospital.
	A local service may not be able to compete with a private sector bid.
	The service would not be integrated if the CCG proceed with their preferred option which would impact negatively on customers.

4.23 Option 2. Brighton & Hove City Council provide the service.

- 4.23.1 This option would mean the 4 ICES staff (with 4 vacancies) would continue to be employed by B&HCC and processes would need to be put in place to separate the equipment purchased by Health funds from equipment purchased by Adult Social Care or have a process to distinguish between a health need and a social care need.
- 4.23.2 Investment would be needed to meet the requirements of a modern, efficient service due to the limitations set out in 3.7 and 3.9 above. No capital investment has been identified.
- 4.23.3 Professionals within health and social care need quick access to a wider range of more cost effective equipment to maintain the independence of people with lower level needs and support the care of people with complex needs. A small local provider will struggle to deliver this because of the inability to store and decontaminate large quantities of equipment and share across boundaries.
- 4.23.4 The Council is under considerable financial pressure and must carefully consider what services it will continue to directly provide in the future. The ICES service is a logistics service and Adult Social Care are not seen to be experts in this area. A small locally provided service would not be able to deliver value for money for council residents.
- 4.23.5 The benefits and challenges are summarised below:

Benefits	Challenges
Benefit from expertise of existing staff	The size of the service would not make it economically viable and it would not meet the needs of the population.
B&H customers are very satisfied with the current service.	Capital cost of the building (£970k over 3 years) and IT (£386k over 3 years).
No tender costs	No capital investment identified.
	Local service does not benefit from sharing resources and equipment across borders.
	The service would no longer be integrated which would impact negatively on customers.

	The service may not be operationally resilient with such few staff and therefore would be unable to deliver a 7 day a week service.
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5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Consultation will be carried out locally with current and potential customers to inform the specification.
- 5.2 There have been regular service user satisfaction surveys and prescriber surveys collected by ICES that show that timely deliveries and customer care is crucial and that prescribers would like a service at weekends and an improved store.
- 5.3 Consultation with customers in East and West Sussex has highlighted the following areas as being important to customers:
- Timed deliveries
 - Good communication
 - Courtesy and patience of delivery staff
 - Access to equipment stores
- 5.4 Customers in East and West Sussex report high levels of satisfaction with their commercially provided services and there is no evidence to support claims by Trade Union representatives that customers are not receiving a good quality service.

6. CONCLUSION

- 6.1 As SCT have given notice on their contract to provide equipment it is vital that a new service is commissioned before the end of September 2015. The preferred option agreed at the Health and Wellbeing Board is to enter in to a contact with the West Sussex preferred bidder due to economies of scale and time-frames for delivery.
- 6.2 Therefore the recommendation is that a service is commissioned externally and that B&HCC and CCG enter into a contract with the equipment provider selected by WSCC.

7. FINANCIAL AND OTHER IMPLICATIONS

Financial Implications:

- 7.1 ICES is managed under Section 75 arrangements and has a total budget of £1,452,000 for 2014/15 of which the CCG contributes £805,000 and B&HCC £647,000.
- 7.2 Entering into a contract with the successful West Sussex provider is the most cost effective option and the economies of scale are likely to deliver savings to social care and health in the procurement of equipment and service delivery and should not require capital investment. This option can be achieved within the current budget envelope and represents the best Value for Money.

7.3 If an alternative option is pursued additional budget funding (revenue and capital) would be required to deliver a service in 2015/16 as discussed in the main report. Any such budget pressure would need to be agreed in the 2015/16 budget development for both partners against competing service priorities and in the context of the Council's savings requirement over the next four years. There would be restrictions on the ability of the service to generate income under an in house model and other associated financial risks.

7.4 Interim arrangements will need to be set up to ensure that the service is delivered to agreed standards and budget whilst the procurement processes are underway.

Finance Officer Consulted: Anne Silley Date 06/11/14

Legal Implications:

7.5 The Council's contract standing orders (CSO's) require that health and social care contracts are procured in such a way as to be able to demonstrate value for money, and in accordance with the EU Public Procurement Directives and the UK Regulations.

7.6 A new EU Procurement Directive was adopted on 24 March 2014 and must be transposed into UK law by 2016 at the latest. The UK Government recently published for consultation new Regulations to bring the Directive into force in UK law and it is anticipated that the new Regulations will be brought into force early in 2015.

7.7 In the new rules, the distinction between Part A and Part B services is abolished. There is instead a new 'light touch' regime for social and health services, such as the ICES service. The new regime requires that only contracts valued in excess of 750,000 Euros must be advertised in OJEU. Below this value it is assumed there will be no cross border interest.

7.8 However, the requirement to follow a fair and transparent process in awarding contracts for such services, regardless of their value, will continue to apply.

7.9 The new Regulations also permit the reservation of social, health and educational service contracts for staff mutuels and social enterprises meeting specified conditions. Such entities must be owned or managed on the basis of employee participation. The rules require that where a contracting authority wishes to award a contract to a body satisfying these conditions, it can run a more limited competition, open only to qualifying organisations. Contracts awarded in this way must be for a maximum of 3 years, and an organisation winning such a contract would not be permitted to bid for another reserved contract at the end of the 3 year term.

7.10 To comply with CSO's any contract awarded as a consequence of a more limited competition, would still need to be able to demonstrate value for money.

7.11 Reference has been made to the possible use of the 'Teckal' exemption from the procurement rules in relation to this service. This permits contracting authorities to side step the procurement rules where they establish a company to deliver a service, and they exercise control of that company similar to the control that they

exercise over their own services. In such a case, the authority may enter into a contract with the controlled company, without needing to follow a procurement process.

- 7.12 The new EU Directive and UK draft Regulations codify the position in relation to exemptions for 'public to public' contracts. The contracting authority is required to exert on the supplying body, a control similar to that which it exercises over its own departments. This creates a difficulty in relation to staff mutuals because the voting and control rights must remain with the public sector owners, rather than the employees of the company.
- 7.13 If the Council chose to bring the service in house, this would involve a TUPE transfer of SCT staff. There would be no contract for the service, and therefore no application of the procurement rules. The in house service would not be permitted to trade commercially with other bodies.
- 7.14 The West Sussex contract has been awarded following an OJEU complaint process and the Council, having been named as a potential purchaser, is legally permitted to enter into a contract with the West Sussex provider for the delivery of this service in Brighton and Hove. This would involve a relevant transfer for TUPE purposes, and therefore staff currently working for the body that is withdrawing from the service will be entitled to transfer on protected terms and conditions to the new provider.
- 7.15 In summary, in all cases, the Council is required to follow a fair and transparent process in awarding the contract. A direct award of the contract to a newly established body would fall foul of this requirement, particularly if the contract is subsidised by virtue of the provision of free accommodation.

Lawyer Consulted:

Elizabeth Culbert

Date: 06/11/14

Public Health Implications:

- 7.16 The development of an efficient equipment service will help to ensure that people remain as independent as possible and in control of their lives, both of which are important elements of the Council's responsibility to promote public health.

Equalities Implications:

- 7.17 An initial Equalities Impact Assessment has been carried out to inform this report. The impact of the recommended option on users of the service and staff was considered.
- 7.18 Users of the service: The proposal will not have a negative impact on the equality strands and seeks to improve outcomes for local people by improving deliveries, collections and access to the service.
- 7.19 Staff in the service: The proposal may have an impact on staff if they are expected to work in a different location. This could have potential negative impacts for disabled staff if they have to travel further. It may however have a positive impact if staff have to travel less or if the environment that staff work in improves.

- 7.20 Formal staff consultation would commence once a decision has been made about the future of the service.

Sustainability Implications:

- 7.21 The commissioned service will place particular emphasis on the recycling of equipment, the move to a more standardised product range to mitigate the cost of purchasing new standard and special equipment and the presence of a local access point for equipment to reduce the reliance on car travel.

SUPPORTING DOCUMENTATION

Appendices:

None

Documents in Members' Rooms

None

Background Documents

None