

## **CONTRACTS AND COMMISSIONING SUB-COMMITTEE**

Minutes of the meeting held at 7.00 pm on 25 June 2018

### **Present:**

Councillor Stephen Wells (Chairman)  
Councillor Neil Reddin FCCA (Vice-Chairman)  
Christopher Marlow, Russell Mellor, Gary Stevens,  
Michael Tickner and Angela Wilkins

### **Also Present:**

Ade Adetosoye, OBE, Councillor Graham Arthur, Councillor  
Simon Fawthrop and Lesley Moore

### **1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS**

Apologies were received from Jacqui Scott from Bromley Healthcare.  
Apologies were also received from Paul Feven and Councillor David Jefferys.

### **2 DECLARATIONS OF INTEREST**

There were no declarations of interest.

### **3 CONSIDERATION OF ISSUES RELATING TO THE BROMLEY HEALTH CARE CONTRACT--REABLEMENT**

The report under discussion was a report on 'Reablement' drafted by Paul Feven (LBB Interim Joint Director of Integrated Commissioning, ECHS).

The Chairman stated that the purpose of the meeting was not to apportion blame, as he did not want to promote a blame culture. His aim was to look at the issues so that lessons could be learnt for the future.

The report had been drafted as a Part 2 report. The Committee debated at some length as to whether or not the report should be discussed and published as a part 2 report, or be published as a non-confidential item under part 1.

The Chairman expressed the view that the report was non-contentious, and could be dealt with as a part 1 item. Councillor Russell Mellor felt that the report should remain as a part 2 item. He felt that matters relating to TUPE in the report meant that it should remain as a part 2 item. Ade Adetosoye OBE, (Executive Director of ECHS and Deputy Chief Executive) suggested that a flexible approach be adopted and that the committee should see how the conversation developed.

The Director of Commissioning (Lesley Moore) stated that matters concerning TUPE would not normally be considered as a part 2 item. Part 2 items would

normally be related to matters concerning procurement bids and contract awards. She felt that there was nothing contentious in the report. Councillor Angela Wilkins and the Vice Chairman (Councillor Neil Reddin) were happy for matters to be heard under part 1. The Chairman decided that the report was not commercially sensitive, and so could be discussed under part 1.

The Chairman stated that one of his aims in calling this meeting, and in discussing the issues, was to gain a better understanding of how the co-commissioning process with the CCG and the NHS worked in practice. He was seeking a clearer understanding of how the engagement process worked at a local and national level, so that services could be provided that were both good value for money and of a high standard.

The Chairman was concerned that in the case of the commissioning of the Reablement contract, the process seemed to have progressed to an advanced stage with both parties misunderstanding issues relating to the TUPE of staff. He was seeking assurances that mutual understanding could be achieved so that this situation did not arise in the future. A mutual understanding was required to enable all parties to move forward. Both sides needed to clearly understand the fundamentals of interaction. The Chairman was hopeful that now LBB officers and the CCG would be more aligned in their thinking. He wanted assurances from Dr Bhan, the Director of Commissioning and the Deputy Chief Executive that this was now the case. He said that Members generically required this assurance as they were accountable to the public.

The Chairman referred to a separate document that had been drafted by the Local Government Association and the CCG. The report was called, 'Integrated Commissioning for Better Outcomes'. A link to this report had been emailed out prior to the meeting by the committee secretary. The Chairman was hopeful that committee members had looked at the briefing prior to the meeting as it would have provided them with useful background information.

Mr Adetosoye introduced Dr Bhan and Mark Cheung to the Committee. He stated that he was going to commence by considering macro issues, and then with micro issues, after this he would answer any questions that arose.

Mr Adetosoye informed the Committee that the most recent inspection relating to Reablement had taken place in May 2018. The previous inspection had taken place in 2016. Since the previous inspection in 2016, the service had progressed from 'requiring improvement' to 'good'. The aim was to move forward to a rating of 'outstanding'. With respect to the most recent inspection, only two days' notice had been given. Subsequent to the most recent inspection, the service had been described as 'caring, good and responsive'. He felt that it was important to note the progress that had been made. There was going to be another inspection by the CQC in 2020, and it was hope that by that time the service would be rated as outstanding.

Mr Adetosoye stated that the correct procurement process had been followed. Although in this case the external commissioning of the service had failed, the positive news was that a comprehensive review of the service had subsequently

been undertaken by the Director of Commissioning. He expressed the view that as a result of the review, improvements had been made that would provide better services for residents, and that this would be achieved from the base budget. He was optimistic that a better platform had now been attained that would enable the service to attain a rating of 'outstanding' from the CQC.

Mr Adetosoye stated that what had transpired was a failed procurement, and not a failed contract. There was no contract in place that had failed. He was satisfied that as a result of the review, good services were in place. He explained how the procurement process had developed and progressed. It had been decided by the Executive in June 2017, that the Council's Reablement services should be included in the CCG's Community Contract award to Bromley Healthcare (BHC). During the period between August 2017 and January 2018, BHC, the CCG and the Council worked closely together to mobilise services.

Concerns were first raised by BHC in October 2017 and on 12th January 2018; Mr Adetosoye chaired a meeting with all partners to discuss any outstanding issues with the proposed transfer of services. At this meeting it became apparent that BHC's view was that the proposed benefits of the contract award were outweighed by the financial risks posed by the pensions liability. BHC asked for mitigations from the council to compensate for the risks.

Mr Adetosoye felt that the prospect of adding in a new post-executive process was questionable. It was clear that there was no benefit in progressing with a procurement process that was going to cost the Council more than leaving the service in house, and so it was clearly the correct decision to withdraw from the contract. This decision was formally ratified by the Executive on 7th February 2018. Mr Adetosoye stated that LBB required synergies in terms of costs and care pathways, and that LBB had to avoid flawed procurements where a provider tried to dictate costs.

At this point the Chairman expressed concern that the CCG and LBB held separate and divergent views that mitigated against integration and the joint commissioning of contracts. The Chairman expressed concern that problems around pensions could leave the commissioning process in an intractable place. He asked if there were any other issues that could hinder the integration process aside from pensions. It was highlighted to the Chairman that there was another issue which was the 'Agenda for Change in the NHS'.

NHS staff were part of the 'Agenda for Change'. The problem for the NHS concerning the 'Agenda for Change' was that it meant that in certain cases the NHS would have to pay more for LBB staff that were being TUPED over. So this would be an additional financial liability that the NHS would have to consider. This was a matter that was challenging and would require working through.

The Director of Commissioning informed the Committee that LBB had been successful in the past with commissioning contracts and with the successful transfer over of pension liabilities. This had resulted in savings for the Council, and in some cases LBB had put sums aside to cover against pension risk. The Director commented that the Reablement Service had now been set up as a private

provider and would deliver significant savings.

The Chairman noted that successful commissioning had been undertaken with respect to other large contracts, and he asked therefore if this was a problem peculiar to CCG/NHS contracts. The Director of Commissioning stated that this was not a problem confined to CCG/NHS contracts. A large ECHS contract bundle had previously been successfully commissioned after a negotiation process. The problem with a negotiated process was that the process took longer.

Councillor Mellor commented that it seemed that the matter of pensions liability for BHC had not been made clear in the initial procurement process, and he wondered why this was the case.

Dr Bhan stated that the CCG were also accountable and that the CCG would produce a business case as part of the procurement process. As far as the CCG were concerned there were no errors in the contractual process as far as they were concerned.

Mark Cheung highlighted that the total value of the Community Care Contract was £35m. The Reablement part of the contract amounted to £800,000 so the issue should be regarded in this context. So the point was that the failed procurement was only in a small area.

Mr Cheung referenced various contracts that had been successfully commissioned and specifically mentioned the provision of disabled respite services at Highbank. In this case a long standing member of staff had been transferred over as part of the commissioning process. This was part of Lot 1 of the Community Contract for Children and Young People's Services. It was estimated that the Lot 1 bundle of services had resulted in significant savings in the region of £2m, and some of these savings had been accrued by LBB.

The Director of Commissioning explained that commissioning was not always about out-sourcing. Different approaches to commissioning were possible. The Chairman stated that he liked the idea of synergies being achieved by integration, and that he was now feeling more assured that mutually agreeable processes could be worked out between partners such as the CCG, NHS and BHC.

Dr Bhan noted that procurement laws applied to all concerned. A genesis point was required when it could be decided from the offset what was required, and what the aims and objectives of procurement and commissioning should be. It may be that the JSNA (Joint Strategic Needs Assessment) was a good place to start, and that the JSNA could be used as a tool to assist with service development and specification. In all cases consultation would take place with patients and other service users. The CCG placed a considerable importance on public consultation. It had extensively engaged with young people in the development of mental health services for young people. The design and strategy development was initiated after this process of consultation was finished.

Mr Adetosoye reminded members that it was a statutory requirement that substantial integration be achieved by 2020. A report was being drafted

concerning this over the next few weeks, and the work of the Joint Leadership Board would broaden and expand. It was hoped that by 2020, LBB could report to central government that substantial integration had been achieved.

Dr Bhan informed the Committee that due to successful integration work to date, hospital admissions had been reduced by 18%. Additionally, the latest data for May showed that delayed transfers of care had reduced by 36%. Progress was being made, but there was still more work to be done, particularly in the area of children and paediatrics. Dr Bhan was convinced that successful integration would definitely benefit the local population.

A Member expressed concern that the commissioning process took too long, and wondered if there was a way of speeding up and improving the commissioning process and the type of contracts used. The Director of Commissioning responded by explaining the nature of the contract documentation that was used. It was the case that the contracts used had been developed over a long period of time, and that the core contract documentation did not need to be changed. It was just supplementary information/detail pertaining to an individual contract that may need to be added as required. The Director highlighted to the Committee that it was important to forward think the commissioning strategy.

A Member expressed the view that if the pensions liability for the Reablement service had been made clear at the offset, the process would not have failed. A discussion took place about clarifying the level of pension risk with respect to contracts, and the practice of banking savings to offset risk.

A further discussion took place concerning when it may be appropriate to enter into negotiations. In some cases, especially when dealing with large and complex contracts, it may be appropriate to enter into negotiations to vary a contract. Mr Cheung commented that if both parties knew what they wanted, then negotiations may not be required, and Mr Adetosoye stated that once a contract had been awarded, it would not be appropriate later to offer more money to the provider.

It was noted that the 19 staff working for the Reablement service had been kept fully informed of the proposed transition of the service, meetings were held and assurances provided. It was the case that some staff left the service during the process, but this was not uncommon.

A Member asked if a management buyout was possible. It was noted that this course of action was not recommended as there were lots of associated risks.

It was agreed that sometime in the spring of 2019, an update should be provided to the Committee concerning what progress had been made towards the objective of substantial integration.

**RESOLVED that the Committee be updated during spring 2019 concerning the progress made towards substantial integration of health and care services**

The Meeting ended at 8.45 pm

Chairman