



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**16 June 2022**

**Report of the Director - Public Health**

**Transferring Infant and Toddler Nutrition and Oral Health Promotion  
contracts into Section 75 Partnership Agreement**  
Cabinet Member for Health and Communities

**1. Divisions Affected**

1.1 County-wide

**2. Key Decision**

2.1 This is a key decision because it is likely to result in the Council incurring expenditure which is, or savings which are significant having regard to the budget for the service or function concerned (this is currently defined as £500,000)

**3. Purpose**

3.1 This report seeks Cabinet approval to:

- a) Transfer both the Infant and Toddler Nutrition Service and Oral Health Promotion Service delivered by Derbyshire Community Health Services NHS Foundation Trust (DCHS) into the existing Section 75 Partnership Agreement with the same provider for the delivery of the 0-19 Public Health Nursing Service from 1 April 2023 for an indefinite period with an annual review
- b) That subject to the approval of this report, Cabinet delegates authority to the Director of Public Health to sign off the agreement to

transfer both services into the existing Section 75 Partnership Agreement

#### **4. Information and Analysis**

- 4.1 Both the Infant and Toddler Nutrition Service and Oral Health Promotion service are Public Health commissioned services delivered by DCHS. The current contracts for both services were awarded following a competitive procurement process and both contracts are due to expire on 31 March 2023. Rather than re-commissioning both services via a competitive re-procurement, this report seeks cabinet approval to commission both services via a Section 75 Partnership Agreement with the same provider meaning that DCHS will continue to provide both services moving forward.
- 4.2 A Section 75 Partnership Agreement is a legal agreement and formal partnership between a local authority and an NHS body under Section 75 of the National Health Service Act 2006 (updated under the Health and Social Care Act 2012). Traditional methods of public sector procurement are subject to a legal framework that encourages free and open completion, whereas a Section 75 Partnership Agreement enables the commissioning authority to delegate responsibilities to NHS organisations for the delivery of Health and Social Care services.
- 4.3 The current Section 75 Partnership Agreement for the delivery of the 0-19 Public Health Nursing Service commenced on 1 October 2019 and Cabinet approved the final sign off of the Section 75 Partnership Agreement on 10 October 2019. Both the Infant and Toddler Nutrition Service and Oral Health Promotion Service are delivered by DCHS and the successful implementation of the current Section 75 Partnership Agreement for the delivery of the 0-19 Public Health Nursing Service is the reason why this report seeks to transfer these additional two services into this agreement.
- 4.4 On 18 November 2021 Cabinet approved the decision to undertake a joint public consultation between Derbyshire County Council and DCHS on proposals to transfer both the Infant and Toddler Nutrition Service and the Oral Health Promotion Service into the existing Section 75 Partnership Agreement with DCHS for the delivery of the 0-19 Public Health Nursing Service. This report provides the outcomes from this joint consultation and seeks approval to proceed with the proposals to transfer both services into the Section 75 Partnership Agreement.

#### 4.5 Infant and Toddler Nutrition Service

The Infant and Toddler Nutrition Service provides support for breastfeeding mothers across the county to establish and sustain breastfeeding to six weeks and beyond. The service also provides support and advice to families on the introduction of first foods (designed to delay the introduction of first foods until six months); establishing healthy eating behaviours in families with toddlers; and building a supportive breastfeeding Derbyshire through recruitment, training and supporting of volunteers. This service has a broad reach to the population across the county and is supported by additional online information and an interactive website.

4.6 The overarching aim of the Infant and Toddler Nutrition Service is to protect and promote the health and wellbeing of children in the early years; improve the short- and long-term health, wellbeing and development of children; and to reduce health inequalities by ensuring that services for children, families and communities are developed and delivered with a strong focus on prevention, health promotion and early identification of needs.

4.7 The contract for the provision of the Infant and Toddler Nutrition Service was awarded by Cabinet on 16 November 2017 to DCHS. This was for an initial three-year period from 1 April 2018 to 31 March 2021 with an option to extend for a further two 12-month periods until 31 March 2023. Public Health SMT approved the first of these 12-month extensions on 6 July 2020 covering the period 1 April 2021 to 31 March 2022. Public Health SMT approved the second 12-month extension on 5 July 2021 meaning this contract is due to expire on 31 March 2023.

#### 4.8 Oral Health Promotion Service

The Health and Social Care Act (2012) conferred the responsibility for health improvement, including oral health improvement to local authorities in order to achieve sustained and long-term improvements in oral health and reduce inequalities.

4.9 This legislation states that local authorities are responsible for providing, or securing provision of:

- a) Oral health promotion programmes
- b) Oral health surveys to facilitate
  - the assessment and monitoring of oral health needs,
  - the planning and evaluation of oral health promotion programmes,
  - the planning and evaluation of the arrangements for provision of dental services as part of the health service, and

- c) Where there are water fluoridation programmes affecting the authority's area, the monitoring and reporting of the effect of water fluoridation programmes.
- 4.10 DCHS deliver the oral health promotion programmes mandated element across the county as part of the contract for the Oral Health Promotion Service. This includes targeted supervised toothbrushing programmes, the provision of oral health promotional resources to targeted groups and training to key organisations that work closely with families and young people. The Office for Health Improvement and Disparities (OHID) commission the other two mandated elements of Oral Health Improvement (oral health surveys and water fluoridation) on the Council's behalf.
- 4.11 The contract for the Oral Health Promotion Service was awarded by Cabinet on 12 July 2016 to DCHS and commenced on 1 April 2017. The term of the contract approved by Cabinet was for three years with an option to extend for a further two 12-month periods until 31 March 2022. Public Health SMT approved the second 12-month extension on 6 July 2020 covering the period 1 April 2021 to 31 March 2022, meaning this contract was due to expire on 31 March 2022. Due to tight timeframes to re-procure or transfer this service into the Section 75 Partnership Agreement, a business case was approved on 16 July 2021 to extend this contract beyond the original award period by 12 months. As a result, this contract is due to expire on 31 March 2023. The contract end date now aligns with the date that the Infant and Toddler Nutrition Service contract is due to expire.
- 4.12 Performance of Infant and Toddler Nutrition and Oral Health Services. Before the Covid-19 pandemic both services were performing well and meeting the key performance indicators (KPIs) outlined within the service specifications. However, the pandemic has resulted in significant changes to the way in which both services have been and continue to be delivered. For example, the Oral Health Promotion Service have had to adapt the way in which they deliver training to partner organisations by creating an online offer where appropriate or delivering face-to-face training in different ways to reduced numbers in order to comply with Covid-19 guidelines. The Infant and Toddler Nutrition Service had to suspend group-based programmes and offer support via telephone on an individual basis. These changes have impacted both services' ability to work with the numbers of individuals that they have worked with over previous years and that has been stipulated within the KPIs. Both services have had to make adaptations to the service delivery models at short notice and performance remained satisfactory for both services under the current circumstances.

The lifting of the Covid-19 restrictions has enabled both services to return to a more business as usual service delivery model, however certain elements of service delivery across both services have not returned to business as usual in order to:

- maintain the health and safety of staff, service users and members of the general public to help reduce the spread of Covid-19
- utilise new technologies in delivering services. For example, virtual appointments continue to be offered where appropriate within the Infant and Toddler Nutrition Service, where this best helps meet the needs of clients. There is a commitment to maintain face-to-face delivery where this best helps meet the needs of the client and where clients would prefer. The Oral Health Promotion Service is also utilising developments within technology to maintain the delivery of some training online.

#### 4.13 Benefits of transferring the Infant and Toddler Nutrition Service and Oral Health Promotion Service into the Section 75 Partnership Agreement

The successful implementation of the Section 75 Partnership Agreement for the delivery of 0-19 Public Health Nursing service was the catalyst for exploring the possibility of transferring both the Infant and Toddler Nutrition Service and Oral Health Promotion Service within the current Section 75 Partnership Agreement. Transferring both services into the current Section 75 Partnership Agreement would have the following benefits:

- Enables better integration between 0-19 Public Health Nursing, Infant and Toddler Nutrition, Oral Health Promotion as well as Early Help services delivered internally via Children's Services. Further integration will also lead to greater opportunities for partnership working between services and aligning resources appropriately to gain efficiencies in scale
- Allows the Council and DCHS to work together more cohesively to achieve positive outcomes for the children and young people and their families across Derbyshire
- Enables the provider to be more innovative and creates more opportunities to adapt services accordingly to meet the changing needs of the children and young people in Derbyshire
- Allows both services within the current Section 75 Partnership Agreement to build on the successful services currently delivered and mitigate future risks in performance as a result of re-procurement

#### 4.14 Possible constraints to approach

It is envisaged that transferring the Infant and Toddler Nutrition and Oral Health Promotion Services into the current Section 75 Partnership Agreement may have the following potential constraints:

- The approach does not help stimulate the wider market, nor give the market the opportunity to respond to the service specification and generate competition/innovation
- The span of the Council's control as a formal commissioner may reduce a little, however the benefits include improved partnership working. The Integrated Care System (ICS) is working towards a single contract model over the next 24 months. The new proposed Provider Regime, under the Health and Care Bill will offer increased flexibility for commissioners to arrange services in a more integrated way locally and nationally.
- The approach may generate some challenge from the market. However, powers provided to local authorities and the NHS under the NHS Act 2006 support the development of Section 75 Partnership Agreements.

## **5. Consultation**

- 5.1 Regulation 4 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (as amended) provides that before entering into partnership arrangements the two parties must undertake a joint public consultation with such persons as appear to them to be affected by the arrangements. Following Cabinet approval on 18 November 2021 DCC and DCHS have undertaken a joint consultation on the proposals to transfer the Infant and Toddler Nutrition and Oral Health Promotion Services into the current Section 75 Partnership Agreement.
- 5.2 The consultation ran for 42 days between 24 January 2022 and 6 March 2022 and was widely advertised across both the Council's and DCHS's networks. An online questionnaire was available on the 'Have Your say' page on the Derbyshire County Council website and paper copies of the questionnaire were also made available on request. All of the respondents were female and did not identify themselves as having a disability. The majority of respondents (74%) identified themselves as a Derbyshire resident with 10 individuals (53%) identifying themselves as a person who works in Derbyshire. 7 (37%) of respondents had used either the Oral Health Promotion Service, Infant and Toddler Nutrition Service (referred to as the Derbyshire Healthy Family Service in the consultation) or both services within the past 5 years. There was clear support to transfer both services into the existing Section 75 Partnership Agreement, with the majority of respondents (84%) either 'strongly

agreed' or 'agreed' to the transferring the Oral Health Promotion Service into the Section 75 Partnership Agreement, with the remaining respondents (16%) stating that they 'nether agreed nor disagreed' to the proposals. A similar response was also provided in response to the proposal of transferring the Infant and Toddler Nutrition Service into the Section 75 Partnership Agreement with the majority of respondents (84%) either 'strongly agreed' or 'agreed' with the proposals. Two respondents (11%) stated that they 'neither agreed nor disagreed' with the proposals and one respondent (5%) stated they 'did not know'. None of the respondents either 'disagreed' or 'strongly disagreed' with proposals to transfer the Infant and Toddler Nutrition and Oral Health Promotion services into the Section 75 Partnership Agreement.

- 5.3 Respondents were given the opportunity to comment about the transfer of both services into the existing Section 75 Partnership Agreement. Seven responses were recorded. The main points were that the transfer of the services into the Section 75 Partnership Agreement would 'continue to provide the best care for the community' and make the services 'more secure' and that a 'more responsive partnership approach' would be enabled by the transfer. Other comments included that the services were 'vital' and that the transfer would 'support' these services.
- 5.4 The final consultation report produced by the Public Health Knowledge and Intelligence Team is included within the background reports for this paper.
- 5.5 Following the completion of this consultation exercise and subject to the approval of this report the proposed timeline to transfer the Infant and Toddler Nutrition Service and Oral Health Promotion Service into the Section 75 Partnership Agreement is as follows:
- July-September 2022: Engagement with key stakeholders to help inform the service specifications for the delivery of both services and ensure continued service development. This will include engaging with management and staff delivering both services within DCHS, as well as current service users and other key stakeholders that will have a vested interest in oral health and infant and toddler nutrition agendas.
  - October-December 2022: Service Specification development. Information obtained from the engagement exercise will be used to help inform the development of service specifications for both the Infant and Toddler Nutrition and Oral Health Promotion Service's. These specifications will be co-produced with DCHS and key stakeholders to ensure they meet the needs of Derbyshire residents
  - January-March 2023: Mobilisation period. There will be a 3-month mobilisation period following the development of the specification in

order to transfer both services into the Section 75 Partnership Agreement. As part of this mobilisation period:

- A variation to the current Section 75 Partnership Agreement with DCHS for the delivery of the 0-19 Public Health Nursing Service will be undertaken. In January 2023 Public Health will work with the Council's Legal Department in order to undertake the necessary variation to the current Section 75 Partnership Agreement
- Establish Governance arrangements: The current Section 75 Partnership Agreement already has governance arrangements in place. Therefore, these will need to be updated to ensure they encompass the Infant and Toddler Nutrition and Oral Health Promotion Services as part of these governance arrangements
- Final approval to sign off the transfer of both services into the Section 75 Partnership Agreement. Part of the approval of this report is to delegate the final sign off to transfer of both services to the Director of Public Health. Therefore, approval will be obtained in March 2023 from the Director of Public Health as well as the Strategic Governance Group that oversees the existing Section 75 Partnership Agreement to have the final sign off of transferring both the Infant and Toddler Nutrition and Oral Health Promotion services into the Section 75 Partnership Agreement on 1 April 2023.
- 1 April 2023: Infant and Toddler Nutrition Service and Oral Health Promotion Service transfer into the Section 75 Partnership Agreement.

## **6. Alternative Options Considered**

- 6.1 Alternative option 1 – Re-procure the Infant and Toddler Nutrition and Oral Health Promotion Services.
- 6.2 The main benefit of re-procuring the Infant and Toddler Nutrition and Oral Health Promotion Services as part of a competitive procurement process is that it would enable the Council to go out to the wider market, which would allow the opportunity for other providers to bid for these services. However, despite this the benefits of transferring both services into the existing Section 75 Partnership Agreement will secure stable services due to a longer-term partnership, increasing service improvements, innovation and efficiencies, these benefits outweigh the benefits of going out to a wider market.
- 6.3 There are also additional social value advantages to transferring these services into the existing Section 75 Partnership Agreement. A partnership approach offers an opportunity for efficiencies as one party provides functions on behalf of another. Savings can then be utilised to



deliver service improvement to better meet the needs of the local population. DCHS, as the current provider of various Public Health services is one of the largest employers in Derbyshire, employing over 4,500 local people.

- 6.4 The success of the implementation of the current Section 75 Partnership Agreement between the Council (Public Health and Children's Services) and DCHS coupled with the advantages highlighted above is why this report seeks approval to transfer these services into the existing Section 75 Partnership Agreement as opposed to undertaking a competitive re-procurement of both services.
- 6.5 Alternative option 2 – De-commission the Infant and Toddler Nutrition and Oral Health Promotion services after the current contracts end in March 2023.
- 6.6 Public Health are not mandated to commission Infant and Toddler Nutrition Services. However, Public Health does have a statutory duty to commission oral health promotion programmes, although Public Health are not constrained to commissioning the current model delivered as part of the Oral Health Promotion Service. De-commissioning both services would produce an initial cost saving to the Public Health Grant. However, failure to commission these services could have an adverse impact on the health of the population and increase health inequalities within some of the most vulnerable populations in Derbyshire. Over the longer-term, failure to have these preventative services in place might create an additional cost within the health and social care system. Failure to provide these services may also cause reputational damage for the Council. It is for these reasons why this is not considered a viable option.

## **7. Implications**

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **8. Background Papers**

- 8.1 Cabinet report 12 July 2016 – 'Oral Health Promotion Service'
- 8.2 Cabinet report 16 November 2017 – 'Provision of Infant and Toddler Nutrition Peer Support Service'

- 8.3 Cabinet report 26 July 2018 – ‘A New Approach to Public Health Nursing and Achieving Population Health and Wellbeing Outcomes in 0-19 Year Olds across Derbyshire’
- 8.4 Cabinet report 10 October 2019 – ‘Achieving Public Health 0-19 Outcomes – Section 75 Agreement between Derbyshire County Council and Derbyshire Community Health Services NHS Foundation Trust’  
<https://derbyshireintranet.moderngov.co.uk/documents/s2173/Section%2075%20Agreement.pdf>
- 8.5 Cabinet report 19 November 2020 – ‘Additional Investment for Public Health Nursing’  
<https://derbyshireintranet.moderngov.co.uk/documents/s4451/6e%20Additional%20Investment%20for%20Public%20Health%20Nursing.pdf>
- 8.6 Cabinet report 18 November 2021 – ‘The transfer of the Infant Toddler and Nutrition Service and Oral Health Promotion service into the existing Section 75 Partnership Agreement’  
<https://derbyshireintranet.moderngov.co.uk/documents/s11077/Transfer%20IT%20and%20OHP%20into%20S75.pdf>
- 8.7 Oral Health Promotion and Derbyshire Healthy Families service – summary report – March 2022

## **9. Appendices**

- 9.1 Appendix 1- Implications.

## **10. Recommendation(s)**

That Cabinet:

- a) Proceeds with proposals to transfer the Infant and Toddler Nutrition Service and Oral Health Promotion Service delivered by DCHS into the existing Section 75 Partnership Agreement with the same provider for the delivery of the 0-19 Public Health Nursing Service from 1 April 2023 for an indefinite period with an annual review.
- b) Delegates authority to the Director of Public Health to sign off the agreement to transfer both services into the existing Section 75 Partnership Agreement.

## **11. Reasons for Recommendation(s)**

- 11.1 The joint public consultation undertaken in February / March 2022 supports the proposals to transfer the Infant and Toddler Nutrition as well as the Oral Health Promotion Service into the Section 75 Partnership Agreement. This report therefore seeks Cabinet approval to proceed with this proposal to transfer both services into the existing Section 75 Partnership Agreement
- 11.2 Final sign off on the transfer of both services will be required in March 2023. Delegating this sign off to the Director of Public Health would free capacity within Cabinet to focus on other matters arising.

## **12. Is it necessary to waive the call in period?**

- 12.1 No

**Report Author: Jamie Dix, Abid Mumtaz      Contact details:**

**Jamie.Dix@derbyshire.gov.uk, abid.mumtaz@derbyshire.gov.uk**

**Appendix 1**

## **Implications**

### **Financial**

- 1.1 The annual budget of the Infant and Toddler Nutrition service is £0.424m and for the Oral Health Promotion service is £0.137m. This equates to £0.561m per annum. Transferring both services into the existing Section 75 Partnership Agreement as part of this proposal will increase the annual budget of the Section 75 Partnership Agreement from £12.500m to £13.061m. This budget will continue to be met out of the Public Health Grant and will not require any further investment out of the Public Health Grant as all three services delivered as part of this Section 75 Partnership Agreement will retain their annual budgets.

### **Legal**

- 2.1 Section 75 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) enables local authorities and NHS bodies (including clinical commissioning groups and foundation trusts) to enter into arrangements in relation to the exercise of each other's health-related functions where such arrangements will provide a more streamlined service if they are likely to lead to an improvement in the

way those functions are exercised. The arrangements may mean that one body carries out the functions of both in providing the service; that the two bodies share functions (usually with a pooled budget); or that one body commissions services on behalf of both. In this instance, DCHS and the Council work in partnership under the Section 75 Partnership Agreement to deliver a better service to users but maintain separate budgets.

- 2.2 As set out in paragraph 5.1 within this report and the previous Cabinet report on 18 November 2021, the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (as amended) require that a joint public consultation is carried out before any partnership arrangements are entered into. This includes situations where an existing agreement is to be amended by the addition of services. The Council have completed this requirement with the consultation undertaken on these proposals in February / March 2022, and the outcome of this consultation has provided the justification to seek further Cabinet approval to proceed with this proposal of transferring both services into the Section 75 Partnership Agreement.
- 2.3 The Director of Legal Services will advise on the further legal process required in order to undertake a variation of the current Section 75 Partnership Agreement between the Council and DCHS to transfer the Infant and Toddler Nutrition and Oral Health Promotion Services into the agreement.
- 2.4 This will include clearly defined shared performance measures, outcomes, aims and objectives, setting out the services to be delivered and the budget for both Infant and Toddler Nutrition and Oral Health Promotion. Both services will also become part of the existing governance arrangements including accountability, financial reporting, management of risks, exit strategy that was established as part of the current Section 75 Partnership Agreement.

## **Human Resources**

- 3.1 The current services in scope for the partnership arrangement employ a range of clinical and non-clinical staff from DCHS. Employee consultation and briefings will take place as appropriate to ensure understanding and maintenance of the service during this process of change.
- 3.2 The delivery of the Infant and Toddler Nutrition Service does contain sub-contractual arrangements between DCHS and the Breastfeeding Friendly Network. These sub-contractual arrangements and the HR

complications that may arise will be taken into consideration at all stages as part of the transfer of both services into the existing Section 75 Partnership Agreement.

## **Information Technology**

4.1 N/A

## **Equalities Impact**

5.1 We do not envisage the need to undertake an Equalities Impact Assessment (EIA) at this stage because this report proposes to change the way services are commissioned as opposed to proposing significant changes to service delivery. If the way these services are delivered change as a result of transferring both services into the current Section 75 Partnership Agreement and/or significant changes are made to the service specifications following the engagement exercise, then an EIA will be undertaken before any proposed changes to service delivery within either of these services are implemented.

## **Corporate objectives and priorities for change**

- 6.1 All Public Health commissioned services set out to meet the outcomes outlined within the Adult Social Care and Health Service Plan 2021-2025 which are to ensure Derbyshire has:
- Resilient, thriving and green communities which share responsibility for improving their lives and supporting each other
  - Happy, safe and healthy people, with solid networks of support, who feel in control of their personal circumstances and aspirations
  - A strong, diverse and clean economy which makes the most of Derbyshire's rich assets and provides meaningful opportunities for local people to achieve their full potential
  - Great places to live, work and visit with high performing schools, diverse cultural opportunities, transport connections and keep things moving and a healthy and sustainable environment for all
  - High quality public services that work together and alongside communities to deliver services that meet people's needs

**Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

7.1 N/A