

**CONTRACT NOVATION IN RESPECT TO THE INTEGRATED DRUG AND ALCOHOL TREATMENT SERVICE CONTRACT.**

*To:* Health Committee

*Meeting Date:* 11<sup>th</sup> July, 2019

*From:* Director of Public Health

*Electoral division(s):* All

*Forward Plan ref:* 2019/021 *Key decision:* Yes

*Purpose:* This paper seeks the support and approval of the Health Committee to novate Cambridgeshire County Council's Integrated Drug and Alcohol Treatment Service contract from the charity Change Grow Live to the wholly owned subsidiary of the charity, Change Grow Live Services Limited.

*Recommendation:* The Health Committee is requested to:

1. Review the rationale for the request for contract novation.
2. Approve the contract novation of Cambridgeshire County Council's Integrated Drug and Alcohol Treatment Service contract from the charity Change Grow Live to the wholly owned subsidiary of the charity, Change Grow Live Services Limited.

If the request is supported:

3. Authorise the Director of Public Health, in consultation with the Chairman and Vice Chairman of the Health Committee, to novate the current contract subject to compliance with all required legal processes
4. Authorise the Consultant in Public Health, Health Improvement, in consultation with the Executive Director of LGSS Law to approve and complete the necessary contract documentation

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## **1. BACKGROUND**

- 1.1 Change Grow Live (CGL) was awarded the Cambridgeshire Adult Integrated Drug and Alcohol treatment contract in June, 2018. The contract commenced on the 1<sup>st</sup> October 2018 for a 3.5 years period with the option to extend for a further 2 years.
- 1.2 Due to financial pressures nationally across the drug and alcohol sector, CGL are approaching all commissioners, seeking to novate contracts to their wholly owned, non-charitable, trading subsidiary 'Change Grow Live Services Limited'. This will enable them to make VAT savings.
- 1.3 As part of their tender submission CGL included a proposal that if it was successful the organisation would seek agreement to novate the contract to their Change Grow Live Services Ltd, to enable the reclaim of VAT (£500k over contract lifetime, £80k per annum) which would be wholly reinvested in a local 'recovery grant fund' to strengthen the growth and development of the innovative Recovery Service element of the new Cambridgeshire treatment model.

## **2. MAIN ISSUES**

- 2.1 As a registered charity, the majority of CGL's services are deemed exempt from VAT as they are classed as health and welfare services by HMRC. Therefore, CGL is not allowed to charge VAT on these services which also means CGL (Charity) is unable to reclaim the VAT it pays to its suppliers in the provision of those services. In order to alleviate financial pressures across its contracts, a corporate restructure has been implemented whereby CGL (Charity) contracts are novated to its wholly owned, non-charitable trading subsidiary CGL Services Limited. This restructure allows CGL Services to charge VAT on the contract. In relation to the CCC contract the Council will be able to recover the VAT. In addition as CGL is now able to charge VAT it is also able to reclaim any charged by the provider's suppliers. See Appendix 1 where the flowcharts describe these processes. This change enables the provider to focus spend on areas that improve and maximise service delivery and ensure it continues to deliver effective service outcomes.
- 2.2 Novation will result in the contract for Integrated Drug and Alcohol Treatment Service being between the Council and CGL Services Limited. However CGL Services Limited will subcontract service delivery to CGL the charity. CGL Services Limited shall be legally responsible for delivering the contract and whilst the Council consents to CGL Services Limited subcontracting to CGL (Charity), this shall not relieve CGL Services Limited of its liability to the Council for the full performance of any of its obligations under the contract.
- 2.3 Charity Commission guidance permits charities to consider different structures to ensure funds are maximised for delivery of their charitable purposes. CGL stated that the proposal does not require HMRC approval, however it did notify HMRC of the intention to novate the Cambridgeshire CGL contract (Charity) to CGL Services Limited.
- 2.4 Savings will vary during the course of the existing contract due to potential changes to VAT rules and the varying VAT position of the mix of supplies into CGL. These savings will only be realisable within the duration of the existing contract. It is anticipated that the VAT

reclaim will generate an additional yearly income of approximately 80k which will be re-invested into the local service.

2.5 The additional yearly income shall be reflected within the Specification, including variation to service delivery/outcome, key performance indicators and monitoring and reporting.

2.6 A similar proposal was requested and granted by Peterborough City Council in December, 2018 in respect to the Public Health Integrated Drug and Alcohol treatment contract which is also provided by CGL (commenced April 2016).

## 2.7 **Potential Risks and mitigation**

2.1 Due diligence was undertaken which included the Finance and Legal teams considering the novation proposals. See Appendix 2 for a FAQ document produced by CGL that explains and addresses questions that have been raised. The following indicates their questions and the assurances that have been provided.

- (i) The Council required a financial investigation/assessment on the new subsidiary CGL Services Limited. This was undertaken and CGL Services Ltd. has been deemed to be low risk.
- (ii) A parent company guarantee was requested for the novated contract which has been agreed with CGL.
- (iii) In order to maintain clinical quality and compliance the Deed of Novation and letter of consent to sub-contracting will contain provisions reiterating the obligations in the contract requiring that any organisation delivering regulated activities are registered and compliant with CQC Regulations as required by law and good clinical practice. CGL have accepted these as part of the terms and conditions of the contract.

2.2 The Legal and Finance Teams also requested further information with regard to the position of HMRC in relation to the novation. This was also a concern of the Health Committee and the Director of Public Health was asked to personally assess through a dialogue with CGL any risks associated with the proposal.

2.3 The central concern was whether HMRC needed to provide written official acceptance of the proposal. CGL had supplied evidence that other areas had approved and accepted the novation of its contracts with CGL (Charity) to CGL Services Ltd. Locally Peterborough City Council legal services has also approved the request as described above.

2.4 Further discussion with CGL has taken place which included its Financial Controller, an advisor from the company that advises CGL on finance/VAT issues and the Director of Public Health. This discussion clarified the HMRC position in that as the proposed novation and its associated VAT implications are in line with the VAT legislation (VAT Act 1994, Schedule 9, Group 7, Item 9) CGL does not require any formal approval for the change.

### **3. ALIGNMENT WITH CORPORATE PRIORITIES**

Report authors should evaluate the proposal(s) in light of their alignment with the following three Corporate Priorities.

#### **3.1 Developing the local economy for the benefit of all**

Reinvesting the VAT reclaim monies into strengthening locally based recovery support will enable growth and increased resilience across communities in Cambridgeshire.

#### **3.2 Helping people live healthy and independent lives**

Increased investment in recovery based support will encourage move on and independence away from specialist services, integrate individuals in their local communities through involvements in healthy recovery based activities and peer led support.

#### **3.3 Supporting and protecting vulnerable people**

An increase in investment to the new Recovery Service model will extend the development and delivery of recovery based activities at a local level, building peer led support thereby strengthening community resilience and providing much needed support to vulnerable individuals and families struggling with substance misuse and/or mental health difficulties.

### **4. SIGNIFICANT IMPLICATIONS**

#### **4.1 Resource Implications**

The following bullet points set out details of significant implications identified by officers:

- Contract novation will result in additional resources made available to Cambridgeshire.

#### **4.2 Procurement/Contractual/Council Contract Procedure Rules Implications**

The following bullet points set out details of significant implications identified by officers:

- Any implications for procurement/contractual/Council contract procedure rules will be considered with the appropriate officers from these Departments and presented to the Health Committee before proceeding.

#### **4.3 Statutory, Legal and Risk Implications**

The following bullet points set out details of significant implications identified by officers:

- Any legal or risk implications will be considered with the appropriate officers from these Departments and presented to the Health Committee before proceeding.

#### **4.4 Equality and Diversity Implications**

The following bullet points set out details of significant implications identified by officers:

- There will not be any equality and diversity changes

#### **4.5 Engagement and Communications Implications**

The following bullet points set out details of significant implications identified by officers:

- Extensive consultation was undertaken before initial contract award with the general public, service users and stakeholders. This proposed contract change will have no impact on service delivery.

#### **4.6 Localism and Local Member Involvement**

The following bullet points set out details of significant implications identified by officers:

- The new recovery service will be co-produced with service users and will involve asset based community development mapping, connecting service users to recovery based activities/services and facilitating access to mutual aid support in their local community.

#### **4.7 Public Health Implications**

The following bullet points set out details of significant implications identified by officers:

- The contract novation will contribute towards improving long term health and social outcomes for substance misusers by ensuring that long term community based support is available after discharge from specialist provision, strengthening community and personal resilience, preventing relapse and readmission to services.
- These service developments will need to include targeted actions that will address any inequalities and improve outcomes for the most vulnerable and at risk populations.

<b>Implications</b>	<b>Officer Clearance</b>
<b>Have the resource implications been cleared by Finance?</b>	Yes Name of Financial Officer: Clare Andrews
<b>Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement?</b>	Yes : 19 June 2019 Name of Officer: Gus de Silva
<b>Has the impact on statutory, legal and risk implications been cleared by LGSS Law?</b>	Yes : 20 June 2019 Name of Legal Officer: Fiona McMillan
<b>Have the equality and diversity implications been cleared by your Service Contact?</b>	Yes Name of Officer: Liz Robin

<b>Have any engagement and communication implications been cleared by Communications?</b>	Yes Name of Officer: Matthew Hall
<b>Have any localism and Local Member involvement issues been cleared by your Service Contact?</b>	Yes Name of Officer: Liz Robin
<b>Have any Public Health implications been cleared by Public Health</b>	Yes Name of Officer: Liz Robin

<b>Source Documents</b>	<b>Location</b>
VAT Act 1994, Schedule 9, Group 7, Item 9	<a href="https://www.legislation.gov.uk/ukpga/1994/23/schedule/9">https://www.legislation.gov.uk/ukpga/1994/23/schedule/9</a>