

Birmingham Audit

Final Audit Report: 0232/014

Early Years Health and Wellbeing Contract

Children and Young People

Date 29th January 2019

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1. Objectives and Scope

Background:

In January 2018 the Children and Young People Directorate entered into a contract with Birmingham Community Health Care NHS Foundation Trust (BCHT) for the delivery of its early years health and well-being services. This is a 5 year contract with an annual value of approximately £33M with BCHT sub-contracting services to 4 partners, with forecast savings of £10.1M and services being provided in City Council properties. There are 140 BCC staff that have been seconded to one of the 4 sub-contractor partners for a period of 12 months. We were informed that it was accepted by all parties that this was a TUPE situation, however due to late concerns expressed in relation to Collective Bargaining rights, staff have been seconded and not TUPEd. A Secondment Agreement is in place that sets out the expectation that secondees are TUPE'd over in January 2019. The Secondment Agreement also sets out a series of BCC liabilities that relate to the secondment situation, including liability for redundancy costs and any potential future claims.

Objective of Review:

To provide assurance that the directorate has established sufficient controls to ensure the Early Years Health and Wellbeing contract is properly mobilised and managed and delivering high quality cost effective services.

Scope of Review:

This review was undertaken via management assurance, discussions with officers and examination/verification of documentation where required. The scope will include:

- Establishing whether the contract has been properly commissioned, appropriately authorised and its contents reviewed in relation to the required governance, finance, HR and legal requirements.
- The relevant staff have been properly and legally transferred to BCHT and its sub-contractor partners.
- There is sufficient capacity, and clear lines of governance and responsibility to manage the performance and delivery of the EYH&W contract.
- There is a strong performance management framework in relation to service delivery.
- There is a robust financial management framework in place.
- The use of Council Property has been properly planned, managed and controlled.

2. Executive Summary

Assurance: **Level 4**

Risk Rating for Council: **High**

Risk Rating for Service Area: **High**

This review has identified significant concerns with the mobilisation and management of the EYH&WB contract, in particular, the late decision to second rather than TUPE staff and the potential litigious implications thereof; delays and mobilisation issues mean the forecast savings are unlikely to be achieved; no budget monitoring for the first 5 months; no ICF in place nor capacity in the directorate to monitor the contract; KPIs not fit for purpose, front line staff dealing directly children that had not had DBS checks undertaken and the risk of claw back of grant funding from the Dfe due to a change in the use of some properties.

These findings collectively have impacted on the assurance and risk levels of this report which have been allocated to reflect the seriousness of the issues, their implications and the risks that the City Council is now exposed to. The key issues are highlighted in the top issues for management section, with additional details provided within section 3 and the action plan, section 4, of this report.

The top issues for management are:

- The £10M of savings forecast from the mobilisation of this contract almost certainly won't be achieved. Whilst there are a number of issues and complexities that have contributed to this, the delay in starting the contract 4 months late has cost an additional £4.7M alone.
- The late decision to second rather than TUPE staff in order to retain collective bargaining rights has exposed the City Council to significant risks of employment litigation.
- No budget monitoring information was available for the first 5 months of the contract. The absence of this information meant there has been no effective monitoring and control on spending until September 2018.
- A number of front line staff who had direct involvement with children had not had appropriate DBS checks undertaken.
- The contract went live in January 2018 without an Intelligent Client Function (ICF) or any real capacity within the directorate to monitor and manage the contract. Whilst it is expected that an ICF will be in place by the end of September 2018, this means that the contract has not been effectively monitored for almost 9 months.
- The KPIs established at the outset of the contract are not fit for purpose and are being fundamentally reviewed.
- No leases have been drawn up and instead the partners are occupying on a licence to occupy and paying a peppercorn rent.
- No condition surveys were undertaken prior to the contract start date which meant that the partners were occupying buildings which needed improvement and remedial work for which no budget had been allocated.
- The Programme Board was closed down too early after the contract started with a number of their key recommendations still outstanding.
- The change of services delivered at some properties has exposed the City Council to the risk of claw back of grant funding from the Dfe.

3. Control Objectives and Conclusion

Control Objective	Conclusion	Rationale
01. The contract with BCHT has been appropriately authorised and its contents reviewed in relation to the required governance, finance, HR and legal requirements.	Partially Met	In April 2017 Cabinet gave approval to award the contract for EYH&WB services to BCHT, with a planned start date of September 2017. However, due to delays the contract didn't start until January 2018. This delay caused immediate pressures on the achievement of the planned £10M savings. A Programme Board was established and due diligence undertaken. Reports on the costs, benefits and risks associated with the contract have been provided to Cabinet. However, officers from some key business areas weren't included on the Programme Board early enough and their absence meant that specialist knowledge was not always available when making key decisions. No Contract Management Plan was in place and the CPS Supply Chain Methodology was not used (See recommendations 1-3) .
02. All relevant staff have been properly and legally transferred to BCHT.	Partially Met	It was decided late in the contract process that staff would be seconded and not TUPE'd as originally planned, so that collective bargaining rights could be retained. This has exposed BCC to a number of unacceptable risks in relation to employment litigation, which includes unfair dismissal claims. There were also issues with the secondment processes and not all staff were correctly transferred as there were instances where staff were found to be at home rather than their new place of work (see recommendation 4) .

Control Objective	Conclusion	Rationale
03. There is sufficient capacity and clear lines of responsibility are in place to manage the EYH&W contract.	Not Met	There is no Intelligent Client Function (ICF) in place and also no capacity or clear lines of responsibility within the service area to manage the contract. The Programme Board was disbanded too soon and as a result there were a number of high risk concerns that were unresolved when the contract started (see recommendations 5-8).
04. There is a strong performance framework in relation to service delivery.	Partially Met	A range of KPIs has been established to measure and monitor the performance of BCHT and its partners. However, these are currently being reviewed, as they are considered to be inadequate to appropriately measure performance. It is unclear why such inappropriate KPIs were established when it is largely the same services being provided but by outside providers. DBS checks had not been undertaken on all staff whose role required them have one and due to IT issues, sickness monitoring systems weren't in place at the partner organisations and the contract did not specify that BCHT and its partners were liable to pay sick for the seconded employees. As a result BCC is now invoicing BCHT and its partners to recover these charges (see recommendations 9-12).
05. There is a robust financial management framework in place.	Not Met	There are no budget monitoring systems in place which means that the service managers are unable to establish and monitor how much has been spent to date. This also means that it is not possible to determine whether the planned savings are on target to be achieved. This is particularly concerning, given that there have been a number of pressures (e.g. delayed start date, partners not paying sick pay) which are likely to mean that the planned savings will not be achieved (see recommendations 13-15).

Control Objective	Conclusion	Rationale
06. The use of Council Property has been properly planned and managed.	Not Met	<p>The partners were given the choice of property that they wanted rather than BCC identifying which properties they wanted the services to be provided from. This left some properties empty and others unsuitable for the services that were being provided. No condition surveys have been undertaken and no budget allocated for any remedial work. As a result, some of the work has been funded from other budgets but other work has been undertaken as an unfunded liability. No leases have been drawn up and instead the properties have been occupied on a licence. It was also identified that there was a risk of claw back of grant, as some properties are no longer being used for the purposes for which the funding was provided. To offset this, smaller ad hoc outreach services are being provided from these properties but this means they are being under-utilised and it is proving difficult to let these properties outside of the hours that outreach services are being provided. This is adding to the budget pressures. There is also dispute over the type of services to be provided and charged at some sites, which again is adding to the budget pressures. (see recommendations 16-23).</p>

4. Action Plan

Rec No.	Recommendation	Priority	Management Response	Responsible Officer / Implementation Date
01	Whilst it is acknowledged that a "core" of staff will need to consistently sit on the Programme Board, the mix of staff should be reviewed to ensure that appropriate members of staff from the different service areas, with the required knowledge /expertise, attend as and when required.	High	Agreed in full and to be address as part of an overall programme review.	Officer Responsible: Assistant Director, Education and Early Years. Agreed Implementation date: July 2019.
02	A Contract Management Plan (covering the key areas detailed in the Sheffield Toolkit) should be in place for all future contracts.	High	Agreed in full and a complete Contract Management plan in place.	Officer Responsible: Early Years Commissioning Manager. Agreed Implementation date: Complete - already implemented.
03	The Corporate Procurement Services (CPS) Supply Chain Methodology should be used for all future contracts.	High	Agreed. Noted and agreed as a recommendation for future activities	Officer Responsible: Relevant DMT lead in conjunction with procurement/ commissioning lead. Agreed Implementation date: As and when required.

Rec No.	Recommendation	Priority	Management Response	Responsible Officer / Implementation Date
04	When transferring staff to a new place of work, additional controls must be in place to account for all staff to ensure they are at their correct place of work.	High	<p>Monthly employee reports are being shared by HRBP to each of the Partners to capture staffing data including resignations, changes to hours, moves, maternity, LTS, Etc.</p> <p>To be incorporated in mobilisation plans.</p>	<p>Officer Responsible: Claire Riley, HR Business Partner.</p> <p>Agreed Implementation date: On-going from September 2018.</p>
05	An ICF is established as a matter of urgency. This must have a clear remit, documented Terms of Reference (TOR), clear lines of responsibility, clear reporting lines and a documented escalation process for when performance is below standard.	High	<p>Commissioning for Early Years in place.</p> <p>Contract Management board in place and operational.</p>	<p>Officer Responsible: Assistant Director, Education and Early Years.</p> <p>Agreed Implementation date: Complete – already implemented.</p>
06	The Project Board should remain in place and operational during the early stages of a contract, (e.g. first six months of the contract) to oversee and help embed its initial implementation.	High	Agreed - to be reviewed in July 2019 as per overall programme review.	<p>Officer Responsible: Relevant DMT lead in conjunction with Project Manager.</p> <p>Agreed Implementation date: As and when required & review in July 2019.</p>

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07	Any recommendations made in a closedown report of a Programme Board should be implemented to help ensure the contract's successful implementation. Initially this could be monitored by the Programme Board as part of its hand over during the initial stages of the contract.	High	<p>Recommendations from closedown report implemented where possible.</p> <p>Outstanding matters being addressed by the programme board.</p> <p>Clear lines of accountability between contract management and programme board recommendations for future activities.</p>	<p>Officer Responsible: Relevant DMT lead in conjunction with Project Manager.</p> <p>Agreed Implementation date: As and when required.</p>
08	Wherever possible contracts should not start unless there is an ICF or there is existing capacity in place within the service to monitor and manage it. If this is not possible, the Programme Board should undertake this role until the board has closed down or the ICF is in place.	High	<p>Noted and agreed as a recommendation for future activities.</p>	<p>Officer Responsible: Relevant DMT lead in conjunction with Procurement/Commissioning lead.</p> <p>Agreed Implementation date: As and when required.</p>

Rec No.	Recommendation	Priority	Management Response	Responsible Officer / Implementation Date
09	The review of the existing KPIs should be completed as soon as possible so that performance / service delivery of BCHT and its partners can be measured effectively.	High	<p>Agreed and review nearly complete and draft KPIs are with provider for review.</p> <p>This is being monitored via the Contract Management Board</p>	<p>Officer Responsible: Early Years Commissioning Officer.</p> <p>Agreed Implementation date: 1st April 2019.</p>
10	The contract and its terms and conditions should be amended so that it clearly specifies which party is liable to pay sickpay.	High	<p>Complete – this has been addressed in the amended seconded agreement where it relates to BCC seconded staff.</p> <p>The provider is liable for any sick pay when it relates to other staff.</p>	<p>Officer Responsible: Assistant Director, CYP Commissioning.</p> <p>Agreed Implementation date: Complete – already implemented.</p>
11	DBS checks should be undertaken and kept up to date for all staff whose role requires one. Where this is not possible, a risk assessment should be undertaken and short term compensating controls such as shadowing an employee should be put in place until the DBS disclosure has been undertaken.	High	<p>DBS checks have now been completed and drop in sessions held over the last two months for those who originally held CRBs but had not completed DBS disclosures and for PSS staff who are now required to hold a valid DBS. For those on LTS a risk assessment is in place for their return so that they are not working with children on a one to one basis until they are able to complete a DBS form. For those whose DBS is about</p>	<p>Officer Responsible: Claire Riley, HR Business Partner.</p> <p>Agreed Implementation date: Complete – implemented on an on-going basis.</p>

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			to expire, declaration forms are to be completed. A monthly check of those about to expire is being produced and shared with Partners so that declarations can be completed.	
12	Sickness recording and monitoring systems should be in place when the contract starts or at least within 1 month of the contract start date.	High	Sickness monitoring has been in place since the start of the secondment. Mark Cohen BCC/HR has been inputting absence data on behalf of managers. Mark produces a LTS/Maternity report on a monthly basis which is shared with Partners and BCC Finance colleagues so that Partners are not being charged incorrectly for these secondees.	Officer Responsible: Claire Riley, HR Business Partner. Agreed Implementation date: Complete – implemented on an on-going basis.
13	A review of the contract should be undertaken to establish whether alternative savings can be identified to offset any that will not be delivered due to the issues and delays with the mobilisation of the contract.	High	Review of contract underway with specific focus on performance measurement, estates and service specifications to be complete by end of March 2019.	Officer Responsible: Interim Finance Business Partner. Agreed Implementation date: 31 st March 2019.

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14	Bi-monthly reports should be produced and used to monitor progress on delivering forecast savings. If forecast savings are not being achieved, then the reasons why need to be established and wherever possible corrective action taken.	High	Agreed – this is being address via the Contract Management Board.	Officer Responsible: Interim Finance Business Partner. Agreed Implementation date: 1 st April 2019.
15	Budget monitoring systems should be in place before the contract start date or no later than the end of the first month after the contract start date. This should include; the allocation of budgets to individual budget holders; the production of profiled individual monthly budget monitoring reports; and regular monitoring systems to ensure spending stays within the available budget and any relevant savings targets are being met.	High	Noted and agreed as a recommendation for future activities.	Officer Responsible: Relevant DMT lead in conjunction with Procurement/Commissioning lead. Agreed Implementation date: As required for the future.
16	All leases and their commercial terms and conditions should be agreed and in place prior to the contract starting.	High	Noted and agreed as a recommendation for future activities.	Officer Responsible: Relevant DMT lead in conjunction with Corporate Property Management and Legal. Agreed Implementation date: As required for the future.

Rec No.	Recommendation	Priority	Management Response	Responsible Officer / Implementation Date
17	When a contract requires services to be delivered from a City Council property, the decision as to which property these will be delivered from should be made by the City Council and not by the contractor. This will ensure both the condition and suitability of the property is sufficiently adequate to deliver the services.	High	Agreed – this is being considered as part of the review of the estates schedule.	Officer Responsible: Early Years Commissioning Officer. Agreed Implementation date: 1 st April 2019.
18	A wider review of the properties where there has been a change in the type / level of services (e.g. outreach rather than full-day) should be undertaken to determine the feasibility of keeping these sites open and operational.	High	Agreed as above for recommendation 17.	Officer Responsible: Early Years Commissioning Officer. Agreed Implementation date: 1 st April 2019.
19	The risk of grant claw back should be investigated and the potential level of exposure quantified prior to any decision to change the use of a property.	High	This has been undertaken and communication taking place with DfE and the provider. Recommendations to be developed.	Officer Responsible: Early Years Commissioning Officer. Agreed Implementation date: 1 st April 2019.
20	An up to date asset condition survey should be undertaken early within the contract, to allow sufficient time for any necessary work to be undertaken and establish which budget will fund this work.	High	Completed.	Officer Responsible: Head of Education Infrastructure. Agreed Implementation date: Complete – already implemented.

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21	The dispute over the services (e.g. hub or outreach) and the relevant charges for the services provided at Storywood and Newhall should be resolved as soon as possible. As not to do so is adding to the budget pressures as well having adverse implications on the delivery of services which could lead to potential reputational damage.	Medium	Agreed – this is being considered as part of the review of the estates schedule.	Officer Responsible: Early Years Commissioning Officer. Agreed Implementation date: 1 st April 2019.
22	Those sites / buildings where multiple services had been provided by other parties prior to this new contract (e.g. Midwife service) should be reviewed to ensure that the service providers are now being appropriately charged.	Medium	Agreed – this is being considered as part of the review of the estates schedule.	Officer Responsible: Early Years Commissioning Officer. Agreed Implementation date: 1 st April 2019.
23	A long term plan should be established to determine what should be done with those buildings which are under utilised as they are only providing out-reach services.	Medium	Agreed – this is being considered as part of the review of the estates schedule.	Officer Responsible: Early Years Commissioning Officer. Agreed Implementation date: 1 st April 2019.