

**NHS Highland**



**Meeting:** Highland Health and Social Care Committee  
**Meeting date:** 27 April 2022  
**Title:** Third Sector Update Report  
**Responsible Executive/Non-Executive:** Louise Bussell, Chief Officer  
**Report Author:** Jacqueline Paterson, Senior Contracts Officer

**1 Purpose**

**This is presented to the Board for:**

- Decision

**This report relates to a:**

- NHS Board/Integration Joint Board Strategy or Direction

**This aligns to the following NHS Scotland quality ambition(s):**

- Safe
- Effective
- Person Centred

**This report relates to the following Corporate Objective(s)**

<b>Clinical and Care Excellence</b> <ul style="list-style-type: none"> <li>• Improving health</li> <li>• Keeping you safe</li> <li>• Innovating our care</li> </ul>	X	<b>Partners in Care</b> <ul style="list-style-type: none"> <li>• Working in partnership</li> <li>• Listening and responding</li> <li>• Communicating well</li> </ul>	X
<b>A Great Place to Work</b> <ul style="list-style-type: none"> <li>• Growing talent</li> <li>• Leading by example</li> <li>• Being inclusive</li> <li>• Learning from experience</li> <li>• Improving wellbeing</li> </ul>		<b>Safe and Sustainable</b> <ul style="list-style-type: none"> <li>• Protecting our environment</li> <li>• In control</li> <li>• Well run</li> </ul>	X
Other (please explain below)			

## 2 Report summary

### 2.1 Situation

This document provides an update on the Third Sector review, as requested at the Committee meeting on 2 March 2022.

The Committee is asked to **note** the current position as set out in Appendix 1; and to further **agree** the Third Sector Project Board's decision to extend current contracts, where required, at current funding levels, from 1 April 2022 to 31 March 2023 to allow discussions/tenders to complete.

The Committee is being also asked to **note** the position with regards to the Sensory Provider Lochaber Sensory Care as set out in Appendix 2; and to further **agree** the Third Sector Project Boards' agreement to support a short term funding uplift to Lochaber Sensory Care from £7,719.55 to £49,500.00pa (pro-rata'd for half year) for the period 1 April 2022 to 30 September 2023, to allow time for a tender exercise to be undertaken and to ensure service continuity meantime.

### 2.2 Background

NHSH Board agreed in 2017 to undertake a review of current services commissioned from Third Sector providers to ensure alignment with NHS Highland's strategic and mission critical objectives; and to ensure it:

- Commissions services aligned to strategic priorities, which can demonstrate measurable value and impact;
- Follows the principle of equity, transparency, consistency and openness;
- Provides stability for aligned services; and
- Promotes a self-sustaining and diversified Third Sector.

The specific contractual arrangements within scope of the review, covered services purchased or secured from the sector through third sector service delivery contracts and/or third sector grant funding; with the majority of these generally based on long standing and historic arrangements.

Over the years, and other than a reduction in funding of 5% over 18 months during 2011-2013, these providers have continually received annual standstill funding; whilst their service delivery costs have continued to rise.

It is also worth noting that the providers are non-registered services and as such do not currently qualify for any of the Scottish Government uplifts awarded to registered services.

A Project Board and Project Team were formed to progress the review, with robust governance arrangements put in place and procurement and Standing Financial Instruction compliant processes developed and implemented.

During the review period and particularly at times when extensions to contracts are required providers have highlighted their growing concern around their organisations

sustainability and continuing ability to deliver services in line with their agreed contractual agreements.

Any request for changes to funding levels/extensions to contracts is raised by the responsible NHS operational manager to the Project Board for consideration/approval prior to submitting to the Health and Social Care Committee for approval thereafter.

## 2.3 Assessment

Appendix 1 sets out:

- the current position with regards to the specific funding categories within scope of the review of Third Sector commissioned services;
- the processes undertaken/due to be taken;
- agreed extensions to current contracts (where required) to allow discussions/tenders to be undertaken; and
- a view on any possible need/timing of uplifts to funding.

It is highlighted that whilst Appendix 1 states that uplifts to funding may not be required for those providers already awarded funding via bidding/tender processes, it is recognised that decisions around submitted costings had been made by bidders prior to current unforeseen events and the significant service delivery rises as a result. The Contracts Team is currently seeking advice from the Head of Procurement around this matter to help inform any future decision making.

Appendix 2 sets out:

- the current position with regards to the sensory service provider Lochaber Sensory Care and their request for a short term funding uplift whilst the Health Board undertakes a tender exercise and to ensure service continuity meantime.

The Third Sector Project Board met on 17 March 2022 and on 21 April 2022 and agreed:

### 17 March 2022 Meeting:

- to extend the four contracts under the category “>£50k – Tender” for one year i.e. from 1 April 2022 to 31 March 2023, at current funding levels to allow discussions/tenders to be finalised; and
- the development of an agreed framework/values/principles to be adopted by the Project Board if asked for an uplift in funding, to ensure consistency, fairness and transparency.

Updated contractual documentation is being drafted for issue to the relevant providers and a meeting is currently being arranged to commence the development of a framework/values/principles for any uplift request.

### 21 April 2022 Meeting:

- to support the recommendations within the SBAR at Appendix 2 i.e. to provide a short term funding uplift to Lochaber Sensory Care from £7,719.55 to £49,500.00pa (pro-rata'd for half year) for the period 1 April 2022 to 30 September 2023, to allow time for a tender exercise to be undertaken and to ensure service continuity meantime; and
- to support the recommendation to seek approval from the Health and Social Care Committee to this.

## **2.4 Proposed level of Assurance**

This report proposes the following level of assurance:

Substantial	<input checked="" type="checkbox"/>	Moderate	<input type="checkbox"/>
Limited	<input type="checkbox"/>	None	<input type="checkbox"/>

## **3 Impact Analysis**

### **3.1 Quality/ Patient Care**

No Impact.

### **3.2 Workforce**

Not applicable

### **3.3 Financial**

The cost of the recommendations will be contained within the agreed NHS Highland financial plan for 2022-2023.

### **3.4 Risk Assessment/Management**

Contractual and service continuity risk has been mitigated by seeking appropriate measures, to ensure decision making within the required timescales.

### **3.5 Data Protection**

No Impact

### **3.6 Equality and Diversity, including health inequalities**

An Equality Impact Assessment has been developed as part of the Third Sector review process. and is being maintained on an ongoing basis until the review process concludes

### **3.7 Other impacts**

None

### 3.8 Communication, involvement, engagement and consultation

- 3.8.1 Membership of both the Project Board and Project Team include representatives from Highland Third Sector Interface (HTSI), who have been actively involved in the development of the review process from the start.
- 3.8.2 Further, NHS Highland, working with its partner, HTSI, has held a number of local provider engagement/consultation events across Highland, during the Third Sector review process. The most recent local events were held during early 2021.

### 3.9 Route to the Meeting

This has been previously considered by the following groups as part of its development. The groups have either supported the content, or their feedback has informed the development of the content presented in this report.

- Third Sector Project Board meeting on 17 March 2022 and 21 April 2022.

## 4 Recommendation

- **Decision** – The Committee is asked to:
- **Note** the current position of each funding category within scope of the Third Sector review;
- **Agree** the Third Sector Project Board's decision to extend current contracts, where required, at current funding levels, from 1 April 2022 to 31 March 2023 to allow discussions/tenders to conclude; and
- **Agree** the Third Sector Project Board's decision to support the recommendation to provide a short term funding uplift to Lochaber Sensory Care from £7,719.55pa to £49,500pa for the period 1 April 2022 to 30 September 2023 to allow the tender to conclude.

### 4.1 List of appendices

The following appendices are included with this report:

- Appendix 1, Third Sector Categories
- Appendix 2, SBAR for Lochaber Sensory Care

## Third Sector Categories

< 50k providers<£50k Bidding Process (approx. £500kpa)

- Application bidding processes undertaken during 2019/20 and again in 2021
- Funding progress reporting submitted by providers during September/October each year
- Bidding total “pot” size on each occasion = approx. £500kpa
- Providers were asked to set out within their application how much funding they required each year, in line with the application process
- 2021 application bidding process - contracts awarded for the period 01/04/22 – 31/03/25
- 14 providers awarded contracts totalling approx. £500kpa

**View at Present time:** No requirement for any uplift.

**Reason:** A procurement complaint, competitive exercise for funding has been undertaken, with providers setting out the amount of funding they require for the 3 year award period. Contractual documentation states that the funding provided for the duration is the total price to be paid and that no further increases will therefore apply.

**Future Consideration:** It is suggested that any desire by NHSH to uplift the available overall “pot” of funding for this area of activity, should be considered/approved by the Project Board/Health and Social Care Committee prior to any future bidding process commencing.

>£50k providersTender Waivers (approx. £603kpa)

- 9 Tender waivers approved by NHS Board during March 2020, covering the period 01/07/20 – 30/06/23
- 2 mental health providers totalling approx. £260kpa
  - 1 mental health provider did not agree the 3 year extension, stating that whilst year 1 is “do-able” at current funding level, years 2 and 3 are not due to insufficient funding, further intimating they would require uplifts over the 3 years ranging from 2%-5%. Discussions are currently being progressed with the Head of Mental Health/Contracts and the provider to agree a way forward.
  - 1 mental health provider signed the 3 year contract but has since raised concerns around sustainability stating they are running at a deficit of approx. £17kpa and are seeking a meeting with the District Manager to discuss options.
- 7 Health and Wellbeing hubs totalling approx. £343kpa
  - All providers signed their 3 year contract, with no issues raised at this time.

**View at Present time:** No uplift required at this time.

**Reason:** Discussions with providers to be concluded, position/requirements remain unclear. Any proposal/recommendation will be submitted thereafter to the Project Board/H&SCC for approval.

**Future Consideration:** It is suggested that any desire by NHSH to uplift the available funding for this area of activity, should be considered/approved prior to contracts ending on 30 June 2023.

### **Tender Cases (approx. £538kpa)**

- Project Board agreed tenders to be undertaken for 4 providers totalling approx. £538kpa
- Discussions currently being held with NHSH operations managers and providers regarding intentions/requirements going forward.
- Current contracts are due to end on 31 March 2022.
- Agreement from the Project Board was given on 17 March 2022 to extend providers' contracts to 31 March 2023 to allow discussions to conclude and tenders to be undertaken.

**View at Present time:** There may be a requirement for uplift(s) depending on discussions with the providers around future intentions.

**Reason:** Discussions with providers to be concluded, position/requirements remain unclear. Any proposal/recommendation will be submitted thereafter to the Project Board/H&SCC for approval.

**Future Consideration:** It is suggested that any desire by NHSH to uplift the available budget for these areas of activity should be considered/approved by the Project Board/H&SCC prior to any future procurement exercise commencing.

### **Sensory Providers (approx. £308kpa)**

- 4 providers totalling approx. £308kpa, with current contracts due to end 31/03/22
- It is the intention to continue to contract with 1 provider beyond 31/03/22 (approx. £13kpa) due to the provider meeting strategic priorities.
- Following a lengthy negotiation with the remaining 3 providers, as a collective, they wrote to NHSH on 18 January 2022 advising that they had exhausted negotiations and asked NHSH to undertake a tender exercise and have intimated they require to negotiate funding for any extension meantime.
- Letters were issued on 09/03/22 to all 3 providers advising of NHSH's agreement to extend by 18 months to 30/09/23 to allow the tender to be undertaken and the offer to meet with each provider regarding their financial concerns.
- NHSH has met with each of the providers on 11 March 2022, to discuss possible uplifts to their existing contracts. Information is being collated by the providers to help inform the uplift process, with further follow up meetings currently being arranged.
- Appendix 2 sets out the position with regards to one of the providers, Lochaber Sensory Care and the position reached between the parties, and which has been supported by the Third Sector Project Board on 21 March 2022.

**View at Present Time:** Discussions with the providers around extension is still ongoing. There may be a possible need for short term uplift for 18 months to ensure service continuity during the procurement phase, amounts for two of the providers is unknown at present. It is highlighted that it is in the providers' interest to agree an extension, to ensure continued TUPE protection of their staff, in the event they are not awarded the tendered contract.

**Reason:** During earlier negotiations, the providers submitted proposed high level costings for future service delivery, which were substantially greater than current funding i.e. approximately £200kpa. Any proposal/recommendation will be submitted thereafter to the Third Sector Project Board for support and to H&SCC for final approval.

**Future Consideration:** It is suggested that any desire by NHSH to uplift the available budget for this area of activity, should be considered/approved by the Project Board/H&SCC prior to the procurement exercise commencing.

### **Advocacy Providers (approx. £420kpa)**

- Tender exercises undertaken during 2019/2020 for advocacy services, for a 3 year basis with the option to extend on a year by year basis for up to 2 years.
- 2 providers awarded funding
- 1 contract for approx. £300kpa, ends on 30/09/22, with extensions allowed up to 30/09/24
- 1 contract for approx. £120kpa, ends of 31/03/23, with extensions allowed up to 31/03/25

**View at Present time:** No requirement for any uplift.

**Reason:** Compliant procurement exercises for the required services undertaken, with prices agreed for the duration of both contracts. Contractual documentation states that the Price supplied by the provider must include all costs in developing and delivering the service, including inflation and any costs associated with Living Wage/TUPE and further states that the price is fixed for the duration of the contract and will not be open to negotiation.

**Future Consideration:** It is suggested that any desire by NHHH to uplift the available budget for this area of activity, should be considered/approved by the Project Board/H&SCC prior to any future procurement exercise.

Total of all areas: approx. £2.3m



## SBAR

## LOCHABER SENSORY CARE

<p><b>To seek approval from the Third Sector Project Board to award an uplift in funding to Lochaber Sensory Care for the interim period 1 April 2022 to 30 September 2023, whilst the Health Board undertakes a tender exercise for adult sensory services beyond September 2023.</b></p>	
<p>Situation</p>	<p>Lochaber Sensory Care (LCS) wrote as part of a collective with 2 other sensory providers to the Health Board on 18 January 2022 asking the Health Board to undertake a tender exercise for adult sensory services, after having exhausted negotiations.</p> <p>On 1 March 2022 the collective wrote to the Health Board advising that any further offer of a contract extension would require further discussion/negotiations.</p> <p>The Health Board wrote to each individual provider including LCS on 9 March 2022 offering to extend the provider's current contract by 18 months from 1 April 2022 to 30 September 2023, to allow the tender process to be undertaken.</p> <p>The Health Board further noted the provider's financial concerns during the interim period and agreed to meet with the provider to discuss any possible uplift to their existing arrangement.</p> <p>Following several recent meetings with the provider the Health Board is seeking agreement in principle from the Third Sector Project Board to uplift the provider's funding from £7,719.55 to £49,500.00pa (pro-rata'd for the half year) for the period 01/04/22 – 30/09/23 to allow the tender to be undertaken and ensure service continuity meantime.</p>
<p>Background</p>	<p>NHSH currently commissions sensory services under contract from the following 3 providers: Sight Action, Hearing and Sight Care and Lochaber Sensory Care.</p> <p>During 2019, NHSH worked in partnership with the 3 providers, along with other key partners to develop the Highland SEE HEAR Strategy, in line with the National SEE HEAR Strategy.</p> <p>The Scottish Government confirmed that the strategy is to be used as guidance; and that there is no specific delivery model, recognising that local partnerships will adopt different approaches and the level of pace and progress will accord with local priorities.</p> <p>The providers were advised at the time that the Highland Strategy would underpin/inform future commissioning and procurement of community based sensory services in Highland.</p> <p>During 2019 NHSH notified the providers of its intention to undertake a procurement exercise for services beyond June 2020. At that time Sight Action served notice on NHSH, and proceeded to commence a pro-active media/MSP campaign.</p>

During 2020 NHSH Senior Management met with representatives of Sight Action and proposed by way of compromise that the provider draft/submit a proposal with costings for delivery of future services, for consideration. In light of this, Sight Action rescinded their notice on NHSH and a “collective” proposal from all 3 providers was received by NHSH. The providers’ proposal further included estimated budgets for the next few years, which are significantly greater than current funding levels.

All parties met during late 2020 to discuss the proposal, at which point the collective asked for more clarity on NHSH’s requirements, to enable them to refine their proposal and costings.

During early 2021 NHSH provided the collective with its service delivery requirements, with the further intention of discussing them in more detail at a meeting with the collective, planned for mid 2021.

The meeting was cancelled by the collective and since then NHSH’s operational staff have on a number of occasions sought to hold meetings with the collective to progress matters. The collective have on each occasion opted instead to write to/meet with NHSH’s Chief Officer (HHSCP)/Deputy Chief Executive, where more recently they stated they are unable to work with the Operational Team members progressing matters.

In an attempt to move matters forward constructively, all parties agreed to attend a workshop during December 2021, facilitated by NHSH’s Head of Strategy and Transformation (HHSCP). The workshop provided the opportunity for all parties to openly discuss working in collaboration; NHSH’s future service delivery requirements, including areas in/out of scope and to hear the reasons for this; and provide clarity, where required. It was hoped that this clarity would then allow the 3 collective providers to refine their collective proposal and associated costings accordingly and continue with negotiations.

Unfortunately, following the workshop and the provision of further information requested during the workshop regarding integrated locality teams and confirmation of flexible service delivery models for sensory services from Scottish Government the 3 providers (as a collective) wrote to NHSH on 18 January 2022 stating that they had exhausted the negotiating process and collectively feel that there is no merit to further debate; and as a collective requested that NHSH create a tender document on which they can tender and price.

NHSH wrote to the providers individually (due to current contractual arrangements) on 9 March 2022 offering to extend the provider’s current contract by 18 months from 1 April 2022 to 30 September 2023, at current funding levels to allow the tender process to be undertaken.

The Health Board further noted the provider’s financial concerns during the interim period and agreed to meet with the provider to discuss any possible uplift to their existing arrangement.

The Health Board’s Chief Officer along with Operational and Contract Team staff met with the provider on 31 March 2022 to clarify that the Health Board’s expectation was for current service continuity to be

	<p>maintained meantime i.e. not an expansion of service; and any request for an uplift should be based on current contractual requirements. The Health Board sought clarification of the provider's financial position; requested information (financial and service delivery) from the provider around the level of uplift funding sought, with evidence of need.</p> <p>Further follow-up meetings were held on 13<sup>th</sup> and 19<sup>th</sup> April 2022 to discuss the position/information received.</p> <p>It is further highlighted that similar meetings are currently still being held with the remaining 2 sensory providers i.e. Hearing and Sight Care and Sight Action. It is likely that similar requests for short terms uplifts will be presented for approval in the near future.</p>
Assessment	<p>Over the years, and other than a reduction in funding of 5% over 18 months during 2011-2013, the provider has continually received annual standstill funding; whilst their service delivery costs have continued to rise.</p> <p>It is also worth noting that the provider is a non-registered service and as such does not currently qualify for any of the Scottish Government uplifts awarded to registered services.</p> <p>The Provider is contracted to deliver a drop in service with outreach providing sensory information, advice and sensory aid maintenance and repair, including providing batteries for hearing aids supplied by the Health Board.</p> <p>As well as the NESH contracted service, the Provider also delivers charitable services funded from other sources.</p> <p>The provider has stated an approximate 90% contracted /10% charitable split of services delivered.</p> <p>The provider is seeking funding of approximately £136k for the period 1 April 2022 – 30 September 2023.</p> <p>The provider's costings include recruitment of an additional member of staff, significant increased salary costs (approximately £30k) to align with COSLA salary scale (further stating "if funding allows"), purchase of new IT/office equipment, plus a 6.6% inflationary uplift across all other areas of their costs.</p> <p>In line with the Procurement legislation and the Health Board's Standing Financial Instructions, funding of this level would require the Health Board to give further consideration to undertaking a procurement exercise due to the value being over the £50kpa threshold.</p> <p>Financial submissions by the provider to OSCR/Companies House over the last few years show income/expenditure for their whole service of approximately £50kpa.</p> <p>To maintain current service continuity whilst the tender process is undertaken the Health Board has offered to uplift the providers funding from £7,719.55 to £49,500.00 (pro-rata'd for the half year) for the period</p>

	<p>1 April 2022 to 30 September 2023. This provides funding for salaries, travel and overheads. The Health Board has further advised the provider that it intends to resume quarterly monitoring of the contract during the interim period, to provide reassurance in light of the significant uplift being offered.</p> <p>The provider has confirmed acceptance of the offer on 21 April 2022, subject to support from the Third Sector Project Board and approval of the Health and Social Care Committee.</p>
Recommendation	<p>It is recommended that:</p> <ul style="list-style-type: none"> <li>a) Support is given for an interim uplift in funding from £7,719.55 to £49,500pa (pro-rata'd for the half year) for the period 1 April 2022 to 30 September 2023, to allow the tender to take place and in the event that the provider does accept the offer; and</li> <li>b) Support is given to seek agreement from the Health and Social Care Committee for the uplift stated in a).</li> </ul>
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<b>Date</b>	20 April 2022