

**NHS VALE OF YORK CLINICAL
COMMISSIONING GROUP**

GOVERNING BODY MEETING



Vale of York
Clinical Commissioning Group

Meeting Date: 4 April 2013

Report Sponsor:

Dr Cath Snape
GP Governing Body Member
on behalf of
Helen Mortimer
(Associate Director of Partnerships)
Vulnerable Adults and Children's Commissioning
Unit

Report Author:

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1. Title of Paper: Section 136 Place of Safety within North Yorkshire and York

2. Strategic Objectives supported by this paper

1. Improve healthcare outcomes
2. Reduce health inequalities
3. Improve the quality and safety of commissioned services
4. Improve efficiency

3. Executive Summary

The purpose of this paper is to outline the options to commission a s136 Place of Safety for the CCG to consider and decide on the approach to be taken.

4. Evidence Base

- 'No Health without Mental Health, A cross government mental health outcomes strategy for people of all ages'. DH 2011
- The Operating Framework for the NHS 2012/13
- Mental Health Act Information Leaflets DH. 2008
- Docking M and Grace K (2007) Emerging Findings from Research on the Use of Police Cells as a Place of Safety, IPCC Briefing Note, London: IPCC
- National Statistics (2007) Inpatients Formally Detained in Hospitals Under the Mental Health Act 1983 and Other Legislation, NHS Trust, Care Trusts, PCTs and Independent Hospitals, England: 1995-96 to 2005-06 London: Government Statistical Service

- North Yorkshire Police Professional Standards Department: Summary of IPCC Report: Police Custody as a 'Place of Safety':
- Examining the use of Section 136 of the Mental Health Act 1983
- Independent Advisory Panel on Deaths in Custody End of Term report February 2012

5. Risks relating to proposals in this paper

While there is no service in place it could give rise to a legal challenge.

6. Summary of any finance / resource implications

The financial requirements are still to be determined. The input from Medacs funded by North Yorkshire Police will reduce costs of the interim service.

7. Any statutory / regulatory / legal / NHS Constitution implications

There is a statutory duty for the NHS to provide a s136 Place of Safety

8. Equality Impact Assessment

The proposal aims to ensure that all those who are recognised as having protected characteristics can access this service and will be built in to the tender process.

9. Any related work with stakeholders or communications plan

Discussions have taken place with North Yorkshire Police, North Yorkshire County Council, City of York Council, CCG Collaborative.
Further discussions planned.

10. Recommendations / Action Required

The Governing Body is asked to:

- Note the content of the paper
- Agree the preferred approach

11. Assurance

The Governing Body will be provided with an update in 3 months or as requested.
The Mental Health (MS) GP Leads will be kept informed of progress via monthly meetings and involved in the development of the proposals.

NHS VALE OF YORK CLINICAL COMMISSIONING GROUP

Governing Body Meeting: 4 April 2013

Section 136 Place of Safety within North Yorkshire and York

1. Purpose

The purpose of this paper is to:

To outline the options to commission an interim s136 Place of Safety for the CCG to consider and decide on the approach.

2. Introduction

- 2.1 If a Police Officer finds, in a place to which the public have access, a person who appears to be suffering from a mental disorder, and to be in immediate need of care or control, the Police Officer can, if he/she thinks it necessary to do so in the interests of that person, or for the protection of other persons, remove that person to a place of safety where the person may be detained for up to 72 hours. (MHA 1983 Section 136)
- 2.2 The purpose of Section 136 is to allow a joint assessment by a doctor, preferably Section 12 approved, and by an AMHP (Approved Mental Health Professional) and to make any other arrangements that may be needed for the person's treatment and care.
- 2.3 In 1995 the Royal College of Psychiatrists and the British Association of Accident and Emergency Medicine convened a joint working group to examine Psychiatric Services in A & E departments. The working group identified a number of differing practices in relation to Section 136 provision, and also a lack of nationally identified standards. Subsequent work resulted in the establishment of a number of standards set in three broad areas:
 - The physical facilities which constitute a Place of Safety
 - Staffing in a Place of Safety
 - Policy in relation to the use of Place of Safety
- 2.4 A review into provision of a Place of Safety, nationally, indicated a number of differing venues which were identified as a Place of Safety, the vast majority of which fell within three categories: -
 - Hospital - A & E departments
 - Police Custody
 - Psychiatric Hospitals
- 2.5 Clear concerns highlighted in relation to the use of both Accident and Emergency departments and police stations were further substantiated following the publication of the report from House of Lords/House of Commons Joint Committee on Human Rights, Deaths and Custody 2004/2005. This clearly identifies concerns in relation to the provision of Place of Safety outwith mental health services.

- 2.6 In July 2011 The Royal College of Psychiatrists published Standards on the Use of Section 136 of the Mental Health Act 1983.
- 2.7 Association of Chief Police Officers (ACPO) and the Department of Health presented a joint paper to the Ministerial Board in February 2012 on the current situation regarding S136 Place of Safety across the county.
- 2.8 The paper recommended that the future NHS Commissioning Board (NHSCB) should commission health based places of safety alongside offender health services. The Independent Advisory Panel welcomed this recommendation and recognises the importance of clear commissioning responsibility for Section 136 places of safety. The Panel will continue to monitor the commissioning and use of health based places of safety to ensure that practice improves and the use of police stations is minimised.

3. Background Information

- 3.1 It is a requirement for PCTs to provide a Designated Place of Safety. The recommendation within the ACPO and DH report will be investigated but at present the current understanding is that this requirement will transfer to CCGs on the 1st April 2013. There is no Section 136 Place of Safety in North Yorkshire and York.
- 3.2 On 2 June 2011 a 31 year old woman from York was arrested under S136 and taken to Fulford Road Police Station at around 2:50pm. She was subsequently found collapsed in her cell at around 6:00pm and was taken to York Hospital where she was pronounced dead.
- 3.3 Recent high profile arrests and the death in custody have thrown significant light on the fact that NHS NYY does not have a Designated Place of Safety, and it is expected that the Independent Police Complaints Commission will criticise North Yorkshire and York for the omission once their report is published. Pressure has been applied by the Strategic Health Authority to rectify this situation.
- 3.4 Discussions have taken place over the last few years with partners including North Yorkshire Police and City of York Council. Partners have expressed an eagerness to see a suitable place of safety is provided within North Yorkshire and York as soon as possible. Verbal commitments have been given to support this financially but there has been no written agreement on the model, location or costings.
- 3.5 A meeting between North Yorkshire Police, City of York Council (Director of Public Health), North Yorkshire County Council (Director of Public Health) and VACCU on 1st March. Police and Public Health were keen the process should be rapid and the interim service start in April with an indication that the Commissioning Board would have funds available to support this. Further enquiries have revealed that there is no funding available from the NCB and the costs of the interim service would fall to the CCGs. Partners were informed that the PCT/CCGs must abide by proper procurement rules and the required time built in to do this. But

assurance given that the process would be as quick as possible without any unnecessary delays.

4. Local Analysis

- 4.1 The total number of detainees for the period 1st January 2012 through to 28th February 2013 in North Yorkshire Custody suites was 482. This equated to an average of 1.13 persons being detained every day.

Month	Harrogate*	N'allerton	Scarbro	York	Skipton	Selby	Total
Jan-12	3	6	5	17	1	0	32
Feb-12	3	10	7	16	0	0	36
Mar-12	8	6	8	28	0	0	50
Apr-12	2	5	3	18	0	0	28
May-12	5	3	9	24	0	0	41
Jun-12	4	4	5	25	0	0	38
Jul-12	4	6	6	28	0	0	44
Aug-12	2	3	5	20	1	0	31
Sep-12	4	7	8	19	0	0	38
Oct-12	3	2	6	17	0	0	28
Nov-12	5	2	4	12	0	0	23
Dec-12	5	4	6	20	1	1	37
Jan-13	6	6	2	16	0	0	30
Feb-13	2	5	4	15	0	0	26
Total	56	69	78	275	3	1	482

* Harrogate Police Station moved premises during the year. This data captures results from both premises.

- 4.2 61% of those detained under section 136 were male and 39% were females.

- 4.3 The table below shows the age categories of those detained.

Age	Harrogate	North'ton	Scarbro'	York	Skipton	Selby	Total
Under 18	2	4	4	13	0	0	23
18-30	20	21	30	104	1	1	177
31-50	31	31	33	113	1	0	209
51-64	3	10	10	37	1	0	61
Over 65	0	3	1	8	0	0	12

4.4 The table below shows the times of arrival.

Time of Arrival	Harrogate	North'ton	Scarbro'	York	Skipton	Selby	Total
0700-1300	6	7	9	40	0	0	62
1300-1900	12	15	18	61	2	0	108
1900-0100	24	34	28	121	0	1	208
0100-0700	14	13	23	53	1	0	104

4.5 Nationally, when compared to the local population Black people were almost twice as likely as White people to be detained. An Independent Police Complaints Commission Report (2006) found that police forces in more rural locations tended to have the largest disparity.

4.6 From the data up to January 2013, 36% of people detained were admitted to an inpatient facility.

5. CCG Collaborative

5.1 At the CCG Collaborative meeting on the 14th March there was support for the development an interim s136 Place of Safety while a sustainable solution was obtained through a proper procurement exercise.

5.2 The reason an interim service is being considered is due to the fact that:

- There is a statutory duty to provide the service
- not having a service is outwith CCGs commitment to put the person at the centre of what they do.
- increasing local public and political pressure to have a service available as soon as possible (NY Police and LAs have stated they would like to see this provided by April 2013).
- There is a commitment to establish a sustainable solution.

6. Options for an interim service

6.1 It must be noted that the nature and value of this proposed contract would fall within UK and EU Competition requirements. It must also observe Department of Health service guidance and its Principles and Rules for Cooperation and Competition. The reasons behind the selection of option must be clearly documented and maybe subject to public scrutiny. To be fully compliant this type of service should be subject to a full competitive process. Such a process would take approximately six months to complete. Given the pressures identified to have a service up and running in the short term, this is at odds with the tendering timescales.

6.2 All the options to commission an interim service carry risk (although this may be small) of a legal challenge to the process.

6.3 North Yorkshire Police have a contract with Medacs. This provides the Doctor who undertakes the initial assessment at the Custody suit (currently being

used as the Place of Safety). North Yorkshire Police are willing to continue providing this input for the interim service.

6.4 There are number of issues in relation to the provision of an interim service including:

- Recruitment of staff: Difficulties have been experienced in recruiting to short term contracts. If a provider is unable to recruit it will delay the start of the service.
- Any provider is likely to need assurance as to the provision of service from Medacs and clarity on how the pathway will work between each of the partners before making a commitment.

6.5 Option 1: Single Waiver Tender

Risks: More than one qualified provider exists to provide this service. Awarding directly to one provider would open up the risk of challenge from providers not considered to undertake the service. If such a challenge was successful then it is likely that the contract would be set aside (cancelled). It would also open up the potential for legal damages.

Benefits: May be implemented within 1 or 2 months.

Reduces risks to those detained under s136 sooner rather than later.

Implications for Vale of York

Currently there are at least four providers who have the capability and/or expressed an interest in providing an interim s136 service. This means there is a higher risk of challenge if one provider is awarded the contract.

6.6 Option 2: Addition to an existing contract:

An option exists to add services to an existing contract. This can be considered if:

- The new service elements would constitute a marginal increase in overall contract value (up to no more than 5% increase)
- The existing contract is for a similar type of service
- The new service addition does not lead to material changes in contract terms (i.e. extension in contract length).

Risks: If seen as a completely new service or if it represents a large relative increase in contract value, then any contract extension could be subject to legal challenge. If such a challenge was successful then it is likely that the contract 'extension' would be set aside (cancelled). It would also open up the potential for legal damages. If the contract extension legitimately falls within an existing contract and represents only a marginal increase in overall contract value, then the above risk is diminished.

Benefits: May fit with initial discussions regarding an integrated Crisis Service. May give greater integration with existing services. May be implemented quickly if commissioners and providers agree.

Implications for VOY

Although in many areas the s136 place of safety is a part of commissioned Crisis services, this could be considered as a new service for the Vale of York. With three other services in the area who could provide this service, it increases the risk of a legal challenge if it is considered as a standalone service.

VOY CCG are taking part in a Mental Health Workshop in April to identify the approach to priority areas of service. The development of an integrated Crisis Service is highly likely to be one of the areas considered and the addition to the existing contract in line with the commissioning intentions may support the outcome of the workshop.

6.7 Option 3: Quotation exercise:

An option exists to implement an interim service allowing time for a full tender to be undertaken. If a number of credible providers exist who all maybe interested in providing the service. A short selection process covering the identified providers could be undertaken to identify an interim provider, allowing time to conduct a full procurement.

Risks: The approach does not comply with UK and European Competition requirements. It also does not comply with the commissioning bodies standing financial instructions. Even for a short term interim service, a risk exists of legal challenge. If such a challenge was successful then it is likely that the contract would be set aside (cancelled). It would also open up the potential for legal damages.

Benefits: An interim service provider can be identified within 1 to 2 months. It also opens up the interim service to a limited degree of competition. The approach may reduce the risk of challenge from identified providers, but it should be noted that providers taking part in the interim selection process can still challenge the validity of the process.

Implications for Vale of York

This would have the advantage of providing competition (although limited) to the process and reduce the risk of challenge, but not eliminate all risk entirely. It would allow a service to be established quickly.

The HaRD CCG may consider doing a joint quotation exercise to enable those detained in the HaRD CCG area to have access to the service while a longer term solution is found. This may reduce the costs to both CCGs.

There is a need to ensure that transport is considered within the service specification and protocols with partner organisations including the police. This is to avoid people being released and being expected to find their own way home particularly at night.

7. Implications/Risks

7.1 Quality

The service specification for both the interim and sustainable solutions will include quality performance measures that will be monitored. Performance reports will be made available to each CCG to provide assurance of the quality of the service or actions being taken to rectify any reduction in quality.

7.2 Financial

The financial requirements are still to be determined. The input from Medacs funded by North Yorkshire Police will bring the costs of the interim service down.

Current estimates for a full service (including medical cover) for the sustainable solution that is accessible across North Yorkshire and York are approximately £600k - £800k. Some capital money may also be required. This may change upon further investigation.

7.3 Constitutional and Legal

While there is no designated place of safety within North Yorkshire and York there is the risk of another death in custody. If this occurs before the service is put in place the CCGs run the risk of being implicated in charges of corporate manslaughter.

While there is no service in place it could give rise to a legal challenge.

Need to ensure fair and proper procurement processes are followed to mitigate any legal challenges by potential providers. Support has been given and will be further requested by the procurement colleagues within the CSU.

7.4 Equality and Diversity

The proposal aims to ensure that all those who are recognised as having protected characteristics can access this service and will be built in to the tender process.

8. Assurance

The Collaborative will be provided with an update as appropriate.

The MH GP Leads will be kept informed of progress via monthly meetings and involved in the development of the proposals.

9. Recommendation

The CCG Collaborative is asked to:

- 9.1 Note the content of the paper.
- 9.2 Agree the preferred approach.

References

- 'No Health without Mental Health, A cross government mental health outcomes strategy for people of all ages'. DH 2011
- The Operating Framework for the NHS 2012/13
- Mental Health Act Information Leaflets DH. 2008
- Docking M and Grace K (2007) *Emerging Findings from Research on the Use of Police Cells as a Place of Safety*, IPCC Briefing Note, London: IPCC
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- North Yorkshire Police Professional Standards Department: Summary of IPCC Report: Police Custody as a 'Place of Safety': Examining the use of Section 136 of the Mental Health Act 1983
- Independent Advisory Panel on Deaths in Custody
End of Term report February 2012
- Data from Operation Directorate within Criminal Justice Unit North Yorkshire Police March 2013.