

## EXECUTIVE

### 22<sup>nd</sup> February 2022

<b>Report Title</b>	<b>Social Care Provision in Prisons in North Northamptonshire</b>
<b>Report Author</b>	David Watts, Executive Director of Adults, Communities & Wellbeing (DASS)
<b>Lead Member</b>	Cllr Helen Harrison, Executive Member for Adults, Health and Wellbeing

<b>Key Decision</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Is the decision eligible for call-in by Scrutiny?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Are there public sector equality duty implications?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Does the report contain confidential or exempt information (whether in appendices or not)?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Applicable paragraph number/s for exemption from publication under Schedule 12A Local Government Act 1972</b>	

#### List of Appendices

#### Appendix A - Options Appraisal

#### 1. Purpose of Report

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- 1.1. To obtain Executive agreement for establishing funding arrangements for the provision of social care in a new prison in the North Northamptonshire area.

#### 2. Executive Summary

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- 2.1. As of April 2021, North Northamptonshire Council area had no prison estate establishments in operation. It therefore had no dedicated grant funding from the Department of Health and Social Care (DHSC) Social Care in Prisons grant but does receive funding for the provision of social care to those in its area.
- 2.2. HMP Five Wells is a newly built Category C resettlement prison in Wellingborough which started to receive prisoners in February 2022. Once fully

operational, anticipated to be by November 2022, it will have operational capacity for 1,680 male prisoners.

- 2.3. NHS England (NHSE) conducted a competitive tendering exercise for the healthcare provider contract for the prison. The outcome of the procurement was an award of the contract to the Practice Plus Group (PPG). PPG are on-site at the new facility and are recruiting for the healthcare team. Adult Social Care Commissioning representatives were fully involved in the NHSE tendering, evaluation and award process however this contract did not include provision for social care.
- 2.4. The Council is responsible for providing social care to those resident in prisons in its area as a consequence of the Care Act 2014. This paper recommends that the Council enter into an agreement with NHSE to secure social care support as a contract variation to the original agreement between PPG and NHSE.
- 2.5. The cost to the Council of provision of social care to those resident in HMP Five Wells is a maximum value of £415,739.52 over the three year period of the agreement.
- 2.6. The Council currently has received no funding for the care of prisoners, and therefore will need to fund the cost of any care provided in financial year 2021 / 2022 from the existing care budget. This is anticipated to be in the region of £35,000.

### **3. Recommendations**

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- 3.1. It is recommended that the Executive:
  - a) Approve the use of social care funding to enter into a contract arrangement for the provision of Social Care support to meet the assessed needs of prisoners at HMP Five Wells.
  - b) Agree that the Council enter into an agreement with NHS England to vary the existing NHSE healthcare contract with PPG to include social care, utilising the flexibility afforded through the Public Contract Regulations 2015 Regulation 12, paragraph 7.
  - c) Delegate authority to the Executive Member for Adults, Health and Wellbeing, in consultation with the Executive Director of Adults, Communities & Wellbeing, to take any consequent decisions in relation to the contract.

### 3.2. Reasons for Recommendations

- a) The recommended course of action is the most cost-effective way of meeting the Council's statutory duty to assess and meet the eligible social care needs of the prison population anticipated for HMP Five Wells.
- b) The recommended approach delivers maximum benefit to individuals, the Council and other key stakeholders.
- c) Alternative courses of action have been considered in coming to the above recommendations. These alternatives are summarised in Appendix A.

## 4. Report Background

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- 4.1. HMP Five Wells is a newly built Category C resettlement prison in Wellingborough. It started to receive prisoners in February 2022 and will see a gradual increase of 40 prisoner transfers per week to increase the prison population. Once fully operational, anticipated to be by November 2022, it will have operational capacity for 1,680 male prisoners.
- 4.2. It is anticipated that the initial 120 prisoners will facilitate the development of the culture of the prison, including the implementation of Prison Service Instruction for Prisoners Assisting Other Prisoners (PSI 17/2015). This sets out the contribution that prisoners may make to meeting the care and support needs of other prisoners, and what is not appropriate for them to do.
- 4.3. The Council has a statutory duty under the Care Act 2014 to assess the social care needs of the local prison population and commission services to meet eligible assessed needs.
- 4.4. A desktop Health and Social Care Needs Assessment was commissioned by NHS England in August 2020 to inform the healthcare provider contract procurement. The assessment drew upon national data sources and knowledge of the prisons estate to provide estimates of the population profile, in the context of the new-build facility being compliant with equalities obligations and catering for a population in the final 2 years of their sentence. It identified the following presumptions:
  - 4.4.1. Turnover will be 1.0 per annum. This means that the average stay of a prisoner will be 12 months;
  - 4.4.2. the immediate health and care needs of prisoners should already have been, or begun to be, addressed at their previous prison establishment(s);

- 4.4.3. There is a relatively short period of time for many prisoners in which to address longer term needs and to promote and encourage future engagement with health and social care provision following release;
  - 4.4.4. 20% will be serving determinate sentences of over 10 years or indeterminate sentences;
  - 4.4.5. 17% (286) will be aged 50 or over which matches the national average. There will be no one aged under 21 years. Thus, there will be a higher-than-average proportion age 30-50 which is the peak age range for onset of long-term conditions;
  - 4.4.6. Prisoners will be released to an area which is within 90 minutes travel time of the prison;
  - 4.4.7. The ethnic and nationality profiles will be similar to the national average. About a third of residents (599) will report some form of disability. Six percent (101) will be veterans;
  - 4.4.8. Additional liaison with a comparator local authority suggests 80-90% of prison population do not require social care support, with the majority of care hours generated through post-hospital rehab and Occupational Therapy referrals.
- 4.5. The above presumptions have been used to inform and assess the extent of social care need likely to occur within HMP Five Wells, for which the Council is responsible. The value of the contract would be £138,579.84 per annum on a 2-year term, enabling the employment of 4.48 FTE Health Care Assistant posts, with an option for a 1-year extension. This level of funding would enable 24/7 cover by 2 workers.
- 4.6. Although the Council has not received any Social Care in Prisons grant, Northamptonshire County Council did receive a grant of £188,101 in 2020/21. Upon local government reorganisation, this funding was allocated to West Northamptonshire Council given the existing contract provision in place for HMP Onley and HMP Rye Hill. That contract expires in March 2023 and the service provider has indicated they do not wish to expand their service offer to include HMP Five Wells.
- 4.7. The healthcare contract for the prison was awarded to the Practice Plus Group (PPG). PPG are on-site at the new facility and recruiting the healthcare team. Now that prisoners are being transferred to HMP Five Wells, it is important that the Council ensures that appropriate arrangements are in place for it to discharge its social care obligations to them.

## 5. Issues and Choices

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- 5.1 The Council can discharge its obligations to provide for the social care needs of prisoners at HMP Five Wells in a number of ways. A variety of options have been considered, as summarised below, with additional detail as to the advantages and disadvantages set out in **Appendix A**:
- a) Do nothing;
  - b) Enter a sub-contract arrangement with West Northamptonshire Council for the provider of Social Care in Prisons services in the West Northamptonshire Council area to extend provision to HMP Five Wells;
  - c) Directly commission the service with the healthcare provider at HMP Five Wells (PPG);
  - d) Seek a contract variation to the current healthcare contract to secure social care provision with the existing healthcare provider, PPG;
  - e) Establish an Individual Service Fund arrangement with the healthcare provider for the initial mobilisation period;
  - f) Commit in-house reablement resources to meet identified eligible social care needs;
  - g) Undertake full market testing through a competitive procurement tender process;
- 5.2 Executive will note that the recommended option is 5.1(d). This is considered the best option as it allows the Council to secure the provision of social care for prisoners efficiently, taking advantage of an existing contractual arrangement which was procured by NHSE. It effectively buys the Council time to understand the level of social care need which will exist at the prison once it is fully operational, and to undertake an appropriate procurement in accordance with its Financial Procedure Rules.
- 5.3 The Council has statutory obligations under the Care Act 2014 for the care needs of the prisoners therefore (a) is not an option. The current contract operated by West Northamptonshire Council is due to run out in March 2023 and the provider does not wish to expand it to include another prison establishment, which means that (b) is not a viable option open to the Council.
- 5.4 PPG would prefer that the Council directly commission it to provide the social care service however this creates additional risk for the Council given that there is limited opportunity for consultation and engagement, a tight timescale and an

unknown level of social care need at this point. Accordingly, while option (c) is viable, it is not recommended.

- 5.5 Option (e) is not considered viable because prisoners are not eligible for Direct Payments. There are no examples of this model being adopted elsewhere and considerable lack of certainty for any service provider. PPG does not wish to bear the risk of employing staff.
- 5.6 The use of Council reablement resources to meet identified need, as set out at option (f) could be appropriate once the scale and nature of needs within the prison has been established. However, given the Council's current workforce pressures, and the vetting and training required to work with prisoners, this is not considered a viable option at this time.
- 5.7 The Council can always obtain services via a full procurement process. However, such a process is time consuming and the delay which would be caused to service provision while the Council undertakes the process is not considered acceptable. This may however be a suitable option for the future provision of the service.

## **6. Next Steps**

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- 6.1 If Executive confirm that the social care needs of prisoners at HMP Five Wells should be met by a contract variation of the existing arrangement between NHSE and PPG, Legal Services will conclude the contractual necessities.
- 6.2 The service is anticipated to commence in February 2022, the transfer of prisoners into the prison already having begun.

## **7. Implications (including financial implications)**

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### **7.1. Resources and Financial**

- 7.1.1. Commitment to a 2-year contract term with an option for a 1-year extension would equate to a total contract value of £415,739.52
- 7.1.2. North Northamptonshire Council has received no funding for Social Care in Prisons for 2021/22<sup>1</sup>.
- 7.1.3. Finance have confirmed that in-year funding to provide Social Care in Prisons would be met from care budget to value of £35,000 in 2021/22.
- 7.1.4. The Social Care Finance Team at the Department of Health and Social Care have been approached to confirm future grant funding. They have confirmed

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<sup>1</sup> [Adult personal social services: specific revenue funding and grant allocations for 2021 to 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97822/adult_personal_social_services_specific_revenue_funding_and_grant_allocations_for_2021_to_2022.pdf)

that allocations and distributions of the Social Care in Prisons Grant will be reviewed as part of the ongoing financial planning exercise, following the Spending Review in September 2021, to ensure the grant is supporting local authorities in the most appropriate way. Allocations are due to be confirmed early in the financial year 2022/23.

7.1.5. A legacy contract arrangement for prison establishments in the county of Northamptonshire has previously been funded through the Social Care in Prisons (DHSC) grant for Northamptonshire County Council, which amounted to £188,101 in 2020/21. That funding did not however relate to HMP Five Wells as it is a new establishment.

7.1.6. As a benchmark, the annual contract liability for the legacy contract arrangement, providing for 2:1 social care support to HMPs Onley and Rye Hill (located within the jurisdiction of West Northamptonshire Council) was £166,400.

## **7.2. Legal and Governance**

7.2.1. There is no current contract arrangement in place for the provision of Social Care in Prisons in the North Northamptonshire Council area.

7.2.2. The recommended approach would enable NHS England to act on the Council's behalf to discharge statutory duties under the Care Act 2014. This will be achieved by the Council entering into an agreement with NHSE in accordance with section 75 of the National Health Service Act 2006. This allows local authorities and NHS bodies to make arrangements for pooling resources and delegating certain NHS and local authority health-related functions to the other partner/s.

7.2.3. The agreement would enable NHSE to secure a variation to the existing contract it has with PPG to provide healthcare services at HMP Five Wells by adding responsibility for the provision of social care. The cost of providing the additional social care provision will be met by the Council, in accordance with the Financial Procedure Rules and the flexibility afforded through the Public Contract Regulations 2015 Regulation 12, paragraph 7.

## **7.3. Relevant Policies and Plans**

7.3.1. The recommended service promotes and supports North Northamptonshire's corporate vision of: "A place where everyone has the best opportunities and quality of life", with priorities centring on Active, fulfilled lives, and connected communities.

7.3.2. Furthermore, the service is aligned with Northamptonshire Health and Care Partnerships Vision of "a positive lifetime of health, wellbeing and care in our community".

## **7.4. Risk**

7.4.1. The legacy contract specification for Social Care in Prisons, now held by West Northamptonshire Council, states that the mobilisation of any future prison within Northamptonshire “will be discussed and agreed upon between the Authority and the Provider at that time”. In simple terms, this is an ‘agreement to agree’ and has no legal force and does not meet the requirements of the Public Contract Regulations 2015.

7.4.2. Legal advice is that there is a risk that the current Provider (of Social Care in Prisons in West Northamptonshire) could issue a claim for breach of contract as there are provisions which if interpreted in the widest possible sense could tie the authority in to incorporating the new prison into the existing contract. The argument is weak as the provisions are too vague and unspecific to be legally binding.

7.4.3. These risks have been mitigated by

- Engagement with the current provider of Social Care in Prisons in West Northamptonshire to inform them of commissioning intentions, to which they have responded that do not have the capacity to seek to expand their service
- Engagement with Legal to draft a termination letter for any NNC provision under the legacy contract
- This proposal for a 2-year term contract, with an option for a 1-year extension, will facilitate benchmarking of social care needs in the prison population
- Engagement with Procurement to suggest timetable for full contract award once a baseline of the scale and intensity of need is known.

## **7.5. Consultation**

7.5.1. Key stakeholders engaged and consulted in the process have included NHS England, the current healthcare provider at HMP Five Wells, the current social care provider for Social Care in Prisons in West Northamptonshire, internal operational management and project group, Adult Social Care providers and commissioners in other local authority areas, and internal stakeholders in Legal and Procurement.

## **7.6. Consideration by Executive Advisory Panel**

7.6.1. Following discussion with the Executive Member for Adults, Health and Wellbeing and the Executive Director for Adults, Communities and Wellbeing, it was not felt necessary for this proposal to be considered by the panel as the proposal is not of a contentious nature and is cognisant of the Council’s priorities.



## **7.7. Consideration by Scrutiny**

7.7.1. The procurement process and/or any part of the requirement may be selected for consideration by Scrutiny

## **7.8. Equality Implications**

7.8.1. The Service proposed does not adversely impact protected characteristics. Recommendations would ensure that social care support would be available to all those in the prison establishment assessed as eligible.

## **7.9. Climate Impact**

7.9.1. HMP Five Wells is a newly built Category C resettlement prison constructed in accordance with the latest environmental requirement.

7.9.2. Commissioning of social care support from the existing healthcare provider will serve to minimise the impact of staff travel to the place of employment.

## **7.10. Community Impact**

7.10.1 The Council will work with the provider to maximise employment opportunities within the local community.

7.10.2 The service will work collaboratively with the existing healthcare provider to deliver joined-up and holistic care and support to individuals accessing service.

## **7.11. Crime and Disorder Impact**

7.11.1 No implications identified.

## **8. Background Papers**

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8.1 New Prison in Wellingborough Desktop Health and Social Care Needs Assessment, Tamlyn Cairns Partnership, commissioned by East Midlands Health and Justice Team, NHS England and NHS Improvement, August 2020.

8.2 HMP Five Wells Social Care SLT Decision Report, 20 January 2022