



## Notice of Non-key Executive Decision

<b>Subject Heading:</b>	Request for a waiver of the Council's Contract Procedure Rules 8 and 9, to allow for the direct award of a contract to Havering Women's Aid to provide a floating support service to people affected by domestic violence and two accommodation based services for women fleeing domestic violence (two women's refuges) up to 31 <sup>st</sup> August 2018.
<b>Cabinet Member:</b>	Councillor Wendy Brice-Thompson, Cabinet member.
<b>CMT Lead:</b>	Barbara Nicholls, Director of Adult Services.
<b>Report Author and contact details:</b>	Michelle Brown, Senior Commissioner and Projects Manager Tel: 01708 433113 Email: <a href="mailto:michelle.brown@havering.gov.uk">michelle.brown@havering.gov.uk</a>
<b>Policy context:</b>	Strategy to end violence against women and girls: 2016 to 2020, HM Government.
<b>Financial summary:</b>	Total value for the interim contract and backdated payment would be up to £485,297.00. This would be funded through the existing Adult Social Care budget.
<b>Relevant OSC:</b>	<b>Individuals</b>
<b>Is this decision exempt from being called-in?</b>	<b>No</b>

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**The subject matter of this report deals with the following Council Objectives**

Havering will be clean and its environment will be cared for  
People will be safe, in their homes and in the community  
Residents will be proud to live in Havering

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

- 1) To retrospectively authorise the expenditure on the current uncontracted domestic violence refuge and floating support service provision with Havering Women's Aid (HWA) covering the period from 1<sup>st</sup> October 2016.
- 2) To authorise a waiver of the Council's Contract Procedure Rules 8 and 9, to allow for the direct award of a contract to provide domestic violence refuge and floating support services for Havering residents for a maximum of 16 months commencing 1<sup>st</sup> May 2017, or as soon as possible thereafter, to 31<sup>st</sup> August 2018, to the current provider to allow sufficient time to complete a full review of the current service and to re-procure provision, if no other bidders respond to the Council's PIN notice.
- 3) To note that the Joint Commissioning Unit publish a PIN notice to inform the market of intention to directly award a contract to Havering Womens Aid, and thereafter to publish a VEAT notice, should no other bidders respond to the PIN notice, to provide the Council with additional protections against a legal challenge of the direct award contract to Havering Womens Aid.

### AUTHORITY UNDER WHICH DECISION IS MADE

Power of an individual Cabinet member under CPR 14 to waive a provision of the CPRs by using an Executive Decision.

14.6.6 Best Interests of the Council - where it is in the best interests of the Council or the Borough for a provision in these Rules to be waived to enable a contract procurement to be rapidly progressed while still Complying with European procurement rules.

### STATEMENT OF THE REASONS FOR THE DECISION

A contract was awarded to Havering Women's Aid, to provide a floating support service to people affected by domestic violence and two accommodation based services for women fleeing domestic violence (women's refuges) in 2011 following a competitive tender process.

The contract was for a period of three years from 1<sup>st</sup> October 2011 with the option to extend by an additional period of up to two years by written notice.

An Equality Impact Assessment (2011) was carried out organised by Age, Disability, Gender, Sexual Orientation, Race and Religion.

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The contract was extended from 1<sup>st</sup> October 2014 until 30<sup>th</sup> September 2015 and then from 1<sup>st</sup> October 2015 to 30<sup>th</sup> September 2016. To date, Havering Women's Aid are continuing to provide the provision and the Council are continuing to fund them. The lead for this service has changed a number of times recently and this has contributed to the current contract expiring. Through this Executive Decision we are looking to rectify this by putting an interim contract in place and setting out the plan to recommission the service.

The current annual contract value: £253,198.40, funded from Adult Social Care\* general fund.

On 8<sup>th</sup> March 2016, the Home Office published its 2016 to 2020 Strategy for ending Violence Against Women and Girls (VAWG).

The national strategy's framework is based on:

- prevention
- the provision of services
- partnership working
- pursuing perpetrators.

The National Statement of Expectations (NSE) sets out what local areas need to put in place to ensure their response to VAWG issues is as collaborative, robust and effective as it can be so that all victims and survivors can get the help they need.

It is proposed that the Havering provision is reviewed in conjunction with local need, the national strategy and expectations. The review will include analysing data relating to past and current usage, outcomes achieved, safeguarding, cost and demand. Comprehensive consultation will also take place with users of the service and other key stakeholders.

Stakeholders are both internal and external and include Havering Women's Aid, the Joint Commissioning Unit, Community Safety Team, Housing, Adults Social Care, Childrens Social Care and the Police.

Senior managers in all relevant directorates will have views on the way forward and this adds complexity. For this reason the local authority is seeking agreement for a waiver to extend the implied contract until 31<sup>st</sup> August 2018 to ensure sufficient time to agree the future model.

### **OTHER OPTIONS CONSIDERED AND REJECTED**

1. Do nothing as we have an implied contract; proceed with recommissioning with implied contract.

Rejected. We wish to have a formal agreement with the provider, to ensure service delivery is provided to the expected level, to formally monitor any

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safeguarding issues and for any contract **management** issues,

2. End or amend the provision immediately.

Rejected. We wish to undertake 3 month formal consultation in relation to future provision.

**PRE-DECISION CONSULTATION**

Formal consultation is pending.

**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Michelle Brown, Senior Commissioner and Projects Manager

**Designation:** Joint Commissioning Unit

Signature:

*M Brown*

Date:

*25/5/2017*

## Part B - Assessment of implications and risks

### LEGAL IMPLICATIONS AND RISKS

The Council has a range of specific powers and duties in relation to reducing domestic violence, including powers and duties under the Crime and Disorder Act 1998, the Domestic Violence, Crime and Victims Act 2004, the Anti-Social Behaviour Crime and Policing Act 2014, and the Care Act 2014. In addition, the Housing Act (1996) and Homelessness Act (2002) specify that local authorities have a duty to provide housing advice to anyone who is homeless or threatened with homelessness – the former including those who are living in a refuge.

The department's recommended option is in compliance with the legislation set out above.

Local authorities must ensure their commissioning practices and the services delivered on their behalf comply with the requirements of the Equality Act 2010 and should encourage services that respond to the fluctuations and changes in people's care and support needs.

Health, social and other related services fall within the Light Touch Regime (LTR) under Chapter 3, Section 7 of the Public Contracts Regulations 2015 ("Regulations 2015"), as set out in Schedule 3 for contracts relating to health, social and other related services. Services subject to the LTR, with a contract value that exceeds the current threshold of £589,148 is subject to the full requirements of Regulations 2015.

The light touch regime provides an open and transparent process for procuring health, social and other related services but allows significant flexibility in the way that process is designed and implemented. The contracting authority can use its own processes and award criteria in a way that best suits the particular purpose and specific outcomes sought.

The proposed HWA contract for the services set out within the body of this report fall within the LTR.

The award of the contract to HWA would be a Direct Award Contract ("DAC"), the allowable reasons for a DAC are as follows:

- i) Extreme Urgency;
- ii) **Absence of tenders, only one bidder received or suitable bidders in response to an invitation to tender;**
- iii) For reasons of protection of exclusive rights or technical reasons there is only one possible supplier;
- iv) A direct award call off over £5,000 under a framework agreement.

If the Council receives no bidders after they publish its PIN notice, then it shall rely upon reason ii, listed above as justification for the award of the direct award contract to HWA.

For public contracts subject to the Regulations 2015, the requirements for publishing contract notices in the Official Journal of the European Union (OJEU) in accordance with the rules of procedure are set out in the Regulations 2015, Pt 2 (see in particular regulations 48 to 52). A voluntary transparency notice (also known as a 'voluntary *ex ante* transparency notice' or '**VEAT** notice') is used in limited circumstances arising under the Regulations 2015, Pt 3.

A VEAT notice may be published by a contracting authority where a contract has been awarded without prior publication of a contract notice in accordance with the Public Contracts Regulations 2015, Pt 2 (i.e. a direct award contract). A contracting authority may opt to publish a voluntary transparency notice in these circumstances in order to resist challenge on grounds of ineffectiveness under the Regulations 2015, regulation 99(2).

The Public Contracts Regulations 2015, regulation 99(3) provides that the above ground for ineffectiveness will not apply if the contracting authority:

- considers the contract award (without prior publication of a contract notice) to be permitted by the Regulations 2015, Pt 2
- publishes a voluntary transparency notice in the OJEU indicating its intention to enter into the contract, and
- observes a standstill period of at least ten days beginning with the day after the date the voluntary transparency notice was published in the OJEU

Under the Regulations 2015, regulation 99(4), a voluntary transparency notice **must** contain:

- the name and contact details of the contracting authority
- a description of the object of the contract
- a justification of the decision of the contracting authority to award the contract without prior publication of a contract notice
- the name and contact details of the economic operator to be awarded the contract, and
- where appropriate, any other information which the contracting authority considers useful.

Due to the estimated whole life value of the proposed extension and lack of expressed language within the body of the current HWA contract concerning a further extension period, the client department intends on publishing a VEAT notice as required by the



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Regulations 2015, to reduce the risk of legal challenge to the Council.

### **FINANCIAL IMPLICATIONS AND RISKS**

Waiver extending provision up to 23 months from 1<sup>st</sup> October 2016 to 31<sup>st</sup> August 2018. There is currently a monthly cost of £21,099.87 and is expected to remain at this rate for the whole period of the contract extension as confirmed by the provider. The total cost for an extension of 23 months will be £485,297. There is currently an annual budget available of £253,200 within Adult Social Care core funding, the pro rata amount of the budget available for 23 months is £485,300 which is sufficient to cover the cost of the extension, therefore there is limited financial risks associated with this extension.

The contract extension will ensure any material risk to the Local Authority for price changes are mitigated by ensuring the provider is able to absorb any significant changes to their cost base, whilst continuing to deliver the service to the same level as specified within the contract.

Falil Onikoyi – Strategic Finance Business Partner – Adults and Public Health.

### **HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

The complexities of obtaining suitable housing means that some individuals, or women with their children, stay at the refuges for extended periods of time. Clients at the refuges have stayed for a period of between 5 to 24 months, the average stay being 15 to 18 months.

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

Cheryl Graham  
Strategic HR Business Partner (Interim)

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

An Equality Impact Assessment (2011) was carried out organised by Age, Disability, Gender, Sexual Orientation, Race and Religion.

An Equalities Impact Assessment, informed by Equalities data collected by Havering Womens Aid, should inform the re-procurement of provision, must be undertaken in order to ensure that any negative impact to individuals within the protected characteristic groups is identified and mitigated.

There are no direct implications to requesting a waiver.



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The refuges are both women only spaces. The current provision does include advice and support for male victims through an element of floating support.

The Romford refuge has access to people with disabilities i.e. wheelchair users can access the building to use consultation rooms. There is currently one unit/flat adapted.

**BACKGROUND PAPERS**

*Not applicable.*

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**Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

**Details of decision maker**

Signed



Name: Barbara Nicholls

Cabinet Portfolio held:  
CMT Member title: Director of Adult Services  
Head of Service title  
Other manager title:

Date: 25/05/2017

**Lodging this notice**

The signed decision notice must be delivered to the proper officer, Andrew Beesley, Committee Administration & Interim Member Support Manager in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on 25/5/2017.

Signed J. F. M.