



## Notice of KEY Executive Decision

<b>Subject Heading:</b>	<b>Interim contract for sexual health services</b>
<b>Cabinet Member:</b>	Councillor Wendy Brice-Thompson, Cabinet Member for Adult Services and Health
<b>CMT Lead:</b>	Mark Ansell, Acting Director of Public Health
<b>Report Author and contact details:</b>	Debbie Redknapp, Principal Public Health – Integration and Collaboration ( <a href="mailto:Deborah.redknapp@havering.gov.uk">Deborah.redknapp@havering.gov.uk</a> )
<b>Policy context:</b>	Supports priorities in the Joint Health & Wellbeing Strategy: <ul style="list-style-type: none"><li>• Quality of services and patient experience</li></ul>
<b>Financial summary:</b>	The value of the interim contract for sexual health services is circa £1.4m per annum or £2.15m if the contract continues for the maximum period proposed of 18 months.
<b>Reason decision is Key</b>	Indicate grounds for decision being Key: (a) Expenditure or saving (including anticipated income) of £500,000 or more
<b>Date notice given of intended decision:</b>	24 <sup>th</sup> February, 2017
<b>Relevant OSC:</b>	Health Overview & Scrutiny Sub-Committee
<b>Is it an urgent decision?</b>	No
<b>Is this decision exempt from being called-in?</b>	No

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

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Communities making Havering	[x]
Places making Havering	[]
Opportunities making Havering	[]
Connections making Havering	[

## **Part A – Report seeking decision**

### **DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION**

- In consideration of the content of this report, the decision-maker is asked to:
- Note the spend on uncontracted sexual health services in the period April 2016 to March 2017.
- Approve the waiver of the Council's Contract Procedure Rules to allow the direct award of a contract to provide integrated sexual health services for Havering residents for a maximum of 18 months commencing April 2017 to BHRUHT as no other bidders who responded to the Council's PIN notice were willing to do so.
- Agree to authorise the Director of Public Health, in consultation with the Directors of Finance, HR & OD and Legal and Governance to finalise contractual arrangements with BHRUHT
- Endorse the decision of the Director of Public Health to participate in a joint open procurement exercise with counterparts in LBBD and LBR to award a new contract(s) for integrated sexual health services in the three boroughs before 30<sup>th</sup> September 2018.

### ***Background***

The Health and Social Care Act 2012 requires top tier local authorities to ensure residents have open access to sexual health services for contraception (referred to here as family planning services); the testing, diagnosis and treatment of sexual transmitted infections (referred to here as GUM services); and the testing and diagnosis of HIV.

A contract with Barking, Havering and Redbridge University Hospitals Trust (BHRUHT) for the provision of an integrated sexual health service (both GUM and family planning) was novated to the Council in 2013. The service specification was consistent with an [exemplar service specification](#) published by the Dept. of Health.

As with GUM services nationwide, BHRUHT was remunerated via a simple 'Payment by Results' (PBR) mechanism whereby a set fee (tariff) was paid every time a local resident attended the service. The tariffs used having previously been agreed by the NHS in 2012/13. This arrangement was consistent with Dept. of Health/ LGA [guidance](#) that Councils adopt a PBR approach to facilitate cross charging by non-local providers, including uncontracted providers, thereby ensuring that residents continue to have open access to GUM services nationwide.

A similar PBR arrangement also applied to family planning activity. In the absence of a

national tariff, a locally agreed fee was employed.

BHRUHT also provided services in and to residents in LB Barking and Dagenham (LBBD) and LB Redbridge (LBR) under separate but more or less identical contracts.

In 2014, the Council began an open procurement exercise with LBBD and LBR to award new contracts for a single organisation to provide integrated sexual health services to residents of the three boroughs. However in July 2015, and after prolonged negotiation, all 3 boroughs declared this procurement 'failed' as none of the prospective providers was able to get close to the agreed service specification at an affordable cost.

Shortly afterwards, BHRUHT advised all three Councils that it would be open to agreeing an interim contract pending a decision regarding a further procurement if commissioners agreed to consider proposals to redesign the service and pay an increased tariff for family planning contacts.

LBBD agreed a new contract ending September 2018.

LBH (and LBR) officers accepted that there was an urgent need to identify ways of reducing the service's operating costs and agreed that there was a case for paying an enhanced tariff while this review proceeded but were unwilling to agree to increased unit costs for the duration of the interim contract. As a result, LBH's contract with BHRUHT lapsed in March 2016.

Nevertheless, BHRUHT continued to provide the service after this date and invoiced the Council for attendances by Havering residents. After validation, the Council has paid these invoices as it would invoices submitted by any other uncontracted GUM service. As a result, all expenditure on sexual health services in 2016/17 has been uncontracted. Total spend in 2016/17 is expected to be circa £1.8m of which £1.4m will be with BHRUHT and £0.4m with non-local providers of GUM services that have cross charged the Council outside of any direct contractual arrangement..

Although out of contract, officers from LBH worked with colleagues from LBBD and LBR and BHRUHT to develop redesign proposals that would reduce the service's operating costs whilst preserving clinical quality and minimize any inconvenience for service users.

Initial proposals were shared with the Havering Health and Wellbeing Board in March 2016 (attachment 1) before being subject to a public consultation and Equality Impact Assessment. In September 2016, BHRUHT were advised that LBH would not object to the implementation of these proposals.

Detailed implementation plans were developed by BHRUHT and the changes went live in January 2017.

In December 2016, and having collaborated on the service redesign, Directors of Public Health from all three boroughs agreed that they would collaborate on a second tri-borough procurement exercise, led by LBBD, with the aim of awarding a new contract(s) for integrated sexual health services by September 2018 at the latest. This timetable will allow the 3 boroughs to agree a common procurement strategy, including service specification and payment mechanism that reflects :-

- a refreshed sexual health needs assessment
- modelling regarding the likely impact on patient flows and costs of

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- the recent redesign of local services
- the introduction of a new London wide self-sampling 'e-service', beginning a phased roll out in May 2017
- the introduction of a more sophisticated Integrated Sexual Health Tariff that enables payment to better reflect the cost of each individual patient contact
- learning from a number of sexual health services procurements currently underway elsewhere in London.

LBH issued a PIN (Prior Information Notice) in January 2017 to test market interest in any future procurement. Several potential providers responded. Subsequent contact revealed that all were interested in the proposed tri-borough procurement but none were willing to participate in a competitive procurement exercise for a Havering only contract for the intervening period.

As there is no interest from other providers in the market, it recommended that a Voluntary Ex Ante Transparency Notice (VEAT) be issued with a direct contract award to the incumbent provider BHRUHT.

The exact value of this contract will depend on rates of activity and duration, but assuming patient flows remain similar to 2016/17 and the contract lasts from April 2017 to September 2018, the cost to LBH is likely to be £2.15m.

The Council, LBBD and LBR, will undertake an open procurement during this period.

The cost of the interim contract will be charged against the Public Health Allocation received by the Council to cover the cost of its public health responsibilities.

Agreement of the interim contract will not of itself alter the cost of these services. An interim contract will give the Council more opportunity to manage the performance of the provider in terms of clinical quality and user experience.

## **AUTHORITY UNDER WHICH DECISION IS MADE**

The authority under which this decision is made is:

Part 3, section 3.3 General Powers, Contract Powers (b) To award all contracts with a total contract value of between £156,000.00 and £5,000,000.00 &  
Part 4, section 14 Waivers, 14.1, 14.3, subset i b. & 14.6.6

## **STATEMENT OF THE REASONS FOR THE DECISION**

- The Council is legally required to ensure that local residents have open access to sexual health services.
- In the absence of any market interest in providing services for Havering alone for the period April 2017 – September 2018, direct award of an interim contract to

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BHRUHT will give the Council additional levers with which to manage the performance of our local provider whilst the Council agrees and undertakes an open procurement with LBBD and LBR to provide services long term to residents in all 3 boroughs.

- That open procurement will ensure that the local provider of sexual health services continues to offer services that meet the needs of local residents and offer consistently high quality care, excellent user experience and good value for money.

## **OTHER OPTIONS CONSIDERED AND REJECTED**

**Do nothing.** Not desirable as a contract affords opportunities for the Council to challenge the provider of sexual health services to the majority of local residents about the quality of that service and require improvements if clinical quality and / or user experience are not as specified. Oversight and challenge particularly important now given recent service redesign and further imminent changes that will impact on and require a response from local sexual health services.

**Undertake an open procurement to provide sexual health services for Havering alone for the period April 2017 – September 2018.** The PIN and subsequent dialogue with potential providers has demonstrated that there is no market interest in such a contract. This is consistent with the view of commissioners that there are significant practical obstacles in pursuing such an approach e.g.

- disaggregating a Havering only service from that provided to the other two boroughs and mobilising the resulting new team is impractical over this timescale
- a single borough provider is likely to be significantly less cost effective and less resilient than the existing tri-borough provider.

## **PRE-DECISION CONSULTATION**

The proposed way forward was discussed at the Havering Health and Wellbeing Board with representatives of Havering Clinical Commissioning Group and Havering Health Watch.

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

Name: Deborah Redknapp

Designation: Principal Public Health

Signature:

Date:

## **Part B - Assessment of implications and risks**

### **LEGAL IMPLICATIONS AND RISKS**

The department's recommended option is in compliance with the Health and Social Care Act 2012 that requires top tier local authorities to ensure residents have open access to sexual health services.

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 BHRUHT contract for the services set out within the body of this report fall within the LTR.

The award of the interim contract to BHRUHT 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.

Following the issue of its PIN notice, no bidders responded to the Council to provide the service for Havering residents alone for the proposed 18 month period. Hence the Council can rely on reason ii, listed above as justification for the award of the direct award contract to BHRUHT.

Derron Jarell - Senior Procurement Solicitor Legal Services

### **FINANCIAL IMPLICATIONS AND RISKS**

The cost of sexual health services is significant. The proposed tri-borough procurement provides an opportunity to market test the service and thereby gain reassurance that the contract offers value for money. The proposed interim contract will be offered on similar terms to the original contract novated to the Council in 2013 without the top up paid on family planning contacts between April and September 2016. As such it will be at least as cost effective as in preceding years. If an interim contract is not agreed, the Council will incur the same costs and forgo the opportunity

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to use the levers that a contract affords to manage the performance of the provider e.g. with regard to clinical quality and user experience.

Nonetheless there is a risk that the service is perceived not to represent Value for Money as it has not been subject to a normal tender or procurement process. This will be resolved by the tri-borough procurement.

[falil.onikoyi@onesource.co.uk](mailto:falil.onikoyi@onesource.co.uk)

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

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. Change of service provider issues would include legal requirements with regard to TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) on the part of the current provider, BHRUHT, and any receiving organisation. Any new contractor for the service would need to satisfy themselves that they can meet TUPE requirements and would be advised to seek independent legal advice with regard to all TUPE implications.

Eve Anderson – Strategic HR Business Partner

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

The current service model was subject to an EIA before the Council agreed to the redesign. The proposal to award an interim contract to BHRUHT will not affect that service model.

A new EIA will be completed when the details of the proposed tri-borough procurement and any potential impacts on the service are clear. .

Diane Egan Community Safety and Development Manager (for the Corporate Diversity Advisor)

### **BACKGROUND PAPERS**

None

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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

*Delete as applicable*

Proposal NOT agreed because

**Details of decision maker**

Signed

Name:

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date:

**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 \_\_\_\_\_

Signed \_\_\_\_\_