

19/71  
DECISION  
NOW MADE



## Notice of KEY Executive Decision

<b>Subject Heading:</b>	Extension of the Stop Smoking Service for Pregnant Women
<b>Cabinet Member:</b>	Cllr Jason Frost Cabinet Member for Health & Adult Care Services
<b>SLT Lead:</b>	Mark Ansell Director of Public Health
<b>Report Author and contact details:</b>	Paul Burgin, Senior Commissioner and Project Manager E:paul.burgin@havering.gov.uk T:01708 431090
	Havering's Health and Wellbeing Board Strategy 2015 – 2019 The Havering Plan (Communities) : Stopping smoking in pregnancy contributes to giving children the best start in life
<b>Policy context:</b>	National policy includes Department of Health and Social Care "Towards a smoke-free generation: a tobacco control plan for England" which sets out objectives to reduce smoking in pregnancy to 6% or less by 2022. This contract will also contribute to the Governments aims and objectives under 'The NHS Long Term Plan' to reduce the number of hospital admissions from smoking "Current estimates are that nearly a quarter of women in the UK smoke during pregnancy <sup>1</sup> .

1: Royal College of Paediatrics and Child Health (2018) Child health in England in 2030: comparisons with other wealthy countries. Available from: <https://www.rcpch.ac.uk/resources/child-health-england-2030-comparisons-other-wealthy-countries>

Key Executive Decision

<b>Financial summary:</b>	<p>The cost of the service for the first three years is £86,341.38. We are requesting that the current contract is extended by a further three years – two and one (at a cost of £86,341.38) subject to a best value review at the end of year five.</p> <p>The total aggregated total of the six year contract would now be £172,682.76.</p>
<b>Reason decision is Key</b>	(c) Significant effect on two or more Wards
<b>Date notice given of intended decision:</b>	19 <sup>th</sup> August 2019
<b>Relevant OSC:</b>	Health Overview and Scrutiny
<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**

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

1. That the Cabinet member approves a waiver of the standard tendering requirements of the Council's Contract Procedure Rules ("CPRs") in particular CPRs 8 (CheckPoint Procedure), 9 (Procurement Routes), and 12 (Tender Process).
2. That the Cabinet Member approves the extension of the current arrangement with the London Borough of Barking & Dagenham (**LBB**D), as **contractor** of a three year (2 + 1) Service Level Agreement (SLA) to provide a stop smoking service for pregnant women and those living in the same household as a pregnant woman for a further three year period in the London Borough of Havering, following the approval of the Head of Procurement as required by CPR 23 (Collaborative, Joint Commercial Enterprises and Public Sector Spin Outs).
3. That the Cabinet member note that a section 3 Local Government Act 1999 "Best Value" review and assessment will be undertaken before final one (1) year extension period is triggered.
4. That the Cabinet member delegate to the relevant Second Tier Officer (in consultation with the SLT member) the power to authorise the final one (1) year extension following a positive "Best Value" review assessment report.

### AUTHORITY UNDER WHICH DECISION IS MADE

#### **2.5 The following Functions may be delegated to individual Cabinet members by the Leader.**

Each individual Cabinet member, as appropriate, may be delegated one or more of the following functions, within the portfolio allocated to him or her by the Leader. If a Cabinet member is unable to act, the Leader may act on his or her behalf, or may authorise another Cabinet member to do so. Matters delegated to individual Cabinet members under this section give them individual decision making powers. Where any paragraph refers to 'in conjunction with' or 'in consultation with' the decision remains that of the individual Cabinet member.

- (g) To approve an exception to the Contracts Procedure Rules set out in Part 4 of this constitution, in accordance with Rule 14(1) of those Rules.
- (h) To award contracts, agree extensions of contract terms and awards/extensions of Consortia contracts of a value above £5,000,000 and up to £10,000,000 and contracts where external funding is guaranteed and there is no longer term financial commitment to the Council.

## Key Executive Decision

### STATEMENT OF THE REASONS FOR THE DECISION

#### **Background**

A Notice of Non Key Decision was approved by the interim Director of Public Health to enter into an Agreement with the London Borough of Barking & Dagenham (LBB) to provide a stop smoking service for pregnant women for a three year period in the borough.

The report was also shared with the Cabinet Member for Adult Services and Health, Senior Officers in Legal, Finance, Human Resources and Equalities & Diversity.

It was agreed following a request to waive the Council's procurement rules in order to award the delivery of the service to LBB in the "Best interest of the Council". A copy of this report is attached at appendix (a) and dated 14<sup>th</sup> September 2016.

A waiver has been sought to extend this agreement beyond November 2019, for a further period of three years for the reason outlined in the waiver appendix (b) and dated 20<sup>th</sup> June 2019.

#### **Key issues**

This report is seeking the approval of those reviewing this report to extend the existing stop smoking cessation service for pregnant women for a further three years (subject to positive service review in year 5).

Smoking in pregnancy has well known detrimental effects for the growth and development of the baby and health of the mother, such as complications during labour, increased risk of miscarriage, premature birth, still birth, low birth-weight and sudden unexpected death in infancy.

Encouraging pregnant women to stop smoking during pregnancy may also help them to stop smoking for good, and thus provide health benefits for the mother and reduce exposure to second hand smoke by the infant.

#### National Context

There is an expectation as outlined in the Department of Health and Social Care's paper 'towards a smoke free generation: a tobacco control plan for England'. This sets out an objective to reduce smoking in pregnancy to 6% by 2022.

#### Local Context

The Service contributes towards the Health and Wellbeing (H&WB) of the residents of Havering and the H&WB Strategy priority 4 "Reduce premature deaths from cancer and cardiovascular disease" by ways of actions including well evidenced prevention programmes.

It also contributes to the Havering Plan to stop smoking in pregnancy to give children the best start in life.

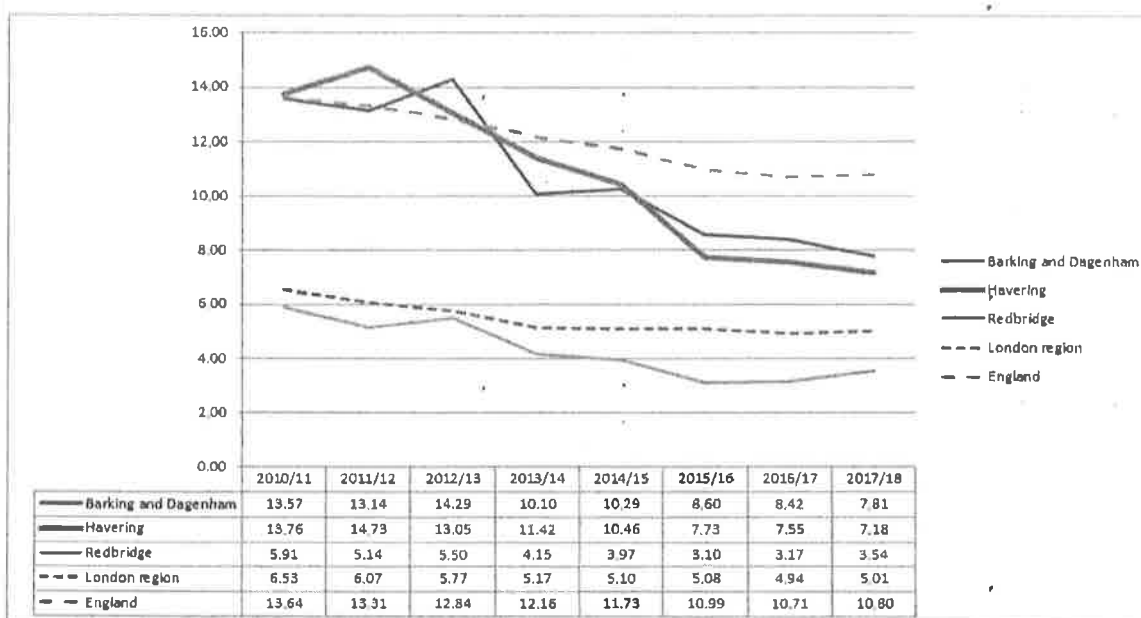
#### Performance of the current service

As chart 1 below shows, rates of smoking at time of delivery (SATOD) reached an all-time

## Key Executive Decision

high for Havering in 2011/12 and for Barking and Dagenham in 2012/13; in those years, rates in the two boroughs were higher than England, and more than twice the rate for London.

Since then, there have been rapid downward trends in SATOD in both boroughs; dropping well below England, and a narrowing in the difference between the two boroughs' respective rates and London. Neither borough is achieving the 6% ambition set out in the national Tobacco Control Plan.



It is worth noting that in recent years, rates of SATOD have mostly plateaued for England and London, whereas in Barking & Dagenham and Havering, rates have continued to reduce.

### Achieving best value for the Council

The level of spend on this service compares favourably compared with other boroughs on level of spend and impact.

In the comparative data table below illustrates the level spend per head compared with other comparative boroughs with similar smoking prevalence and population.

Table 2: Comparative smoking prevalence, population and spend/head.

Local Authority	Smoking Prevalence	Population	Public Health spend/head	Ranking by least amount of spend
Hounslow	13%	269,100	£0.00	1st
Harrow	9%	248,880	£0.04	2nd
<b>Havering</b>	<b>13%</b>	<b>256,039</b>	<b>£0.41</b>	<b>3rd</b>
Medway Town (UA)	18%	277,616	£0.54	4th
Waltham Forest	16%	275,505	£0.62	5th
Bexley	12%	246,124	£1.10	6th
Greenwich	17%	282,847	£1.38	7th

**Key Executive Decision**

Barking & Dagenham	19%	210,711	£2.11	8th
Kingston Upon Hull	23%	260,673	£2.49	9th

Source: <https://www.gov.uk/government/publications/spend-and-outcome-tool-spot>

Impact of the service

*Table 3: Comparator borough and service impact*

Local Authority	SATOD 2014-15	SATOD 2017-18	Difference	Service Impact
Havering	10	7.2	-2.8	1 <sup>st</sup>
Barking & Dagenham	10	7.8	-2.2	2 <sup>nd</sup>
Bexley	10	8	-2	3 <sup>rd</sup>
Harrow	5	3.4	-1.6	4 <sup>th</sup>
Medway Town (UA)	18	17	-1	5 <sup>th</sup>
Kingston Upon Hull	21	23	2	6 <sup>th</sup>
Hounslow	3	6.5	3.5	7 <sup>th</sup>
Waltham Forest	No data	5.8	N/a	9 <sup>th</sup>
Greenwich	No data	8.8	N/a	9 <sup>th</sup>

Source: <https://www.gov.uk/government/publications/spend-and-outcome-tool-spot>

During the period of the contract the Service has continued to contribute in reducing the number of women smoking at pregnancy by a higher percentage compared with other local authorities with similar prevalence and population.

The service currently commissioned is more economic than the previous service with a difference in spend annually of £376,000. We have achieved economies by commissioning our service from Barking and Dagenham with its extensive stop smoking and intervention service to deliver our targeted stop smoking service for pregnant women.

The Council will continue to adopt a payment by results (PbR) payment mechanism where LBBB receives part payment upon the delivery of the service outcomes.

At the end of the fifth year of the service November 2021 the service will be reviewed to ensure that it is delivering best value under general duty of 'Best Value' to make arrangements to secure continuous improvement in the way in which the service and its functions are exercised having regard to a combination of economy, efficiency and effectiveness.

**Resource implications**

The level of funding requested is £28,780.46 per year, for a further three years (subject to a positive service review in year five).

## Key Executive Decision

The total amount being sought at this time is £86,341.38. The aggregated total for the lifetime of the contract at the end of six years will be £172,682.76.

The funding requested is available from the Public Health Grant.

This is subject to the continued funding from National Government of this grant.

There is a termination clause in the agreement to allow us to terminate the agreement early if the funding is cut.

### **Risk factors**

The lifetime value of the contract including the extension (£172,682.76) is below the EU Threshold.

The procurement rules were waived in the Best Interest of the Council and an agreement entered into with the London Borough of Barking and Dagenham (LBBB) in September 2016.

The inter authority agreement was entered into on the basis that the Council had an existing positive working relationship with LBBB in the field of smoking cessation with both Councils joint funding a targeted intervention for pregnant women known as the 'Babyclear' programme. Following investment in this programme, LBBB has developed its support for maternity services with advisors running clinics and drop ins at Queens Hospital. With the Council having already invested in the Babyclear programme and LBBB developing its service provision to target and support pregnant women, it is therefore expedient for the Council to identify LBBB as the appropriate organisation to provide this service for pregnant women living in Havering.

An additional request was made to extend the existing contract by a further period on the basis that the authority would not be able to procure a similar service with existing infrastructure by going to the market for this type of targeted service.

The on-going risk is whether the Public Health Grant will be continued to be funded by National Government. Steps are being taken to part fund this service by approaching Havering CCG to contribute towards the costs of this service.

The legal risks have been addressed and incorporated in this report.

### **Human Resources, including Equality implications**

There are no human resource implications for the Local Authority.

In the EIA action plan the disability characteristic data will be collected from the next month (November 2019) to ascertain whether any of those supported have a disability. The service will have a positive impact on a majority of the characteristics with no negative impact.

### **Social impact and sustainability**

The staff in the Joint Commissioning Unit and Public Health are committed in acting in a socially responsible way to influence our partners, communities and those that we work with to reflect this principle. In response to the Public Service (Social Value) Act 2012 which places a duty on all public authorities to have regard to social, economic and environmental wellbeing in connection with public service contracts to which the Public Contract Regulations 2006 (as

### Key Executive Decision

amended) apply.

Despite this contract being below the EU procurement threshold this contract contributes towards the environment, economic and social wellbeing:

- by protecting and promoting a clean environment by reducing the emission of carbon monoxide.
- by supporting individuals to stop smoking we have contributed in saving the average 20 cigarette a day smoker £3,796 a year funding their habit.
- by supporting pregnant women to stop smoking by promoting the wellbeing of the unborn child, which could be negatively affected with a low birth weight, heart defect or sudden infant death.

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

1. Terminate the contract and rely instead on the web and telephone-based London-wide stop smoking service

This was rejected as (a) the working relationship between midwives and stop smoking service has been key to the reductions in SATOD that have been achieved (through the Babyclear initiative) and (b) the London-wide service has only just expanded provision to include advice for pregnant women and so currently has no track record for delivery and links to Babyclear not developed.

Note that this may be an option at the end of the five year extension; once Babyclear 2 is implemented and embedded, and the London-wide stop smoking service has established a track record for supporting pregnant women.

2. Retender the contract. This was rejected as (a) the arrangement with Barking & Dagenham has been integral to the successful system-wide partnership with BHRUT (midwifery service) , LBB (public health) and CCG (maternity commissioners) and (b), the financial envelope available for the service is so small so unlikely to be of interest to other providers.

### **PRE-DECISION CONSULTATION**

The pre-decision consultation has involved engaging with a number of stakeholders to extend this contract. This has included Public Health, Procurement, Legal and Finance, and external partners.



Key Executive Decision

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

Name: Paul Burgin

Designation: Senior Commissioner & Project Manager

Signature:

*P Burgin*

Date: 14/10/2019

## Part B - Assessment of implications and risks

### LEGAL IMPLICATIONS AND RISKS

1. The Council has a duty under the Health & Social Care Act 2012, for commissioning the smoking cessation service (since 1<sup>st</sup> April 2013). The Council has power under various enabling legislation, including Section 1 of the Local Government (Contracts) Act 1997, the local authority has power to enter into contracts for the purposes of or in connection with the discharge of its functions.
2. The estimated whole life value of proposed extension period to the current arrangement is **£172,682.76 (i.e. £86,341.38 + £86,341.38)**, which falls below the EU threshold for Service/Supply contracts and therefore any procurement route or award of contract is not subject to the full requirements of the Public Contracts Regulations 2015 (the "EU Regulations"). Further, the estimated value of the contract is such that it is not considered to be of cross border interest.
3. CPRs 9 & 12 provides that procurements over £100,000.00 must be subject to a formal tender exercise in conjunction with the Strategic Procurement Unit (SPU), unless a waiver has been sought and approved under CPR 14.
4. The Council must procure these contracts in accordance with the Public Contracts Regulations 2015 ("**PCR 2015**") and the CPR.
5. The CPRs provides that subject to any requirements in the European Procurement legislation for below threshold contracts, an individual Cabinet member may agree an exemption from the CPRs, where there are justifiable reasons under CPR 6, 8 and 23.  
  
**"CPR 14 (Waivers)**  
**Exceptions to competitive requirements**  
  
14.3 Exceptions to the competition requirements may be made only if all relevant law is complied with and one of the following circumstances applies:  
  
i. the contract falls within one of the exceptions listed in this Rule;  
AND  
a. the Competition Financial Thresholds Exceptions, is fully and properly completed and signed by the relevant Member of SLT;  
AND  
b. the person awarding the contract can demonstrate that the contract represents the best value that can be obtained in the circumstances.  
  
ii. an individual Cabinet member has approved the waiving of the application of these rules, as permitted by Rule (a) above;  
  
iii. the contract is solely for the employment of Temporary Agency Workers or interim managers (but not consultants);

## Key Executive Decision

iv. joint purchasing with or through another public body provided that the public body awarding the contract can demonstrate that the arrangements comply with European procurement, best value and other applicable legislation.

v. the instructing of counsel by the Director of Legal and Governance;

vi. they are allowed by some other specific provision in these Rules.

### **14.4 The exceptions are:**

14.6.1 **Genuine emergency** - unforeseen events likely to cause immediate danger to people or property such as bombing or flooding;

14.6.2 **Specialist services/supplies** - available only from one supplier in the European Union – for example, specialist niche consultants or supplies;

14.6.3 **For reasons of compatibility** - with existing services/products – for example, equipment that needs parts from its own manufacturer;

14.6.4 **Urgency NOT of the Council's own making** - the urgency must be unforeseen, for example, a current supplier ceases to operate, or a contract is terminated for poor performance. Urgency caused by previous delay by the Council or a requirement to implement a strategy or project urgently will not justify an exception under this exception;

14.6.5 **Exceptions permitted under European procurement rules** - where the contract is subject to the full application of the European procurement rules and there are specific exceptions which shall be complied with;

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 contract procurement to be rapidly progressed while still complying with European procurement rules."

6. The Cabinet member should therefore satisfy themselves that there are "**good operational and/or financial reasons**" for waiving the CPRs and is referred to Officers comments within the body of the report.
7. For the reasons detailed above and within the body of the report, it is not considered that waiving CPR14 would constitute a breach of domestic and EU legislation, as it would comply with CPR 14.6.6.
8. The Cabinet member will be aware of the Public Sector Equality Duty (PSED) set out in section 149 of the Equality Act 2010. At each stage, in exercising its function (and in its decision making processes) the council must have due regard to the need to:
  - a) eliminate discrimination, harassment, victimisation or other prohibited conduct;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
  - c) foster good relations between person who share a relevant protected characteristic and those who do not share it.

The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9. The Legal and Governance officers are available to assist the client department in finalising the terms and conditions of the proposed contract between the parties.

## Key Executive Decision

--

### **FINANCIAL IMPLICATIONS AND RISKS**

The Stop Smoking Service for Pregnant Women provided by the London Borough of Barking and Dagenham has been budgeted for within the Public Health Grant available resources at an amount of £29,500 per annum (£88,500 for 3 years). The estimated contact value of £86,341.38 for the period of 3 years can therefore be met within the available budget.

These figures are based on the assumption that the grant amount remains the same over the next five years, and that expenditure that is funded through the Public Health Grant remains constant. If either the grant or expenditure figures vary, this may effect how much is available to fund the Stop Smoking Service for Pregnant Women.

There is a financial risk over the uncertainty over the removal of the ring-fence of the Public Health Grant in 2020/21, and the consequences on services that will be funded as a result of this outcome through the Public Health Grant that will remain.

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

There are no HR implications for Havering in the extending of this contract.

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

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

Key Executive Decision

--

**BACKGROUND PAPERS** - NONE

**APPENDICES**

Appendix A: Approval form for competition financial threshold Sept 2016

Appendix B: Approval form for competition financial threshold July 2019

Appendix C: Equality & Health Impact Assessment

Key Executive Decision

**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. This decision has been taken at it is in Best Interests of the Council to continue to procure this service from LBD as the cost would be prohibitive to source the same service and infrastructure from another provider.

**Decision**

Proposal agreed

**Delete as applicable**

Proposal NOT agreed because

**Details of decision maker**

Signed



Name: Cllr. Jason Froot

Cabinet Portfolio held: Health and Adult Care Services

CMT Member title:

Head of Service title

Other manager title:

Date: 14/11/19

**Lodging this notice**

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on

14 November 2019

Signed

