

Notice of Non-Key Executive Decision

Subject Heading:	12 month contract extension for the provision of the Havering Integrated Advocacy Service.
Cabinet Member:	Councillor Jason Frost, Cabinet Member for Health and Adult Care Services
SLT Lead:	Barbara Nicholls, Director for Adults Social Care and Health
Report Author and contact details:	Jonathan Cassidy Senior Commissioner & Project Manager T: 01708 433588 E: Jonathan.Cassidy@havering.gov.uk
Policy context:	Section 67 of the Care Act 2014 imposes a duty on local authorities to arrange for an independent advocate to be available to represent and support certain persons for the purpose of facilitating those persons' involvement in the exercise of functions by local authorities.
Financial summary:	An extension to the contract for 12 months will cost a total of £123,429 The contract will be funded from the existing budget.

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Relevant OSC:	Individuals
Is this decision exempt from being called-in?	It is a non-key decision by a member of staff.

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. Agree to:
 - a. Extend the contract with Mind in Tower Hamlets and Newham for the provision of the Havering Integrated Advocacy Service for the period of 12 months from 1st April 2021 to 31st May 2022 at estimated cost of £123,429;
 - b. Approve the variation of the initial extension value of £112,000 to £123,429 that is an additional amount of £11,429.

AUTHORITY UNDER WHICH DECISION IS MADE

Contract Procedure Rule 19.4 states an extension to a contract may be made by a chief officer under the Scheme of Delegation provided that it was contemplated at the time the contract was awarded.

STATEMENT OF THE REASONS FOR THE DECISION

1. The current statutory advocacy services provided by Mind in Tower Hamlets & Newham play a significant role in Havering's duty to deliver on the Care Act 2014, Mental Health Act 2007, Mental Capacity Act 2005 and the Health & Social Care Act 2012. Havering's Integrated Advocacy Service, provided by Mind in Tower Hamlets & Newham, deliver the following elements of advocacy:
 - Independent Mental Health Advocacy,
 - Independent Mental Capacity Advocacy and Deprivation of Liberty Safeguards
 - Care Act Advocacy
 - NHS Complaints Advocacy
2. Following an OJEU complaint procurement a 3 year contract with an option to extend for 12 months was awarded to Mind in Tower Hamlets & Newham. The 12 months extension was contemplated at the time of the award and it was permitted in the published contract notice. The value of the contract awarded was £332,097 for the initial term and £112,000 for the contract extension.
3. By a Deed of Variation, it was agreed to increase the contract from £332,097 to £358,097 because an administrator was added. This was approved by the Director of Adult Services. It is proposed to exercise the option to extend the contract for one year at a total cost of £123k. As the initial extension value per annum was £112,000 the contract would need to be varied to account for the additional £11,429.

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4. The initial term of the 3 year contract is coming to an end. The estimated cost to extend the contract for 12 months is £123, 429. A tender exercise for a long-term contract for replacement services is planned between August and October 2021 with the intention that a new contract commences on 1st April 2022. The recommissioning of the new service is aligned to the timescales of the implementation of the Liberty Protection Safeguarding (LPS).
5. The Council requires continuity of services, pending commencement of the new long term contract, in order that it may continue to deliver against the statutory duties.
6. The Council will extend the current contract using the current terms set out in the contract:

3. Extending the initial term

3.1 The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to 1 year (Extension Period). If the Authority wishes to extend this agreement, it shall give the Provider at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period.

7. The extension to the contract will be funded from the existing budget.

OTHER OPTIONS CONSIDERED AND REJECTED

Retender the Integrated Advocacy Service Immediately

- 1) Retender the contract now without triggering the 12 months contract extension. Given the timescales this would prove a challenge. Furthermore, the proposed extension of one year will enable the Council sufficient time to develop a new specification drawing on the findings and recommendations from the LPS project board. The documentation for the tender and contract will be produced jointly by a tender board to ensure it meets the needs and expectations of all stakeholders.

Do nothing and let the contract expire

- 2) Do nothing would mean the contract would expire on 31st March 2021. This is not an option as the Council has a statutory duty to provide these services. The Council does not have capacity to bring the assessment services in house.

PRE-DECISION CONSULTATION

Consultation with a range of internal and external stakeholders including; the service provider.

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

Name: Jonathan Cassidy

Designation: Senior Commissioner & Projects Manager, Joint Commissioning Unit

A handwritten signature in black ink, appearing to read 'Jonathan Cassidy', written in a cursive style.

Signature:

Date: 18/09/2020

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The Council has a general power of competence under section 1 of the Localism Act 2011 to do anything an individual may generally do, together with the power under section 111 of the Local Government Act 1972 to do anything ancillary to or which facilitates any of its functions. The Council has the power under this section to agree to the proposals in the recommendations.

This report seeks approval to extend the contract with Mind Tower in Hamlet and Newham for a period of 12 months. This report also seeks approval to vary initial value of the extension.

The extension is subject to the Public Contract Regulations 2015 (PCR). Section 72 (1) (a) of the PCR permits variations of contract where the contract sets out the scope and nature of the variation. The 12 month extension is permitted by the terms of the contract.

The extension must comply with the Council's Contract Procedure Rules (CPR). Under CPR 19.4 an extension is permitted where certain conditions are fulfilled which are the extension was contemplated at the time the contract was awarded, the award followed an OJEU-compliant procurement and the published contract notice permitted the contract to continue past the defined period. CPR 19.4 also requires the extension does not exceed 50% of the awarded contract value. The body of the report confirms that the proposed extension falls within CPR 19.4.

This report also seeks approval to vary the value of the extension. The estimated value of the extension is £123, 429 which includes an additional £11,429. In order to extend at that value there needs to be a variation. The variation is permitted under regulation 72 (5) (a) and (b) in that the additional amount of £11, 429 is below the EU services threshold of £189,330, it is also below 10% of the initial contract value and does not alter the overall nature of the contract.

CPR 19.3 permits the variation where it is below the relevant EU threshold and is less than 10 % of the initial contract value for service and supply contracts, where it does not alter the overall nature of the contract or framework agreement.

Under CPR 19.5 the extension document will be completed in the same manner as the original contract. The Council's legal services team will assist with drafting the letter of extension.

FINANCIAL IMPLICATIONS AND RISKS

The current contract costs are funded via cost centre A32110 – Independent Mental Capacity Act. A budget of £137k exists to meet this contractual cost. Payments are currently made to the provider of this service, Mind in Tower Hamlets & Newham, at a cost of £30,857 per quarter. The cost will remain the same during the extension period to 31st May 2022 and will be met from within the existing budget.

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With the introduction of Liberty Protection Safeguarding legislation for implementation on 1st April 2022, there will be a requirement to develop revised contract specifications for Advocacy Services, in line with new requirements. The extension of the existing contract will allow the LPS Project Board sufficient time to develop the requirements for the new service.

This contract will need to be terminated earlier if the new arrangements are entered into prior to the end of this extension period, to ensure that existing budget availability is not exceeded.

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.

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.

If the recommendation to award an extension to the contract for the provision of a Advocacy Services is agreed it should have a positive impact on equality groups. It will enable the provider to continue to provide the service ensuring consistency and the ability to maintain a quality service for service users.

The service will continue to meet the needs of all eligible service users, including those from minority community groups and those 'protected' under Equality Act 2010 legislation.

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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: Barbara Nicholls

Member title: Director of Adult Social Care & Health

Date: 09.10.2020

Lodging this notice

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

For use by Committee Administration

This notice was lodged with me on _____

Signed _____