

Notice of Non-key Executive Decision

Subject Heading:	Approval to waive the requirement of the Contract Procedure Rules, and extend the Adults Emergency Duty Team (AEDT) for a further 12 months.
Cabinet Member:	Councillor Frost
SLT Lead:	Barbara Nicholls, Director, Adults Social Care & Health
Report Author and contact details:	Laura Neilson Commissioning Programme Manager Email: Laura.neilson@havering.gov.uk
Policy context:	The AEDT service discharges statutory social care responsibilities whilst ensuring public safety, by providing an emergency social care crisis response for Adults and Mental Health services, outside of normal office hours.
Financial summary:	The total contract value is £501,839.20 per year, to be divided equally between; LBBD, LBH, LBR and LBWF.

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Relevant OSC:	Individuals Overview & Scrutiny Sub-committee
Is this decision exempt from being called-in?	Yes

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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"/>

Place an X in the [] as appropriate

Part A – Report seeking decision

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DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

Approval is sought to waive the provisions of the Council's Contract Procedure Rules requiring a tender process to procure the delivery of the Services; and

To award a 12-month extension to North East London Foundation Trust (NELFT) for the provision of the Adults Emergency Duty Team (AEDT) service, which is jointly commissioned across Havering, Barking & Dagenham, Redbridge and Waltham Forest, under a section 75 Agreement.

AUTHORITY UNDER WHICH DECISION IS MADE

Constitution Part 3 (Responsibility for Functions) Paragraph 2.5(g) delegates to an individual Cabinet Member authority to approve an exception to the Contract Procedure Rules (CPR) in accordance with CPR 14.1.

STATEMENT OF THE REASONS FOR THE DECISION

The Adult Emergency Duty Team (AEDT) Section 75 agreement between the London Boroughs of Havering (LBH), Redbridge (LBR), Waltham Forest (LBWF), Barking and Dagenham (BBD) and the North East London Foundation Trust (NELFT) has been in existence since 2013 for the pooling of functions and funding in respect of out of hours emergency services for Adult Social Care and Mental Health services.

The service was due to be reviewed and recommissioned in 2020 however due to the impact of the COVID-19 pandemic on all partner organisations it was unable to be completed within the planned timescales. Resources that had been allocated to the review and recommissioning across the system were diverted to the emergency response for COVID. All partners agreed that to ensure continuity and safety of our residents during the pandemic it is necessary to extend the Section 75 agreement with NELFT.

This decision to further extend the contract with NELFT for a further 12 month period on the same terms and conditions is necessary to ensure that the London Borough of Havering in particular and the London Boroughs of Redbridge, Waltham Forest and Barking and Dagenham generally can continue to deliver a robust out of hours service to their residents while the necessary steps are taken to review and re-procure the Service. However, authority to waive the provisions of the Council's Contract Procedure Rules is required to do so.

Background

A full Service review was undertaken in 2017 prior to the joint recommissioning of the service with minimal changes to the service specification and delivery requirements. The review and procurement exercise was led by London Borough of Havering (LBH).

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The contract was awarded via direct award to NELFT for 2 years plus a 1 year extension until March 2021 due to there being no other expression of interest following the closure of the Prior Information Notice.

During the contract period 2018 to date, NELFT have shown significant improvement in service delivery with higher levels of satisfaction from in-house social care teams and other stakeholders.

Another service review was planned for early 2020 as per standard commissioning practice prior to a re-procurement exercise, However the impact of the COVID-19 pandemic resulted in this not being possible due to staff resource being diverted to the emergency response. Although there was a period of recovery in 2020 it did not allow sufficient time to complete the review and re-commissioning exercise.

The EDT Steering Group considered options for the continued delivery of the service and in October 2020 it was agreed by all Local Authority partners that the preferred option is to extend the contract with NELFT for a duration of 12 months. This will enable a full service review to be completed and meaningful consultation with service users and staff to be undertaken at a time where there is more stability across the system.

The NELFT AEDT team have been a system partner for many years during which they have delivered the Service to such a standard that in these very uncertain times all participating local authorities are assured that they would be able to provide a safe and robust emergency service during the pandemic period.

Service Information

The AEDT provides an emergency social care service outside of normal office hours to deal only with emergency situations which cannot wait until the next working day. It covers the four partner Local Authorities- LBH, LBB, LBR and LBWF,

The AEDT service can be accessed by members of the public and professionals via the direct contact number if a vulnerable adult or carer aged 18 and over requires urgent assistance to protect them from harm.

A vulnerable adult is defined as a person of 18 years or over with a social care need. This can include people with mental health problems, physical or learning disabilities or older people. The service includes but is not restricted to the provision of Mental Health Act Assessments by an Approved Mental Health Professional (AMHP).

The service is commissioned to:

- Fulfil the statutory requirement to provide an emergency Adult Social Care and Mental Health response including the provision of 24 hour Approved Mental Health Professionals (AMHPs) under The Care Act 2014, The Mental Capacity Act 2005 and the Mental Health Act 1983.
- Manage emergency situations that cannot wait until the next working day by operating out of hours i.e. from Monday to Friday, 5.15pm – 8.45am and 24

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hours on Saturday and Sunday including Public Holidays and additional statutory days.

- Provide a responsive front line service to safeguard people in an emergency, as well as in accordance with the respective procedures and reporting protocols of each local authority.
- Signpost to appropriate agency or refer matter to day service staff or to assess, give advice and guidance over the phone where necessary or to visit and/or arrange an intervention where necessary.

Joint Commissioning plans

LBH also commission an emergency out of hours service for Children which is provided by LBR. Discussions have commenced to explore the possibility of amalgamating the Adults and Children's Services to create a consistent service offer for our residents and align commissioning intentions to focus on improved outcomes for the service user. It is expected efficiencies would be achieved through reduced overheads and contract monitoring resources.

The Children's Services contract expires in March 2022 so an early termination notice would be required to align with the extended end date of the Adults contract.

The 12 month extension of the current AEDT contract with LBH will allow time for this to be explored further with a view to developing a joint service specification and testing the market.

Waiver

Annex 1 to the Council's Contract Procedure Rules states that contracts for Goods/Services between £100k and the relevant EU financial threshold (£189,330) should be procured by way of tender published on the Council's electronic procurement platform (Capital E-sourcing). Since that process will not be followed in this instance for the reasons given above, a waiver of the Rules must be sought and obtained.

Service Cost

The proposed NELFT direct award is on the same terms and conditions and so does not include any uplift. Therefore the contract for the next 12 months will remain at £125,459.80.

Recommendation

It is recommended that the Cabinet Member approve a waiver of the CPR and the award of the AEDT service to NELFT on the same terms and conditions as the current section 75 Agreement.

The extension of the current contract by 12 months would provide LBH in particular with sufficient time to complete a detailed audit and Service Review and undertake a procurement exercise to ensure consistency and quality outcomes for the residents of Havering. The extension will also allow time for more in-depth exploration of the

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amalgamation of the Adults' and Children's Services to achieve efficiencies and improved outcomes.

It is anticipated that the Service Review will commence at the end of March followed by the procurement in July/August. Subsequent emergency periods resulting from the pandemic remain a risk but a 12 month extension will allow enough time to complete the process even if it is delayed beyond July.

Timetable

Description	Date
Service Review	March 2021
Specification complete	April/May 2021
Checkpoint 1	Early June 2021
Non Key Officer Decision Report	Late June 2021
Tender preparation	July/August 2021
Tender Notice Published	September 2021
Tender deadline	Late October 2021
Evaluation /moderation	November 2021
Checkpoint 2	Early December 2021
Non Key Officer Decision Award Report	Mid December 2021
Award of contract	January 2022
Implementation/mobilisation	Mid-January – 31 March 2022
Contract start date	01 April 2022

OTHER OPTIONS CONSIDERED AND REJECTED

Option 1 – Do Nothing

The option to do nothing, has been considered and rejected. The Service meets a statutory requirement to provide an emergency out of hour's response. The current contract is due to expire on the 31st March 2020 and therefore would leave the adult social care without and out of hour's response service.

Option 2- To undertake a full tender exercise.

The option to complete a full tender exercise has been considered and rejected. Due to the impact of Covid19 and the length of time that is required to deliver this option it

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cannot be considered. The current service provided by NELFT meets a statutory requirement to provide an emergency out of hour's response and therefore additional funding to secure the service for a duration of 1 year is recommended.

PRE-DECISION CONSULTATION

All key stakeholders were consulted regarding the decision to progress with an extension of the AEDT service contract with NELFT.

There has been ongoing consultation via the Section 75 operational meetings and the Executive Steering Group meetings and all Partners were in agreement.

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

Name: Laura Neilson

Designation: Commissioning Programme Manager, Joint Commissioning Unit

Signature: Laura Neilson

Date: 25.01.21

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. The Council has a “general power of competence” under Part 1 Chapter 1 of the Localism Act 2011 which gives it the same power to act as an individual, subject to other statutory provisions limiting or restricting its use of that power. The Council’s decision to extend its current contract for the provision of an Emergency Duty Team with NELFT is therefore compatible with the Council’s exercise of its general power of competence.
2. The provision of an Adult Emergency Duty Team is also in furtherance of its statutory obligations under the Care Act 2014 and the Mental Health Act 1983, among others.
3. A Waiver of the Council’s Contract Procedure Rules (CPR) which requires the Council to procure goods and services with a value of £100k but below the EU threshold on its electronic procurement platform has also been sought and obtained in compliance with CPR14.
4. CPR19 details the circumstances under which an extension of a contract is permitted but none of its provisions apply to this proposed extension. Recourse is therefore had to the provisions of Regulation 72 of the Public Contracts Regulation 2015 (as amended).
5. A safe harbour is provided at Regulation 72(1)(c) on the basis that:
 - the need for the extension has been caused by circumstances which the Council could not have foreseen, i.e. the Covid-19 pandemic which precluded the Council from conducting the Service Review required prior to the commencement of a procurement exercise;
 - the proposed extension does not alter the overall nature of the contract, as the proposed extension is on the same terms and conditions as the existing contract;
 - the increase in the value of the contract (by £125,459.80) does not exceed the total value of the contract (£376,379.40, being the total value paid by LBH for the initial 3 year term of the contract).
6. Pursuant to Reg. 72(1)(c), the Council is required to publish a notice to reflect the extension in keeping with Reg. 72(3).
7. Paragraph 3.4 of Part 3 of the Council’s Constitution delegates authority to award all contracts for Supplies and Services below £500k but above EU thresholds to 2nd Tier Managers. CPR4.2.2 also authorises 2nd Tier Managers in consultation with a member of SLT to award contracts with a value between

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£100k and £500k. The financial thresholds for the award of contracts by Cabinet Members however is between £5m and £10m, far in excess of this proposed contract valued at just £125,459.80. The Cabinet Member for Adult Social Care & Health is however requested to grant a waiver of the requirements of the CPR as well as authorise the proposed 12-month extension of the Emergency Duty Team with NELFT by virtue of the fact that the proposed contract is within his assigned Portfolio under Part 3 of the Constitution.

FINANCIAL IMPLICATIONS AND RISKS

The existing contract of £0.502m per annum is shared across the 4 partners equally at the amount of £0.125m per borough. The current contract is funded from within Adults Strategy and Commissioning (cost centre A32610 – Emergency Duty Team), consequently the proposed 12 month extension will be met from the existing budget.

Once agreed, the risk to the authority is minimal because this is a fixed contract, with each partner organisation having an individual obligation to pay the Provider directly for their share of costs.

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, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

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. The contract will be monitored to ensure that any equality implications arising are considered.

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BACKGROUND PAPERS

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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: **Councillor Jason Frost**

Cabinet Portfolio held: **Health and Adult Care Services**

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, 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 _____

Signed _____