

## Notice of NON KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendices A is not available for public inspection as it contains exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972. It is exempt because it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

<b>Subject Heading:</b>	Permission to waive the procurement process and Direct Award the Statutory Independent Advocacy Service
<b>Decision Maker:</b>	Barbara Nicholls, Strategic director of People.
<b>Cabinet Member:</b>	Councillor Gillian Ford, Cabinet Member for Health and Adult Care Services
<b>ELT Lead:</b>	Barbara Nichols, Strategic Director of People
<b>Report Author and contact details:</b>	Laura Wheatley, Senior Commissioner and Project Manager T: 01708 434019 E: <a href="mailto:laura.wheatley@havering.gov.uk">laura.wheatley@havering.gov.uk</a>
<b>Policy context:</b>	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

**Non-key Executive Decision**

<b>Financial summary:</b>	The contract will cost £313,724.70 for the period April 2024 to March 2026. Year 1: £156,867.35 Year 2: £156,867.35  The direct award to Havering MIND will provide a £25,500.00 saving to the council for the delivery of the statutory advocacy service.
<b>Relevant Overview &amp; Scrutiny Sub Committee:</b>	People's Overview and Scrutiny Sub Committee
<b>Is this decision exempt from being called-in?</b>	The decision will be exempt from call in as it is a Non key Decision

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

People - Things that matter for residents

**X**

Place - A great place to live, work and enjoy

Resources - A well run Council that delivers for People and Place.

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

For reasons detailed in this report, the Strategic Director of People agrees to waive Contract Procedure Rule 9.9 and the requirement for the procurement process to be subject to a formal tender and directly award the Statutory Independent Advocacy Service to Havering MIND for a period of two years from 1<sup>st</sup> April 2024 to 31<sup>st</sup> March 2026 at a total value of £313,724.70.

### AUTHORITY UNDER WHICH DECISION IS MADE

The Havering Constitution:

Part 3: Responsibility for Functions, Article 2 – Executive Functions  
3.3 Powers of Members of the Senior Leadership Team

Members of the Senior Leadership Team (SLT) have delegated authority to act as follows within the assigned service service/portfolio of responsibilities, subject to the general provisions and limitations set out in section 3.1 of the Constitution.

Contract powers

(b) To award all contracts with a total contract value of between £500,000 and £5,000,000 other than contracts covered by Contract Procedure Rule 16.3.

### STATEMENT OF THE REASONS FOR THE DECISION

The Care Act places a requirement on Local Authorities “to promote choice and control by the individual for their care and support and how it is delivered” and “to start from the assumption that the individual is best placed to be able to judge the individual’s well-being”.

Out of this is a requirement to provide independent advocacy to support “qualifying residents” through all aspects of the care and support planning process, and through any safeguarding processes. This requirement sits alongside existing requirements within the Mental Capacity Act 2005.

The Care Act requires councils to be able to identify those individuals with ‘substantial difficulty’ in participating in an assessment or review of care and support needs, an appeal in respect of such a decision and/or a safeguarding enquiry. If there is no appropriate relative or friend available to take that role the council must appoint an advocate to support that individual’s involvement.

The Care Act provides guidance as to how ‘substantial difficulty’ can be identified, and when it might not be appropriate for a relative or friend to act in place of an independent advocate.

Councils also have several existing statutory duties under the Mental Health Act 1983 and will continue to have responsibilities in conjunction with the Mental Health Act 2007. The local

## **Non-key Executive Decision**

authority is responsible for commissioning advocates to help individuals express their views and represent their interests.

This includes duties to authorise deprivation of liberty under the current Deprivations of Liberty Safeguards (DOLS) scheme and the forthcoming Liberty Protection Safeguards (LPS) scheme.

The primary role of the advocacy service is to meet all statutory requirements in respect to the Care Act (2015), Independent Mental Capacity Act (2005), Mental Health Act (2007) and the Health & Social Care Act (2012) across all categories of need including, physical disability, learning disability, dementia, those with mental health needs, sensory impairment and acquired brain injury.

### **Current Contract:**

The current contract comes to an end on 31/03/2024 and as is good practice, a full review of the service was completed to establish how the service was performing and establish the Council's position going forward with the current provider. The results of such review are set out in Exempt Appendix A.

The review has highlighted that it would be beneficial to have a service provider based within the borough as this will reduce the overall budget for this contract significantly as there would be no travel costs to incorporate and would also make the service more accessible for local residents as they would be a local provider.

Furthermore, there would be a significantly reduced management charge if we were to award to an established provider already providing a preventative mental health related service which also has enough staffing levels to allow it to provide the statutory advocacy service. The projected costs to award to an established provider for the financial years 2024/25 to 2025/26 would be £313,724.70 which is a significant reduction on contract costs currently paid. Therefore, it is recommended that the current contract lapse at its end date.

### **Recommendation:**

It is recommended that we waive Contract Procedure Rule 9.9 and the requirement for the procurement process to be subject to a formal tender and directly award the Statutory Independent Advocacy Service to Havering MIND who currently provide community advocacy as part of the Prevention services for Wellbeing, Sustainability and Social Inclusion (Mental Health) contract.

MIND Havering are a local provider based in Hornchurch whose mission is to provide advice and support to empower anyone experiencing a mental health problem. They provide services, raise awareness and promote understanding. They have been providing the Prevention services for Wellbeing, Sustainability and Social Inclusion (Mental Health) contract since 2022 and are delivering good outcomes for our clients. This is evidenced in the quarterly contract monitoring completed with them.

The direct award to MIND Havering will provide a £25,500.00 saving to the council for the delivery of the statutory advocacy service, which aligns with the Council's intentions to secure best value through efficient contracting and robust contract monitoring which will also secure positive outcomes whilst for residents whilst also assisting the councils financial position.

The current contract includes a clause that where the identity of the service provider changes, this shall constitute a relevant transfer of the services for the purposes of TUPE. There may be TUPE implications between the existing provider and the new provider which will be considered before the current contract lapses.

## **Non-key Executive Decision**

The plan is to recommission the Prevention services for Wellbeing, Sustainability and Social Inclusion (Mental Health) and the statutory advocacy for April 2026, incorporating the whole scope of the service into one contract which would be in the best interest for the council and residents.

The prevention service provides leadership that supports the wider understanding of advocacy across the borough. The service works in partnership with all relevant partners including, Havering's Voluntary and Community Sector Providers, organisations, health partners, social care practitioners to ensure that the concept of advocacy is understood, and when it should be provided and whom to. This is so that effective community advocacy is provided to all residents who have genuine difficulty in articulating their needs and negotiating their goals in respect of the care and support they receive. By having the community and statutory advocacy delivered by one provider our residents can gain full rounded support in a setting that is located and accessible in the borough where they live.

The direct award will be for a period of two years from 1st April 2024 to 31st March 2026. The end date set will coincide with the ending of the Prevention services for Wellbeing, Sustainability and Social Inclusion (Mental Health) service that MIND Havering currently provide.

This will mean that a joint procurement can be completed for both the prevention and community advocacy as well as the statutory advocacy incorporating the whole scope of the service into one contract which would be in the best interest for the council and residents.

## **OTHER OPTIONS CONSIDERED AND REJECTED**

### **Option 1: Extend the current contract with MTHN.**

The current contract ends on 31/03/2024 and there was only one extension built into the contract which has already been enacted. MTHN is an out of borough service provider and this has cost implications particularly when advocates have to travel from East London into Havering to complete their advocacy duties. This option has been rejected as there are no extensions allowable in the contract and there would also be significant cost increases to consider.

### **Option 2: Decommission the Service and remain with no service at all.**

The Integrated Advocacy service is to meet all statutory requirements in respect to the Care Act (2015), Independent Mental Capacity Act (2005), Mental Health Act (2007) and the Health & Social Care Act (2012) across all categories of need including, physical disability, learning disability, dementia, those with mental health needs, sensory impairment and acquired brain injury. This option has been rejected as it is a Statutory service required under legislation.

### **Option 3: Award a 6-month contract and Start the Procurement Process**

This is not a viable option as it is in the best interests of the council and residents to have a local provider who can provide both the community and statutory advocacy services and make the service more accessible for local residents. Also it is not a good use of council resources to complete a full procurement exercise now and then again a year later to align the community and statutory advocacy service. Therefore, this option has also been rejected.

## **PRE-DECISION CONSULTATION**

None

**Non-key Executive Decision**

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

Name: Laura Wheatley

Designation: Senior Commissioner and Project Manager

Signature:

A handwritten signature in cursive script that reads "L. Wheatley".

Date: 25/01/2024

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

### **LEGAL IMPLICATIONS AND RISKS**

This report seeks approval to waive the Council's Contract Procedure Rule (CPR) 9.9 requiring a formal tender exercise and to directly award a contract to in compliance with the Council's statutory duties already set out in the body of this report.

CPR 14 provides that a waiver of the Rules is permissible if all relevant law is complied with and the contract falls within one of the exceptions listed in CPR 4.4. As set out in the body of this report, the most relevant exception to the competitive requirements of CPR 9.9 is for reasons of compatibility with existing services/products.

Furthermore, the value of the proposed contract is well below the threshold for Light Touch Services (as listed in Schedule 3 of the Public Contract Regulations 2015). The Council is therefore under no obligation to advertise the contract opportunity on the UK e-notification service, 'Find a Tender'.

Officers have satisfied themselves that the requirements for a waiver have been met in this instance and that this decision will result in the best value for the Council overall.

### **FINANCIAL IMPLICATIONS AND RISKS**

This decision paper is seeking approval to direct award the Statutory Independent Advocacy Service for a period of two years from 1<sup>st</sup> April 2024 to 31<sup>st</sup> March 2026 to Havering MIND. A direct award is required as it will reduce the overall budget for this contract significantly and will also make the service more accessible for local residents as they are a local provider.

The plan is to recommission the Prevention services for Wellbeing, Sustainability and Social Inclusion (Mental Health) service and the statutory advocacy for April 2026, incorporating the whole scope of the service into one contract which would be in the best interest for the council and residents.

The current contract for the integrated advocacy service is with Mind in Tower Hamlets and Newham and the provider has already had an extension on the current contract. The annual contract cost for the 23/24 financial year is £150,560. There is currently an annual budget of £126,050 that is allocated to fund this contract, this is funded from Havering core funding and from the Better Care Fund and the current overspend is covered from within the Adult Social Care budgets.

An uplift was requested by current provider if the contract was to continue into the 24/25 financial year, the forecast costs for the next 3 years were estimated as per the below:

Year	Amount
2024/25	£162,949
2025/26	£176,281
Total	£339,230

Performance monitoring has indicated that there has been a reduction in the number of referrals for the first two quarters of 23/24 and therefore a reduction in the number of hours utilised in the service due to MTHN having reduced capacity. Taking this into consideration with an increase in the contract value, the contract is not achieving value for money.

### **Non-key Executive Decision**

It is a statutory requirement for Havering to have an integrated advocacy service under the Care Act 2014 and the Mental Capacity Act. Havering Mind who is a local provider have given set costs for the next two years and these are as follows:

Year	Amount
2024/25	£156,867
2025/26	£156,867
Total	£313,734

These costs are significantly lower than the estimations given by the current provider. A direct award of this contract to Havering Mind will result in cashable savings against the current contract value of £25,500 over the two years, £6,082 in the 24/25 financial year and £19,414 in the 25/26 financial year.

There is sufficient budget available to cover the full cost of £157k. per annum for this contract.

### **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**

Havering has a diverse community made up of many different groups and individuals. The council values diversity and believes it essential to understand and include the different contributions, perspectives and experience that people from different backgrounds bring.

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

The Council demonstrates its commitment to the Equality Act in its decision-making processes, the provision, procurement and commissioning of its services, and employment practices concerning its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing of all Havering residents in respect of socio-economics and health determinants.

**Non-key Executive Decision**

**ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

The recommendations made in this report do not give rise to any identifiable environmental implications or risks.

**BACKGROUND PAPERS**

Review Report - Integrated Advocacy Service  
Havering Waiver Template – Statutory Independent Advocacy Direct Award

**APPENDICES**

<b>Appendix A</b>	Results of the Review	Exempt
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**Non-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.

**Decision**

Proposal agreed

**Details of decision maker**

Signed 

Name: Barbara Nicholls

Head of Service title: Strategic Director People

Date: 01/05/2024

Signed 

Name: Councillor Gillian Ford

Cabinet Portfolio held: Adults & Public Health

Date: 01/05/2024

**Lodging this notice**

The signed decision notice must be delivered to Democratic Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_