

MUNICIPAL YEAR 2022/2023 REPORT NO.

London Borough of Enfield

Portfolio Decision by:

Councillor Cazimoglu

Cabinet Member for Health and Adult Social Care

Report of: **Iain Hart**

Mental Health Service Development Manager

Subject: Tri borough Statutory Adult Advocacy services contract award.

Cabinet Member: Councillor Cazimoglu

Executive Director: Tony Theodoulou

Meeting Date: TBC

Key Decision: KD 5391

Purpose of Report

1. To provide information for the Cabinet Member for Health and Adult Social Care regarding the tender process and recommended award decision.

Proposal(s)

2. To approve:
 - (i) the award to a joint contract as part of a tri-borough contract with the London Borough of Barnet and the London Borough of Haringey to Pohwer for the statutory Adult Advocacy Services consisting of:
 1. Care Act Advocacy
 2. Independent Mental Health Advocacy (IMHA)
 3. Independent Mental Capacity Advocacy (IMCA)
 4. Liberty Protection Safeguards (LPS)
 5. Independent Health Care Advocacy Service (IHCAS)
 - (ii) the Council entering into a partnership agreement with the London Borough of Barnet and the London Borough of Haringey into an Advocacy Services Contract with Pohwer. This will be for an initial period of 36 months with an option for the Director of Health and Adult Social Care to extend for two 12 month periods through Delegated Authority. The potential total length of the partnership agreement for the

contract will be 5 years commencing from the 1st April 2023. Details of the total contract value are contained in the Confidential Appendix.

Relevance to the Council Plan

6. Under Priority 2 – Safe, Healthy and Confident Communities
 - a. Protect vulnerable adults from harm and deliver robust early help and social care services for adults with additional needs.

Background

7. There are a number of Statutory Acts requiring the local authority to source the provision of independent advocates. These are:
 - i. IMCA - Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006.
 - ii. IMHA - were introduced in 2007 under amendments to the 1983 Mental Health Act.
 - iii. Care Act - The Care and Support (Independent Advocacy Support (No2)) Regulations 2014.
 - iv. LPS - Mental Capacity (Amendment) Act 2019
 - v. IHCAS - The Health & Social Care Act 2012

8. The current statutory contracts are with the following incumbent providers and all end on the 31st March 2023.

Voiceability – Care Act, IMCA, DoLs
 Voiceability - IHCAS.
 Pohwer - IMHA

9. The new contract will consolidate three existing contracts into one for an initial three-year period from the 1st April 2023 - 31st March 2026. There will be an option to extend for two 12 month periods with the tri-borough acting collectively.
10. The new contract will also take into account the changes in Legislation and arrangements in the move from Deprivation of Liberties (DoLs) to Liberty Protection Safeguards (LPS).
11. The Council receives grants from Government for the funding of these statutory provisions.
12. Below is a brief description of the nature of the services being tendered.

Service	Description
IMHA	Access to an IMHA is a statutory right for people detained under most sections of the Mental Health Act, subject to Guardianship or on a community treatment order (CTO). IMHAs are independent of mental health services and can help people get their opinions heard and make sure they

	know their rights under the law.
IMCA	Are a safeguard for people who lack capacity to make some important decisions. The IMCA role is to support and represent the person in the decision-making process. Essentially, the advocate makes sure that the Mental Capacity Act 2005 is being followed.
DoLs	Are a safeguard for people who lack capacity to make some important decisions. In particular where a hospital or care home might feel that a vulnerable person needs to be restricted in order to provide treatment or care which is necessary to protect them from harm.
Care Act	Care Act advocates support vulnerable people to understand their rights under the Care Act and to be fully involved in a local authority assessment, care review, care and support planning or safeguarding process.
IHCAS	Provides an independent NHS complaints advocacy service, for people who are unhappy with the experience they receive from a hospital, doctor, dentist, local surgery or other NHS provider.

13. Funding from Central Government is directed to local authorities to assist in the provision of these independent advocacy services.
14. Enfield, Barnet and Haringey have worked collaboratively together over the last 10+ years to go to the market for advocacy provision in a series of joint Tri-borough tenders. Each borough has taken the role of lead borough in delivering the procurement activity in previous years. The current procurement process is being led by Barnet Council.
15. By working collaboratively as a Tri-borough it delivers a larger contract to achieve qualities of service and economies of scale. It also allows for expertise to be brought from all three boroughs to deliver Value for Money.
16. Within the procurement delivery Safeguarding, Adult Social Care Commissioning, and Procurement have all brought their expertise to ensure the tender is legal, fair and appropriate.
17. After a competitive open procurement process, the proposal is to award the new contract to Pohwer. Details of the tender evaluation and winning bid can be found in the confidential annex to this report.

Main Considerations for the Council

18. The Council is statutorily required to provide independent advocacy services.
19. The service benefits from being in a Tri-borough contract both from economies of scale and having greater resilience by having the same service across the three boroughs.

Safeguarding Implications.

20. The advocacy services are key in ensuring that individuals are supported and given a voice in raising issues about their care and support. It also ensures that people who lack capacity are treated appropriately and do not have any unnecessary restrictions placed upon their liberty. Either of which could potentially lead onto identifying areas of safeguarding concern

Public Health Implications.

21. The advocacy service supports disadvantaged individuals to challenge the health care service they receive and to ensure that they are able to understand and receive appropriate health and care support.

Equalities Impact of the Proposal

22. An Equalities Impact Assessment has been undertaken. There are no proposed detrimental changes to the service. The current contract supports and delivers advocacy services to a range of vulnerable individuals.

Environmental and Climate Change Considerations

23. Any changes to the service provision under the new contract will consider the Council's Climate Action Plan to ensure any proposals are in line with the council's current policies.

Risks that may arise if the proposed decision and related work is not taken

24. There will be a gap in statutory advocacy services for vulnerable people. This would place the local authority in breach of Government Acts and open to legal challenge.

Financial Implications

25. See Confidential Appendix to this report

Legal Implications

(Legal Implications provided by ZS based on version of report circulated on 30/11/2022)

26. Section 130A Mental Health Act 1983 places a duty on Local Authorities to make arrangements, as it considers reasonable, to enable persons (“independent mental health advocates”) to be available to help qualifying patients. Section 67 Care Act 2014 places a duty on Local Authorities to arrange Independent Advocates to be available to represent and support individuals for the purpose of facilitating their involvement in the assessment, care planning and review of a person’s social care needs. Not all persons will require an advocate. It is only those persons who are particularly vulnerable and have a substantial difficulty in taking part. Section 35 Mental Capacity Act 2005 places a duty on Local Authorities to make arrangements, as it considers reasonable, to enable persons (“independent mental capacity advocates”) to be able to represent and support persons who lack capacity to make decisions, as defined by the Act. Section 223A of the Local Government and Public Involvement in Health Act 2007 as amended by the Health and Social Care Act 2012 places a duty on Local Authorities to make arrangements, as it considers appropriate, for the provision of independent advocacy services. Advocacy in this respect is to help people with complaints against the NHS.
27. S.111 Local Government Act (1972) gives a local authority power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. Further, the Council has a general power of competence in s.1(1) Localism Act (2011) which states that a local authority has the power to do anything that individuals generally may do provided it is not prohibited by legislation.

The proposals in this report are in accordance with the above powers and duties of the Council.
28. The Council must always ensure compliance with its Constitution and in particular, its Contract Procedure Rules (CPRs). The proposed value of this contract will exceed the Light Touch Regime threshold (LTR) (currently £663,540 inclusive of VAT) and consequently, the Council must ensure that the procurement process complies with the Public Contracts Regulations (2015) (“PCRs (2015)”).
29. The Council must comply with (and continue to comply with) its obligations relating to obtaining best value under the Local Government (Best Value Principles) Act 1999.
30. The Council must ensure that the contracts and any legal agreements arising from the matters described in this report are in a form approved by

Legal Services on behalf of the Director of Law and Governance and the contract must be executed under seal.

31. Officers must ensure that the Council's Key Decision process is followed.
32. The CPRs provide that contractors must be required to provide sufficient security in one of the forms outlined in CRP 7.3. As the contract value is above £1m, the CPRs provide that if the supplier cannot provide such security, the Executive Director of Resources must approve such a decision, with reasons and risk mitigation measures set out in the relevant authority report, prior to the contract award.
33. As TUPE may apply to this procurement and to any future service provision change, the Service department should ensure that the lead borough has taken appropriate steps to protect the Council's interests.

Workforce Implications

34. None of the staff are directly employed by the local authority.

Property Implications

35. This contract is not directly run from Council building. However, staff delivering this contract may attend Council premises to meet with service users.

Other Implications – Procurement Implications

36. Any procurement must be undertaken in accordance with the Council's Contract Procedure Rules (CPR) and the Public Contracts Regulations (2015) and the Council's Sustainable and Ethical Procurement Policy.

The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of the executed contract must be undertaken on the London Tenders Portal (LTP) including the future management of the resultant contract. The award of the contract must also be published in the Contracts Finder portal to comply with the Government's transparency requirements.

37. The CPR state that contracts over £100,000 must have a nominated contract owner in the LTP, and for contracts over £500,000 there must be evidence of contract management, including, operations, commercial, financial checks (supplier resilience) and regular risk assessment uploaded into the LTP. The service department must ensure that these rules are adhered to.

38. Contract must be entered into the Procurement Pipeline and relevant information is updated in order to ensure the contract is managed properly and brought forward for any changes or future re-procurement.
39. Given the subject matter and value of the forthcoming contract, robust contract management will be required.

Provided by MG & MJ based on version circulated 08 November 2022.

Options Considered

40. Do nothing – this will leave the service to be run without a contract that will put the service and the Council at risk of Provider failure and Legal challenge.

Conclusions

41. That approval is granted to award a joint contract to Pohwer following the tri-borough procurement process for the Adult Advocacy services for a period of three years with an option to extend for two further periods of a year each that can be approved by the Director of Adult Social Care through Delegated Authority.

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Date of report 22/11/22

Annex 1 – Confidential Appendix - Financial Information

Background Papers

The following documents have been relied on in the preparation of this report:
None.