

	Officer Key Decision
	Report to the Director of Adult Social Care
AUTHORITY TO TENDER CONTRACT FOR STATUTORY ADVOCACY SERVICES	

Wards Affected:	All
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	Appendix 1 – Equality Impact Assessment
Background Papers¹:	None
Contact Officer(s): (Name, Title, Contact Details)	Andrew Davies, Head of Commissioning, Contracts & Market Management Email – Andrew.Davies@brent.gov.uk

1.0 Purpose of the Report

- 1.1 This report sets out the proposals for the commissioning of services currently delivered through the Gateway to Support Services contract (Gateway). The Council entered into a contract for Gateway to support services to deliver statutory and non-statutory advocacy services and preventative support to customers of adult social care, including Carers, and people at risk of social isolation
- 1.2 The Gateway contract is currently commissioned to bring together five services. Those services are –
- Independent Mental Health Advocacy (IMHA)
 - Independent Mental Capacity Advocacy (IMCA)
 - Care Act Advocacy

- Carers Support Service
- Social Isolation and Loneliness Prevention (SILP)

1.3 This report requests approval to invite tenders in respect of Advocacy Services (IMHA, IMCA, RPPR and Care Act) contract as required by Contract Standing Orders 88 and 89.

2.0 Recommendation(s)

That the Director for Adult Social Care:

- (i) Approves inviting tenders for Advocacy Services on the basis of the pre - tender considerations set out in paragraph 3.21 of the report.
- (ii). Approves Officers evaluating the tenders referred to in 2.0(i) above on the basis of the evaluation criteria set out in paragraph 3.21 of the report.

3.0 Detail

3.1 The Gateway contract was originally commissioned in October 2019 and has been operational since December 2019. The current contract is delivered by a company called Age UK Hillingdon, Harrow & Brent. The contract was let for two years, with an option to extend it for an additional year, subject to review. The extension was taken up, so the contract was originally scheduled to end on the 2nd of December 2022.

3.2 An approval of a further six months extension was obtained from the Operational Director of Adult Social Care to extend the Gateway contract from the 2nd December 2022 to 1st June 2023 and consequently officers are requesting approval to tender the Advocacy Services contract to enable a new contract to go live from 1st June 2023. The contract extension has now taken affect, and consequently officers are preparing to re-tender the service to enable a new contract to go live from 1st June 2023.

Background

3.3 Prior to the establishment of the Gateway contract there was little coordination between commissioning arrangements for each of these separate services, which had their own specifications, contract lengths and pricing models.

3.4 Providers delivering the services operated in isolation from each other and did not routinely work with other commissioned providers in Brent to support people to access the help they needed. Some residents were accessing multiple services to meet their needs. The purpose of the Gateway contract was to

reduce the need for this duplication and make access to services easier for people.

- 3.5 The services provided under the Gateway contract were commissioned to provide a seamless approach to delivering preventative social care services and statutory advocacy support; and to promote community capacity and reduce demand for Social Care and Health Services. People were to access the service themselves (self-referral) or be referred by a professional such as their GP or social worker.
- 3.6 The aim of the service was to introduce a single access point for all referrals to Gateway services. Residents should benefit from one screening should they need a different service or re-access services in the future. A focus was not to provide generic advice but engage in direct casework where required and develop working relationships with other services and organisations.
- 3.7 Under the Care Act (2014), councils are required to provide access to several different types of advocacy and the Gateway contract specifically, provided the following:
- a) **Independent Mental Health Advocacy (IMHA)** - Local Authorities have a statutory duty under The Mental Health Act 1983 to provide an advocate to people who are detained in hospitals under the Act. There are also other circumstances under which a person may be entitled to a Mental Health Advocate. For example, if they are no longer in hospital but subject to a Community Treatment Order (which means that they have to comply with treatment for their mental illness even though they are no longer in hospital). An IMHA will be provided when the person does not have an appropriate individual to support them. The value of the contract is £81,000 per year.
 - b) **Independent Mental Capacity Advocacy (IMCA)** – The Council has a statutory duty under The Mental Capacity Act 2005 to provide an advocate to people who are unable to make significant decisions for themselves, such as where they live or whether they wish to receive care and support because they lack the capacity to make these decisions. An IMCA will also be involved in cases where it is recommended that an individual is deprived of their liberty (i.e., their freedom to go out or carry out particular actions is restricted in some way). An IMCA is used when there is not another appropriate adult who can support the person unable to make the decision. The value of the contract is £89,000 per year.
 - c) **Independent Care Advocacy under the Care Act 2014** - Local Authorities have a statutory duty under the Care Act to provide independent advocacy for people who have a substantial difficulty being involved in the social care assessment of their needs. This will also include putting together their care plan, participating in their annual social care review, or if there are any safeguarding processes that may

be undertaken in relation to the individual. Again, an advocate will be used where there is no appropriate individual who is willing and able to support the individual. The value of the contract is £97,000 per year.

3.8 In addition, the Gateway contract also includes carers services and social isolation prevention services –

d) **Carers Support Services** - Local Authorities have a duty under the Care Act 2014 to provide preventative support services to carers. Brent Council currently commissions Brent Carers Centre to provide these services. The Carers Centre provides advice, information and guidance to carers, particularly related to maximising income. The service also puts on support sessions to access to work and training, whole family support training, respite activities and support for young carers. There are currently over 5,700 registered carers in Brent. The contract value for the service is £224,000 per year.

e) **Social Isolation and Loneliness Prevention** – The Social Isolation and Loneliness Prevention contract is a non-statutory service jointly commissioned by Brent Adult Social Care and Public Health which seeks to target adults experiencing or at risk of social isolation and support them to connect with their community. This is done through the provision of advice, information and guidance, providing activities, signposting to local activities, offering support with training and helping individuals to engage with volunteering opportunities. The contract value for the service is £59,000 per year.

3.9 A review and evaluation of the Gateway contract was undertaken looking at the performance of all existing services, involving service user feedback and stakeholder engagement.

3.10 The review of the Gateway services identified issues with the delivery of the current contract, particularly around the advocacy offer. This part of the contract has not been as successful as was hoped when the current contract was tendered. At various times there have been backlogs in cases and delays in meeting targets around the provision of advocacy. Through contract monitoring, extensive work was undertaken with the Gateway provider to support addressing issues highlighted in the review. Advocacy services were commissioned through spot contracts to reduce the backlog of outstanding cases, mitigating risks caused by delays.

3.11 The review concluded that the current Gateway contract has not delivered a joined-up, seamless service that had been expected and has had problems in delivering against the service specification, particularly in relation to advocacy and adult carers support.

3.12 Whilst there has been merit in commissioning the services this way, unfortunately the Gateway concept has not resulted in the enhanced outcomes

for service users from bringing services together as planned. However, as the services now need to be re-tendered, it is not proposed to revert to the commissioning model in place prior to 2019, i.e., commissioning each of the services separately. There is still value in commissioning services jointly, but not as a portfolio of five services. Instead, officers are proposing that two combined services are commissioned.

- 3.13 In doing this, and commissioning the services separately, the successful bidders would be able to focus on improving service performance and outcomes for individuals focusing on the specialities of each service and the Council to further policies and objectives for each service.
- 3.14 It is therefore proposed that rather than re-commissioning the Gateway contract in its current form, the council commissions two separate services -
- Contract 1 - Carers Support Service
 - Contract 2 – Advocacy Services: Independent Mental Health Advocacy (IMHA), Independent Mental Capacity Advocacy (IMCA), Relevant Person's Paid Representative (RPPR) and Care Act Advocacy.
- 3.15 **Statutory Advocacy** – This service would bring together the four statutory advocacy services under one contract – IMHA, IMCA, RPPR and Care Act Advocacy. It is proposed to tender a contract for an initial period of one year with an option to extend for up to three years, on a 1+1+1 basis. This is for two main reasons. Firstly, to enable the council to respond to the implementation of the Mental Capacity (Amendment) Act 2019, which has changed legislation around Deprivation of Liberty (DOLs) and will replace it with the Liberty Protection Safeguards (LPS). This new system will affect how we commission advocacy and is likely to increase the need for specialist advocacy, particularly IMCA. Having a one-year extension makes sense because of this change, the full implications of which are still unclear.
- 3.16 Secondly, officers have had some initial, informal discussions with neighbouring councils about the possibility of jointly commissioning advocacy services. There is merit in doing this for example, to share costs and benefit from a single provider working across three boroughs, where each has a high number of placements in our respective boroughs. However, none of the councils are ready to commit to a joint procurement at this time, partly due to the uncertainty with the Liberty Protection Safeguards (LPS). Further work will be done to consider the viability of a joint contract in future years.
- 3.17 Officers plan to continue discussions and bring forward further proposals on advocacy services once it is clear whether a joint commissioning can go ahead, and once there is more clarity on the requirements for advocacy connected to the LPS changes.

- 3.18 As part of statutory advocacy, Relevant Person's Paid Representative (RPPR) work with all persons detained by Brent Council under the deprivation of liberty safeguards (DoLS) is included in the contract. The role of the RPPR is to maintain contact with individuals to represent and support them in all matters relating to the deprivation of liberty safeguards, including, if appropriate, triggering a review, using the organisation's complaints procedure on their behalf or making an application to the Court of Protection if they object to the deprivation of liberty.
- 3.19 Under the current contract, RPPR work with all persons detained in the borough of Brent is included but does not account for those persons detained outside of Brent or in other London boroughs. Advocacy for those ordinary residents of Brent but detained under DoLS outside of the borough of Brent have required additional spot purchasing. Purchase orders for spot advocacy provision were raised for £23,000 from April 2022 to March 2023. The budget for RPPR will be added to the current Advocacy provision to enable the new provider to spot-purchase advocacy outside of the borough of Brent to be paid on receipt of the invoice of the service purchased.
- 3.20 Permission to tender for Advocacy Services is on the Council's forward plan. The value of the contract for an initial period of one year with an option to extend for up to two years, on a 1+1+1 basis will be £801,000. An additional £23,000 per annum to subcontract out of borough advocacy paid on invoice this is a total value of £69,000. The decision to tender this service can be taken by the Director for Adult Social Care so that the tender can begin in February 2023, with a contract implementation date of 1st June 2023.
- 3.21 In accordance with Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the Director.

Ref.	Requirement	Response	
(i)	The nature of the service.	Advocacy Services	
(ii)	The estimated value.	£267,000 per annum, over the proposed contract length of three years (1+1+1) £23,000 per annum to subcontract out of borough advocacy paid on invoice (1+1+1) £801,00 plus £69,000 this is a total value of £870,000	
(iii)	The contract term.	One year with the option to extend for two, one-year extensions (1+1+1)	
(iv)	The tender procedure to be adopted.	Open	
v)	The procurement timetable.	Indicative dates are:	

Ref.	Requirement	Response	
		Adverts placed	20/02/23
		Invite to tender	20/02/23
		Deadline for tender submissions	20/03/23
		Panel evaluation and moderation	27/03/23 – 31/03/23
		contract decision	31/03/23
		Report recommending Contract award circulated internally for comment	31/03/23
		[Strategic Director / Operational Director] approval	06/04/23
		[Call-in period of 5 days OR minimum 10 calendar day standstill period – notification issued to all tenderers and additional debriefing of unsuccessful tenderers (contracts covered by the full requirements of the PCR only)]	06/04/23 – 16/04/23
		Contract Mobilisation	17/04/23
		Contract start date	01/06/2023
(vi)	The evaluation criteria and process.	<ol style="list-style-type: none"> 1. At selection stage shortlists are to be drawn up in accordance with the Council's Contract Procurement and Management Guidelines by the use of a selection questionnaire to identify organisations meeting the Council's financial standing requirements, technical capacity and technical expertise. 2. At tender evaluation stage, the panel will evaluate the tenders against the following criteria: 	

Ref.	Requirement	Response
		<ul style="list-style-type: none"> 50% Quality, 10% Social Value, 40% Price
(vii)	Any business risks associated with entering the contract.	<p>1. Budget: The Council will be setting a maximum budget for this procurement. This may disadvantage the Council due to the stagnation of price competition between providers. However, a maximum budget has been set, as the risk of receiving higher bids is seen as a greater risk.</p> <p>2. Transfer and continuity of service if there is a change in provider: In order to minimise impact on service users and for new provider to TUPE staff, 6 weeks has been allowed for mobilisation.</p> <p>3. Risk of lack of capacity through same provider winning both contracts: As there are 2 separate contracts the provider will have clear KPIs to focus on for each of the contracts. There will be quality questions to ensure that provider is able and has the capacity to deliver services. Moreover, there will be robust contract management to ensure that the provider delivers services.</p>
(viii)	The Council's Best Value duties.	The council will be awarding the contract to the Most Economically Advantageous Tender (MEAT)
(ix)	Consideration of Public Services (Social Value) Act 2012	10% of weighting has been allocated to Social Value.
(x)	Any staffing implications, including TUPE and pensions.	There will be TUPE implications for the tendering of this contract.
(xi)	Sustainability	Sustainability should be included in accordance with the Council's Sustainability Policy
(xii)	The relevant financial, legal and other considerations.	See sections 4.0 and 5.0 below.

3.22 The Director of Adult Social Care is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 89.

4.0 Financial Implications

- 4.1 It is expected that the annual cost of this contract will be funded from existing Adult Social Care budget, which has previously paid for the contract and therefore no additional funding will be required.

Value for money has been considered and reviewed as part of how the service will be delivered such as working with neighbouring authorities, which has the potential to have positive outcomes for Brent.

- 4.2 The breakdown of the services and their costs can be seen below.

Service	Amount (£000)
Independent Care Act Advocacy	97
Independent Mental Health Advocacy	81
Independent Mental Capacity Advocacy	89
Carers Support Services	224
Social Isolation in Brent Initiative	59
Total	550

5.0 Legal Implications

- 5.1 Social care services such as the provision of Advocacy Services are classified under the Public Contracts Regulations 2015 (the “PCR 2015”) as social and other specific services that fall within those services listed in Schedule 3 to the PCR 2015. The estimated value of the proposed contract for Advocacy Services is £870,000 (see paragraphs 3.21 and 3.22(ii)) which is above the threshold for Schedule 3 Services, currently set at £663,540 (inclusive of VAT) and as such this procurement is therefore governed by the PCR 2015. Consequently, the Council is required to publish a contract notice on Contracts Finder and a contract award notice once the contract has been awarded.
- 5.2 The procurement is subject to the Council’s own Standing Orders and Financial Regulations in respect of Medium Value Contracts given the procurement is valued at £870,000. For Medium Value Contracts, the Corporate Director / Service Area Director must approve the pre-tender considerations set out in paragraph 3.26 above (Standing Order 89) and the inviting of tenders (Standing Order 88).
- 5.3 Once the tendering process is undertaken, Officers will report back to the Director of Adult Social Care in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contracts and recommending award.
- 5.4 As this procurement is subject to the full application of the PCR 2015, the Council must observe the requirements of the mandatory minimum 10 calendar standstill period imposed by the PCR 2015 before the contract can be awarded. The requirements include notifying all tenderers in writing of the Council’s decision to award and providing additional debrief information to unsuccessful

tenderers on receipt of a written request. The standstill period provides unsuccessful tenderers with an opportunity to challenge the Council's award decision if such challenge is justifiable. However, if no challenge or successful challenge is brought during the period, at the end of the standstill period the Council can issue a letter of acceptance to the successful tenderer and the contract may commence.

- 5.5 In the present case if the contracts are awarded to a new contractor the Transfer of Employment (Protection of Employment) Regulations 2006 ("TUPE") is likely to apply so as to transfer from the current to the new contractor those employees of the current contractor who spend all or most of their working time on the activities taken over by the new contractor.

6.0 Equality Implications

- 6.1 "The public sector equality duty, as set out in section 149 of the Equality Act 2010, requires the Council, when exercising its functions, to have "due regard" to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a "protected characteristic" and those who do not share that protected characteristic. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 6.2 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 6.3 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary. The Director is referred to the contents of this report for information, in particular the Equality Analysis at Appendix 1 of the report.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 This tender has borough wide implications, so specific consultation with ward councillors has not taken place.

8.0 Human Resources/Property Implications (if appropriate)

- 8.1 There are no direct staffing implications for the Council arising from the tender process. The services are currently provided by an external provider. As part of the procurement process, employee liability information will be sought from current contractor and provided to the tenderers. The TUPE process and any

issues that may arise from it will be managed during the mobilisation phase, which will be at least 6 weeks between contract award and commencement.

9.0 Public Services (Social Value) Act 2012

9.1 The Council is under duty pursuant to the Public Services (Social Value) Act 2012 (“the Social Value Act”) to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake consultation. Officers have had regard to considerations contained in the Social Value Act in relation to the procurement.

9.2 Social Value will be weighted at 10.00%.

Report sign off:

Claudia Brown

Director of Adult Social Care