

**Open Report on behalf of Richard Wills, Executive Director for Environment and Economy**

Report to:	<b>Councillor Mrs S Woolley, Executive Councillor for NHS Liaison and Community Engagement</b>
Date:	<b>24 March 2017</b>
Subject:	<b>NHS Complaints Advocacy</b>
Decision Reference:	<b>I013297</b>
Key decision?	<b>No</b>

**Summary:**

NHS Complaints Advocacy is a statutory service that supports people who are making a complaint about health services – from assistance with letter writing, through to representation at meetings and support with navigating a complex system that may be confusing or distressing for individuals.

Section 185 of the Health and Social Care Act 2012 inserts a new section 223A (independent advocacy services) into the Local Government and Public Involvement in Health Act 2007 which states "Each local authority must make arrangements as it considers appropriate for the provision of independent advocacy services in relation to its area" – i.e. services providing assistance (by way of representation or otherwise) to persons making or intending to make a complaint in respect of a health body.

Lincolnshire County Council (LCC) therefore has a statutory duty to ensure the provision of independent advocacy services.

LCC currently has a contract for NHS Complaints Advocacy (delivered by POhWER).

LCC also has a separate contract for Adults and Children's Advocacy (delivered by Voiceability).

The current contract for NHS Complaints Advocacy, delivered by POhWER, will expire on the 31<sup>st</sup> March 2017 and has a current annual contract value of £109,250

To enable greater efficiency, it is the intention of commissioners to procure a joint advocacy service on the expiry of both the above contracts.

In order to do this, authority is required to award a contract to POhWER (for the delivery of NHS Complaints Advocacy) for two years and three months, to align

the service contract end dates. It is also proposed to realign the contract end date to 30<sup>th</sup> June (previously 31<sup>st</sup> March), due to central government funding for NHS Advocacy historically being confirmed in April.

This report, therefore requests authority to waiver procurement regulations to award a contract to POhWER for the duration of 2 years 3 months.

**Recommendation(s):**

That the Executive Councillor approves the direct award of a new contract for NHS complaints independent advocacy to POhWER to run from 1st April 2017 to 30th June 2019.

**Alternatives Considered:**

Competitive procurement. A change of contractor would result in a high risk to service delivery of a statutory service and is not considered to be outweighed by the efficiencies which would be gained by submitting just the NHS Complaints Advocacy Service to competition.

**Reasons for Recommendation:**

To ensure continuation of service and minimise the risk to the Council and to service users while future advocacy services commissioning intentions are aligned. The earliest a joint advocacy contract could commence would be 1 July 2019 and the proposed contract with PohWER would bridge the gap to that date.

**1. Background**

Legacy issues have resulted in the NHS Complaints Advocacy Service contract being rolled over since its transfer from NHS PCT.

In 2013 a joint advocacy service was put forward to be commissioned by Adult Care, Children's Services and Public Health, aiming to combine all Lincolnshire County Council commissioned advocacy services together into one contract. At that time Public Health were unable to commit to this venture, resulting in a joint Adults and Children's Advocacy Service, with NHS Complaints Advocacy remaining separate.

Since that time, Officers have investigated comparator authorities and research suggests that justification for a joint advocacy service holds strong synergies and efficiencies. It would therefore make sense to consider aligning the contracts for future procurement processes.

The current Adult and Children's Advocacy Services expires 30<sup>th</sup> June, 2018 with the potential for further extensions of 1 year and 1 year. Given the time required to plan and undertake a joint advocacy contract, the earliest such a contract could commence would be 1 July 2019. To award a contract to PohWER would ensure

continuation of a statutory service while enabling the procurement of a joint contract at the earliest opportunity

In order to align the current NHS Advocacy Service contract with the Adults & Children's contract, Officers are seeking the authority to award a new contract to POhWER, ensuring the service is not disrupted unnecessarily pending a joint procurement exercise for a complete advocacy service at a later date.

An element of the Local Reform and Community Voices (LRCV) grant from central government currently funds NHS Complaints Advocacy. Confirmation of the grant and its value has historically been later than the current contract start date (confirmed in April). This has led to budgetary uncertainties. However, the legacy of the LRCV grant has resulted in a confidence that the funds will remain consistent in value. That being said, there is a perceived risk that the government may change the terms of the grant value without sufficient notice to the Local Authority. Moving the contract completion date to the end of the first quarter may address this issue.

Therefore, we are seeking to award a contract for NHS Advocacy Services for two years and three months to resolve the LRCV timing and align with Adults and Children's Advocacy.

## **2. Legal Issues:**

The service is defined as one which falls within Schedule 3 (Social and Other Specific Services) of the Public Procurement Regulations 2015 ("PCR") and therefore within the "Light Touch Regime" as given under regulations 74 to 76. The value of the proposed contract is below the "Light Touch threshold value" of £589,148.00 which means it is not necessary to procure it in accordance with the PCR but only by way of LCC's Contract Regulations.

Nevertheless any such procurement needs to be undertaken in compliance with the EU Treaty Principles of Openness, Fairness, Transparency and Non-discrimination. This involves a determination as to whether it is necessary to advertise the opportunity to the market based on whether such a service requirement would attract what is referred to a "cross-border interest" – i.e. interest from a contractor in another European Union Member State.

In this case, the contract value is relatively low and, the duration is not long. There are TUPE implications, very small margins on the service, and the service in question is very much a local provision – being dependent on a specific understanding of the National Health Service and its complaints processes. It is not therefore considered that the contract would be of interest to a contractor in another member state.

The Council's Contract Regulations would normally require a contract of this value (£245,812.50 over 2 years, 3 months) to be advertised. However, where a Chief Officer proposes a different process, they may proceed with approval from the Executive Councillor where the value of the contract is below £250,000.

## Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation
- Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:
  - Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
  - Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
  - Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

The continuation of the existing service is not considered to have any detrimental impact on people with a protected characteristic and is available to all. Indeed, the service assists people with protected characteristics to complain to health bodies, particularly older and younger people, people with a disability and people whose first language is not English.

### Joint Strategic Needs Analysis (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

Consideration has been given to the JSNA and the JHWS and it is noted that the services provided by NHS Complaints Advocacy contribute to the outcomes sought by the Joint Health and Wellbeing Strategy (JHWS) through the delivery of information, advice and assistance that reflects the key themes of the JHWS.

By supporting the complaints process advocacy has been able to contribute to improvements to NHS services through enabling patients to raise their concerns or suggestions through the complaints process, lessons learnt and local resolution meetings.

### Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

Consideration of the impact on Crime and Disorder in respect of NHS complaints advocacy is unsubstantiated. However it could be argued that the support of the advocate on the complainant may reduce the stress and pressure of the situation, resulting in calm, measured, professional resolution meetings between the service and complainant; reducing the risk of potential public disorder.

Advocates are also trained in safeguarding procedures and their knowledge of NHS services

### **3. Conclusion**

Value for money in respect of this agreement cannot be guaranteed to be best value in the absence of competition. However, following the financial challenge review last year, which resulted in a 5% cut to this service, it is clear that any further cuts to this service would start to impact on capacity of the service to respond to requests for support, impacting upon statutory delivery. To achieve best value and efficiencies, the financial challenge review identified that a joint advocacy service should be explored, supporting multi-skilled advocates able to undertake a variety of advocacy support services. As has been identified above, the earliest that could be achieved would be 1 July 2019 and the award of a contract to PohWER in the intervening period ensures continuity while enabling a joint contract as early a point as possible

Therefore, by balance of risk versus reward in respect of achieving best value for money in the long term for Lincolnshire, it is requested that this waiver be approved to enable the contract award for NHS Complaints Advocacy to POhWER for the

duration of 2 years and 3 months commencing on the 1<sup>st</sup> April 2017 under Lincolnshire County Council contract regulations.

In respect of the future commissioning intentions for a joint advocacy service, it is currently being discussed with senior management in the respective Director areas that the Advocacy element of the LRCV Grant budget and responsibility for NHS Complaints Advocacy is moved from Environment and Economy to Adult Care commissioners to better fit with commissioning strategies.

**4. Legal Comments:**

The Legal approach has been addressed in the body of the Report. The Council has the power to enter into the contract proposed. The Procurement Law implications and the other matters to which the Executive Councillor must have regard are dealt with in detail in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive Councillor if it is within the budget.

**5. Resource Comments:**

The funding for this service is dependent upon receipt of LRCV grant which is determined by Government on an annual basis. The proposed insertion of a 6 months' notice break clause in the extended contract should protect the Council from having to allocate any of its own funding to the service should the grant cease. In the longer term it is noted that value for money aspects of the service are to be tested on the open market.

**6. Consultation**

**a) Has Local Member Been Consulted?**

N/A

**b) Has Executive Councillor Been Consulted?**

Yes

**c) Scrutiny Comments**

This has not been considered by a scrutiny committee.

**d) Have Risks and Impact Analysis been carried out?**

Yes

**e) Risks and Impact Analysis**

See body of the Report

## **7. Background Papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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