

Open Report on behalf of Alina Hackney - Head of Commercial & Procurement – People Services

Report to:	Councillor Mrs P A Bradwell OBE, Executive Councillor for Adult Care, Health and Children's Services
Date:	15 – 22 March 2019
Subject:	NHS Complaints Advocacy
Decision Reference:	I017684
Key decision?	No

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 30th June 2019 and has a current annual contract value of £109,250.

To enable greater efficiency, it is the intention of commissioners to review the services and potentially 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 12 months, to align the service contract end dates to 30th June 2020.

This report, therefore requests authority to waiver procurement regulations to award a contract to POhWER for the duration of 12 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 July 2019 to 30th June 2020.

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.

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.

This requires the NHS Advocacy services to be commissioned separately for a period of a year. If the service was opened up to competition it may impact on continuity of the service over a limited period without any opportunity for the new provider to form the relationships on which the service depends. There would then

be further change when the two services are re-commissioned, potentially jointly, in 2020.

To ensure continuity over the intervening period it is therefore recommended that an award is made directly to the existing provider for the year required to align the contracts.

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 £615,278.00 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 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 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, there have been previous financial cuts to the service, it is clear that any further cuts 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, 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 award of a contract to PohWER ensures continuity while enabling a joint contract.

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 12 months commencing on the 1st July 2019 under Lincolnshire County Council contract regulations.

In respect of the future commissioning intentions for a joint advocacy service, a review of all Advocacy Services will commence February 2019.

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 through a Department of Health grant which is determined by Government on an annual basis. It is confirmed that these grants can be carried forward and that there is sufficient budget to fund the contract cost until June 2020. This would protect the Council from having to allocate any of its own funding to the service should the grant cease.

6. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

No

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 were used in the preparation of this report.

This report was written by Marie Kaempfe-Rice, who can be contacted on 01522 554087 or Marie.Kaempfe-Rice@lincolnshire.gov.uk .