

Report to:

STRATEGIC COMMISSIONING BOARD

Date:

26 June 2019

Reporting Member / Officer of Strategic Commissioning Board

Dr Ashwin Ramachandra (Chair) – NHS Tameside and Glossop CCG

Councillor Eleanor Wills – Executive Member (Adult Social Care and Population Health)

Stephanie Butterworth – Director of Adult Services

Subject:

PERMISSION TO SPEND - TENDER FOR THE PROVISION OF AN INDEPENDENT MENTAL CAPACITY ADVOCACY SERVICE

Report Summary:

The report is seeking permission to re-tender the service on behalf of Tameside, Stockport and Oldham Council on an annual budget of £181,312, split equally between the three local authorities, an annual cost of £60,437. The new contract will commence on 1 April 2020.

Recommendations:

- (a) That approval is given to re-tender the Independent Mental Capacity Advocacy (IMCA) Service for a five year period with a termination period of six month.
- (b) That approval is given for the Director of Adult Services to approve the contract award following the tender, subject to compliance with Procurement Standing Orders.

Financial Implications:

(Authorised by the statutory Section 151 Officer & Chief Finance Officer)

Integrated Commissioning Fund Section	Aligned Section
Decision Required By	Executive Cabinet
Organisation and Directorate	Tameside MBC – Adult Services
Budget Allocation 2019/20	£ 60,437 This represents a third of the contract value : £ 181,312

Additional Comments

The report seeks approval to re-tender the current service provision with a new contract commencement date of 1 April 2020.

The current annual contract value is £ 181,312 which is financed equally by the three partner local authorities. The annual cost for each local authority is £ 60,437 with the Council share of the contract value financed via the Adult Services revenue budget.

It is essential that both Stockport and Oldham local authorities agree to their share of the annual contract value in 2019/20 and in advance of the re-tender process.

The outcome of the re-tender process and any potential impact on future year budget allocations will need to be reported to Members as soon as related details are

available and in advance of any contract award.

Legal Implications:

(Authorised by the Borough Solicitor)

In approving any contract, the Director must comply with Procurement Standing Orders. STAR Procurement should be advising on the tender process going forward.

The provision of an IMCA service is a legal duty under the Mental Capacity Act 2005. The Mental Capacity (Amendment) Bill which will make significant changes to the authorisation process for living arrangements, which amount to a deprivation of liberty, continues to require the involvement of IMCAs for those without an appropriate person to act for them. The changes are anticipated to come into force in Spring 2020. Much of the detail of how the new arrangements will work will be in regulations and a Code of Practice now expected in late 2019.

How do proposals align with Health & Wellbeing Strategy?

The proposal aligns with the Living Well and Ageing Well programmes.

How do proposals align with Locality Plan?

The service links into the Council's priorities for People :

- Help people to live independent lifestyles supported by responsible communities.
- Improve Health and wellbeing of residents
- • Protect the most vulnerable

How do proposals align with the Commissioning Strategy?

The service contributes to the Commissioning Strategy by:

- Empowering citizens and communities;
- Commission for the 'whole person'.

Recommendations / views of the Health and Care Advisory Group:

The report has not been presented at the Health and Care Advisory Group.

Public and Patient Implications:

There is a statutory duty to provide this service under the Mental Capacity Act 2005.

Quality Implications:

The Council is subject to the duty of Best Value under the Local Government Act 1999, which requires it to achieve continuous improvement in the delivery of its functions, having regard to a combination of economy, efficiency and effectiveness. Any procurement exercise will be awarded on the basis of the most economically advantageous tender that balances the cost and quality advantages of tender submissions.

How do the proposals help to reduce health inequalities?

The IMCA Service supports people to live independent lifestyles, improves the health and wellbeing of residents and protects the most vulnerable.

What are the Equality and Diversity implications?

There are no equality and diversity implications associated with this report.

What are the safeguarding implications?

There are no safeguarding implications associated with this report. Where safeguarding concerns arise as a result of the actions or inactions of the provider and their staff, or concerns

are raised by staff members or other professionals or members of the public, the Safeguarding Policy will be followed.

What are the Information Governance implications? Has a privacy impact assessment been conducted?

Information governance is a core element of all contracts. The necessary protocols for the safe transfer and keeping of confidential information are maintained at all times by both purchaser and provider.

Risk Management:

There are no anticipated financial risks given the low value of the contract. The service is required so Oldham, Stockport and Tameside MBC can meet their statutory responsibilities under the Mental Capacity Act 2005 and the Mental Capacity (Amendment) Bill when it becomes law..

Access to Information:

The background papers relating to this report can be inspected by contacting the report writer



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1. INTRODUCTION

- 1.1 The report is seeking permission to retender the Independent Mental Capacity Advocacy (IMCA) Service on behalf of Tameside, Stockport and Oldham for a period of five years with a termination period of six months commencing 1 April 2020.

2. BACKGROUND

- 2.1 The IMCA Service, whilst highly specialised, operates generically across a wide variety of service users with mental capacity issues, including people with learning disabilities, dementia, mental health needs and acquired brain injury. Staff practitioners and medics alike make referrals across the three council's and their local health partners. Typically, referrals include those from doctors and nurses providing serious medical treatment for people who lack mental capacity for the specific decision and care managers arranging hospital discharges and planning long-term placements for people with learning disabilities, people with dementia and others.
- 2.2 Since the Mental Capacity Act 2005 came into force on 1 April 2007, Tameside has jointly commissioned IMCA provision with Oldham MBC and Stockport MBC.
- 2.3 The current five year contract has been in place since 1 April 2015 with Together for Mental Wellbeing providing the service. The Council holds the contract and each council contributes exactly one third of the contract price. A Service Level Agreement (SLA) between the three councils has been in place throughout, formalising commissioning and contractual arrangements and managing funding streams. Subsequent performance monitoring has continued along these lines and a close working relationship between the three councils fostered.
- 2.4 The Supreme Court ruling on the Cheshire West deprivation of liberty case in March 2014 has had significant implications for this service, not least because of the increase in demand that the IMCA provider – in keeping with IMCA providers regionally and across the country – has experienced as a result. The Judgement was significant in the determination of whether arrangements made for the care and/or treatment of an individual lacking capacity to consent to those arrangements amount to a Deprivation of Liberty.
- 2.5 Cheshire West and Chester Council v P [2014] led to a significant change to the definition of deprivation of liberty and significantly increased the number of people nationally who are entitled to the safeguards of a DoLS authorisation. This, in turn, placed pressure on care providers to submit applications to their supervisory body with a resulting 'knock-on' effect for Social Care, Best Interest Assessors, Section 12 Doctors and also the IMCA services providing Paid Relevant Person's Representative (PRPR) and assessment functions (section 39A).
- 2.6 As a result, approval was given in July 2016 to increase the contract price by an additional £61,000 per annum – split evenly between the three councils - to allow for the employment of an additional 1.5 Full Time Equivalent (FTE) IMCA's.
- 2.7 However, following the increase in budget, demand for the service continued to grow year on year as the duties and powers to instruct IMCAs were better understood meaning the service was no longer able to meet the statutory obligations required. Procurement Standing Order F2.1 permits a 5% increase to the contract price following approval via a report to Exec Directors. A report was submitted to the Adult Services Directorate Management Team on 25 March 2019 and approval was given to further increase the annual budget by an additional £31,200 for the remainder of the contract period (2019-20) – split evenly between the three councils. The increase enabled the service to employ a Relief Worker for 20 hours

per week providing an additional 1040 hours support and approximately 260 Paid Relevant Persons Representative (PRPR) visits for the remainder of the contract period.

- 2.8 The Council are working with STAR to procure this service. Following approval to increase funding Tameside MBC are required to complete a modification form to formalise the increase to the budget and vary the contract.
- 2.9 Despite the increase in budget there remains significant demand pressures in the service.
- 2.10 The budget for the service for the remainder of the contract period 2019-2020 is £181,312. This purchases 3.5 IMCAs and 1 x 20 hr Relief Worker post, (the Relief Worker was only funded for the final twelve months of the contract period to deal with the backlog of referrals and the waiting list). This provided for a minimum of one PRPR visit per authorisation for those persons assessed as being medium and low priority and a minimum of three visits per authorisation for those persons assessed as being high priority. It was made clear that this arrangement would only improve service delivery based on the number of referrals open at that time, and would not serve as a future-proofed approach should referrals increase.

3. PROPOSED CHANGES TO LEGISLATION

- 3.1 In July 2018 the Government published a Mental Capacity (Amendment) Bill, which is now awaiting Royal Assent and when passed into law will reform the Deprivation of Liberty Safeguards (DoLS), and replace them with a scheme known as the Liberty Protection Safeguards, see attached link [Liberty Protection Safeguards \(LPS\) | SCIE](#). The current timetable following the Bill receiving Royal Assent is for it to come into effect in spring 2020. However the detail of how the law will operate will be contained in regulations and a Code of Practice, which are not yet available.
- 3.2 Until the regulations and Code of Practice are issued the impact of the new Liberty Protection Safeguards on service delivery is not clear. It is possible that there will be a requirement to increase the budget further. This will be monitored as the new legislation is implemented. Any impact on service delivery and subsequently the budget arising from the introduction of the new legislation will be reported back through the governance process.

4 VALUE FOR MONEY

- 4.1 The contract value for this service in 2019-20 is £181,312, split equally between the three local authorities. This is an annual cost of £60,437 per local authority.
- 4.2 This service is being procured under a collaborative arrangement with Oldham MBC and Stockport MBC, which means that all three councils benefit from cost savings in relation to management and procurement costs.
- 4.3 To ensure a competitive tender in terms of delivering best value, evaluation criteria against the most economically advantageous tender will be implemented as part of the procurement process. This will include a quality and cost weighting with the latter evaluated against an indicative budget guide with the lowest price receiving the highest weighting.
- 4.4 Any requirement for an increase to the budget following the implementation of the new Liberty Protection Safeguards legislation will be reported back through governance processes once all commissioners have a clear understanding of need.

5. CONTRACTING PROPOSAL

- 5.1 Consideration is given to retender the service for a five year period with a termination clause of six months, with an annual budget of £181,312. This will provide assurance that service users assessed as low or medium priority will receive a minimum of one visit per authorisation and those assessed as high priority will receive a minimum of three visits per authorisation, see **Appendix 1** for referral criteria.
- 5.2 During the remainder of the contract period referrals and any impact of the new Liberty Protection Safeguards legislation on the service will be assessed and any changes evident before going to tender will be reflected in the new contract, tender documentation and factored into different costing models within the tender.
- 5.3 The Council are working jointly with STAR procurement to re-tender the service.

6. OTHER ALTERNATIVES CONSIDERED

- 6.1 The option to “do nothing” is not viable - this is a statutory service and required to enable the three councils to meet their statutory obligations under the Mental Capacity Act 2005.

7. IMPLICATION IF THE SERVICE IS NOT RE-COMMISSIONED

- 7.1 If the service was not re-commissioned the three councils with responsibility for procuring this service would be in breach of their statutory obligations to provide this service.
- 7.2 This is a statutory service required under the Mental Capacity Act 2005.
- 7.3 The purpose of the DoLS authorisation is to ensure that the restrictions in place are as least restrictive as possible for the person being subjected to the deprivation. Without this service there is a risk that some people could be unlawfully deprived of their liberty because the restrictions are disproportionate and therefore not in their best interest. This could impact upon a person’s health and mental wellbeing, and their safety, as well as impinging upon their legal and human rights.
- 7.4 This service is used by some of our most vulnerable citizens, referrals to the service have consistently increased year on year.

8. EQUALITIES

- 8.1 It is not anticipated that there are any equality and diversity issues with this proposal, see EIA available with this report.

9. RISK MANAGEMENT

- 9.1 Any risks of poor service delivery will be mitigated by close monitoring of the service by close working relationships between officers representing the three councils to ensure that assessed need is being met.
- 9.2 Ceasing the provision of this service will mean that the Council would not fulfill its statutory and legal duty to provide the service and meet eligible needs.

10. CONCLUSION

- 10.1 The current IMCA contract comes to an end on 31 March 2020. The Mental Capacity Act requires the Council to provide an IMCA service that meets eligible need.
- 10.2 Tameside MBC holds the contract for this service and is leading on the tender process on behalf of Oldham, Stockport and Tameside Councils. A Service Level Agreement (SLA) between the three councils is in place, formalising commissioning and contractual arrangements and managing funding streams. Subsequent performance monitoring will continue along these lines.
- 10.3 Oldham, Stockport and Tameside Councils wish to procure this service on a budget of £181,312, split evenly between all three Councils (£ 60,437). This will provide assurance that people assessed as low and medium priority will be guaranteed a minimum of one visit per authorisation and those assessed as high priority will receive at least three visits per authorisation until we are clearer what the impacts of the new legislation will have on this service.
- 10.4 Any requirement to increase the budget following the implementation of the new legislation will be reported back through the governance process for consideration.
- 10.5 Continuing this service will mean that all three Councils continue to fulfill their statutory obligations.

11. RECOMMENDATIONS

- 11.1 As stated on the front cover of the report.

APPENDIX 1

REFERRAL CRITERIA

Low Priority	Medium Priority	High Priority
Client is in receipt of regular visits from family and friends	Client are un-befriended, have conditions attached to the DoLs authorisation or may have an unsettled placement	Client is objecting
Guaranteed a minimum of one visit per 12 month authorisation	Guaranteed a minimum of one visit per 12 month authorisation	One a minimum of three visits per 12 month authorisation