



**PWYLLGOR ARCHWILIO A SICRWYDD RISG
AUDIT AND RISK ASSURANCE COMMITTEE**

DYDDIAD Y CYFARFOD: DATE OF MEETING:	20 June 2023
TEITL YR ADRODDIAD: TITLE OF REPORT:	Independent Mental Capacity Advocacy (IMCA) Service retrospectively funded via Single Tender Award process
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Jill Paterson, Director of Primary Care, Community and Long Term Care
SWYDDOG ADRODD: REPORTING OFFICER:	Steven Hughes – Deprivation of Liberty Safeguards Coordinator

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

Er Sicrwydd/For Assurance

ADRODDIAD SCAA

SBAR REPORT

Sefyllfa / Situation

The Mental Capacity Act 2005 and its Regulations place a duty on the Welsh Government to provide an Independent Mental Capacity Advocate (IMCA) service, a duty that has been delegated to Welsh Health Boards to commission on behalf of themselves and their contingent Local Authorities. Since 2013, Mental Health Matters Wales (MHMW) has been the provider commissioned by HDdUHB.

The IMCA contract was awarded under a Service Level Agreement (SLA) in 2013 and was due for renewal in 2018. For the reasons set out below, no re-tendering process for the IMCA service was undertaken. A Single Tender Action (STA) request for 2022/23 was approved in March 2023 to continue commissioning with MHMW, following a significant increase in Welsh Government funding for that service. A further STA is proposed for 2023/24 until a new All Wales IMCA contract developed by NHS Wales Shared Services Partnership (NWSSP) Procurement Services comes in to effect. Tenders for the service are planned to be sent out in July 2023, with new contracts to commence on 1 April 2024.

The Audit & Risk Assurance Committee is asked to take assurance that the Single Tender Action requests relating to the provision of IMCA services in 2022/23, and proposed for 2023/24, are appropriate while a national procurement process is in progress for completion in time for the April 2024 renewal date.

Cefndir / Background

Work to re-tender the IMCA service locally was commenced in 2018 but then placed on hold, as the Health Board had been informed that NWSSP Procurement Services were intending to develop an all Wales IMCA contract. It was agreed through the Consent and Mental Capacity Group that work on a local re-tendering process would cease, pending its introduction. In late 2019, and with no progress made on the all Wales contract, it was decided to recommence work on a local tender; however, this was then interrupted due to the COVID-19 pandemic. The local process was due to recommence in April 2022; however, the Health Board was notified that work had restarted on the All Wales contract, with tenders due to go out in the summer of

2023 and with contracts to commence in April 2024. It was again agreed to wait for the All Wales contract, rather than r—tender locally in the interim.

In April 2022, Welsh Government announced significantly increased funding for IMCA services, rising from £72,000 per annum paid since the contract with MHMW was awarded in 2013, to £336,000 per annum. The aim of the additional funding was to enable the IMCA service to expand in preparation for the introduction of the Liberty Protections Safeguards (LPS) which were anticipated to require a 10-fold increase in the number of IMCAs needed under the new legislation. In addition, the funding would – for the first time – cover the costs of Paid Relevant Persons Representatives (PRPR), a statutory role under the Deprivation of Liberty Safeguards (DoLS) that had previously been ‘spot-purchased’ by the Health Board and individually by the local authorities.

Asesiad / Assessment

The Health Board has a statutory duty to commission an IMCA service. Within the Health Board region, there is currently only one provider of this service and, while others may be able to enter the market locally, it is very likely that they would need to transfer IMCAs from the current provider under a Transfer of Undertakings (Protection of Employment) (TUPE) process. The timescale to complete both a local tender and possible TUPE process for a new provider would take us into the period during which tenders based on the All Wales IMCA contract would be sought. To ensure continuity of the service until April 2024 and to benefit from the confidence in tendering for a new contract developed to national standards, continuing to commission with MHMW until the end of March 2023 would be appropriate, under a further STA.

Argymhelliad / Recommendation

The Audit & Risk Assurance Committee is asked to take assurance that the Single Tender Action requests relating to the provision of IMCA services in 2022/23 and proposed for 2023/24 are appropriate while a national procurement process is in progress and which will be completed in time for the April 2024 renewal date.

Amcanion: (rhaid cwblhau)

Objectives: (must be completed)

<p>Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor:</p>	<p>2.4 The Committee’s principal duties encompass the following: 2.4.2 Seek assurance that the systems for financial reporting to Board, including those of budgetary control, are effective, and that financial systems processes and controls are operating. 3.15 Receive a report on all Single Tender Actions and extensions of contracts.</p>
<p>Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:</p>	<p>Not applicable</p>
<p>Parthau Ansawdd: Domains of Quality Quality and Engagement Act (sharepoint.com)</p>	<p>4. Efficient</p>

Galluogwyr Ansawdd: Enablers of Quality: Quality and Engagement Act (sharepoint.com)	Not Applicable
Amcanion Strategol y BIP: UHB Strategic Objectives:	6. Sustainable use of resources
Amcanion Cynllunio Planning Objectives	Not Applicable
Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2021-2022	10. Not Applicable

Gwybodaeth Ychwanegol: Further Information:

Ar sail tystiolaeth: Evidence Base:	Mental Capacity Act 2005
Rhestr Termiau: Glossary of Terms:	Included in body of report
Partion / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Archwilio a Sicrwydd Risg Parties / Committees consulted prior to Audit and Risk Assurance Committee:	Use of Resources group Consent and Mental Capacity Group NWSSP Procurement Services

Effaith: (rhaid cwblhau) Impact: (must be completed)

Ariannol / Gwerth am Arian: Financial / Service:	Single Tender Action was approved for 2022/23 and will be required for 2023/24 to enable the continuation of a contract for statutory advocacy services. The Health Board is responsible for commissioning this service of behalf of itself and its contingent local authorities.
Ansawdd / Gofal Claf: Quality / Patient Care:	All eligible patients will be able to access statutory advocacy when needed.
Gweithlu: Workforce:	Staff will have access to the IMCA service to enable referrals to be made in a timely manner.
Risg: Risk:	Using an STA process does not allow for competitive tendering of a high value service
Cyfreithiol: Legal:	The Health Board may be subject to challenge if robust financial governance arrangements are not put in place.
Enw Da: Reputational:	Any disruption in delivery of statutory services unless the STA process is used may result in reputational harm and negative consequences for the health board.

Gyfrinachedd: Privacy:	There are no impacts on individual privacy within this paper.
Cydraddoldeb: Equality:	Failure to provide the necessary service will disproportionately affect those with a mental disorder.