

KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

DECISION TO BE TAKEN BY:

Clair Bell, Cabinet Member for Adult Social Care and Public Health

DECISION NO:

20/00004

For publication

Key decision: YES

The decision will result in expenditure of more than £1,000,000, and affects more than 2 electoral divisions

Title of Decision **ADVOCACY HUB CONTRACT EXTENSION AND PERMISSION TO TENDER FOR NEW CONTRACT**

Decision: As Cabinet Member for Adult Social Care and Public Health, I propose to:

- a) **APPROVE** a flexible extension to the current Advocacy Services Contract for up to 12 months from 1 April 2022 until 31 March 2023;
- b) **UNDERTAKE** market engagement in partnership with Kent and Medway Clinical Commissioning Group and Medway Council to procure a new Advocacy Services Contract; and
- c) **DELEGATE** authority to the Corporate Director Adult Social Care and Health to take other relevant actions, including but not limited to finalising the terms of and entering into required contracts or other legal agreements, as necessary to implement the decision.

Reason(s) for decision: The Advocacy Hub for Adults contract, held by The Advocacy People is due to expire on 31 March 2022. With all contract extensions exhausted, an additional extension was previously made under the March 2020 Procurement Policy Note (PPN 01/20) due to the COVID-19, outbreak. The intention was to commence with procurement of new Advocacy Services during but a national lockdown remained in place. Virtual market engagement and meaningful public consultation was not ideal for the cohort of people that the contract is commissioned to support.

With hindsight, the additional one year extension was requested and approved before the unprecedented nature, and duration of the pandemic could be fully appreciated.

There are additional considerations that are not yet fully known which relate to the Mental Capacity Act amendments and the yet to be published, further delayed until at least April 2023 publication of the accompanying Liberty Protection Safeguards code of practice.

The recommendation to flexibly extend the current contract for up to 12 months with reserved right for earlier termination, reserved right for contract variation to allow for implementation of Liberty Protection Safeguards requirements as necessary, and for work with Providers to scope diversity aims and future workforce development for people from the marginalised groups the services aim to support has been endorsed.

Financial Implications: The value of 12 months contract extension (1 April 2022 to 31 March 2023) will be approximately £1.5m.

The approximate contract value for the newly procured advocacy services, to include the 12 month dual running period of Deprivation of Liberty Safeguards Mental Health Assessors contract alongside the Liberty Protection Safeguards contract, is £1,930,000 (based on current contracts as

£1.5m for Advocacy Hub and £430,000 Deprivation of Liberty Safeguards per annum).

The contract value is made from grants to the Local Authority which are expected to continue.

Legal Implications: The Authority has statutory duties to deliver advocacy services under the Mental Capacity Act (amended 2019), the Mental Health Act (2007), the Health and Social Care Act (2012) and the Care Act (2014), across all categories of need, including to young people in transition to adult services.

The 2019 Amendments to the Mental Capacity Act and the effect on the Advocacy services are not yet fully understood, due to the delay in the publication of the accompanying Code of Practice.

Legal advice received from Invicta Law supported a 12-month extension and they recommended that we begin the process to re-let this contract in early 2022.

The proposed 12-month extension is flexible, in order to reserve the right for earlier termination of the contract should the Code of Practice be published and the implications understood, thus informing and expediting the development of new services specification and procurement of services.

The extension is proposed in view of the remaining statutory obligations to deliver statutory services, regardless of whether they are contracted or not. In the absence of a contracted service, significant inconvenience, and duplication of costs to the authority in managing spot purchased provision would likely occur. In addition, service users would likely experience inconsistent and fragmented delivery of Advocacy Services.

Equalities implications: An EqIA was completed when the Kent Advocacy Services Contract was originally tendered. This has been updated to include this proposed extension to contract and will continue to be updated as throughout the recommissioning process.

The EqIA explores the implications of decommissioning non-statutory community learning disability advocacy service in any future procurement process (as recommended by the Contract Management Review Group in 2020). Presently an ongoing need for commitment to this non-statutory element in principle is indicated. However, this will be kept under review and need to flex within the context of Liberty Protection Safeguard code of practice.

Data Protection implications: General Data Protection Regulations are part of current service documentation for the Advocacy Hub Contract.

For the new procurement of Advocacy Services a DPIA is likely to be required.

Cabinet Committee recommendations and other consultation: The proposed decision will be discussed at the Adult Social Care Cabinet Committee on 18 January 2022 and the outcome included in the paperwork which the Cabinet Member will be asked to sign.

The Kent Learning Disability Partnership Board and The Autism Collaborative will be consulted regarding development of new services, and implementation.

Any alternatives considered and rejected:

Do nothing the contract will end on 31 March 2022 with the Authority still obligated to deliver statutory functions but these will be at increased cost, spot purchased, and deliver inconsistent and fragmented services.

Extend current contract as is for period of 18 months (30 September 2023) to allow for a

meaningful procurement without the additions of the recommended and supported option. This offers more limited scope to progress and develop the current service and future specification but Legal advice is that this may be more open to challenge.

Extend only the statutory elements of the contract for period of 18 months (30 September 2023) to allow for a meaningful procurement, without the additions of the recommended and supported option. This offers an immediate cost saving to the Council but risks further exacerbating inequalities experienced by learning-disabled people, during a time of disproportionate impact from covid-19, and risks damaging the Authority's reputation.

Procurement of the services on a short term basis would comply with public procurement regulations 2015 but create duplication of work and resource use for further procurement, award and mobilisation, risk a fragmented service delivery and poorer experience, and limits scope for more innovative service development and delivery.

Procure the services as is for the longer term with option to include Liberty Protection Safeguards once implications are understood would comply with public procurement regulations 2015 but limits scope for more innovative service development and delivery, and limits scope for financial savings or efficiencies to be found

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

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signed

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date