

From: Richard Smith, Corporate Director Adult Social Care and Health

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

Subject: **ADVOCACY HUB CONTRACT EXTENSION AND PERMISSION TO TENDER FOR NEW CONTRACT**

Decision Number: **22/00004**

Classification: Unrestricted

Past Pathway of report: Adult Social Care Governance Board – 22 December 2021
Adult Social Care Cabinet Committee – 18 January 2022

Future Pathway of report: Cabinet Member decision

Electoral Division All

Summary: The Advocacy Hub Contract is due to end on 31 March 2022, this includes the additional extension under the Procurement Policy Note (PPN 01/20)

The Mental Capacity Act (MCA) 2019 introduced Liberty Protection Safeguards as a replacement to Deprivation of Liberty Safeguards and was originally to come into force from 1 October 2020. During the pandemic Central Government announced that it would not be possible to meet the October deadline and decided that full implementation of Liberty Protection Safeguards would be April 2022. The implementation date of April 2022 hasn't changed but it takes a year to consult and implement, so there is an expectation of a further year's delay to April 2023.

The impact of the amendments on the future advocacy services that Kent County Council will need to continue to deliver to meet its statutory function needs to come from the Code of Practice which has not yet been shared.

Recommendation(s): The Cabinet Member for Adult Social Care and Public Health is asked 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.

1. Introduction

- 1.1 The current Advocacy Hub Contract meets Kent's duties under the Care Act statutory requirements for the provision of independent advocacy under the terms of:
 - the Mental Capacity Act 2005,
 - the Mental Health Act 2007,
 - the Health and Social Care Act 2012
 - the Care Act 2014,
 - And across all categories of need, including young people in transition to adult services
- 1.2 The Advocacy Hub Contract is due to end on 31 March 2022, this includes the additional extension under the Procurement Policy Note (PPN 01/20).
- 1.3 The Mental Capacity Act (MCA) 2019 introduced Liberty Protection Safeguards (LPS) as a replacement to Deprivation of Liberty Safeguards (DoLS) and was originally to come into force from 1 October 2020. During the pandemic Central Government announced that it would not be possible to meet the October deadline and decided that full implementation of Liberty Protection Safeguards would be April 2022. The implementation date of April 2022 hasn't changed but it takes a year to consult and implement, so there is an expectation of a further year's delay to April 2023.
- 1.4 The impact of the amendments on the future advocacy services that KCC will need to continue to deliver to meet its statutory function needs to come from the Code of Practice which has not yet been shared.
- 1.5 The proposal is to flexibly extend the current contract from 1 April 2022 to 31 March 2023 this will allow for
 - the contract to be ended earlier
 - implementation of LPS requirements as necessary and in line with available information,
 - work with Providers to scope diversity aims for future workforce development for people from the marginalised groups the services aim to support
- 1.6 Commit to begin procurement in Spring 2022 for the new contract

2. Background

- 2.1 The initial contract for Advocacy Services was commissioned based on comprehensive, and award-winning coproduction and engagement. The contract and suite of services offering no wrong door access, has performed well, including during these unprecedented times.
- 2.2 During the Pandemic the current Provider has proved their ability to be flexible in diverse times, adapt to the use of technology, and consistently work to ensure the best level of support is provided for the residents of Kent.

- 2.3 At the start of the Pandemic an extension was given on the contract under Procurement Policy Note (PPN 01/20) which was released in March 2020 setting out information and associated guidance on the public procurement regulations and responding to the current coronavirus, COVID-19, outbreak. The contract was due to end 31 March 2021 but the extension moved this to March 2022, the rationale for this was due to issues related to restricted ability to engage, co-produce and network with stakeholders across Health, Social Care, Providers and people who use and refer into the service.
- 2.4 During this time work has been undertaken to understand the implications of Mental Capacity Act Amendments, Liberty Protection Safeguards and scope the opportunities for partnership approaches. Conversations with Medway Unitary Authority and Kent and Medway Clinical Commissioning Group have shown an interest to further explore the benefits and opportunities that a partnership working approach could have. Exploring the sharing of resources within the procurement and commissioning cycle alongside the ongoing contract management and the benefit of a no wrong door across Kent and Medway Social Care and Health and the person remains at the heart of what we do. A central point will ensure that people do not have to repeat their story and they can be best supported.
- 2.5 To ensure we develop a learning culture within our procurement we need to listen to others and have their thoughts on the service requirement, to do this effectively the correct time and resource needs to be allocated .We need to ensure that the direction we believe is correct for the contract is backed with evidence from all identified stakeholders to enable us to take meaningful measures and better understand the outcomes that those accessing the service are wishing to achieve. The additional time from the extension will allow us to ensure we procure a contract that has the person at the centre and will allow us to continue to make a difference every day.
- 2.6 Work with the stakeholders to review the service requirement and specification to use a strength-based approach which may involve having to challenge existing establishments.
- 2.7 Alternative options as detailed in Appendix 1, were considered including:
- Extending contract as is; with no flexibility, for 18 months
 - Do nothing; the contract will end on 31st March 2022
 - Extend only the statutory elements of the contract
 - Procure the service on a short-term basis
 - Procure the services as is for the longer term with option to include LPS once implications are understood
- 2.8 The proposal to seek up to 12 months extension will allow time for meaningful coproduction and partnership working to further develop the award-winning work, and extend the no wrong front door approach that the suite of services has continued to deliver in Kent to include Medway and have consistency for Clinical Commissioning Group (CCG) users.

2.9 We have built a mobilisation period into the extension, to allow for a smooth transition should the incumbent Provider either not tender or not be successful during the procurement for the new Advocacy Services Contract.

3. Financial Implications

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

3.2 The approximate contract value for the newly procured advocacy services, to include the 12-month dual running period of the DoLs MH Assessors contract alongside the LPS contract, is £1,930,000 (based on current contracts as £1.5m for Advocacy Hub and £430,000 DoLS per annum)

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

4. Legal implications

4.1 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.

4.2 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.

4.3 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.

4.4 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.

4.5 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.

5. Equalities implications

- 5.1 An Equality Impact Assessment has been undertaken (attached as Appendix 2). The analysis of the proposal to extend the Advocacy Hub Contract and all services, including the non-statutory Community Learning Disability Services, considers that No change in the Advocacy hub services is the most appropriate option.
- 5.2 The evidence suggests that there is no potential for discrimination and that this option is an appropriate measure to advance equality and foster good relations.
- 5.3 This EQIA will be updated further to as part of the recommissioning process to continually assess and consider the options and whether no change remains the most appropriate option.

6. Data Protection Implications

- 6.1 General Data Protection Regulations are part of current service documentation for the Advocacy Hub Contract.
- 6.2 For the new procurement of Advocacy Services, a Data Protection Impact Assessment is likely to be required.

7. Other corporate implications

- 7.1 Partnership working may offer opportunities such as a joint approach to market management, joint tendering and commissioning, and development of good coordination between new and established responsible bodies to benefit Residents
- 7.2 Liberty Protection Safeguards will apply to 16 and 17 year olds as well as Adults, therefore Children's Services will be impacted by the change in legislation. Commissioning are liaising with colleagues in Children and Young Peoples Commissioning to understand the future impacts.

8. Conclusions

- 8.1 KCC has to commission statutory services to the residents of Kent therefore a contract has to be in place on 1 April 2022
- 8.2 The current service provider and provision are working well. An extension will ensure a continued good service whilst work can continue on the review and analysis for tendering the new service
- 8.3 We have outlined work with partners to continue to present opportunities which the extension will provide
- 8.4 Partnership work will inform the commissioning and procurement for any new commissioned Advocacy services.

9. Recommendations

9.1 Recommendation(s): The Cabinet Member for Adult Social Care and Public Health is asked 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.

10. Background Documents

None

11. Report Author

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