

From: Clair Bell, Cabinet Member for Adult Social Care and Public Health
Richard Smith, Corporate Director Adult Social Care and Health

To: Adult Social Care Cabinet Committee – 15 March 2023

Subject: **Community Services Contract awards for Mental Health Assessment and Independent Advocacy Services**

Key decision: 23/00023

Classification: Restricted Appendix (Exempt from publication by Schedule 12A to the Local Government Act 1972, as it contains commercially sensitive information)

Past Pathway of report: None

Future Pathway of report: Cabinet Member decision

Electoral Division: All

Summary: The current contracts to provide the Kent Advocacy Hub and Mental Health Assessment Services are due to end on 31 March 2023. These contracts allow the council to meet its duties relating to Advocacy and Deprivation of Liberty Safeguards (DoLS) under the Care Act. The Liberty Protection Safeguards (LPS) as a replacement to DoLS were originally due to come into force from October 2020. This change is however still awaited. Following a formal procurement process, it is proposed to award new contracts for Community Services for the provision of Mental Health Assessment and Independent Advocacy Services to suitably qualified providers and extend the current contracts for a short period that allows for the mobilisation of the new contracts in a way that best supports the citizens of Kent.

Recommendation(s): The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make **RECOMMENDATIONS** to the Cabinet Member for Adult Social Care and Public Health on the proposed decision (attached as Appendix A) to:

- a) **EXTEND** the current Kent Advocacy Hub and Mental Health Assessment contracts for a period of up to four months;
- b) **AWARD** contracts to successful providers for the provision of Community Services Contracts (Mental Health Assessment and Independent Advocacy Services);
- 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; and
- d) **DELEGATE** authority to the Corporate Director Adult Social Care and Health, in consultation with the Cabinet Member for Adult Social Care and Public Health and

the Corporate Director Finance, to agree the relevant contract extensions as required.

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 Advocacy services provide independent support to a person who needs help to express their views and wishes, or help to stand up for their rights. The contract provides:

- **Statutory advocacy services** - Local authorities must involve people in decisions about their care and support and provide an independent advocate where the person has substantial difficulty being involved and has no appropriate individual to support them. Statutory advocacy covers:
 - (a) *Care Act Advocacy*, for when the authority is making decisions about a person's care.
 - (b) *Independent Mental Health Advocacy*, for when someone is being detained under the Mental Health Act.
 - (c) *Independent Mental Capacity Advocacy*, if decisions are being made about serious medical treatment or a change of accommodation.
 - (d) *Independent Health complaints Advocacy*, supporting people to make a formal complaint about the care and/or treatment they have received using the NHS complaints procedure.
- **Community advocacy** - Specialist advocacy for people with particular support or communication needs due to disability, frailty or other vulnerability.
- **Peer advocacy** - Peer advocacy gives the opportunity for people trained in advocacy who share the same experiences or use the same services to help people who have difficulty making their views known to develop the skills to speak up for themselves, to self-advocate, or if required to speak up for others in a similar situation to themselves.

1.3 The Advocacy Hub Contract is due to end on 31 March 2023.

1.4 The current Mental Health Assessment Service ensures that the Council can meet their requirement to ensure that a person subject to Deprivation of Liberty Safeguards (DoLS) has received statutory Mental Health and Eligibility assessments in a timely manner so as not to delay any outcome issued by the Supervisory Body.

1.5 The Mental Health Assessment Contract is due to end on 31 March 2023.

2. Background

2.1 In 2022 the decision was taken to re-procure Community Services to Meet the Requirements of Advocacy, DoLS and Liberty Protection Safeguards (LPS).

2.2 A procurement process was designed that was proportionate to the requirement, clear and accessible. This requirement is subject to the Light Touch Regime (LTR); however, a traditional procurement route was conducted given that there was no need to alter the 'Open Procedure' in this case.

2.3 The table below sets out the procurement timetable

Procurement Timetable	
Publication of advert and Invitation to Tender Documentation on the Kent Business Portal	6 January 2023
Deadline for Tender Responses	13 February 2023
Tender Evaluation and Governance Procedure	7 February – 21 February 2023
Contract Award	w/b 3 April 2023
Contracts Issued	w/b 10 April 2023
Contracts Commencement Date	1 August 2023

2.4 The evaluation of tenders was completed by a team consisting of officers from Strategic Commissioning (both the Adults and Children's and Young People teams), Adult Social Care practitioners and Kent County Council's Peoples' Panel.

2.5 Following the evaluation process, it is recommended that two new contracts to meet the requirements of Advocacy, DoLS and LPS are awarded. The successful providers recommended for the award of contracts are detailed in Exempt Appendix A (Exempt from publication by Schedule 12A to the Local Government Act 1972, as it contains commercially sensitive information).

2.6 The proposal to award these contracts will introduce well-managed contracts for adult social care and put systems and measures in place to manage its operational requirements in relation to Advocacy, DoLS and LPS including:

- Key Performance Indicators (KPIs): Ongoing management and monitoring of quality ensures that all providers remain compliant to their contractual commitments; and
- Contract Management: Regular communication with providers that continues to strengthen the relationship and service delivery. Regular analysis of KPIs, and management information for quality of services and improved contract monitoring.

2.7 The extension to the current contracts for Independent Advocacy Services and Mental Health Assessment Services will allow for a period of transition between contracts as required to ensure that Kent citizens are not adversely affected by the change.

2.8 The following alternatives were considered and rejected:

- **Do nothing:** the contracts will end on 31 March 2023 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 the current contracts for a longer period:** This offers limited scope to develop the service in the future and as it does not comply with the Public Procurement Regulations (2015), increasing the risk of challenge to do so.

3. Financial Implications

3.1 **Independent Advocacy Services** - The contract will be awarded for a period of 36 months (1 August 2023 to 31 July 2026) with two optional extension periods of 12 months each (1 August 2026 to 31 July 2028). The annual value of Independent Advocacy Services is £1,599,400 (£7,797,000 total, including potential contract extension periods).

3.2 **Mental Health Assessment Services** - The contract will be awarded for a period of 12 months (1 August 2023 to 31 July 2024) with an optional extension period of a further 12 months (1 August 2024 – to 31 July 2025). Although the contract will not give any guarantees to the value of the services, allowing the service to be purchased via this contract as and when required, as it is a demand-led service, the estimated annual value to the council is £420,000 (£840,000 including the potential contract extension period).

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 Contract extension periods are being recommended under Regulation 72(c) of the Public Contract Regulations 2015, fulfilling the following conditions:

- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
- (ii) the modification does not alter the overall nature of the contract;
- (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.

5. Equalities implications

- 5.1 An Equality Impact Assessment has been carried out and is attached as Appendix 1. The assessment concluded that there should be no negative impact on those with protected characteristics as a result of these services being commissioned.

6. Data Protection Implications

- 6.1 A Data Protection Impact Assessment is likely to be required and will be carried out during the contract mobilisation process.

7. Other corporate implications

- 7.1 LPS will apply to 16 and 17 year olds as well as Adults, therefore Children's Services will be impacted by the change in legislation. Adult Social Care Commissioners are liaising with colleagues in Children and Young Peoples Commissioning to understand the future impacts.

8. Conclusions

- 8.1 Kent County Council has a statutory duty under the Care Act to provide independent advocacy.
- 8.2 Putting in place contractual arrangements for Community Services to meet the requirements of Advocacy, DoLS and LPS will meet these statutory requirements.
- 8.3 Following the completion of a comprehensive and transparent procurement process, it is proposed to award contracts to the providers identified in Exempt Appendix A (Exempt from publication by Schedule 12A to the Local Government Act 1972, as it contains commercially sensitive information) for the provision of Independent Advocacy and Mental Health Assessment Services.
- 8.4 The extension to the current contracts for Independent Advocacy Services and Mental Health Assessment Services will allow for a period of transition between contracts as required to ensure that Kent citizens are not adversely affected by the change.

9. Recommendations

9.1 Recommendations: The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make **RECOMMENDATIONS** to the Cabinet Member for Adult Social Care and Public Health on the proposed decision (attached as Appendix A) to:

- a) **EXTEND** the current Kent Advocacy Hub and Mental Health Assessment contracts for a period of up to four months;
- b) **AWARD** contracts to successful providers for the provision of Community Services Contracts (Mental Health Assessment and Independent Advocacy Services);
- 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; and
- d) **DELEGATE** authority to the Corporate Director Adult Social Care and Health, in consultation with the Cabinet Member for Adult Social Care and Public Health and the Corporate Director Finance, to agree the relevant contract extensions as required.

10. Background Documents

Decision Number [22/00004](#) – Advocacy Hub Contract Extension and Permission to Tender for a New Contract.

11. Lead Officer

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