

The Royal Borough of Kensington and Chelsea

EXECUTIVE DECISION

Report Title: Contract Variation: Statutory Advocacy Services: Extending April 2025-September 2025

Date: March 2025

Decision Maker:	Bi Borough Executive Director Adult Social Care and Public Health – Bernie Flaherty
Reporting Officer:	Care Markets Development Officer – Lucie Price
Executive Decision	ED5011354
Access to information	Public (Part A) and Appendix three (Part B) which is exempt from publication on the following grounds: Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
Wards:	All Wards

1. EXECUTIVE SUMMARY

- 1.1 This report is seeking approval for two contract variations for Statutory Advocacy Service contracts to the incumbent providers; The Advocacy Project (TAP) and POhWER for the provision of statutory advocacy services, across the Royal Borough of Kensington and Chelsea (RBKC).
- 1.2 The contracts commenced 1st April 2023 for a period of 24 months. Procurement for new services to commence in 2025 is underway, the public ITT has been closed and evaluation is in progress, however there have been challenges to meet the timeline of seeing a new service in place for April 2025. A contract variation is required to ensure these statutory services are maintained whilst final procurement stages for new services take place; to comply with legal obligations and ensure the well-being of vulnerable individuals.
- 1.3 Currently Adult Social Care (ASC) commission The Advocacy Project (TAP) and POhWER to deliver the following range of statutory advocacy services across RBKC. Services delivered include:
 - Independent Mental Capacity Advocacy (IMCA)
 - Independent Mental Health Advocacy (IMHA)
 - Professional Advocacy Services (who deliver Independent Care Act Advocacy (ICAA)
 - Independent Health Complaints Advocacy (IHCA)

- 1.4 The proposed contract variations are to be extended from 1st April 2025 for 6 months until 30th September 2025.
- 1.5 Procurement timelines are in progress, the ITT having been published at the end of November 2024, expecting a new service in place by 1st August 2025. There is a delivery group working to support this timeline.
- 1.6 The termination clause included in this contract will provide the council flexibility to end the agreement in line with reprocurring a new service.

2. RECOMMENDATIONS

- 2.1 The Executive Director of Adults & Public Health Services to approve a contract variation for statutory advocacy services, in compliance with Regulation 72(1)(b) of the Public Contracts Regulations 2015 (PCR):
 - The Advocacy Project (TAP) (Charity #1084106) – Extend for six months from 1 April 2025 to 30 September 2025, with a contract sum of £140,654.
 - Total contract value from 1 April 2023 to 31 March 2025: £562,614.
 - Total value including extension: £703,268
 - POhWER (Charity #1061543) – Extend for six months from 1 April 2025 to 30 September 2025, with a contract sum of £58,300
 - Total contract value from 1 April 2023 to 31 March 2025: £224,207.
 - Total value including extension: £282,507

* Note VAT is not payable for these services.

- 2.2 The contracts to include a break clause, which would allow the Council to terminate the agreement with three months written notice.

3. REASONS FOR DECISION

- 3.1 This recommendation is made to ensure the Royal Borough of Kensington and Chelsea (RBKC) fulfils its duty under The Care Act 2014 which places a duty on Local Authorities 'to promote choice and control by the individual around their care and support and how it is delivered'; and in all matters governed by the Care Act 'to start from the assumption that the individual is best placed to be able to judge the individual's wellbeing'. Out of this is a requirement to provide independent advocacy to support 'qualifying residents' through all aspects of the care and support planning process and through any safeguarding processes. This requirement sits alongside existing requirements within the Mental Capacity Act 2005/Mental Capacity (Amendment) Act 2019.

4. BACKGROUND

- 4.1 These are statutory Advocacy Services, and the Council is therefore obliged to ensure appropriate service provision is in place. There is not an option for there to be a gap in service, otherwise the Council would be failing in delivering their statutory responsibilities in this area under the Care Act 2014.

- 4.2 In the time available, it would not be possible to conduct a competitive procurement process, even on an expedited basis, in order to safely mobilise an interim service pending the commencement of the new contract. Varying these contracts for the period requested is the most feasible option as it helps continue existing arrangements and ensures continuity for all individuals engaging with the services. As the contracts are currently operating under implied terms varying will regularise the arrangements, allow continuation of the services (in accordance with the statutory obligations of the Councils) and the new service design to be reprocured from the open market.
- 4.3 The intention is to provide sufficient time to bridge the gap between current contracts expiring and getting a new service in place, enabling commissioners to work with procurement and commercial services to carry out a robust procurement process with an open tender, overseeing mobilisation and new service implementation. It is anticipated that the new service will be in place by August 2025
- 4.4 During this contract period, the project team will conclude a robust Open Tender. Commissioners are in the process of procuring a single integrated service, with one front door/gateway into Advocacy Services, for Adults with Health and Social Care Needs, in RBKC, and for people outside the borough where RBKC retains a statutory responsibility for the provision of these services. No appropriate frameworks exist for these locally delivered services.
- 4.5 Contract performance is strong with a robust set of service outcome requirements, which are monitored and reported on quarterly. These show evidence of advocates consistently supporting individuals to achieve increased voice, increased independence, improved opportunities, have their rights upheld and challenge injustices they face.
- 4.6 KPIs have seen providers responding to referrals within the agreed timescale at a 95%+ success rate, responding to 95%+ of complaints within the agreed timescale, and having 90% of referrals waiting less than 10 days to receive the service.
- 4.7 There is good feedback from operational teams in relation to partnership working with POhWER and TAP. Officers work closely with both organisations. There have been no performance issues identified with both providers being flexible in their approach and there is evidence of positive outcomes for residents.

5. CONSULTATION AND COMMUNITY ENGAGEMENT

- 5.1 To support the expected reprocurement, there have been a number of consultations with the provider market. This has included issuing a PIN notice to notify the market of intension to procure services and obtaining feedback to help inform the model.

- 5.2 In addition to a market engagement event, a further consultation with the market took place in 2022 which including sharing outline specifications and pricing options. This was conducted through direct provider by provider discussions to both ensure the specification were relevant and any gaps/risks and opportunities for the new contracts iterated and an agreement of the rates to be paid to services. These changes and agreements have informed the finalised documents to support the procurement. Benchmarking across other London Local Authorities has also informed the service model and specification.
- 5.3 Further, to support the tender evaluation process, Commissioners have received input from the Local Account Group, to support quality questions that can be included in the tender which will be weighted for the overall scores.
- 5.4 In addition, the services obtain and report quarterly on feedback from service users and conduct satisfaction surveys of services received. The case studies support evidence of impact. The outcome monitoring framework will support the assurance of ongoing engagement, review and satisfaction of services along with an annual review process to ensure services are responsive and resilient to demand and needs.
- 5.5 To support the variation, the incumbent providers have been informed of the agreement being sought and are in agreement for the continuation of services for the period noted. A PIN was posted via Jaggaer to notify the market at tender go live and this included opportunity for all interested parties to seek further information.

6. LEGAL IMPLICATIONS

- 6.1 The relevant contracts were previously directly awarded in accordance with Regulation 32 of the Public Contracts Regulation 2015 ("PCR"). The contracts are due to expire on 31 March 2025 and so approval is sought to vary the contracts to allow for a 6-month extension while the current competitive procurement process is finalised and the new contract is mobilised. Taking into account all previous direct awards, the total contract value is above the relevant threshold for Light Touch regime contracts and therefore the proposed variation must fall within one of the grounds under Regulation 72 PCR. Regulation 72 permits the modification of a public contract without triggering the need for a new procurement in limited circumstances.
- 6.2 Regulation 72(1)(b) of the PCR enables the modification of a public contract for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, and would cause significant inconvenience or substantial duplication of costs

for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract.

- 6.3 In accordance with Regulations 72 and 51 PCR a notice must be published to inform the market of the modification.
- 6.4 The Council's Contract Regulations applies to the variation recommended in this report. In accordance with the Contract Regulations, the decision to approve the proposed variation must be made by the relevant Executive Director. The must be made by the Executive Director following endorsement by the relevant Lead Member. The Contract Regulations allow endorsement of the approval by an equivalent body to CAP (in this case CGRB as this is a bi-borough procurement led by WCC). As the proposed variation relates to contracts involving essential statutory services which were directly awarded, the requirement for CGRB involvement is removed.
- 6.5 Legal Services will assist with completion of the variation documents.
- 6.6 A Data Protection Impact Assessment (DPIA) was previously completed and signed off for these contracts. The DPIA is currently being refreshed to ensure it is reflective of any changes. From a data protection perspective, there are no issues or concerns anticipated at this stage.
- 6.7 Further legal implications are set out in Part B of the report

Legal Comments provided by Abigail Carey, Solicitor

7. SAFETY AND OTHER RISK CONSIDERATIONS

See appendix 2 for Safety Impact Assessment.

8. FINANCIAL, PROPERTY AND ANY OTHER RESOURCES IMPLICATIONS

- 8.1 No savings are expected from this contract.
- 8.2 An uplift of 3% was granted for the period 2024-2025 for these contracts. No further inflationary increase is expected, however if such a request were to arise from the provider, commissioning team would need to approve this and would inform finance team of implications to budget.
- 8.3 Varying these contracts is considered value for money for the following reasons.
- 8.4 Contract values for the recommended variation is based on current demand and activity levels. However, since the amalgamation of the previous multiple contracts with each provider into one single contract per provider with each Authority, efficiencies were realised due to the reduction in contract monitoring.
- 8.5 When the contract for Independent Health Complaints Advocacy Service (IHCA) led by Southwark Council ceased with PohWER in March 2021,

WCC negotiated with POhWER a new activity-based agreement with the hourly rate of £38.30 per hour. This reduces the overall charges to both RBKC and WCC for IHCA services by approximately 7%, achieved by removing the fixed core cost, which covered the triage and self-help element. Service uplifts had not been offered for several years and certainly not since 2019, with the nominal funding remaining at the same level. (It is proposed that savings are built into the re-procurement of these services).

Tom Dennerly – Head of Finance ASC and PH

9. ENVIRONMENTAL IMPLICATIONS

- 9.1 There are no known adverse impacts on the climate in approving this decision. Responsible procurement agreements within existing contracts state that the Council seeks to enhance Social Value - defined as 'a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits to society and the economy, whilst minimising damage to the environment' - in all of its service commissioning activities.
- 9.2 Social value contributions including Application to the waste hierarchy, carbon neutral and net-zero carbon initiatives, and the use, implementation and upkeep of green spaces are discussed and reported quarterly through contract monitoring.

10. EQUALITIES IMPACT ASSESSMENT AND IMPLICATIONS

- 10.1 When completing the EQIA, these services did not propose a disproportionate or negative impact upon any protected characteristic/ population group and thus a full EQIA was not required. Positive impacts are proposed for some groups; people with a disability, people of different age groups.
- 10.2 For people with a disability, the rationale behind the proposed positive impact is that Advocacy services are commissioned to offer support specifically to this service-user group and offers of support tailored to this characteristic, in other words parts of this service require a person to have a disability to access the service. These services seek to positively empower people with a disability and increase their independence, ability to understand complex information in certain circumstances, and ability to communicate their wishes and needs.
- 10.3 For people of different age groups, the rationale behind the proposed positive impact is that Advocacy services are commissioned to offer support specifically to this service-user group and offers of support tailored to this characteristic, in other words parts of this service require a person to be an 'older-person' to access the service. These services seek to positively empower Older People and increase their independence, ability to understand complex information in certain circumstances, and ability to communicate their wishes and needs. Overall, current monitoring data from

advocacy services provides that people of different age groups are not disproportionately affected across all service provision and service user activity by age group is reflective of borough residents by age group.

11. HUMAN RESOURCES IMPLICATIONS

11.1 None

12. OTHER KEY CONSIDERATIONS

12.1 None

13. APPENDICES

13.1 Appendix One – EQIA

13.2 Appendix Two – Safety Impact Assessment

13.3 Appendix Three – Part B Exempt

14. SUPPORTING AND BACKGROUND DOCUMENTS

14.1 None

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Mandatory clearance process

Cleared by Corporate Finance (*TD*)

Cleared by Legal Services (*AC*)

Cleared by Communications (*NT*)