

ADULT HEALTH AND SOCIAL CARE ADVOCACY SERVICE CONTRACT EXTENSION

Cabinet Date	11 March 2020
Adult Social Care Commissioning	Cllr Carole Allaway-Martin
Key Decision	Yes
Background Documents	Previous Cabinet paper in which a 3 year contract with an option to extend for two years was agreed: https://glostext.gloucestershire.gov.uk/ieListDocuments.aspx?CId=117&MID=8220#AI14675
Contact for inspection of Background Documents	For details see weblink above or contact: Hannah Gorf, Outcome Manager, 01452 328416 hannah.gorf@gloucestershire.gov.uk
Main Consultees	POhWER (current provider of the service) Head of Safeguarding, Gloucestershire County Council Mental Capacity Act Governance Manager, Gloucestershire County Council Healthwatch Gloucestershire Commissioners GCC and Gloucestershire Clinical Commissioning Group NHS and GCC Complaints Managers Strategic Finance
Planned Dates	Contract extension to commence on 1 st August 2020 and end 30 th September 2022
Divisional Councillor	All
Officer	Hannah Gorf, Outcome Manager, 01452 328416 hannah.gorf@gloucestershire.gov.uk

Purpose of Report	<p>To seek approval:</p> <ul style="list-style-type: none"> a) to extend the term of the existing Adult Health and Social Care Advocacy services contract with the supplier known as POhWER b) to amend such contract for the purpose of including new Liberty Protection Safeguards (LPS) when they are introduced pursuant to anticipated legislation, thereby ensuring that the Council will be able to meet its legal duties thereunder.
Recommendations	<p>That Cabinet delegates authority to the Executive Director Adults Social Care:</p> <ul style="list-style-type: none"> 1) to exercise an option, under the council's Independent Health and Social Care Advocacy Service for Adults contract with POhWER, to extend its term by 2 years from 1st August 2020 until 31st July 2022; 2) to extend the term of such contract by 2 further months expiring 30th September 2022 for the purpose of aligning it to the council's financial monitoring quarter year, and to provide further time in which to embed the implementation of the Liberty Protection Safeguards (LPS) before the re-commissioning of a new service in 2022; 3) in consultation with Cabinet Member for Adult Social Care Commissioning to amend the service specification of such contract upon implementation of LPS (described in the main body of this report) in order to ensure that the council is able to comply with its new statutory duties under the LPS.
Reasons for recommendations	<p>To allow for the continued delivery of the statutory advocacy services to the eligible residents in Gloucestershire when the current contractual arrangements end on 31st July 2020.</p>
Resource Implications	<p>The value of the proposed contract extension (for 2 years and 2 months) is estimated to be approximately £1,761,328.</p> <p>This sum includes the annual cost of the existing contract of £1,233,690; plus the value of an additional 2 months extension (equating to £103,270); plus our projected costs arising from amendments to such contract that are necessary in order to reflect the council's anticipated new Liberty Protection Safeguards (LPS) related obligations (equating to £424,368 over the two years (as LPS is due to commence October 2020).</p> <p>The annual spend under such contract may fluctuate between years over the period of the proposed contract extension given that we have yet to receive the Code of Practice for LPS. This is likely to occur when LPS are implemented and additional investment will be needed in order to ensure that the Council will be able to meet its new statutory duties thereunder and the additional value will be reflected in the contract notice.</p>

	<p>The contract will need to allow for government funding reductions if necessary.</p> <p>Any shortfall in future funding will be considered within the annual financial planning process.</p>
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Background

1. Independent advocacy can assist individuals to understand their choices, make decisions and have their voice heard. The national Advocacy Charter defines advocacy as: *“taking action to help people say what they want, secure their rights, represent their interests and obtain services they need. Advocates and advocacy providers work in partnership with the people they support and take their side. Advocacy promotes social inclusion, equality and social justice”*. The Care Act statutory guidance further defines it as *“supporting a person to understand information, express their needs and wishes, secure their rights, represent their interests and obtain the care and support they need”*. Advocacy can take several forms depending on the individual’s ability and capacity to instruct an advocate.

Current Provision

2. The current contract is due to expire on 31st July 2020. The current provider, namely POhWER, is well respected by professionals and we have received positive feedback from individuals who have used the service and their friends and families in the 2 years and 5 months they have held the contract. The performance monitoring data shows that they are able to operate a good service with fluctuating demand within the envelope of the contract. They are a flexible and transparent service provider. The current model enables us to commission arrangements to efficiently meet a range of statutory duties including the Care Act 2014; Health & Social Care Act 2012, Mental Health Act 2007, Mental Capacity Act 2005, as well as the local prevention, early intervention and personalisation agendas.

Table 1 shows new cases received for 2017/2018 and 2018/2019 and we have compared this data with the contracts forecasted figures for each area, see table 1. The RPPR data is recorded as visits (counting 4 per case) and cases as this was how the forecast was provided.

Table 1

	17/18 actuals	18/19 actuals	Forecast 17/18	Forecast 18/19	% difference between actual and forecast 17/18	% difference between actual and forecast 18/19
IMCA	232	254	145	145	60% increase	75.17% increase

IMCA RPPR	243 (cases) 972 visits	254 (cases) 1016 visits	465 visits	480 visits	109.03% increase	111.67% increase
IMCA DoLS	102	100	110	110	7.27% decrease	9.09% decrease
IHCA	148	121	155	155	4.52% decrease	21.94% decrease
IMHA	422	786	300	300	47.33% increase	162% increase
CAA	574	464	401	462	43.14% increase	0.43% increase
CAA SCC	19	16				

3. The services in scope are listed in Table Two below.

Table Two: Services in scope

Service	Purpose
1. Independent Health Complaints Advocacy (IHCA)	To enable individuals to make a complaint about NHS care.
2. Independent Mental Health Advocacy (IMHA)	For people who are detained under the Mental Health Act or who are under a Community Treatment Order.
3. Independent Mental Capacity Advocacy (IMCA) including the Relevant Person's Representatives (RPR) under the Deprivation of Liberty Safeguards (DoLS) (This is likely to change to Liberty Protection Safeguards (LPS) within the lifetime of this contract extension)	To help particularly vulnerable people who lack the capacity to make important decisions (therefore covered by the Mental Capacity Act) about serious medical treatment, changes of accommodation, safeguarding concerns and care reviews and who have no family or friends that it would be appropriate to consult about those decisions. IMCAs will work with and support people who lack capacity, and represent their views to those who are working out their best interests. IMCA are not decision makers.
4. Independent Care Act Advocacy	To involve individuals who would experience substantial difficulty and have no appropriate involver, in key processes and interactions with the

	LA and other organisations as required for safeguarding enquiries or reviews.
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4. Advocacy providers must be independent from statutory organisations and as free from conflict of interest as possible, both in design and operation of advocacy services. In order to practise in most of the services in scope advocates must be trained to specific standards. They are often paid although there are situations in which it is acceptable to use volunteers as advocates. Advocates are not decision makers. The current provider provides all of this to a high standard and we are satisfied with their service provision.
5. Funding sources are complex involving the Better Care Fund, the Local Reform and Community Voices Grant as well as base budgets. The cost of this service is given in the 'Resource Implications' section.

Liberty Protection Safeguards (LPS)

6. We are expecting the Liberty Protection Safeguards (LPS), contained in the Mental Capacity (Amendment) Act 2019, to come into effect in October 2020, when it will replace the Deprivation of Liberty Safeguards (DoLS).
7. The main changes we are expecting with LPS implementation are:
 - a) The changes to LPS will impact where we receive applications from. We will inherit applications from all supported living residential including shared lives which will increase the number of applications received for a LPS advocate.
 - b) DoLS applies to those aged 18 years and above, but LPS will apply to those 16 years and above
 - c) We will no longer be responsible for providing advocacy for people with an LPS placed out of county, but we will inherit responsibility for those people from out of county placed with Gloucestershire. As we are a net importer, this is likely to bring additional financial pressure.
 - d) Best Interest Assessors will become Approved Mental Capacity Professional (AMCAP)
 - e) RPRs will then become an Appropriate Person IMCA.
 - f) Health authorities will become responsible authorities under LPS, whereas under DoLS, GCC is the only responsible authority. This will require Gloucestershire Health and Care NHS Foundation Trust and Gloucestershire Hospital NHS Foundation Trust to decide how to procure LPS advocacy for themselves. Gloucestershire Clinical Commissioning Group currently spot purchase advocacy from the provider known as POhWER for Continuing Health Care and at this point they state they will continue to do this.
8. The implementation of LPS will have financial implications for the council. Currently we have about 2,000 applications a year. We predict this will rise to 3,000 a year from October 2020 once LPS is implemented. Currently approximately 25% of applications require an advocate. If we work on these assumptions, then that means an extra 250 people a year will require an advocate for LPS. Due to the change in out-of-county arrangements, we also predict we will become a net importer of 150 people eligible for LPS. Based on current

financial modelling we are expecting this to increase our advocacy budget requirements by approximately £424,368 over the two years and two months extension. Based on current financial modelling we are expecting this to increase gradually, with effect from 1st October 2020. However, this will not be required from the first day LPS is implemented and will be monitored and scrutinised robustly, ensuring we work with the provider to absorb as much as we can within the current envelope by analysing current processes. Any shortfall in future funding will be considered within the annual financial planning process.

Options

9. An options appraisal considering the following options was prepared and consulted on:
 - a) **Extend the current contract for a further period of 2 years and 2 months and also amend its provisions for the purpose of including new Liberty Protection Safeguards (LPS) when they are introduced;**
 - b) Extend the current contract for a term of 2 years exactly, and also amend its provisions for the purpose of including new Liberty Protection Safeguards (LPS) when they are introduced
 - c) Extend the contract without including any new Liberty Protection Safeguards (LPS)
 - d) Commission a new contract to commence on the expiry of the existing contract in July 2020
 - e) Do nothing
10. **Option a** is recommended.
11. The four alternatives are not recommended because:
 - Option b –we are re-procuring the service in 2022, so the added 2 months will give us additional time to embed LPS and analyse what we require in the new contract.
 - Option c – LPS is a legislative change due on 1st October 2020. We would need to spend more time and resource coming back to cabinet in April 2020 to seek approvals.
 - Option d – we are very satisfied with the current provider. We would not be able to effectively procure for LPS advocacy as we do not yet have code of practice.
 - Option e – we would be in breach of our statutory duty to provide independent health and social care advocacy.

Risk Assessment

12. There are two identified risks with this option:
 - a. The current provider cannot deliver on the legislative changes to LPS
 - b. We receive a procurement law related challenge to the proposed contract amendments.
13. We are confident we have mitigated these risks:
 - a. The current provider sits on a national steering group looking at the impact of the legislative changes to LPS and is therefore well briefed and up to date with potential changes. They have also managed fluctuating demands within the current service within the financial envelope over the past 2 years and 5 months.
 - b. The anticipated modifications to the current contract with POhWER will result from legislative changes to LPS that will be forced upon the council later this year, hence

the council may rely on provisions within public procurement legislation which permit modifications to the current contract on the proposed basis in circumstances where the needful nature of such modifications is unforeseeable.

Officer Advice

14. The recommended option will ensure that the council is able to provide lawful and effective advocacy service across Gloucestershire following the implementation of LPS in keeping with Gloucestershire County Council's vision and values. The Council will continue to be compliant with its legal duties to offer advocacy in specific circumstances and so afford individuals their statutory rights. Individuals will continue to feel empowered to take the responsibility they want and be more involved in decisions about themselves and their own wellbeing. The service will continue to provide material for individuals to support them to self advocate.
15. The extension of the current contract by 2 years and 2 months would give us more time to analyse and fully understand the impact of LPS for the purpose of procuring a replacement contract in 2022.

Equalities considerations

16. A due regard statement was completed at the time of the original decision to enter into this contract for advocacy services in Gloucestershire. This due regard statement has been reviewed in light of the proposed decision to extend the contract for a further two years and two months and no new material impact on equalities has been identified. The provision of independent advocacy and related services contributes to advancing equality of opportunity for people with a protected characteristic(s). Continuing provision of the advocacy service will ensure that people meeting the relevant eligibility criteria are able to access the services in scope that they need.

Consultation feedback

17. Consultation with relevant Council & NHS colleagues has taken place. We also have robust performance monitoring data, which includes feedback from people who have had an advocate and professionals who have referred for advocacy. Feedback has been mainly positive and any issues that arose we have effectively worked with the provider to develop the service accordingly.

Performance Management/Follow-up

18. The specifications will continue to be reviewed annually to assess changes in need and available resources; this will include legislative duties, provider performance, and budget availability. The council will have the option to terminate the contract in circumstances which make the contract untenable.
19. There is a common approach to the management of these contracts including a performance management workbook for providers to use as well as reporting on quality and outcomes achieved. Over and above this, there are specific reporting requirements and provision for reviewing the quality of each service. Providers are required to quality

assure services by collecting regular customer feedback and service user experience, which has been positive in the lifetime of the contract.

Report Title	Extension of Adult Health & Social Care Advocacy contract
Statutory Authority	<ul style="list-style-type: none"> • Care Act 2014 • Mental Health Act 1983 (revised Mental Health Act 2007) • Health and Social Care Act 2012 • Mental Capacity Act 2005 • Mental Capacity Amendment Act 2019
Relevant County Council policy	<ul style="list-style-type: none"> • Advocacy • Early Help and Children & Young People's Plan • Settled, Secure and Safe lives in Gloucestershire – a policy for supporting people in vulnerable circumstances. • Gloucestershire Mental Health and Wellbeing Strategy 2018-2023 • Gloucestershire Looking to the Future 2019-2022
Sustainability checklist:	
Partnerships	Gloucestershire Health and Care NHS Foundation Trust, Gloucestershire Hospital NHS Foundation Trust, Gloucestershire Clinical Commissioning Group, Current provider
Decision Making and Involvement	Senior Management Team
Economy and Employment	The proposed contracts will employ staff.
Caring for people	The current provider ensures vulnerable people have access to independent advocacy to secure their rights
Social Value	The current provider employs and trains local people, as well as provide opportunities for volunteering
Built Environment	N/A
Natural Environment' including Ecology (Biodiversity)	N/A.

Education and Information	The current provider provides independent advocacy that enables individuals to better understand information
Tackling Climate Change	Carbon Emissions Implications? Positive / Neutral/ Negative Vulnerable to climate change? Yes / No/ Maybe
Due Regard Statement	Has a Due Regard Statement been completed? Yes /No No - A copy of the full Due Regard Statement from the original decision can be accessed at https://glostext.gloucestershire.gov.uk/mglIssueHistoryHome.aspx?IId=23721&optionId=0 Alternatively a hard copy is available for inspection from Jo Moore, Democratic Services Unit, e-mail: jo.moore@gloucestershire.gov.uk .
Human rights Implications	These proposals will have a positive impact on the human rights of individuals using the services.
Consultation Arrangements	<ul style="list-style-type: none"> • Current Provider of the service • Head of Safeguarding Gloucestershire County Council • Gloucestershire County Council Mental Capacity Act Governance Manager • Commissioners GCC and Gloucestershire Clinical Commissioning Group • GCC and NHS Operational staff • NHS and GCC Complaints Managers • Healthwatch Gloucestershire