

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

**Reference Number:**

1881

**Author:**

Clare Gilbert

**Department:**

Children and Families

**Contact:**

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**Subject:**

Advocacy Provision - contract extension and variation

**Total Value:**

£269,538 (Type: Revenue)

**Decision Being Taken:**

To exercise the option to extend the POWWER contract for advocacy provision until 31 March 2016, enabling the additional advocacy requirements outlined in this decision to be addressed.

To grant dispensation from Contract Procedure Rule 5.1.2, in accordance with Financial Regulation 3.29, for the additional funding of £109,948, to meet these advocacy requirements from 1st April 2015 until 31st March 2016.

To approve spend for the total contract value of £269,538.

To approve allocation of £37,000 of the identified funding from Better Care Fund Care Act monies to support the additional requirements in relation to Care Act advocacy.

To note the intention to re-tender the whole service from April 2016 in partnership with the County Council.

Currently the County Council commissions advocacy services on behalf of the City Council and the City and County Clinical Commissioning Groups (CCGs) with the national advocacy service, POHWER. The three year contract is ending on 31 March 2015 but there is the option of extending the contract on a yearly basis for the next three years. The City Council finances for the contract were only confirmed for the initial three years of the contract.

The model of the service is that all enquiries come into a central hub, Access to Advocacy (A2A) which triages all the calls and provides information and advice where this can be delivered in place of advocacy. There are three statutory strands around Independent Mental Capacity Advocacy, Independent Mental Health Advocates and Paid Representatives and the Specialist service which delivers non-statutory advocacy to all vulnerable groups.

When the original contract was agreed, the City Council was able to negotiate a contribution which was significantly less than the contribution of the County Council and this has provided a considerable saving for the City Council over the last three years. However, as the contract is being renewed and there is sufficient data to more accurately identify the City Council split, the level of overpayment by the County has become clear and they are no longer able to sustain this. A new level of contribution has now been agreed which increases the level of payment by the City.

In addition further funding will be required for advocacy in relation to Cheshire West and the Care Act.

#### 1. Cheshire West Pressures

Due to the Supreme Court ruling regarding Cheshire West the interpretation of a deprivation of liberty under the Mental Capacity Act 2005 has significantly widened. This has led to a five fold increase in the requirements for Deprivation of Liberty approvals with a corresponding impact on the requirement for Independent Mental Capacity Advocates (IMCAs) and Paid Representatives. The proposed level of increase in the provision of advocates and Paid Representatives equates to less than a doubling of current provision in these areas and the commissioners feel that this is a proportionate response by the service.

#### 2. Care Act Advocacy

The Care Act identifies a significant increase in advocacy requirements. This includes opening up the provision for individuals experiencing 'substantial difficulties' as well as widening the range of activities for which advocacy should be provided including assessment, care and support planning and review.

It is likely that the level of demand will increase year on year over a five year period, but in order to meet immediate demands, it is proposed that POHWER is given a block sum to meet the initial costs of development and training and a further award on a cost and volume basis across the year.

In order to understand the long term impact of these changes, it is proposed that two separate pilots are run by POHWER in respect of the Care Act and Cheshire West to run from 1st April 2015 to 31st March 2016 alongside the main contract.

Given the substantial additional requirements around statutory advocacy provision in relation to the Care Act 2014 and the Cheshire West ruling, the service will need to be fully reviewed. The level of increase in provision and corresponding cost means that the current contract cannot be extended beyond March 2016 and so it is proposed that the entire service will be re-tendered. It is proposed that we continue in partnership with the County Council as this arrangement provides considerable economies of scale.

**Other Options Considered:**

**Do Nothing - The County Council will not be able to continue to subsidise the current contract at its existing level and so the current contract would be dissolved. Without additional funding for Cheshire West and the Care Act the Council would not meet its statutory obligations**

**Re-tender the service - this would not be achievable within the timescales. The County would not seek to re-tender at this time, so this the City Council would lose the considerable benefits from the economies of scale as well as having to meet the full service costs and the statutory pressures.**

**Tender the additional work as 2 separate Pilots. The 2 pilots are required to work together, and with POHWER, therefore to avoid duplication and confusion for referrers and users, it is recommended that POHWER undertakes the Pilots.**

**De-commission the non-statutory element of the service - this would be difficult to achieve legally as the current contract is for the whole service. Removal of such a significant element of the contract would require a period of consultation. There will also need to be a detailed analysis of the potential impact and how best to manage the reduction or ending of non-statutory provision. This will be addressed in the re-tendering process for 2016.**

**Background Papers:**

**None**

**Published Works:**

**None**

**Affected Wards:**

**Citywide**

**Colleague / Councillor Interests:**

**None**

**Exempt Information:**

**Description of what is exempt:**

**The financial information**

**An appendix (or appendices) to this decision is exempt from publication under the following paragraph(s) of Schedule 12A of the Local Government Act 1972**

**3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).**

**The public interest in maintaining the exemption outweighs the public interest in disclosing the information because it could prejudice negotiations**

**Documents exempt from publication:**

**Exempt Advocacy Information2.docx, Advocacy Provision - Financial Observations.doc**

**Consultations:**

**Those not consulted are not directly affected by the decision.**

**Crime and Disorder Implications:**

**Not applicable**

**Equality:**

**EIA not required. Reasons: No EIA is required because additional funding is being used to meet existing requirements and new statutory responsibilities and so will not impact adversely on any groups.**

**Social Value Considerations:**

**Not applicable**

**Decision Type:**

**Portfolio Holder**

**Subject to Call In:**

**Yes**

**Call In Expiry date:**

**18/03/2015**

**Advice Sought:**

**Legal, Finance, Procurement**

**Legal Advice:**

**This report does not raise significant legal issues. An option is being exercised to extend the term of the contract but in addition the scope is being varied to ensure the service delivered meets the Council statutory duties as described in the report. The report author has confirmed that it would not be practicable or cost effective to tender for these additional services to be provided by a separate advocacy service provider. Advice provided by Andrew James (Team Leader Contracts and Commercial) on 05/02/2015.**

**Finance Advice:**

**This advice is exempt from publication and is contained within an exempt appendix Advice provided by Darren Revill (Finance Analyst) on 04/02/2015.**

**Procurement Advice:**

The proposed extension of the POWWER advocacy contract held jointly with Nottinghamshire County Council will enable the continued delivery of this service pending a full review of the commissioning requirements and re-tendering. The proposed increase in funding will ensure the contract is funded at an appropriate level to meet the identified need in the City, and will enable the additional statutory requirements around advocacy provision arising from the Care Act 2014 and the Chesire West ruling to be met pending the outcome of the review. It would not be feasible or cost effective for the City Council to tender separately to meet the additional requirements within the timescales available. For these reasons dispensation from the Contract Procedure Rules (5.1.2), in accordance with Financial Regulation (3.29) to award the additional funding is supported from a procurement perspective. Advice provided by Jo Pettifor (Strategic Procurement Manager) on 29/01/2015.

**Signatures**

<b>Alex Norris (PH Adults, Commissioning and Health)</b>
<b>SIGNED and Dated: 11/03/2015</b>
<b>Alison Michalska (Corporate Director for Children and Adults)</b>
<b>SIGNED and Dated: 09/03/2015</b>